

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Subsidies and
Countervailing Measures

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

US Countervailing Duty Regulations¹

Draft Modifications to US Countervailing Duty Regulations to Implement Legislative Changes Resulting from the Enactment of the Trade and Tariff Act of 1984

Revision

In documents SCM/1/Add.3/Rev.1 and Corr.1, the United States delegation notified the Committee of changes to US countervailing duty law resulting from the enactment of the Trade and Tariff Act of 1984.

Draft revisions to regulations designed to implement the changed legislation have now been published. These draft revisions are the subject of this notification. The Committee's attention is drawn to the opportunity provided for submission of written comments on the draft regulations.²

¹English only.

²These comments should be addressed directly to the US Department of Commerce in Washington or to Mr. Andrew Stoler, Office of the US Trade Representative in Geneva, by 9 August 1985.

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 355

[Docket No. 50448-5048]

Countervailing Duties

AGENCY: International Trade Administration, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: The International Trade Administration proposes to revise its regulations to implement the provisions in Title VI of the Trade and Tariff Act of 1984 concerning countervailing duties and modify in other respects provisions in the current version of Part 355. The modifications are intended to improve administration of the countervailing duty provisions of the Tariff Act of 1930.

DATES: Written comments must be received not later than August 9, 1985.

ADDRESS: Address written comments to Alan F. Holmer, Deputy Assistant Secretary for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Assistant General Counsel for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. (202) 377-1411.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291. The International Trade Administration ("ITA") has determined that this proposed revision of the current countervailing duty regulations in 19 Code of Federal Regulations ("CFR") Part 355 is not a major rule as defined in section 1(b) of Executive Order 12291 (48 FR 13193, February 19, 1981) because it will not: (1) Have a major monetary effect on the economy; (2) result in a major increase in costs or prices; or (3) have a significant adverse effect on competition (domestic or foreign), employment, investment, productivity, or innovation.

Paperwork Reduction Act. The information collection requirement contained in 19 CFR Part 355 has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been assigned OMB control number 0625-0148.

Regulatory Flexibility Act. The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small business entities because, to the extent it changes existing practices, the proposed rule simply improves the administration of the countervailing duty provisions of the Tariff Act of 1930, as amended. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Background

The current countervailing duty regulations in Subparts A, B, and C of 19 CFR Part 355 (45 FR 4932; January 22, 1980, as amended by 49 FR 22466; May 30, 1984) are based on Subtitles A, C, and D of Title I of the Trade Agreements Act of 1979 ("Trade Agreements Act"), which amended section 303 and Title VII of the Tariff Act of 1930 (19 U.S.C. Subtitle IV, Parts I, III and IV) ("Tariff Act"). Title VI of the Trade and Tariff Act of 1984 (Pub. L. 98-573; October 30, 1984) ("1984 Act") amended those provisions, effective on the dates specified in the interim-final rule adding a new Subpart E to 19 CFR Part 355 (50 FR 5748; February 17, 1985). The current regulations relating to subsidies on quota cheese in Subpart D of 19 CFR Part 355 (45 FR 74469; November 10, 1980) are based on section 702 of the Trade Agreements Act (19 U.S.C. 1202 note).

Some of the proposed changes to the current countervailing duty regulations are necessary to implement the amendments made by the 1984 Act. Other proposed changes: (1) Incorporate existing administrative interpretations and practices, not currently stated in the regulations, that will continue under the amended statute; (2) improve administrative efficiency in countervailing duty proceedings; or (3) simplify the language of existing regulations. The proposed text of Part 355 would replace the entire current text of Part 355.

Grammatical changes throughout the text of the proposed regulations are the use of the word "Secretary" in place of "administering authority," use of the active rather than passive voice, and simplification of sentence structure. When possible, cross references to other sections of this part replace references to the Tariff Act.

Other changes in the regulations incorporated in this proposed rule are described in the following section-by-section analysis.

1. Section 355.1. This section corresponds to section 355.0 of the current regulation. The paragraph on environmental impact statements is deleted. References to section 702 of the Trade Agreements Act and to Title VI of the 1984 Act are added.

2. Section 355.2. This section corresponds to §§ 355.6 and 355.7 of the current regulation.

Subsections (a) through (f) are revised for clarity.

Subsection (g) is a new definition of "factual information," a term used throughout the proposed rule, especially in § 355.31. Factual information and argument (written and oral) describe the submissions which may be made to the Department during a proceeding.

The current definition of "industry" is clarified in subsection (h) of the proposed rule to highlight those aspects of the statutory definition (section 771(4) of the Tariff Act) regarding whether the petitioner has filed "on behalf of" an industry, as required by section 702(b)(1) of the Tariff Act. The modification does not change current practice. The Department would consult with the International Trade Commission on the decision concerning the "like product."

In subsection (i) of the proposed rule, paragraph (6) is added to the definition of "interested party" to include coalitions of firms, unions, or trade associations that have individual standing, as defined in paragraphs (3), (4), or (5). The change conforms the definition to section 771(9) of the Tariff Act, as amended by section 612(a) of the 1984 Act. The word "seller" replaces "wholesaler" in paragraph (3) to clarify that the provision includes all sellers (except retail sellers) rather than only sellers at the wholesale level of trade. This change is consistent with current practice. Otherwise, the definition of "interested party" is changed for clarity only.

The definition of "investigation", in subsection (j), is revised to include investigations that begin with a notice of continuation of an investigation under § 355.19 after the Secretary finds that a suspension agreement has been violated. It also includes a reference to investigations that end with a notice of suspension of investigation.

Subsection (k), which is new, is a definition of "the merchandise." The definition avoids continual repetition throughout the proposed regulations to "the class or kind of merchandise subject to the proceeding which has either been imported or sold, or is likely to be sold, for importation."

The definition of "party to the proceeding" in subsection (1) requires.

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instead of the current written request, that an interested party actively participate in the particular segment of the proceeding that is judicially reviewable. In order to participate in litigation under section 516A(d) of the Tariff Act, an interested party must be a party to the proceeding. Active participation in the proceeding is a reasonable prerequisite for the right to participate in judicial review of the results.

The definition of "proceeding" in subsection (n) is revised to cover administrative reviews at the direction of the President, under § 355.22(i), and to cover dismissal of a petition prior to initiation of an investigation, rescission of an initiation, and termination of a suspended investigation.

The definition of "order" in § 355.6 of the current regulations is deleted, because orders are defined and described in § 355.21. The definition of "determination" in § 355.6 of the current regulation is deleted because it is not needed.

The new definitions of "producer" and "production" (subsection (o)) are intended to simplify regulatory language by substituting a single word for the phrase "manufacturer or producer" or "manufacture and production" wherever it appears.

Subsection (p) of the proposed rule includes for the first time definitions of "sale" and "likely sale." The definition of "likely sale" implements sections 701(a) and 705(b)(1) of the Tariff Act, as amended by section 602(a) of the 1984 Act. Only in the event that no sale has been consummated will the Secretary consider likely sales, as defined in this subsection. "Likely sale" means an offer that the seller has made irrevocable for a period of time. The definition of "sale" is based on current practice. A "sale" includes a contract to sell, even though during the proceeding the contract may be contingent on a future even or occurrence, may not have been reduced to writing, or may not yet be complete in every detail.

The definition of "Secretary" in subsection (q) is amended to summarize current delegations of authority from the Secretary of Commerce and thereby clarify the references to "Secretary" throughout the regulations.

3. *Section 355.3.* Sections 355.15 through 355.21 of the current regulation are completely reorganized and modified, as explained below. Generally, the regulatory procedures for release of proprietary information under administrative protective order are simplified, in accordance with the amendments to section 777 of the Tariff Act made by the 1984 Act.

Rewritten under a new section title, § 355.3 describes in subsections (a) and (b) the two types of records of the proceeding, the official record and the public record. For the purposes of judicial review, the official record under section 516A(b)(2) of the Tariff Act is the official record of the judicially reviewable segment of a proceeding. For example, the record we would file with the court in the event of a judicial challenge to the final results of administrative review issued by the Secretary under § 355.41(c) are the documents pertinent to that particular administrative review. Unless those documents had been used by the Department in the later review, we would not include documents pertinent to an earlier administrative review, or to the investigation, unless those documents had been resubmitted during the review being challenged, in accordance with these proposed rules, and were pertinent to the review. This reflects our current practice. The public record is available for inspection and copying, as described in the proposed rule.

Subsection (c) of the current regulation, concerning reports on the progress of investigation, is deleted because it is unnecessary. No report has ever been requested. The public file provides an accurate record of the progress of the investigation.

Subsection (c) of the revised regulation retains the basic requirement for protection of the record that is stated in subsection (d) of the current regulation. Submission of the official record to the court for the purpose of judicial review is addressed in section 516A(b)(2) of the Tariff Act and in court rules. Reference to submission to the court is deleted in the revised version of this subsection, because these rules do not address procedures for judicial review.

4. *Section 355.4.* Section 355.4 defines each of the four types of information that may be contained in the official file of the proceeding: public, proprietary, privileged, and classified. The term "proprietary" is used throughout the revised regulation in place of the term "confidential" (the term used in the current regulations) to describe the type of business information defined in paragraph (b)(2) of this subsection. "Proprietary" more accurately describes this category of information and eliminates possible confusion with the national security classification of "confidential."

Subsection (a) of the proposed rule generally tracks the substance of the current regulation in § 355.19(b). Written argument, which is described in § 355.39

of the proposed rule, normally is public rather than proprietary.

Subsection (b) of the proposed revision provides a more specific and complete list of information normally considered proprietary than does § 355.19(c) of the current regulation. The list reflects the agency's experience with the various types of proprietary and other information submitted in proceedings. We have found that many of the disagreements over disclosure may be traced to the inappropriate designation of information as proprietary.

Subsections (c) and (d) of the proposed revision are new, although they do not change Department practice. They are intended to complete the definition of the types of information in the official record. Factual information does not acquire national security "classified" status merely because a foreign government submits it to the Secretary. The Department will continue its practice of ensuring that transmission of information through a foreign government is not used to avoid disclosure of publicly available information or of proprietary business information. Of course, during the Secretary's consideration of the request, documents submitted by a government with a request that it be held in confidence will be accorded such treatment, consistent with Executive Order 12356.

5. *Section 355.5.* This section of the proposed rule corresponds to § 355.44 of the current regulation. The proposed rule provides more specific information about the location of the subsidy library.

6. *Section 355.6.* This section, which corresponds to § 355.51 of the current regulation, concerns the effective dates of amendments to the Tariff Act made by the 1984 Act. Section 355.51 was published as an interim final rule on February 12, 1985 (50 FR 5748).

7. *Section 355.11.* This section corresponds to section 355.25 of the current regulation. By use of the term "the merchandise," subsection (a) and later sections of the proposed rules incorporate the concept of likely sales for importation that was added explicitly to section 701(a) of the Tariff Act by section 602 of the 1984 Act. See preamble comment on § 355.2(k). As under § 355.27(b) of the current regulation, subsection (a)(1) of the proposed rule provides for consultation with the Commission on the description of the merchandise. Commission access to information is government by section 355.32(f)(3) of the proposed rule.

8. *Section 355.12.* This section corresponds to § 355.26 of the current

regulation. Subsection (a) of the proposed rule states the general requirements for filing a petition found in § 355.26 of the current regulation. Coalitions of domestic interested parties have the ability to file petitions, consistent with section 612(a)(3) of the 1984 Act. See H.R. Rep. No 98-1158, 98th Cong., 2d Sess. at 175 (1984) ("Conference Report").

Subsection (b) of the proposed rule, entitled "Contents of Petition," corresponds to subsection (a)(1) through (a)(13) of § 355.26 of the current regulation, with some modifications. Subsection (b)(2) of the proposed rule combines subsection (a)(2) and (a)(11) of the current regulation.

Subsection (b)(4) clarifies that the petitioner's description of the merchandise does not necessarily determine the scope of an investigation initiated under § 355.13. In some instances the Secretary may expand or contract the class of kind of merchandise under investigation to conduct an adequate investigation.

Subsection (b)(6) requires reasonable quantification of the share of total exports to the United States accounted for by each allegedly subsidized exporter or producer. This change is consistent with current practice.

Subsection (b)(7) highlights the requirement that petitioner document allegations about subsidy programs. Such documentation helps the Department to judge quickly the adequacy of a petition and to prepare the questionnaires referred to in § 355.31 of the proposed rule.

Subsection (b)(8), which is new, implements section 771A of the Tariff Act, as added by section 613 of the 1984 Act. The subsection sets out petition requirements concerning upstream subsidies.

Subsection (b)(9) of the proposed rule combines without substantive changes subsections (a)(8) and (a)(9) of the current regulation.

Subsection (b)(10) reflects the new definition of likely sales for importation. See preamble comment on § 355.2(p).

The requirement at the end of subsection (a) of the current regulation, concerning forms for submission of petitions is deleted. The only form for petitions is stated in subsection (b) of the proposed rule.

The requirement in subsection (b) of the current regulation, concerning English translations, appears in § 355.31(f) of the proposed rule.

Subsections (c) and (e) of the proposed rule clarify the simultaneous filing requirement for petitions and amendments to petitions contained in subsections (c) and (e) of the current

regulation. In addition to Title VII investigations, under section 303 of the Tariff Act the Commission must under certain conditions make injury determinations in investigations involving duty-free merchandise from non-agreement countries. Subsection (e) of the proposed rule also includes a filing certification requirement (as does subsection (c)) and a reference to the time limits in § 355.31.

Subsection (d) is revised for clarity.

Subsection (f) of the proposed rule corresponds to portions of subsection (a) and to subsection (f) of the current regulation. It cross-references the requirements of subsections (d) and (e) of § 355.31 concerning where to file, time of delivery, format, and number of copies. Section 355.31(d) also states the time at which the Department considers a document filed.

Subsection (g) is revised for clarity.

Subsection (h) is added to implement section 702(b)(3) of the Tariff Act, as added by section 650 of Pub. L. 98-181 (November 30, 1983), concerning petitions based solely on alleged derogation of an international undertaking on official export credits. Under this provision the Secretary of the Treasury determines, in consultation with the Secretary, the existence and estimated value of the alleged derogation within 70 days after the petitioner files the petition. Given the short deadline, the simultaneous filing requirement stated in subsection (h) of the proposed rule is a reasonable means of implementing the statutory notification requirement. We note that the determination regarding derogation does not constitute the subsidy determination required by this Part.

Subsection (i)(1), which is new, implements section 221 of the 1984 Act, which explicitly requires the Department to provide technical assistance to eligible small businesses in the preparation and filing of petitions under this section. Subsection (i)(2) is revised to identify specifically the person to contact for additional information on filing any petition.

Subsection (j), which is new, limits communication, before the Secretary determines whether or not to initiate an investigation under § 355.13, between the Secretary and persons that might be respondents in the investigation. The only exception to this limitation on pre-initiation communication with potential respondents is stated in subsection (j)(2), which provides that the Secretary may consult with the representatives of the affected country to the extent required by the international obligations of the United States. The subsection is consistent with the decision of the Court

of Appeals for the Federal Circuit in *United States v. Roses, Inc.*, 706 F.2d 1563 (1983).

9. *Section 355.13.* This section corresponds to § 355.27 of the current regulation. Subsection (a) of the proposed rule corresponds to subsection (a) and portions of subsection (b) of the current regulation. The last sentence of subsection (a) of the current regulation is now incorporated in § 353.31(d) of the proposed rule.

Subsection (b) of the proposed rule conforms the contents of the notice of initiation published under this section to that for notices of self-initiation under § 355.11. It also limits the requirement for special notice to the Commission to those investigations requiring a determination of injury.

Subsection (c) reflects the Secretary's authority to dismiss a petition in whole or in part. An example of partial dismissal is the Secretary's decision not to initiate an investigation of a subsidy allegation which the Secretary previously found not to be a subsidy and which is not supported by new evidence.

Subsection (d) of the current regulation, which concerns notice to the Commission of the Secretary's decision, appears in subsections (b) and (c) of the proposed rule.

10. *Section 355.14.* This section corresponds to the second sentence of § 355.3² of the current regulation. It now specifies requirements for requests for exclusion from an order, including certifications of the producer, exporter, and the government of the affected country. The Secretary will not extend the time limit for submission of requests for exclusion. Once submitted, a request for exclusion may not be withdrawn, because the Secretary's investigation will be structured to take account of the request for exclusion. The certification requirement, which is tied to the programs the Secretary identifies in the notice of initiation of investigation, is intended to eliminate frivolous requests. (See also § 355.33(e) for the consequences of submission of exclusion certificates which the Secretary is unable to verify.)

Under subsection (c), the Secretary will investigate requests for exclusion "to the extent practicable," which means that the Secretary will consider in each investigation the specific administrative burden created by the requests. Where the Secretary decides that the administrative burden of investigating each request for exclusion is too great, given the statutory time limits, the Secretary may refuse to act on any or all of the requests.

11. *Section 355.15.* This section corresponds to § 355.28 of the current regulation. In subsection (a)(1), the current reference to "best information available" is changed in the proposed rule to read "available information." "Available information" is not limited to the "best information available" within the meaning of § 355.38. The phrase "the merchandise . . . from a country entitled to an injury test for the merchandise" replaces the current reference to "merchandise . . . from a country under the Agreement or duty-free merchandise" in order to clarify the statutory requirement for determination of injury. See preamble comments on § 355.12 (c) and (e).

Subsections (a)(2) and (a)(3) of the proposed rule, which describe the Secretary's preliminary determination, consolidate provisions in subsections (a) and (d) of the current regulation and, in subsection (a)(2)(iii), add a reference to a preliminary finding of critical circumstances. Provisional measures are limited to cash deposit or bond, the current practice. Regarding determination of the estimated net subsidy on a country-wide basis, the proposed rule implements section 607 of the 1984 Act, which amends section 706(a) of the Tariff Act. See the discussion under proposed § 355.20(d).

Subsection (a)(4) states that the notice will include an invitation for argument on the Secretary's preliminary determination. Subsection (a)(4) otherwise is revised to reflect the notice requirements of section 703(f) of the Tariff Act. This revision does not change current practice.

Subsections (b) and (c) of the proposed rule correspond to the respective subsections of the current regulation, except that the notice and publication requirements in subsection (b)(3) and (c) of the current regulation appear in subsection (e) of the proposed rule. Subsection (b)(2)(i) is revised to reflect current practice, and subsection (b)(2)(ii) and (iv) is revised to conform to the similar test for "extraordinary circumstances" in § 355.18(d). Subsection (c) states that the Secretary will grant a timely request from petitioner to postpone the preliminary determination, unless the Secretary finds compelling reasons to deny the request. This reflects current practice and Congressional intent.

Subsection (d) implements section 703(h) of the Tariff Act, as added by Section 613(c) of the 1984 Act, regarding time limits when the Secretary investigates upstream subsidies.

Subsection (e) of the proposed rule consolidates all notice requirements for

the postponements of the preliminary determination described in this section.

Subsection (f) implements section 703(b) of the Tariff Act, as amended by section 603 of the 1984 Act, concerning waiver of verification.

Subsection (g), which corresponds to subsection (e) of the current regulation, no longer contains the requirement that the Commission "confirm" the obligation not to disclose "confidential" (proprietary) information. Confirmation is unnecessary, given the limitations on disclosure stated in this subsection and in § 355.32(f) of the proposed rule.

Subsection (h) reflects current practice concerning the disclosure conference, a meeting with a party to the proceeding at which a knowledgeable employee of the Department reviews calculations illustrative of the preliminary determination.

12. *Section 355.16.* This section corresponds to § 355.29 of the current regulation. Subsection (a) of the current regulation is reorganized for clarity and divided into two subsections. Subsection (a) of the proposed rule states the general requirements concerning critical circumstances allegations and clarifies that the Secretary may investigate critical circumstances on the Secretary's own initiative in investigations self-initiated under § 355.11. Subsection (b) of the proposed rule states the conditions for, and timing of, a preliminary finding of critical circumstances.

The word "finding" is used throughout the proposed rule to describe what in the Tariff Act and in the current regulation are called "determinations" of critical circumstances. The change is not substantive. It is intended to differentiate clearly in the regulation a determination regarding critical circumstances from a preliminary determination under § 355.15 or a final determination under § 355.20.

Subsection (b)(2) of the proposed rule incorporates the notice and publication requirements of subsections (b) and (d) or the current regulation.

Subsection (c), which corresponds to subsection (c) of the current regulation, is revised for clarity only. If the Secretary makes an affirmative preliminary finding of critical circumstances after an affirmative preliminary determination under § 355.15, the Secretary will amend the order (referred to in this subsection) suspending liquidation.

Subsection (d) states that the Secretary will make a final finding of critical circumstances under certain conditions. The subsection is based on portions of subsection (a) of the current

regulation and on section 705 (a)(2) and (c)(4) of the Tariff Act, as added by section 605(a) of the 1984 Act.

Subsection (e), which is new, states that in making findings regarding critical circumstances in self-initiated investigations, the Secretary is not bound by the time limits that apply to findings in investigations based on a petition under § 355.12.

Subsections (f) and (g) describe what the Secretary normally will examine in deciding whether there have been "massive imports" in a "relatively short period," two of the statutory elements of the critical circumstances finding. The criteria described in the proposed rule are intended to clarify the bases for the Secretary's critical circumstances findings without adversely affecting the Secretary's administrative discretion. If the imports have accounted for a preponderance of the U.S. apparent consumption of the merchandise during the relatively short period, the Secretary might consider the imports massive, even if the increase is less than 15 percent over the base period described in this subsection.

13. *Section 355.17.* This section corresponds to § 355.30 of the current regulation. Subsection (a) implements section 704(a)(1) of the Tariff Act, as amended by section 604(a)(1) of the 1984 Act. The proposed rule clearly states the Secretary's authority to terminate self-initiated investigations.

Subsection (b) is new. Paragraphs (1) and (2) of subsection (b) implement section 704(a)(2) of the Tariff Act, as added by section 604(a)(1) of the 1984 Act. Under the 1984 Act, the Secretary must consider special "public interest" factors before terminating an investigation upon withdrawal of the petition based on the Secretary's acceptance of a quantitative restriction agreement. Paragraph (3) of subsection (b) implements section 761(b) of the Tariff Act, as added by section 611(a)(4) of the 1984 Act, regarding modifications of quantitative restriction agreements to take account of consultations held under new section 761(a) of the Tariff Act.

Subsection (c) revises subsection (b) of the current regulation for clarity.

Subsection (d), although a new provision, reflects section 704(f) of the Tariff Act and current practice.

14. *Section 355.18.* This section corresponds to § 355.31 of the current regulation. Subsection (a) of the proposed rule states the public interest requirement in subsection (f) of the current regulation, which is deleted as a separate subsection.

Subsection (b) of the proposed rule reorganizes for clarity the corresponding

subsection of the current regulation. Subsection (b)(1) states the public interest requirement in subsection (f) of the current regulation.

Subsection (b)(3) of the proposed rule modifies subsection (b)(3) of the current regulation to implement section 704(d)(1) of the Tariff Act, as amended by section 604(a)(2)(A) of the 1984 Act.

Subsection (c) provides for measurement of "substantially all" of the imports based either on the volume or on the value of imports, an addition to the current regulation that is consistent with the language and purpose of the Tariff Act. The portion of subsection (c) of the current regulation that concerns modification of agreements during administrative reviews is incorporated in § 355.22 of the proposed rule.

Subsection (d) and (e) are revised for clarity.

Subsection (f) revises for clarity subsection (g) of the current regulation.

Subsection (g) of the proposed rule sets forth in more explicit detail than corresponding subsection (h) of the current regulation the applicable procedures for suspension of investigation. Paragraph (g)(1), as revised, requires the foreign government or exporters to submit a proposed suspension agreement not later than 45 days before the scheduled date for the final determination, a requirement intended to give the Secretary and domestic interested parties adequate time to review and, if appropriate, suggest revisions to the proposed agreement. Paragraph (g)(3) includes a time limit for submitting comments on a proposed suspension agreement. While time may be very restrictive for commenting on a proposed suspension agreement, nothing is served by the Secretary's receipt of comments too late to consider them.

Subsection (h) provides for publication in the Federal Register of the text of the suspension agreement, which is the current practice. The last sentence of this subsection, which is new, provides the Secretary with explicit authority to incorporate into a suspension agreement factual and legal conclusions reached after a preliminary determination and subsequently the results of a final determination is an investigation continued under subsection (i). In addition, this subsection of the proposed rule, which includes subsections (i), (j), and (k) of the current regulation, is revised for clarity.

Subsection (i) corresponds to subsection (l) of the current regulation. The only substantive change is the reference to § 355.2(i)(6), the amended

definition of interested party which is explained above under that section.

Subsection (j) adds to subsection (g) of the current regulations the additional authority in section 704(d)(2) of the Tariff Act, as amended by the 1984 Act, concerning the treatment of excess entries of the merchandise under a suspension agreement.

Subsection (k), which is new, implements section 761(b) of the Tariff Act, as added by section 611(a)(4) of the 1984 Act.

15. *Section 355.19.* This section, which corresponds to § 355.32 of the current regulation, states the applicable procedures when the Secretary decides or has reason to believe either that the signatory government or exporters have violated a suspension agreement, or that the agreement is no longer in the public interest or no longer subject to effective monitoring.

Subsection (a) of the proposed rule, like subsection (a) of the current regulation, provides for an expedited determination without prior notice or opportunity for comment. The Secretary would use the "fast track" approach in subsection (a) when the Secretary decides that the record shows clear evidence of violation and that notice and comment are unnecessary. Paragraph (a)(4) provides that, if appropriate, the Secretary will notify the Commissioner or Customs of the determination, in accordance with section 704(i)(1)(D) of the Tariff Act, as amended by section 604(a)(4)(C) of the 1984 Act. The Commissioner would take action, if appropriate, under section 704(i)(2) of the Tariff Act, if the violation was intentional.

Subsection (b) establishes a procedure for notice and comment on suspected violations or when the Secretary has reason to believe that a suspension agreement no longer meets the public interest or monitoring requirements of the Tariff Act. After the comment period, the Secretary would take appropriate action, which would mean the steps outlined in subsection (a) (issuing a countervailing duty order or resuming the investigation) if the Secretary finds a violation. If the Secretary does not determine that the agreement has been violated, the Secretary may nonetheless take action to correct any deficiencies in the agreement, including revising the agreement or cancelling it under subsection (a). In revising an agreement under this subsection, the Secretary could, for example, convert a suspension agreement eliminating the net subsidy to one eliminating injurious effect.

Subsection (c), which is new, allows the Secretary to include in an agreement

additional signatory exporters. It codifies current administrative practice.

Subsection (d) of the proposed rule, which is new, defines "violation." References in the current regulation to "breach" and "intentional violation" are omitted from the proposed rule in favor of a straight-forward definition of a violation as significant noncompliance with an agreement's terms. If the Secretary finds an insignificant deviation, the Secretary would not consider the agreement to have been violated but could find the agreement is lacking under the public interest standards. Subsection (c) of the current regulation (intentional violations), as noted above, is dealt with in proposed subsection (a).

16. *Section 355.20.* This section corresponds to § 355.33 of the current regulation. Subsection (a) of the proposed rule incorporates subsections (a), (b), (e), and (f) of the current regulation but provides a more specific description, consistent with current practice, of the action the Secretary takes when the final determination is affirmative.

Subsection (b) implements section 703(h)(2) of the Tariff Act, as amended by section 613(c) of the 1984 Act, as to time limits when the investigation involves upstream subsidies.

Subsection (c) implements section 705(a)(1) of the Tariff Act, as amended by section 606 of the 1984 Act, regarding simultaneous antidumping and countervailing duty investigations. Subsection (c) of the current regulation, concerning disclosure conferences, is covered in subsection (h) of § 355.28 of the proposed rule. Subsection (d) of the current regulations is covered in § 355.39 (written argument and hearings) of the proposed rule.

Subsection (d) implements section 705(a)(2) of the Tariff Act, as added by section 607 of the 1984 Act. The enactment of section 607 was meant "to lessen the administrative burden on the administering authority stemming from implementing company-specific rates." Conference Report at 180. To that end, the provision establishes a presumption of a single, country-wide rate for each class or kind of merchandise investigated. The presumption can be overcome as described in subsection (d)(1). The proposed rule would apply a common-sense, two-tiered approach to whether a significant differential is shown. With the weighted-average country-wide rate as the starting point, a significant differential would be 10 percentage points, or 25 percent whichever is greater. This recognizes that differences that at lower company

and country-wide rates might be significant are less significant as the weighted-average rate increases. Section 607 is designed to result in fewer company-specific rates than under current practice.

Subsection (e), which is new, states the consequences for an individual producer or exporter of failure to satisfy the requirements for exclusion stated in §§ 355.14 and 355.21.

Subsection (f) is new. It reflects current practice on sharing information with the Commission. See comment on proposed § 355.15(g).

Subsection (g), which corresponds to subsections (g) and (h) of the current regulation, provides a more detailed explanation of the effect, under current practice, of negative final determinations.

17. *Section 355.21.* This section corresponds to § 355.36 of the current regulation, except as noted below. Subsection (a) is modified to clarify the relationship between this section and section 751 of the Tariff Act, as amended by section 611(a)(2)(A) of the 1984 Act. Under current practice, the Secretary notifies the Customs Service of the amount of countervailing duty to assess at the completion of each administrative review under section 751.

Subsection (b) of the proposed rule corresponds to subsection (c) of the current regulation.

Subsection (d) of the current regulation is deleted, because information concerning critical circumstances is included in the Secretary's affirmative final determination under § 355.20(a)(2), not in the order.

Subsection (c) of the proposed rule corresponds to the first sentence of § 355.38 of the current regulation. This subsection ties the nonreceipt of benefits requirement to the programs identified in the Secretary's affirmative final determination. The current regulation is not explicit on this point.

18. *Section 355.22.* This section corresponds to § 355.41 of the current regulation. Subsection (a) of the proposed rule implements section 751(a) of the Tariff Act, as amended by section 611(a)(2)(A) of the 1984 Act. These amendments provide for administrative reviews upon request rather than automatically in each proceeding on an annual basis. The agency will promulgate a separate provision to control administrative reviews during the transition to full implementation of section 611(a)(2)(A) of the 1984 Act.

Any interested party, including an importer, may request a review to cover all producers and exporters of the merchandise. In addition, a foreign

producer or exporter may request that the Secretary conduct a review of an order for the merchandise of that producer or exporter, if the requester submits with the request the certifications described in subsection (a)(2) (i), (ii), and (iii). Subsection (a)(2)(iii) requires additional certifications from suppliers and producers when the person submitting the request does not produce the merchandise (see preamble comment under proposed § 355.25(b)). As explained in subsection (f), requests submitted under subsection (a)(2) are premised on certifications that the merchandise has not benefitted during the period of review from any net subsidy.

Subsection (b) of the proposed rule describes the period and the exports (under subsection (b)(2), for first reviews, the entries or exports) of the merchandise that the Secretary will review upon request. The period may be longer or shorter for the first than for subsequent administrative reviews, because it covers the period between the time the Secretary first applied provisional measures and the end of the most recent completed reporting year of the government of the affected country. This subsection reflects the current practice in administrative reviews.

Subsection (c) of the proposed rule expands subsection (c) of the current regulation to provide specifically for each action the Secretary will take in a review under this section. The proposed reference to "a sample of interested parties" in subsection (c)(2) implements section 777A of the Tariff Act, as added by section 620(a) of the 1984 Act. See preamble comment on § 355.38(a)(2). Subsection (c)(7) of the proposed rule provides that the Secretary will issue the final results of administrative review not later than 385 days after the anniversary month during which the review was requested.

Disclosure of factual information, the subject of subsection (d) of the current regulation, is covered in subsection (c)(6). The subject of hearings, also in subsection (d) of the current regulation, is covered in § 355.39 of the proposed rule.

Subsection (d) of the proposed rule, dealing with individual countervailing duty rates, implements for administrative reviews section 706 of the Tariff Act, as amended by section 607(2) of the 1984 Act. This subsection is nearly identical to § 355.20(d) of the proposed rule.

Subsection (e) cross-references § 355.19, concerning cancellation and revision of suspension agreements, and provides that the Secretary may delay

publishing final results of administrative review while taking action under § 355.19.

Subsection (f) describes the specific actions the Secretary may take when the Secretary issues final results of reviews based on requests under subsection (a)(2) from individual producers or exporters. In particular, unless the Secretary verifies that during the period of review the merchandise covered by the request under subsection (a)(2) did not benefit from any net subsidy previously found countervailing in the proceeding, the Secretary, as provided in paragraph (6) of this subsection, will refuse to consider any other requests for company-specific reviews for the duration of the countervailing duty order. If the Secretary is unable to verify that the merchandise did not benefit from a net subsidy previously found countervailing in a proceeding, the certification mechanism of the government of the affected country will necessarily be deficient. The impact of that result clearly extends beyond the particular producer or exporter which was the subject of the government's certification.

Subsection (g) provides for assessment of countervailing duties at the rate of the cash deposit of estimated countervailing duties required at the time of entry of the merchandise, when the Secretary has received no request, under subsection (a), for an administrative review. This provision also provides for continuation of the cash deposit of estimated countervailing duties at the latest determined rate. This implements the Congressional intent that the Secretary provide by regulation for duty assessment on entries for which no review has been requested (Conference Report at 181).

Subsection (h) of the proposed rule corresponds to subsection (b) of the current regulation but provides a more detailed statement of procedures applicable to changed circumstances reviews. The Secretary may initiate at any time (except as provided in subsection (h)(2)) a review based on changed circumstances. At the beginning of the review, if the Secretary has information sufficient to form the basis for the preliminary results, and the Secretary concludes that expedited action is warranted, the Secretary under subsection (h)(3) may combine the notices of initiation and preliminary results.

Subsection (i) implements section 762 of the Tariffs Act, as added by section 611 of the 1984 Act. This new provision concerns special reviews, conducted by the Secretary at the President's

direction, of the merchandise covered by quantitative restriction agreements which resulted either in withdrawal of a petition (and the Secretary's termination of the investigation) or the Secretary's suspension of an investigation. Subsection (i)(9) specifies what action, if any, the Secretary will take at the conclusion of the review. While the agreement remains in effect, the Secretary will not publish a countervailing duty order. At the expiration or other termination of the agreement, after any extensions of the agreement, the Secretary will publish and implement the order based on the final results of the review, unless the President before expiration directs the Secretary to conduct a new review under this subsection.

19. *Section 353.23*: This section corresponds to § 353.37 of the current regulation. The title is changed to Provisional Measures Deposit Cap to describe the subject more accurately. The phrase "under the Secretary's affirmative preliminary or affirmative final determination," which is new, clarifies that when an injury test is required, the estimated net subsidy established in the Secretary's final determination becomes the maximum amount which the Secretary may assess on entries made between publication of that determination and publication of the Commission's final affirmative determination. The estimated net subsidy rate set by the Secretary's preliminary determination will be the assessment ceiling for entries made up to the date of publication of the Secretary's final determination.

20. *Section 355.24*: This section corresponds to § 355.40 of the current regulation. Subsection (a) of the proposed rule incorporates the current regulation, revised for clarity, and states that the requirement for interest applies to entries made on or after the date of publication of the Secretary's order.

Subsection (b) implements section 778 of the Tariff Act, as amended by section 621 of the 1984 Act. That amendment makes interest payable at the Internal Revenue Code rates in effect while the particular entry remained unliquidated.

Subsection (c), which reflects current practice, clarifies the period for which the Customs Service calculates interest on overpayments and underpayments.

21. *Section 355.25*: This section corresponds to § 355.42 of the current regulation but is rewritten to provide a detailed statement of the standards and procedures for revocation of orders and termination of suspended investigations. In the proposed rule, subsection (a) provides for revocation or termination based on the absence of a subsidy,

subsection (d) provides for revocation or termination based on changed circumstances, and subsection (e) provides for revocation or termination based on injury reconsideration by the Commission.

Subsection (a) provides three separate standards for revocation based on the absence of subsidy. Subsection (a)(1) provides for revocation or termination based on the foreign government's elimination, for a period of at least three years, of subsidy programs which the Secretary has found countervailable. Subsection (a)(2) provides for revocation or termination based on the absence, for a period of at least five years, of any net subsidy on all of the merchandise covered by the order or suspension. Subsection (a)(3) provides for revocation of an order, to the extent it applies to an individual producer or exporter, based on the absence, for a period of at least five years, of any net subsidy on the merchandise of the individual producer or exporter. Each type of revocation or termination under this subsection also is premised on the Secretary's finding that the foreign government is not likely to reinstate the program or substantially equivalent programs or, as appropriate, that the producer or exporter is not likely to apply for or receive any net subsidy from the same or substantially equivalent programs. Revocation for an individual firm which the Secretary previously has found to have received any net subsidy is contingent on an agreement to reinstate the order immediately if the Secretary later finds that the firms has received any net subsidy. The requirements for revocation in subsection (a) are consistent with section 751(c) of the Tariff Act, as amended by section 611(a)(3) of the 1984 Act, which provides that the Secretary may not revoke an order or terminate a suspended investigation based on the levy of an export tax, duty, or other charge intended to offset a net subsidy.

Subsection (b) states the requirements for requests for each type of revocation or termination described in subsection (a), including for each a certification requirement. Only the government of the affected country may submit a request for revocation or termination under subsections (b)(1) and (b)(2). The individual producer or exporter submits the request for revocation under subsection (b)(3). The government's certification is required for all three types of requests submitted by the government. In addition, the certifications of all producers and exporters are required for requests under subsection (b)(2). Requests for revocation under subsection (b)(3) from

individual producers or exporters must be accompanied by the certifications described in § 355.22(a)(2) of those individual producers and exporters and, for firms previously found to have received a net subsidy, by the agreement to reinstate the order. If the person submitting the request under subsection (b)(3) is not the producer or supplier of the merchandise, the requester must submit the certifications of the producer and supplier. We recognize that this requirement may be very difficult in some instances. The alternative is to revoke the order with regard to the exporter when the merchandise may continue to benefit from a subsidy. We find this an unacceptable basis for the exercise of our discretionary authority to revoke.

Subsection (c) describes the procedures applicable in the administrative review based on the request for revocation or termination under subsection (b). The procedures add to or modify slightly those described in § 355.22(c). A revocation or termination under subsection (a) is effective for all merchandise entered, or withdrawn from warehouse, for consumption, on or after the first day after the period of review.

Subsection (d), concerning revocation or termination based on changed circumstances, is new. The subject is addressed only in passing in subsection (c) of the current regulation. Subsection (d)(1) sets the criteria for revocation or termination under this subsection.

Subsection (d)(2) authorizes the Secretary to conduct an administrative review for the purpose of deciding whether the criteria for revocation or termination under subsection (d)(1) are met. The Secretary may conduct the review at any time that the Secretary concludes from available information that the revocation or termination may be warranted. Consistent with the legislative history of the 1984 Act, subsection (d)(2) also provides that an affirmative statement of no interest from the petitioner is sufficient for the Secretary to initiate a changed circumstances review to consider revocation. See Conference Report at 181.

Subsection (d)(3) adds to or modifies slightly the procedures applicable to an administrative review described in § 355.22(h).

Subsection (d)(4) provides for possible revocation of an order or termination of a suspended investigation based on an absence of interest (as demonstrated by the absence of requests for administrative review) for a period of five consecutive years. This "sunset"

provision will eliminate old orders and suspended investigations no longer of interest to domestic interested parties. Prior to revoking or terminating under this subsection, the Secretary will, in addition to publishing notice in the Federal Register, write individually to each known producer and seller of the like product in the United States. If any producer or seller, or any other interested party, objected, the Secretary would not revoke the order or terminate the suspended investigation under subsection (d)(4).

Subsection (d)(5), concerning the ending of suspension of liquidation and refund of cash deposits, corresponds to subsection (c)(3) of the proposed rule.

Subsection (e) provides for revocation or termination based on injury reconsideration by the Commission. This provision was reserved in subsection (d) of the current regulation.

22. *Section 355.31.* This section, which corresponds to portions of § 355.34 of the current regulation, concerns submission of factual information. Submission of written argument, the other portion of § 355.34 of the current regulation, is addressed in proposed § 355.39.

Subsections (a) through (d) are new. The Secretary will consider only those submissions which conform to the timing and other requirements of these subsections. Subsection (a)(1) establishes time limits for submission of factual information, and subsection (a)(2) states the consequences of late submission. Subsection (a)(2) is derived from subsection (a)(1) of the current regulation. "Factual information" is defined in proposed § 355.2(g).

Subsection (b) provides that the Secretary may request submission of factual information at any time during a proceeding. Subsection (b)(2) addresses the subject of time limits for responses to the Secretary's questionnaire and other requests for factual information and, given the need for timely analysis of responses and planning of verification activities, limits the Secretary's authority to consider unsolicited questionnaire responses. Subsection (b)(3) provides that under certain conditions the Secretary may extend the time limit for responding to a request and lists the employees of the Department who may approve (in writing) such an extension.

Subsection (c) establishes the time limit for submission of subsidy allegations not included in the original petition and provides for an extension of the time limit under certain conditions. It also bars submission after the preliminary determination of challenges to a petitioner's standing. Standing is

important; however, it is also complex and the Department needs time to gather and evaluate the facts. Under this subsection, only certain specified employees of the Department may authorize extensions. This subsection does not cover upstream subsidy allegations, which are the subject of proposed §§ 355.15(d) and 355.20(b).

We expect the discretion to extend time limits under subsections (a), (b), and (c) to be exercised sparingly.

Subsections (d) and (e) correspond to subsections (a)(1) and (a)(2) of the current regulation, which was adopted as a final rule on May 30, 1984 (49 FR 22467). Subsection (d) specifies, in accordance with current practice, when the Secretary considers a document received. Subsection (e) includes minor modifications of the current regulation and, in addition, includes a new paragraph (3) on submission of computer tapes. Tape submissions may be required unless the Department finds the firm does not maintain records in computerized form or otherwise could not submit a computer tape response without unreasonable additional burden. As provided in this subsection, the Department intends to reject nonconforming submissions.

Subsection (f), which is new, contains the requirement for submission of an English translation of any document submitted in a foreign language. The similar requirement in § 355.12(b) of the current regulation is limited to petitions.

Subsection (g) of the proposed rule modifies the service requirements in subsection (a)(3) of the current regulation by limiting service generally to interested parties on the Department's service list. The government of the affected country always must be served. The proposed rule also establishes a more specific certificate of service requirement.

Subsection (h) establishes a service list for each proceeding that will be maintained and available to the public in the Import Administration's Central Records Unit. The corresponding provision concerning designation of agents appears in subsection (b) of the current regulation.

23. *Section 355.32.* This section of the proposed rule covers the material in §§ 355.17 and 355.18 of the current regulation, modified as explained below.

Subsection (a) restates the requirement in the first three sentences of § 355.18(a) of the current regulation.

Subsection (b) of the proposed rule covers other portions of § 355.18(a) of the current regulation. Section 619(3) of the 1984 Act amends section 777 of the Tariff Act to require the submitter requesting proprietary treatment either

to summarize for public release each portion of the submitted information (in sufficient detail to permit a reasonable understanding of the substance of the information) or to justify specifically why, as to each portion, summarization is impossible. The proposed rule reflects this statutory amendment and includes a special provision concerning summaries of voluminous information. The "brief" nonproprietary statement, permitted by current subsection (b)(3) if the submitter agrees to release under administrative protective order, is no longer consistent with section 777 of the Tariff Act as amended by section 619(3) of the 1984 Act.

Subsection (c) modifies the provision in subsection (a) of the current regulation concerning the submitter's agreement to disclose proprietary information under administrative protective order. Section 619(3) of the 1984 Act amends section 777 of the Tariff Act to require that requests for proprietary treatment be accompanied by the submitter's statement either agreeing or objecting to disclosure. The proposed rule clarifies that an objection to disclosure must include supporting arguments. The submitter should include in the objection any argument against disclosure to particular individuals who have requested disclosure. The Secretary may permit subsequent argument from the submitter only when submission of a request for disclosure raises compelling issues that the submitter could not have anticipated—for example, the identity of the representative who submits the request for disclosure, as may be the case when the requester becomes a party to the proceeding after the information is submitted.

Subsection (d) corresponds to § 355.18(b) and portions of § 355.18(e) in the current regulation. If the Secretary returns information because the submitter failed to provide an adequate summary, agreement to disclose, or the statements described in this revised section, the Secretary will give the submitter an additional 48 hours to return the information with a proper request for proprietary treatment. If the deadline for submitting the information has passed at the time the Secretary returns it, the Secretary will extend the deadline by 48 hours. If a conforming request is not submitted within 48 hours, however, the Secretary will not consider the information in the proceeding.

Subsection (e) corresponds to § 355.18(c) of the current regulation.

Subsection (f) incorporates the limitations on disclosure of proprietary information, under administrative

protective order and otherwise, that are stated in §§ 355.17 and 355.18(d) of the current regulations. The Department does not intend to change its current practice of not disclosing proprietary information submitted by one foreign firm to its foreign competitor. Since § 355.32 of the proposed rule concerns only proprietary information of a business nature, references in the current regulations to classified information are deleted. Subsection (d)(4) of the proposed rule, which is new, authorizes release to a Customs Service employee for use in a fraud investigation. The revision is required by section 619(2) of the 1984 Act, which amends section 777(b) of the Tariff Act.

Subsection (g) incorporates without change most of the substance of § 355.18(e) of the current regulation. 24. *Section 355.33.* This section, which states that information which is classified or privileged is exempt from disclosure, consolidates in one place the similar statements in §§ 355.17, 355.18(a) and (e), and 355.20(a) of the current regulation.

25. *Section 355.34.* The proposed rule revises current procedures for submission of requests for disclosure of proprietary information under administrative protective order, for the purpose of making the procedure more efficient and more responsive to the needs of parties to the proceeding. The revision is intended to ensure timely action on requests for disclosure and is more specific as to protection of information disclosed. This section replaces § 355.20 of the current regulation.

Subsection (a) states the considerations relevant to the Secretary's decision whether or not to issue an administrative protective order. The Secretary will consider whether the requester has stated a sufficient need for the information, would protect adequately the information, and the probable effectiveness of the available sanctions in the event of a violation of the order. The Secretary will also consider whether disclosure will adversely affect the Secretary's ability to obtain proprietary information in subsequent proceedings. As under current practice, proprietary information is released under administrative protective order only to aid the requester's ability to assist the Department in reaching an accurate and reasoned result in the administrative decision process.

Subsection (b) implements section 619(4) of the 1984 Act, which authorizes standing requests for disclosure of information for the duration of each segment of a proceeding that culminates

in a judicially reviewable decision. The interested party's representative must request disclosure at the earliest opportunity, which is defined in the proposed rule as 10 days after the later of the date the requesting interested party becomes a party to the proceeding or the date notice of initiation is published in the Federal Register. In addition, the Secretary will not consider requests received later than 10 days after the date of publication of the Secretary's preliminary determination or preliminary results of administrative review. The request must cover all proprietary information which the representative wants disclosed, whether or not in the record of the proceeding at the time the request is filed. The request must be submitted on the standard form provided by the Secretary (not a retyped copy or modified version of the form). The form (Form ITA-367) is drafted specifically to satisfy the requirements of section 777 of the Tariff Act. The regulation recognizes that the standard in section 777(c) for particularity of description of requested information must be read in light of the 1984 Act's provision for requesting information before the Department receives it, or even before the information exists. Consistent with the current practice, in-house (e.g., corporate) counsel are subject to the same rules as other attorneys who request disclosure. The statement in current § 355.20(a)(3) that disclosure generally will be made only to attorneys subject to disbarment for violation has been deleted. Economic and other consultants to a party's attorneys have played an increasingly significant role in recent years. We will continue to insist that the party's attorney (and the law firm) take responsibility for violation of an administrative protective order by consultants assisting the attorney in the proceeding.

Subsection (b)(3) lists the obligations that are imposed on the representative to whom the Secretary discloses the information under administrative protective order. Subsection (b)(4) lists possible sanctions for violation of the order. The representative must acknowledge those possibilities in the request. These subsections correspond to subsections (b), (c), and (e) of the current regulation.

Subsection (c) of the proposed rule is based on subsection (a)(4) of the current regulation, with the addition of a 24-hour time limit on withdrawal of information that the Secretary decides, over the submitter's objection, to disclose under protective order.

Subsection (d) permits the representative to retain the proprietary

information, subject to the terms of the administrative protective order, after the Secretary has reached the judicially reviewable decision, for a limited period of time and under specific conditions. Before the administrative protective order lapses, the proposed rule requires that the proprietary information either be subject to the terms of an existing judicial protective order or that the representative destroy or return the proprietary information and certify to the Secretary full compliance with the terms of the order (including return or destruction of the information). The provisions of this subsection are more specific and comprehensive than the corresponding provisions of subsection (d) of the current regulation. They also take account of the potential for inefficiency in the current regulation that requires the representative to destroy notes based on proprietary information before any party decides to sue. We emphasize that this permission to retain proprietary information for a limited time after the Secretary has made the judicially reviewable decision may be withdrawn by the Secretary under the terms of subsection (d)(1). In no event will the Secretary release additional proprietary information after making a judicially reviewable decision, because the need to prepare for judicial review is not an adequate reason for additional disclosure. As stated earlier, release under administrative protective order is intended to benefit the Secretary's administrative decision by full participation of parties—no such benefit can result once the administrative process is concluded.

Subsection (e) states that the General Counsel of the Department will investigate each alleged violation of an administrative protective order and prepare a report to the Secretary. There is no corresponding provision in the current regulations. The Department intends firm and effective enforcement of administrative protective orders.

26. *Section 355.35.* The proposed rule retains the requirement in § 355.16 of the current regulation for preparation of memoranda of *ex parte* meetings during administrative reviews. Section 619(1) of the 1984 Act added this requirement to section 777(a)(3) of the Tariff Act, which previously appeared to limit the requirement to the investigation phase of a proceeding. The Secretary, rather than a party to the proceeding, prepares the memorandum. This is consistent with current practice.

27. *Section 355.36.* This section, which corresponds to § 355.43 of the current regulation, is modified to clarify that it covers all portions of a proceeding, not

just investigations. The change is required by section 775 of the Tariff Act as amended by the 1984 Act, which reflects current practice. The provision in the present regulation concerning initiation of a separate investigation is deleted, because it is neither required by section 775 nor a feasible option for the Secretary. Other clarifying changes are made in this subsection.

28. *Section 355.37.* The proposed rule separates the provisions in § 355.39 of the current regulation into two separate sections. Section 355.37 covers verification of information, and § 355.38 covers the use of best information available, a concept not limited to the verification process.

Subsections (a) and (b) of the proposed rule implement section 776(a) of the Tariff Act, as amended by section 618 of the 1984 Act. In addition to the specific verification requirements in that amendment (subsection (a)(1)(iv)), the proposed rule includes in subsection (a)(1)(iii) authority for verifications in administrative reviews whenever "the Secretary decides that there is good cause for verification." As noted by the Committee of Conference on page 177 of its report, section 618 of the 1984 Act generally codifies the current practice of verifying information relied upon in a final determination in an investigation and in later decisions which warrant verification. Specifically, the Secretary is to conduct a verification before revoking an order, in whole or in part, or if the Secretary decides that good cause to verify exists. In addition, the Secretary will carry out a verification if a timely written request for verification is submitted by a domestic interested party in a proceeding in which the Secretary has not conducted verification during either of the two immediately preceding reviews. Section 618 implicitly overrules *Al Tech Specialty Steel Co. v. United States*, 8 CIT —, 575 F. Supp. 1277 (1983), *aff'd*, 745 F.2d 632 (Fed. Cir. 1984).

Subsection (a)(2) implements for administrative reviews of orders and agreements the authority to use generally recognized sampling techniques, confirmed in section 777A of the Act, as added by section 620 of the 1984 Act.

Subsection (b) corresponds to the second sentence of subsection (a) of the current regulation as to notice of the methods and procedures used to verify.

Subsection (c) of the proposed rule clarifies subsection (c) of the current regulation and the current practice concerning verification procedures.

Subsections (d) and (e) of the current regulation are incorporated in § 355.31 of the proposed rule.

29. *Section 355.38.* This section, which is new, corresponds to § 355.39(b) of the current regulation. The proposed rule reflects current administrative practice. Legislative history to the 1984 Act confirms the Congressional intent to apply the concept of "best information available" to administrative reviews and other portions of a proceeding in addition to investigations. Conference Report at 177.

30. *Section 355.39.* This section of the proposed rule concerns written argument, addressed in § 355.34 of the current regulation, and also broadens and modifies substantially the current regulation on hearings in § 355.35.

Subsection (a) of the proposed rule establishes the procedures and requirements for all written argument after the Secretary's preliminary determination or preliminary results of administrative review. "Written argument" means all written submissions after the preliminary determination or preliminary results of administrative review that are not "factual information" and includes legal and policy contentions concerning the proceeding. Under subsection (a), any interested party and any agency of the U.S. government may submit written arguments but must do so in the "case brief" or the "rebuttal brief" as described in subsections (b) and (c), or in response to a request of the Secretary. As with factual information, the Secretary will not consider, or retain in the record, written argument which is untimely or otherwise does not follow these rules.

Subsection (b) describes the case brief and establishes time limits for submission. The case brief is a complete presentation of each argument that the party or the agency wants the Secretary to consider in making a final determination or the final results of administrative review. The case brief must also contain any request for a hearing the party wants on arguments raised in the brief. In an administrative review, an interested party may address only arguments specifically identified in the case brief for hearing presentation. The Department intends to implement this requirement by practice, to the extent possible, in investigations.

Subsection (c) describes the rebuttal brief and establishes time limits for its submission. In the rebuttal brief, an interested party may request a hearing specifically to present rebuttal arguments on issues that are identified and discussed in the rebuttal brief. To the extent possible in investigation and in all administrative reviews, rebuttal at the hearing is limited to arguments

specifically identified in the rebuttal brief for such presentation.

Subsection (d) states special service requirements for case and rebuttal briefs in recognition of the tight time frames for submission of briefs by the parties and decisions by the Department in the proceeding. The rebuttal brief will usually be due seven days after the case brief, which ordinarily is due 35 days (30 days in an administrative review) after publication of the Secretary's preliminary determination or preliminary results.

Subsection (e) states when Secretary will hold a hearing, if requested, and the procedural rules that apply to hearings. Paragraph (e)(1) concerns the availability of verbatim transcripts. Paragraph (e)(2) specifies which employees of the Department may chair a hearing. Paragraph (e)(3) states rules for conduct of the hearing. The chair may request post-hearing briefs on specific issues; these requests will be the exception, rather than the rule.

Subsections (f) and (g) cross-reference the filing requirements stated in § 355.31(d) and (e) of the proposed rule.

31. *Sections 355.41 through 355.45.* These sections, which correspond to §§ 355.46 through 355.50 of the current regulation, are changed for clarity. Section 355.45 of the current regulation is incorporated in 355.1 of the proposed rule.

32. *Annex I.* Annex I of the proposed rule corresponds to Annex II of the current regulation, which was reserved. Annex I of the proposed rule provides a complete list of "countries under the Agreement," as defined in section 701(b) of the Tariff Act, on the date of this proposed rule. Annex I of the Current regulation is deleted because statements of policy and interpretation belong in the Secretary's determinations rather than in the regulation. Policy and interpretation are subject to change. Annex I of the current regulations covers only a small portion of the Department's methodology and, even for the covered subjects, is an incomplete statement of current practice.

Drafting Information:

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List of Subjects in 19 CFR Part 355

Business and industry, Foreign trade, Imports, Trade practices.

Dated: June 2, 1985.

Alan F. Holmer,
Deputy Assistant Secretary for Import Administration.

For the reasons stated in the preamble, we propose to revise 19 CFR Part 355 as follows:

PART 355—COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

- Sec.
- 355.1 Scope.
- 355.2 Definitions.
- 355.3 Record of proceedings.
- 355.4 Public, proprietary, privileged, and classified information.
- 355.5 Library of foreign subsidy practices and countervailing measures.
- 355.6 Trade and Tariff Act of 1984—effective date.

Subpart B—Countervailing Duty Procedures

- 355.11 Self-initiation.
- 355.12 Petition requirements.
- 355.13 Determination of sufficiency of petition.
- 355.14 Request for exclusion from countervailing duty order.
- 355.15 Preliminary determination.
- 355.18 Critical circumstances findings.
- 355.17 Termination of investigation.
- 355.18 Suspension of investigation.
- 355.19 Violation of agreement.
- 355.20 Final determination.
- 355.21 Countervailing duty order.
- 355.22 Administrative review of orders and suspension agreements.
- 355.23 Provisional measures deposit cap.
- 355.24 Interest on certain overpayments and underpayments.
- 355.25 Revocation of order, termination of suspended investigation.

Subpart C—Information and Argument

- 355.31 Submission of factual information.
- 355.32 Request for proprietary treatment of information.
- 355.33 Information exempt for disclosure.
- 355.34 Disclosure of proprietary information under administrative protective order.
- 355.35 *Ex Parte* meeting.
- 355.36 Subsidy practice discovered during an investigation or review.
- 355.37 Verification information.
- 355.38 Best information available.
- 355.39 Written argument and hearings.

Subpart D—Quota Cheese Subsidy Determinations

- 355.41 Definition of "subsidy."
- 355.42 Annual list and quarterly update.
- 355.43 Determination upon request.
- 355.44 Complaint of price-undercutting by subsidized imports.
- 355.45 Access to information.

Annex I—List of Countries Under the Agreement.

Authority: Tariff Act of 1930, as amended, 19 U.S.C. 1303 and Subtitle IV Parts I, III and IV, Trade Agreements Act of 1979, Pub. L. 96-39, 19 U.S.C. 2501 Note; Trade and Tariff Act of 1984, Title VI, Pub. L. 98-573, 19 U.S.C. 1654 Note; and 5 U.S.C. 301.

The authority for § 355.12(h) is section 650 of Pub. L. 98-181 (November 30, 1983), which added sections 702(b)(3), 703(b)(2), and 708 to the Tariff Act of 1930, 19 U.S.C. 1671a (6)(3), 1671b (b)(2), and 1671g.

The authority for § 355.12(i)(1) is section 221 of the Trade and Tariff Act of 1984 which adds section 339 to the Tariff Act of 1930, 19 U.S.C. 1339.

The authority for § 355.41 through 355.46 is section 702 of the Trade Agreements Act of 1979, 19 U.S.C. 1202 note.

Subpart A—Scope and Definitions

§ 355.1 Scope.

This part sets forth procedures and rules applicable to proceedings under section 303 and Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1303, 1516a, and 1671-1677(g)) (the "Act"), relating to the imposition of countervailing duties, and under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note) ("Trade Agreements Act"), relating to subsidies on quota cheese. This part incorporates the regulatory changes made pursuant to Title VI of the Trade and Tariff Act of 1984 (Pub. L. 98-573; October 30, 1984). Certain portions of the regulations in this part do not apply to proceedings under section 303 of the Act in the case of the merchandise from a country that is not a "country under the agreement," as defined in section 701(b) of the Act, and also is not entitled to an injury test under section 303 of the Act for the merchandise. Specifically, for such proceedings under section 303:

(a) No determination by the Commission under section 703(a), 704, or 705(b)(1) of the Act is required;

(b) No investigation may be suspended by the Secretary under § 355.18(b);

(c) No finding of critical circumstances may be made by the Secretary, under § 355.16; and

(d) If an allegation or factual information regarding injury and subsidies is required by this part, only an allegation or factual information regarding subsidies is required.

§ 355.2 Definitions.

(a) *Act* "Act" means the Tariff Act of 1930, as amended.

(b) *Agreement* "Agreement" means the "Agreement on Interpretation and Application of Articles VI, XVI, and

XXIII of the General Agreement on Tariffs and Trade", that is, the Subsidies Code, and any amendments accepted by the United States.

(c) *Commission* "Commission" means the United States International Trade Commission.

(d) *Country* "Country" means a foreign country or a political subdivision, dependent territory, or possession of a foreign country, and may include an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries in a customs union outside the United States.

(e) *Customs Service* "Customs Service" means the United States Customs Service of the United States Department of the Treasury.

(f) *Department* "Department" means the United States Department of Commerce.

(g) *Factual Information* "Factual information" means:

(1) Initial and supplemental questionnaire responses;

(2) Data or statements of facts in support of allegations;

(3) Other data or statements of facts; and

(4) Documentary evidence.

(h) *Industry* "Industry" means the producers in the United States collectively of the like product, except those producers in the United States that the Secretary excludes under section 1(4)(B) of the Act on the grounds that they are also importers (or are related to importers, producers, or exporters) of the merchandise. Under section 771(4)(C) of the Act, an "industry" may mean producers in the United States, as defined above in this paragraph, in a particular market in the United States if such producers sell all or almost all of their production of the like product in that market and if the demand for the like product in that market is not supplied to any substantial degree by producers of the like product located elsewhere in the United States.

(i) *Interested Party* "Interested Party" means—

(1) A producer, exporter, or United States importer of the merchandise, or a trade or business association a majority of the members of which are importers of the merchandise;

(2) The government of the country in which the merchandise is produced (the affected country);

(3) A producer or seller (other than a retailer) in the United States of the like product;

(4) A certified or recognized union or group of workers which is representative of the industry in or of

sellers (other than retailers) in the United States of the like product:

(5) A trade or business association a majority of the members of which are producers or sellers (other than retailers) in the United States of the like product; or

(6) An association a majority of the members of which are interested parties, as defined in paragraph (i)(3), (i)(4) or (i)(5) of this section.

(j) *Investigation.* An "investigation" begins on the date of the publication of notice of initiation, resumption, or continuation of investigation and ends on date of the publication of the earliest of (1) notice of termination of investigation, (2) notice of rescission of investigation, (3) notice of a negative determination that has the effect of terminating the proceeding, (4) notice of suspension of investigation, or (5) an order.

(k) *The Merchandise.* "The merchandise" means the class or kind of merchandise imported or sold, or likely to be sold, for importation into the United States, that is the subject of the proceeding.

(l) *Party to the Proceeding.* "Party to the proceeding" means any interested party, within the meaning of paragraph (i) of this section, which has actively participated, through written submissions of factual information or written argument, in a particular decision by the Secretary subject to judicial review. Participation in a prior reviewable decision will not confer on any interested party "party to the proceeding" status in a subsequent decision by the Secretary subject to judicial review.

(m) *Person.* "Person" includes any "interested party" as well as any other individual, enterprise, or entity, as appropriate.

(n) *Proceeding.* A "proceeding" begins on the date of the filing of a petition, publication of a notice of initiation under § 355.11, or publication of a notice of initiation under § 355.22(i) if the review is of the merchandise subject to an understanding or other kind of agreement accepted under § 355.17(b), and ends on the date of the publication of the earliest of notice of (1) dismissal of petition, (2) rescission of initiation, (3) termination of investigation, (4) negative determination that has the effect of terminating the proceeding, (5) revocation of an order, or (6) termination of a suspended investigation.

(o) *Producer; Production.* "Producer" means a manufacturer or producer. "Production" means manufacture or production.

(p) *Sale; Likely sale.* A "sale" includes a contract to sell and a lease that is equivalent to a sale. A "likely sale" means a person's irrevocable offer to sell.

(q) *Secretary.* "Secretary" means the Secretary of Commerce of a designee. The Secretary has delegated to the Assistant Secretary for Trade Administration the authority to make final determinations under § 355.18(i), 355.20, and 355.22(i). The Deputy Assistant Secretary for Import Administration has other delegated authority relating to countervailing duties.

§ 355.3 Record of proceedings.

(a) *Official Record.* The Secretary will maintain in the Import Administration Central Records Unit, at the location stated in § 355.31(d), an official record of each proceeding. The Secretary will include in the record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of the proceeding which pertain to the proceeding. It will include governmental memoranda pertaining to the proceeding, memoranda of *ex parte* meetings, determinations, notices published in the Federal Register, and transcripts of hearings. It will not include any factual information, written argument, or other material which is not timely filed or which the Secretary returns to the submitter under § 355.32(d) or 355.34(c). The record will contain material that is public, proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each judicially reviewable segment of the proceeding.

(b) *Public Record.* The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material described in paragraph (a) of this section that the Secretary decides may be disclosed to the general public. The public record will be available to the public for inspection and copying in the Central Records Unit, as provided in § 355.31(d). The Secretary will charge an appropriate fee for providing copies of documents.

(c) *Protection of Records.* Unless ordered by the Secretary or required by law, no record or portion of a record will be removed from the Department.

§ 355.4 Public, proprietary, privileged, and classified information.

(a) *Public Information.* The Secretary normally will consider the following to be public information:

(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;

(2) Factual information that is not designated proprietary by the person submitting it;

(3) Factual information which, although designated proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person;

(4) Laws, regulations, decrees, orders, and other official documents of a country, including English translation; and

(5) Written argument relating to the proceeding.

(b) *Proprietary Information.* The Secretary normally will consider the following factual information to be proprietary information, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process;

(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);

(3) Distribution costs (but not channels of distribution);

(4) Terms of sale (but not terms of sale offered to the public);

(5) Prices of individual sales, likely sales, or other offers (but not (i) components of prices, such as transportation, if based on published schedules, (ii) dates of sale, (iii) product description except as described in paragraph (b)(1) of this section, or (iv) order numbers);

(6) The names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, unless the destination or designation would reveal the name);

(7) The exact amounts of the gross of net subsidies received and used by a person (but not descriptions of the operations of the subsidies, or the amount if included in official published documents);

(8) The names of particular persons from whom proprietary information was obtained; and

(9) Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(c) *Privileged Information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the Secretary decides that the information

should not be released to the public or to parties to the proceeding.

(d) *Classified Information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (43 FR 28949) or successor executive order, if applicable.

§ 355.5 *Library of foreign subsidy practices and countervailing measures.*

The Secretary will maintain in the Central Records Unit a library of public information relating to all foreign subsidy practices and countervailing measures that are known to the Secretary, whether or not the subject of a proceeding. The Secretary will make documents in the library available to the public and will charge an appropriate fee for providing copies of documents. For further information, contact the Central Records Unit at the location stated in § 355.31(d).

§ 355.6 *Trade And Tariff Act of 1984—effective date.*

In accordance with section 626 of the Trade and Tariff Act of 1984 (Pub. L. No. 98-573) (for purposes of this subpart referred to as "the 1984 Act"), the amendments to the Act made by Title VI of the 1984 Act are deemed effective as follows:

(a) Except as provided in paragraphs (d), (c) and (d) of this section, all amendments made by Title VI of the 1984 Act which affect authorities administered by the Secretary are effective on October 30, 1984.

(b) Amendments made by sections 302, 611, 612, and 620 of the 1984 Act which affect authorities administered by the Secretary take effect immediately with respect to all investigations and administrative reviews begun on or after October 30, 1984.

(c) Amendments made by section 623 of the 1984 Act, regarding judicial review, apply with respect to civil actions pending on, or filed on or after, October 30, 1984.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984, if the Secretary determines that implementation in accordance with paragraph (a) or (b) of this section would prevent the Department from complying with other requirements of law.

Subpart B—Countervailing Duty Procedures

§ 355.11 *Self-initiation.*

(a) *In General.* (1) If the Secretary determines from available information that an investigation is warranted with

respect to the merchandise, the Secretary will initiate an investigation and publish in the Federal Register a notice of "Initiation of Countervailing Duty Investigation." The Secretary will publish the notice only after providing the government of the affected country an opportunity for consultation to the extent required by article 3(1) of the Agreement or by a substantially equivalent obligation.

(2) The notice will include:

(i) A description of the merchandise, after consultation as appropriate with the Commission;

(ii) The name of the country in which the merchandise is produced and, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country; and

(iii) A summary of the available information that would, if accurate, support the imposition of countervailing duties.

(b) *Information Provided to the Commission.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the proceeding all information upon which the Secretary based initiation and which the Commission may consider relevant to its injury determinations.

§ 355.12 *Petition requirements*

(a) *In General.* Any interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of section 355.2 who has reason to believe that:

(1) A subsidy is being provided with respect to the merchandise, and

(2) If the merchandise is from a country entitled to an injury test for the merchandise, an industry is materially injured, is threatened with material injury, or its establishment is materially retarded by the merchandise, may file on behalf of that industry a petition under this section requesting the imposition of countervailing duties equal to the alleged subsidy.

(b) *Contents of Petition.* The petition shall contain the following, to the extent reasonably available to the petitioner:

(1) The name and address of the petitioner and any person the petitioner represents;

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry (if numerous, provide information at least for persons that individually accounted for two percent or more of the industry

during the most recent 12-month period.);

(3) A statement indicating whether the petitioner has filed for import relief under sections 337 or 732 of the Act (19 U.S.C. 1337, 1673a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) with respect to the merchandise;

(4) A detailed description of the merchandise that defines the requested scope of the investigation, including technical characteristics and uses of the merchandise, and its current tariff classification under the Tariff Schedules of the United States;

(5) The name of the country in which the merchandise is produced and, if the merchandise is imported from a country other than that in which it is produced, the name of the intermediate country;

(6) The names and addresses of each person the petitioner believes benefits from the subsidy and exports the merchandise to the United States and the proportion of total exports to the United States which each person accounted for during the most recent 12-month period (If numerous, provide information at least for persons that individually accounted for two percent or more of the exports.);

(7) The alleged subsidy and factual information (particularly documentary evidence) relevant to the alleged subsidy, including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the merchandise;

(8) If the petitioner alleges an upstream subsidy under section 771A of the Act, factual information regarding:

(i) Domestic subsidies described in section 771(5) of the Act that the government of the affected country provides to the upstream supplier;

(ii) The competitive benefit the subsidies bestow on the merchandise; and

(iii) The significant effect the subsidies have on the cost of producing the merchandise;

(9) The volume and value of the merchandise (including information on individual sales, customers, and prices) during the most recent two-year period, and any other recent period that the petitioner believes to be more representative, or, if the merchandise was not imported during the two-year period, information as to the likelihood of its importation;

(10) The name and address of each person the petitioner believes imports or, if there were no importations, is likely to import the merchandise;

(11) If the merchandise is from a country entitled to an injury test for the merchandise, factual information regarding material injury, threat of material injury, or material retardation, as described in 19 CFR 207.11 and 207.26;

(12) If the petitioner alleges "critical circumstances" under section 355.16, factual information regarding:

(i) Material injury which is difficult to repair;

(ii) Massive imports in a relatively short period; and

(iii) An export subsidy inconsistent with the Agreement; and

(13) Any other factual information on which the petitioner relies.

(The information requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 0625-0148.)

(c) *Simultaneous Filing With Commission.* If the merchandise is from a country entitled to an injury test for the merchandise, the petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(d) *Proprietary Status of Information.* The Secretary will not consider any petition which contains factual information for which the petitioner requests proprietary treatment unless the petitioner meets the requirements of § 355.32.

(e) *Amendment of Petition.* The Secretary will allow timely amendment of the petition. If the merchandise is from a country entitled to an injury test for the merchandise, the petitioner must file an amendment with the Commission and the Secretary on the same day and so certify in submitting the amendment to the Secretary. The timeliness of new allegations is controlled under § 355.31.

(f) *Where to File; Time of Filing; Format and Number of Copies.* The requirements of § 355.31 (d), (e), (f), and (g) apply to this section.

(g) *Notification of Affected Country's Representative.* Upon receipt of a petition, the Secretary will deliver a public version of the petition, as described in § 355.31(e)(2), to a representative in Washington, D.C., of the government of the affected country.

(h) *Petition Based Upon Derogation of an International Undertaking on Official Export Credits.* In addition to the other requirements of this section, if the sole basis of a petition is the derogation of an international undertaking on official export credits, the Secretary will immediately notify the Secretary of the Treasury of the filing. The petitioner shall file a copy of the petition with the

Secretary of the Treasury and the Secretary on the same day and so certify in submitting the petition to the Secretary.

(i) *Assistance to Small Businesses: Additional Information.*

(1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 339 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of § 355.13.

(2) For additional information concerning petitions, contact the Director, Office of Investigations, Import Administration, International Trade Administration, Room 3085, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; (202) 377-5497.

(j) *Limitation of Communication Before Initiation.*

(1) Except as provided in paragraph (j)(2), of this section, before the Secretary decides whether to initiate an investigation, the Secretary will not accept from an interested party, as defined in paragraph (i)(1) or (i)(2) of § 355.2, oral or written communication regarding a petition except inquiries concerning the status of the proceeding.

(2) The Secretary will provide the government of the affected country an opportunity for consultation to the extent required by article 3(1) of the Agreement or by a substantially equivalent obligation.

§ 355.13 *Determination of sufficiency of petition.*

(a) *Determination of Sufficiency.* Not later than 20 days after a petition is filed under § 355.12, the Secretary will determine whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, contains information reasonably available to the petitioner supporting the allegations, and is filed by an interested party as defined in paragraph (i)(3), (i)(4), (i)(5), and (i)(6) of § 355.2.

(b) *Notice of Initiation.* If the Secretary determines that the petition is sufficient under paragraph (a) of this section, the Secretary will initiate an investigation and publish in the Federal Register a notice of "Initiation of Countervailing Duty Investigation." The notice will include the information described in § 355.11(a). If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will notify the Commission at the time of initiation of the investigation and will make available to it and to its employees directly involved in the

proceeding all information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(c) *Insufficiency of Petition.* If the Secretary determines that a petition is insufficient under paragraph (a) of this section, the Secretary will dismiss the petition in whole or in part and, if appropriate, terminate the proceeding. The Secretary will notify the petitioner in writing of the reasons for dismissal, notify the Commission of the dismissal, if appropriate, and publish in the Federal Register a notice of "Dismissal of Countervailing Duty Petition", summarizing the reasons for dismissal.

§ 355.14 *Request for exclusion from countervailing duty order.*

(a) Any producer or exporter which exported the merchandise to the United States during the period described in paragraph (b)(1) of this section and which desires exclusion from a countervailing duty order must submit to the Secretary, not later than 30 days after the date of publication of the notice of initiation under § 355.11 or 355.13, an irrevocable written request for exclusion.

(b) The person must submit with the request:

(1) The person's certification that the person did not apply for or receive any net subsidy on the merchandise, during the period from the beginning of the last fiscal year for which the person has records to the date of filing of the petition, from any program listed in the Secretary's notice of initiation and will not apply for or receive any subsidy on the merchandise in the future;

(2) The certification of the government of the affected country that the government did not provide to that person any net subsidy during the period described in paragraph (b)(1) of this section; and

(3) If the person is not the producer of the merchandise, the certification under paragraph (b)(1) of this section of the suppliers and producers of the merchandise and the certification under paragraph (b)(2) of this section of the government regarding those suppliers and producers.

(c) The Secretary will investigate requests for exclusion to the extent practicable in each investigation.

§ 355.15 *Preliminary determination.*

(a) *In General.* (1) Not later than 85 days after the date of filing of a petition or the date of publication of a notice of initiation under § 355.11, the Secretary will make a determination based on the available information at the time

whether there is a reasonable basis to believe that a subsidy is being provided with respect to the merchandise. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) The Secretary's determination will include:

- (i) The factual and legal conclusions on which the determination is based;
- (ii) The estimated net subsidy, if any, stated on a countrywide basis, except as provided in § 355.20(d); and
- (iii) A preliminary finding on critical circumstances, if appropriate under § 355.16(b)(2)(i).

(3) If affirmative, the Secretary's determination will also:

- (i) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, or consumption on or after the date of publication of the notice of the Secretary's preliminary determination; and

- (ii) Impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under this subsection a cash deposit or bond equal to the estimated net subsidy.

(4) The Secretary will publish in the Federal Register a notice of "Affirmative (Negative) Preliminary Countervailing Duty Determination," including the estimated net subsidy, if any, and an invitation for argument consistent with § 355.39.

(5) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary also will notify the Commission.

(b) *Postponement in Extraordinarily Complicated Investigation.* If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 150 days after the proceeding begins. The Secretary will base the decision on express findings that:

(1) The respondent parties to the proceeding are cooperating in the investigation;

(2) The investigation is extraordinarily complicated by reason of (i) the large number or complex nature of the alleged subsidies, (ii) novel issues raised, (iii) the need to determine the extent to which particular subsidies are used by individual producers or exporters, or (iv) the large number of producers and exporters; and

(3) Additional time is needed to make the preliminary determination.

(c) *Postponement at the Request of the Petitioner.* If the petitioner, not later than 25 days before the scheduled date for the Secretary's preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 150 days after the date of filing of the petition unless the Secretary finds compelling reasons to deny the request.

(d) *Postponement to Investigate Upstream Subsidies.* If, prior to the Secretary's preliminary determination, the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation, the Secretary may postpone the preliminary determination to not later than 250 days after the proceeding begins (up to 310 days if also postponed under paragraph (b) or (c) of this section).

(e) *Notice of Postponement.* If the Secretary decides to postpone the preliminary determination under paragraph (b), (c), or (d) of this section, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date for the Secretary's preliminary determination and will publish in the Federal Register a notice of "Postponement of Preliminary Countervailing Duty Determination," stating the reasons for the postponement.

(f) *Expedited Preliminary Determination.* Not later than 55 days after the initiation of an investigation under § 355.13, the Secretary will review the record of the first 50 days of the investigation. If the available information is sufficient for the Secretary to make a preliminary determination, the Secretary will disclose to the petitioner, and any interested party that has requested disclosure, all available public and proprietary information (subject to the requirements of § 355.34). If, not later than three government business days after disclosure, each party to whom disclosure was made furnishes an irrevocable written waiver of verification and agrees to a preliminary determination based on information in the record on the fiftieth day of the investigation, the Secretary will make an expedited preliminary determination.

(g) *Commission Access to Information.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary

based the determination and which the Commission may consider relevant to its injury determination.

(h) *Disclosure.* Promptly after making the preliminary determination, the Secretary will provide to parties to the proceeding which request disclosure a further explanation of the determination.

§ 355.16 Critical circumstances findings.

(a) *In General.* If the merchandise is from a country entitled to an injury test for the merchandise and if a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, not later than 21 days before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in an investigation under § 355.11, the Secretary will make a finding whether:

(1) Any alleged subsidy is inconsistent with the Agreement; and

(2) There have been massive imports of the merchandise over a relatively short period.

(b) *Preliminary Finding.* (1) If the petitioner submits the allegation of critical circumstances not later than 30 days before the scheduled date for the Secretary's final determination under § 355.20, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe that critical circumstances as described in paragraph (a) of this section exist.

(2) The Secretary will issue the preliminary finding:

(i) As part of the Secretary's preliminary determination under § 355.15, if the allegation is submitted not later than 20 days before the scheduled date for the preliminary determination; or

(ii) Not later than 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date for the Secretary's preliminary determination. The Secretary will notify the Commission and publish in the Federal Register a notice of the preliminary finding.

(c) *Suspension of Liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, the Secretary will order the suspension of liquidation of all entries of the merchandise, if the Secretary had not already done so as part of an affirmative preliminary determination. Any suspension of liquidation that the Secretary orders at this time, or ordered previously under this part, will apply to all entries of the

merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date of the order of suspension of liquidation.

(d) *Final Finding.* For any allegation submitted not later than 21 days before the scheduled date for the Secretary's final determination under § 355.20, the Secretary will make a final finding on critical circumstances. If the final finding is affirmative and if the Secretary did not make an affirmative preliminary finding of critical circumstances, the Secretary will order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after 90 days before the date the Secretary ordered suspension of liquidation either as part of an affirmative preliminary or final determination. If the final finding is negative and if the Secretary made an affirmative preliminary finding of critical circumstances, the Secretary will end the retroactive suspension of liquidation ordered under paragraph (c) of this section, and will instruct the Customs Service to release the cash deposit or bond.

(e) *Findings in Self-Initiated Investigations.* In investigations initiated under § 355.11, the Secretary will make a preliminary and final finding on critical circumstances without regard to the time limits in paragraphs (b) and (d) of this section.

(f) *Massive Imports.* In determining for the purpose of paragraph (a) of this section whether imports of the merchandise have been massive, the Secretary normally will examine:

- (1) The volume and value of the imports;
- (2) Seasonal trends; and
- (3) The share of domestic consumption accounted for by the imports.

In general, unless the imports during the period identified in paragraph (g) of this section have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(g) *Relatively Short Period.* For the purpose of paragraph (a) of this section, the Secretary normally will consider the period beginning on the date the proceeding begins and ending on the date the Secretary orders suspension of liquidation. However, if the Secretary finds that importers or exporters had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider the period from that earlier time to the date the

Secretary ordered suspension of liquidation.

§ 355.17 Termination of Investigation.

(a) *Withdrawal of Petition.* (1) Except as provided in paragraph (b) of this section, the Secretary may terminate an investigation upon withdrawal of the petition by the petitioner or on the Secretary's own initiative in an investigation initiated under § 355.11, after notifying all parties to the proceeding and, if the merchandise is from a country entitled to an injury test on the merchandise, after consultation with the Commission. The Secretary may not terminate an investigation unless the Secretary concludes the termination is in the public interest.

(2) If the Secretary terminates an investigation, the Secretary will publish in the Federal Register a notice of "Termination of Countervailing Duty Investigation" together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination.

(b) *Withdrawal of Petition Based on Acceptance of Quantitative Restriction Agreements.* (1) The Secretary may not terminate under paragraph (a) of this section an investigation by accepting an understanding or other kind of agreement with the government of the affected country to restrict the volume of the merchandise unless the Secretary, taking into account the factors listed in section 704(a)(2)(B) of the Act, is satisfied that termination is in the public interest.

(2) In deciding for the purpose of this subsection whether termination is in the public interest, the Secretary, to the extent practicable, will consult with representatives of potentially affected United States consuming industries and potentially affected persons in the industry, including persons not parties to the proceeding.

(3) At the direction of the President of the United States or a designee, the Secretary will modify any understanding or other kind of quantitative restriction agreement accepted under paragraph (b)(1) of this section as a result of consultations entered into under section 761 (a) of the Act.

(c) *Negative Determination.* An investigation terminates, without further comment or action, upon publication in the Federal Register of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(d) *End of Suspension of Liquidation.* If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the

date of publication of the notice of termination under paragraph (a) of this section or on the date of publication of a negative determination referred to in paragraph (c) of this section, and will instruct the Customs Service to release the cash deposit or bond.

§ 355.18 Suspension of Investigation.

(a) *Agreement to Eliminate or Offset Completely a Subsidy or to Cease Exports.* If the Secretary is satisfied that suspension is in the public interest, the Secretary may suspend an investigation at any time before the Secretary's final determination by accepting an agreement with the government of the affected country or exporters that account for substantially all of the merchandise:

(1) To eliminate or to offset completely the net subsidy, with respect to the merchandise; or

(2) To cease exports of the merchandise, not later than 180 days after the date of publication of the notice of suspension of investigation.

(b) *Agreement Eliminating Injurious Effect.* (1) As provided in this paragraph and paragraph (b)(2) of (b)(3) of this section, the Secretary may suspend an investigation at any time before the Secretary's final determination if the merchandise is from a country entitled to an injury test for the merchandise and if the Secretary:

(i) Is satisfied that the proposed suspension is in the public interest;

(ii) Finds that extraordinary circumstances are present; and

(iii) Finds that the agreement will eliminate completely the injurious effect of the merchandise.

(2) The Secretary may suspend an investigation under paragraph (b)(1) of this section by accepting an agreement with the government of the affected country or exporters that account for substantially all of the merchandise, if the Secretary finds that:

(i) The agreement will prevent the suppression or undercutting by the merchandise of prices of like products produced in the United States; and

(ii) The agreement will eliminate or offset completely at least 85 percent of the net subsidy.

(3) The Secretary may suspend an investigation under paragraph (1) by accepting an agreement with the government of the affected country to restrict the volume of the merchandise. In considering for the purpose of this paragraph whether suspension is in the public interest, the Secretary will take into account the factors listed in section 704(a)(2)(B) of the Act and, to the extent practicable, consult with representatives

of potentially affected persons in the industry, including persons not party to the proceeding.

(c) *Definition of "Substantially All"*: For purposes of paragraphs (a) and (b)(2) of this section, exporters who account for "substantially all" of the merchandise means exporters that have accounted for not less than 85 percent of value or volume of the merchandise during the period for which the Department is measuring benefits in the investigation or other period that the Secretary considers representative.

(d) *Definition of "Extraordinary Circumstances"*: For purpose of paragraph (b) of this section, "extraordinary circumstances" means circumstances in which (1) suspension of the investigation will be more beneficial to the industry than continuation of the investigation, and (2) there are a large number of alleged subsidy practices which are complicated, the issues raised are novel, or the number of exporters is large.

(e) *Monitoring*. The Secretary will not accept an agreement unless effective monitoring of the agreement by the Secretary is practicable. In monitoring an agreement under paragraph (b) of this section, the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the merchandise or of like products produced in the United States.

(f) *Exports Not to Increase During Interim Period*. The Secretary will not accept an agreement under paragraph (a) of this section unless the agreement ensures that the quantity of the merchandise exported during the interim period for elimination or offset of the subsidy of cessation of exports does not exceed the quantity of the merchandise exported during a period of comparable duration that the Secretary considers representative.

(g) *Procedure for Suspension of Investigation*. (1) The Government of the affected country or the exporters, as appropriate, shall submit to the Secretary a proposed agreement not later than 45 days before the scheduled date for the Secretary's final determination under § 355.20.

(2) The Secretary will:

(i) Not later than 30 days before the date the Secretary suspends the investigation, notify all parties to the proceeding of the proposed suspension and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (The agreement shall contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of this section); and

(ii) Consult with the petitioner concerning the proposed suspension.

(3) The Secretary will provide all interested parties and United States government agencies an opportunity to submit, not later than five days before the scheduled date for the Secretary's final determination, written argument and factual information concerning the proposed suspension.

(h) *Acceptance of Agreement*. If the Secretary accepts an agreement to suspend an investigation, the Secretary will publish in the Federal Register a notice of "Suspension of Countervailing Duty Investigation," including the text of the agreement. If the Secretary has not already published a notice of affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.

(1) If the Secretary suspends an investigation based on an agreement under paragraph (a) of this section, the Secretary will not order the suspension of liquidation of entries of the merchandise. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension of liquidation ended on the effective date of notice of suspension of investigation and will instruct the Customs Service to release the cash deposit or bond.

(2) If the Secretary suspends an investigation based on an agreement under paragraph (b) of this section, the Secretary will order the suspension of liquidation to continue or begin, as appropriate. The suspension of liquidation will not end until the Commission completes any requested review, under section 704(h) of the Act, of the agreement. If the Commission receives no request for review within 20 days after the date of publication of the notice of suspension of investigation, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release the cash deposit or bond.

(3) If the Commission undertakes a review under section 704(h) of the Act of an agreement and determines that the agreement will not eliminate the injurious effect, the Secretary will resume the investigation on the date of publication of the Commission's determination as if the Secretary's affirmative preliminary determination had been made on that date. If the Commission determines that the agreement eliminates the injurious effect, the Secretary will continue the suspension of investigation and order the suspension of liquidation ended on

the date of publication of the Commission's determination, and will instruct the Customs Service to release the cash deposit or bond.

(i) *Continuation of Investigation*. (1) An interested party, as defined in paragraph (i)(2), (3), (4), (5), or (6) of § 355.2, not later than 20 days after the date of publication of the notice of suspension of investigation, may request in writing that the Secretary continue the investigation. If the merchandise is from a country entitled to an injury test for the merchandise, the party shall simultaneously file a request with the Commission to continue its investigation.

(2) Upon receiving the request, the Secretary and, if appropriate, the Commission will continue the investigation. If the Secretary and the Commission make affirmative final determinations, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. This paragraph does not affect the provisions of paragraph (h) of this section regarding suspension of liquidation.

(j) *Merchandise Imported in Excess of Allowed Quantity*.

(1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of the merchandise in excess of any quantity allowed by an agreement under paragraph (a) or (b) of this section.

(2) Imports in excess of the quantity allowed by an agreement may be exported or destroyed under Customs Service supervision, except that if the agreement is under paragraph (b)(2) of this section, the excess merchandise may be held for future opening under the agreement by placing it in a foreign trade zone or by entering it for warehouse.

(k) *Modification of Quantitative Restriction Agreements*. At the direction of the President or a designee, the Secretary will modify an agreement accepted under paragraph (b)(2) of this section as a result of consultations under section 761(a) of the Act.

§ 355.19 Violation of agreement.

(a) *Immediate Determination*. If the Secretary determines that the signatory foreign government or exporters have violated a suspension agreement, the Secretary, without right of comment, will:

(1) Order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after: (i) Ninety

days before the date of publication of the notice of cancellation of agreement, or (ii) if later, the date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which was in violation of the agreement;

(2) If the investigation was not completed under § 355.18(i) resume the investigation as if the Secretary made an affirmative preliminary determination on the date of publication of the notice of cancellation and impose provisional measures by instructing the Customs Service to require for each entry of the merchandise suspended under this subsection a cash deposit or bond equal to the estimated net subsidy determined in the affirmative preliminary determination;

(3) If the investigation was completed under § 355.18(i), issue a countervailing duty order for all entries subject to suspension of liquidation under paragraph (a)(1) of this section and instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit equal to the estimated net subsidy determined in the affirmative final determination;

(4) Notify all persons who are or were parties to the proceeding and, if appropriate, the Commission and the Commissioner of Customs; and

(5) Publish in the Federal Register a notice of "Countervailing Duty Order (Resumption of Countervailing Duty Investigation); Cancellation of Suspension Agreement."

(b) *Determination After Notice and Comment.* (1) Notwithstanding, paragraph (a) of this section, if the Secretary has reason to believe that the signatory government or exporters have violated an agreement or that an agreement no longer meets the requirements of subsection 704(d)(1) of the Act, the Secretary will publish in the Federal Register a notice of "Invitation for Comment on Countervailing Duty Suspension Agreement."

(2) After publication of the notice inviting comment the Secretary will:

(i) If the Secretary determines that the signatory government or exporters have violated the agreement, take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section; or

(ii) If the Secretary determines that the agreement no longer meets the requirements of section 704(d)(1) of the Act: (A) Take appropriate action as described in paragraphs (a)(1) through (a)(5) of this section, except that, for paragraph (a)(1)(ii) of this section, the date shall be the date of first entry of the merchandise under the agreement;

(B) Continue the suspension of investigation by accepting a revised suspension agreement under § 355.18(a) (whether or not the Secretary accepted the original agreement under that subsection) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) of the Act, and publish in the Federal Register a notice of "Revision of Agreement Suspending Countervailing Duty Investigation;" or

(C) Continue the suspension of investigation by accepting a revised suspension agreement under § 355.18(b) (whether or not the Secretary accepted the original agreement under that subsection) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) of the Act, and publish in the Federal Register a notice of "Revision of Agreement Suspending Countervailing Duty Investigation."

If the Secretary continues to suspend an investigation based on a revised agreement accepted under § 355.18(b), the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review, under section 704(h) of the Act, of the agreement. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release the cash deposit or bond. If the Commission undertakes a review under section 704(h) of the Act, the provisions of § 355.18(h)(3) will apply.

(iii) If the Secretary decides neither to consider the order violated nor to revise the agreement, the Secretary will publish in the Federal Register a notice of the Secretary's decision under this subsection, including a statement of the factual and legal conclusions on which the decision is based.

(c) If the Secretary decides that the agreement no longer meets the requirements of § 355.18(b)(1)(iii) or that the signatory exporters no longer account for substantially all of the merchandise, the Secretary may revise the agreement to include additional signatory exporters.

(d) *Definition of "Violation."* For the purpose of this section, "violation" means significant noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory foreign government or exporter.

§ 355.20 Final determination.

(a) *In General.* (1) Not later than 75 days after the date of publication of the Secretary's preliminary determination, the Secretary will make a final determination whether a net subsidy is being provided with respect to the merchandise.

(2) The Secretary's determination will include:

(i) The factual and legal conclusions on which the determination is based;

(ii) The estimated net subsidy, if any, stated on a country-wide basis, except as provided in paragraph (d) or (e) of this section; and

(iii) If appropriate, a final finding on critical circumstances under § 355.18.

(3) If affirmative, the Secretary's determination will also:

(i) Unless previously ordered by the Secretary, order the suspension of liquidation of all entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the Secretary's final determination; and

(ii) If the merchandise is from a country not entitled to an injury test for the merchandise, instruct the Customs Service to require a cash deposit, as provided in § 355.21(b), for each suspended entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of the countervailing duty order under § 355.21; or

(iii) If the merchandise is from a country entitled to an injury test for the merchandise, instruct the Customs Service to require a cash deposit or bond equal to the estimated net subsidy determined under this subsection for each suspended entry of the merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the Secretary's final determination.

(4) The Secretary will publish in the Federal Register a notice of "Affirmative (Negative) Final Countervailing Duty Determination," including the estimated net subsidy, if any.

(5) The Secretary will notify all parties to the proceeding. If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will also notify the Commission.

(b) *Postponement to Investigate Upstream Subsidies.* If, after the Secretary's preliminary determination, the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation, the Secretary may:

(1) If the Secretary's preliminary determination was negative, postpone the final determination under this section to not later than 165 days after the preliminary determination;

(2) If the Secretary's preliminary determination was affirmative:

(i) Postpone the final decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any; or

(ii) At the written request of the petitioner: (A) Make the decision concerning upstream subsidization in the final determination under this section;

(B) Postpone the final determination to not later than 165 days after the preliminary determination; and

(C) End the suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless the ITC publishes a final affirmative determination, or, if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary publishes a countervailing duty order. The Secretary, not later than 20 days before the scheduled date for the Secretary's final determination, will notify all parties to the proceeding of the decision to postpone either the final determination or the decision concerning upstream subsidization.

(c) *Postponement for Simultaneous Investigations.* (1) If the Secretary simultaneously initiated antidumping and countervailing duty investigations on the merchandise (from the same or other countries), the Secretary at the petitioner's request will:

(i) Postpone the final determination under this part to the date of the final determination under Part 353, unless the Secretary's final determination under this part is due on a later date as the result of postponement under paragraph (b) or § 355.15; and

(ii) End any suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless the ITC publishes a final affirmative determination, or, if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary publishes a countervailing duty order.

(2) The petitioner shall submit any such request in writing not later than 10 days before the scheduled date for the Secretary's final determination under this part.

(d) *Calculation of Individual Rates.* (1) If a producer or exporter is government-owned, the Secretary will, and to the extent practicable for other producers or exporters the Secretary may, investigate whether a significant differential existed, during the period for which the Department is measuring benefits in the investigation, between the net subsidy received by an individual producer or exporter of the merchandise and the weighted-average net subsidy calculated on a country-wide basis.

(2) If the Secretary decides that an individual (including government-owned) producer or exporter received a significantly different net subsidy during the period, the Secretary will state in the final determination an individual estimated net subsidy for that person.

(3) A significant differential is a difference of the greater of at least 10 percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis.

(e) *Effect of Decision not to Exclude From Order.* If the Secretary finds that a person requesting exclusion under § 355.14 received, during the period for which the Department measured benefits in the investigation, and net subsidy from any program that the Secretary determines countervailable in the affirmative final determination, the Secretary will state in the affirmative final determination an individual rate for that person, and that rate will be the basis for the cash deposit or bond, as appropriate, of estimated countervailing duties for that person. The individual rate will be the greater of the weighted-average net subsidy stated on a country-wide basis or the individual rate calculated for that person.

(f) *Commission Access to Information.* If the merchandise is from a country entitled to an injury test for the merchandise, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding all information upon which the Secretary based the final determination and which the Commission may consider relevant to its injury determination.

(g) *Effect of Negative Final Determination.* An investigation terminates, without further comment or action, upon publication in the Federal Register of the Secretary's or the Commission's negative final determination. If the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of negative final determination and will instruct the Customs Service to release the cash deposit or bond.

§ 355.21 Countervailing Duty Order.

Not later than seven days after receipt of the notice of the Commission's affirmative final determination under section 705 of the Act, or simultaneously with the publication of the Secretary's affirmative final determination if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary will publish in the Federal Register a "Countervailing Duty Order" that:

(a) Instructs the Customs Service to assess countervailing duties on the merchandise, in accordance with the Secretary's instructions at the completion of each administrative review requested under § 355.22(a) or, if not requested, in accordance with the Secretary's instructions under § 355.22(g);

(b) For each entry of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order, instructs the Customs Service to require a cash deposit of estimated countervailing duties equal to the net subsidy stated in the Secretary's final determination; and

(c) Excludes from the application of the order any producer or exporter that complies with the requirements of § 355.14 and that the Secretary finds did not receive directly or indirectly, during the period for which the Department measured benefits in the investigation, any net subsidy on the merchandise from any program that the Secretary determined countervailable in the affirmative final determination.

§ 355.22 Administrative review of orders and suspension agreements.

(a) *Request for Administrative Review.* (1) Each year during the anniversary month of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurred), an interested party may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an order or an agreement on which suspension of investigation was based.

(2) During the same month, a producer or exporter covered by an order may request in writing that the Secretary conduct an administrative review of only that person if the person submits with the request:

(i) The person's certification that the person did not apply for or receive any net subsidy on the merchandise, during the appropriate period described in paragraph (b) of this section, from any program that the Secretary previously

found countervailable in the proceeding, and that the person will not do so in the future;

(ii) The certification of the government of the affected country that the government did not provide to that person any net subsidy, during the period described in paragraph (b) of this section, from any program that the Secretary previously found countervailable in the proceeding; and

(iii) If the person is not the producer of the merchandise, the certifications under paragraph (a)(2)(i) of this section of the suppliers and producers of the merchandise and the certification under paragraph (a)(2)(ii) of this section of the government regarding those suppliers and producers.

(b) *Period Under Review.* (1) Except as provided in paragraph (2), an administrative review under paragraph (a) of this section normally will cover exports of the merchandise during the most recent completed reporting year of the government of the affected country.

(2) For requests received during the first anniversary month after publication of an order or suspension of investigation, the review under paragraph (a) of this section will cover entries or exports, as appropriate, during the period from the date of suspension of liquidation under this Part or suspension of investigation to the end of the most recent completed reporting year of the government of the affected country.

(c) *Procedures.* After receipt of a timely request under subsection (a), or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Within the first 10 days after the anniversary month, publish in the Federal Register a notice of "Initiation of Countervailing Duty Administrative Review;"

(2) Send to appropriate interested parties or a sample of interested parties, normally not later than 30 days after the date of publication of the notice of initiation, questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 355.37(a)(1) (iii) or (iv);

(4) Issue preliminary results of review, based on the available information, that include:

(i) The factual, and legal conclusions on which the preliminary results are based;

(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in paragraph (d) or (f) of this section;

(iii) A description of official changes in the subsidy programs made by the government of the affected country that

affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the Federal Register a notice of "Preliminary Results of Countervailing Duty Administrative Review," including the net subsidy, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.39, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(7) Not later than 365 days after the month of the Secretary's initiation of the review, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in paragraph (d) or (f) of this section;

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the Federal Register a notice of "Final Results of Countervailing Duty Administrative Review," including the net subsidy, if any, and the estimated net subsidy for cash deposit purposes, and notify all parties to the proceeding;

(9) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section and to collect a cash deposit of estimated countervailing duties on future entries. Both the assessment and the cash deposit will be at the rates found in the final results of review, calculated on a country-wide basis, except as provided in paragraph (d) or (f) of this section.

(d) *Calculation of Individual Rates.* (1) If a producer or exporter is government-owned, the Secretary will, and to the extent practicable for other producers or exporters the Secretary may, review whether a significant differential existed, during the period under review, between the net subsidy received by an individual producer or exporter of the merchandise and the weighted-average

net subsidy calculated on a country-wide basis.

(2) If the Secretary decides that an individual (including government-owned) producer or exporter received a significantly different net subsidy during the period, the Secretary will state in the final results an individual rate for that person, and that rate will be the basis for the assessment of countervailing duties and, except as provided in paragraph (c)(7)(iii) of this section, the cash deposit of estimated countervailing duties for that person.

(3) A significant differential is a difference of the greater of at least 10 percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis.

(e) *Possible Cancellation of Revision of Suspension Agreement.* If during an administrative review, the Secretary determines or has reason to believe that the signatory foreign government or exporters have violated a suspension agreement or that the agreement no longer meets the requirements of § 355.18, the Secretary will take appropriate action under § 355.19. The Secretary may toll the time limit in subsection (c)(7) while taking action under § 355.19(b).

(f) *Review of Individual Producer or Exporter.* For an administrative review requested under paragraph (a)(2) of this section:

(1) The Secretary will verify whether there is a net subsidy on the merchandise covered by the request from any program that the Secretary:

(i) Previously found countervailable in the proceeding; or

(ii) Determines in the review to be countervailable.

(2) If the Secretary verifies that the certifications are complete and accurate with regard to paragraph (f)(1)(i) and verifies that there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary may issue and publish in the Federal Register final results for that person and take actions under paragraph (c)(9) of this section that include a zero rate of assessment and cash deposit.

(3) If the Secretary verifies that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section but is unable to verify there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will:

(i) Issue and publish final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the net subsidies found; and

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(ii) Initiate an administrative review under paragraphs (b) and (c) of this section of all producers and exporters covered by the order, unless the Secretary is concurrently reviewing the same period, as a result of a request is concurrently reviewing the same period, as a result of a request under paragraph (a)(1) of this section.

(4) If the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section but verifies there is not net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will: (i) Issue and publish final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the previously or concurrently determined country-wide weighted-average rate.

(5) If the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section and is unable to verify that there is no net subsidy described in paragraph (f)(1)(ii) of this section on the merchandise, the Secretary will:

(i) Issue and publish final results for that person and take actions under paragraph (c)(9) of this section that include a rate based on the previously determined country-wide weighted-average rate plus the additional rate under paragraph (f)(1)(ii) of this section, or, if appropriate, the concurrently determined country-wide weighted-average rate; and

(ii) Initiate and administrative review under paragraphs (b) and (c) of this section of all producers and exporters covered by the order, unless the Secretary is concurrently reviewing the same period, as a result of a request under paragraph (a)(1) of this section.

(6) In addition to the actions described in (f)(4) and (5) of this section, if the Secretary is unable to verify that the certifications are complete and accurate with regard to paragraph (f)(1)(i) of this section, the Secretary will refuse to accept any other requests for review under paragraph (a)(2) of this section for the duration of the order.

(g) *Automatic Assessment of Duty.* (1) For orders, if the Secretary does not receive a timely request under paragraph (a)(1) or (a)(2) of this section, the Secretary, without additional notice, will instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section, at rates equal to the cash deposit of or bond for estimated countervailing duties required on that merchandise at the time of entry, or withdrawal from warehouse, for

consumption and to continue to collect the cash deposit previously ordered.

(2) If the Secretary receives a timely request under paragraph (a)(2) of this section and no request under paragraph (a)(1) of this section, the Secretary in accordance with paragraph (g)(1) of this section will instruct the Customs Service to assess countervailing duties and continue to collect the cash deposit on the merchandise not covered by the request.

(h) *Changed Circumstances Review.*

(1) If the Secretary concludes from available information, including information in a request under this subsection for an administrative review, that changed circumstances sufficient to warrant a review exist, the Secretary will:

(i) Publish in the Federal Register a notice of "Initiation of Changed Circumstances Countervailing Duty Administrative Review;"

(ii) If necessary, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(iii) Issue preliminary results of review based on the available information that include the factual and legal conclusions on which the preliminary results are based and any action the Secretary proposes based on the preliminary results;

(iv) Publish in the Federal Register a notice of "Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review," including an invitation for argument consistent with § 355.39;

(v) Notify all parties to the proceeding of the preliminary results;

(vi) If appropriate, promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(vii) Not later than 270 days after the date of the Secretary's initiation of the review, issue final results of review that include the factual and legal conclusions on which the final results are based and any action, including action under paragraph (c)(9) of this section and § 355.25(d), that the Secretary will take based on the final results;

(viii) Publish in the Federal Register a notice of "Final Results of Changed Circumstances Countervailing Duty Administrative Review;" and

(ix) Notify all parties to the proceeding.

(2) The Secretary will not initiate an administrative review under this subsection before the end of the second annual anniversary month after the date of publication of the Secretary's

affirmative preliminary determination or suspension of investigation, unless the Secretary finds that good cause exists.

(3) If the Secretary concludes that expedited action is warranted, the Secretary may combine the notices identified in paragraphs (h)(1)(i) and (h)(1)(iv) of this section in a notice of "Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review." In that event, the notification required in paragraph (h)(1)(v) of this section will be given to all interested parties included on the Department's service list described in § 355.31(h).

(i) *Review at the Direction of the President.* At the direction of the President or a designee, the Secretary will conduct an administrative review to determine if a net subsidy is being provided, with respect to the merchandise subject to an understanding or other kind of quantitative restriction agreement accepted under § 355.17(b) or § 355.18(b)(3). The Secretary will:

(1) Publish in the Federal Register a notice of "Initiation of Countervailing Duty Administrative Review at the Direction of the President" which will include a description of the merchandise, the period under review, and a summary of the available information which would, if accurate support the imposition of countervailing duties;

(2) Notify the Commission;

(3) Send to appropriate interested parties or a sample of interested parties, normally not later than 30 days after the date of publication of the notice of initiation, questionnaires requesting factual information for the review;

(4) Issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in subsection (d); and

(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the estimated net subsidy;

(5) Publish in the Federal Register a notice of "Preliminary Results of Countervailing Duty Administrative Review at the Direction of the President," including the net subsidy, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.39;

(6) Notify the Commission and all parties to the proceeding;

(7) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(8) Issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The net subsidy, if any, during the period of review stated on a country-wide basis, except as provided in subsection (d); and

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated net subsidy;

(9) Publish in the Federal Register a notice of "Final Results of Countervailing Duty Administrative Review at the Direction of the President," including the net subsidy, if any, and the estimated net subsidy; and

(10) Notify all parties to the proceeding.

(11) If the Secretary's final results of administrative review under this paragraph and the Commission's final results of review section 762(a)(2) of the Act are affirmative, the Secretary will:

(i) Publish in the Federal Register a "Countervailing Duty Order" under § 355.21 on or promptly after the date the agreement terminates; and

(ii) Order the suspension of liquidation of entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order.

§ 355.23 Provisional measures deposit cap.

This section applies to the merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of affirmative final determination or, if the merchandise is from a country not entitled to an injury test for the merchandise, the date of the Secretary's notice of affirmative final determination. If the cash deposit or bond required under the Secretary's affirmative preliminary or affirmative final determination is different from the net subsidy the Secretary calculates under § 355.22, the Secretary will instruct the Customs Service to disregard the difference to the extent that the cash deposit or bond is less than the net subsidy, and to assess countervailing duties equal to the net subsidy calculated under § 355.22 if the cash deposit or bond is more than the net subsidy.

§ 355.24 Interest on certain overpayments and underpayments.

(a) *In general.* The Secretary will instruct the Customs Service to pay or collect, as appropriate, interest on the difference between the cash deposit of estimated countervailing duties and the assessed countervailing duties on entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of a countervailing duty order.

(b) *Rate.* The rate or rates of interest payable or collectible under paragraph (a) of this section for any period of time are the rates established under section 6621 of the Internal Revenue Code of 1954.

(c) *Period.* The Secretary will instruct the Customs Service to calculate interest for each entry from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

§ 355.25 Revocation of order; termination of suspended investigation.

(a) *Revocation or Termination Based on Absence of Subsidy.* (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that the government of the affected country:

(i) Has eliminated all subsidies on the merchandise by abolishing for the merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable; and

(ii) Is not likely to reinstate for the merchandise those programs or substitute substantially equivalent programs.

(2) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that all producers and exporters covered by the order or the suspension agreement:

(i) Have not applied for or received, for a period of at least five consecutive years, any net subsidy on the merchandise; and

(ii) Are not likely to apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from substantially equivalent programs.

(3) The Secretary may revoke an order in part if the Secretary concludes that one or more producers or exporters covered by the order:

(i) Have not applied for or received, for a period of at least five consecutive years, any net subsidy on the merchandise;

(ii) Are not likely to apply for or receive any net subsidy on the merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from substantially equivalent programs; and

(iii) For producers or exporters that the Secretary previously has determined to have received any net subsidy on the merchandise, agree to the immediate reinstatement of the order, as long as any producer or exporter is subject to the order, if the Secretary concludes under § 355.22(h) that the producer or exporter has received, subsequent to the revocation, any net subsidy on the merchandise.

(b) *Request for Revocation or Termination.* (1) During the third and subsequent annual anniversary months of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurred), the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a)(1) of the section if the government submits with the request its certification that it has satisfied, during the period described in § 355.22(b)(1), the requirements of paragraph (a)(1)(i) of this section and that it shall not reinstate for the merchandise those programs or substitute substantially equivalent programs; or

(2) During the fifth and subsequent annual anniversary months of the publication of an order or suspended investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (a)(2) of this section if the government submits with the request:

(i) The certifications required under § 355.22(a)(2) for all producers and exporters covered by the order or suspension agreement; and

(ii) Those producers' and exporters' certifications that they shall not apply for or receive any net subsidy on the merchandise from any program described in paragraph (a)(2)(ii) of this section.

(3) During the fifth and subsequent annual anniversary months of publication of an order or suspension of investigation, a producer or exporter may request in writing that the Secretary revoke an order with regard to that person if the person submits with the request:

(i) The certifications required under § 355.22(a)(2):

(ii) The certifications described in paragraph (b)(2)(ii) of this section for the merchandise covered by the request; and

(iii) The agreement described in paragraph (a)(3)(iii) of this section.

(c) *Procedures.* (1) After receipt of a timely request under subsection (b), the Secretary will consider the request as including a request for an administrative review and will conduct a review under § 355.22(c).

(2) In addition to the requirements of § 355.22(c), the Secretary will:

(i) Publish with the notice of initiation, under § 355.22(c)(1), a notice of "Request for Revocation of Order (in Part)" or, if appropriate, "Request for Termination of Suspended Investigation;"

(ii) Conduct a verification, under § 355.37(a)(1)(ii);

(iii) Include in the preliminary results of review, under § 355.22(c)(4), the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary's preliminary decision under paragraph (c)(2)(iii) of this section is affirmative, publish with the notice of preliminary results of review, under § 355.22(c)(5), a notice of "Intent to Revoke Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation;"

(v) Include in the final results of review, under § 355.22(c)(7), the Secretary's final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary's final decision under paragraph (v) is affirmative, publish with the notice of final results of review, under § 355.22(c)(8), a notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

(3) If the Secretary revokes an order or revokes an order in part, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release the cash deposit or bond, if any.

(d) *Revocation or Termination Based on Changed Circumstances.* (1) The Secretary may revoke an order or terminate a suspended investigation if the Secretary concludes that the order or suspended investigation:

(i) Is no longer of interest to interested parties, as defined in paragraph (i) (3), (4), (5), and (6) of § 355.2; or

(ii) Other changed circumstances sufficient to warrant revocation or termination exist.

(2) If at any time the Secretary concludes from the available information, including an affirmative statement of no interest from the petitioner in the proceeding, that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct an administrative review under § 355.22(h).

(3) In addition to the requirements of § 355.22(h), the Secretary will:

(i) Publish with the notice of initiation, under § 355.22(h)(1)(i), a notice of "Consideration of Revocation of Order (in Part)" or, if appropriate, "Consideration of Termination of Suspended Investigation;"

(ii) Conduct a verification, if appropriate, under § 355.37(a)(1)(iii);

(iii) Include in the preliminary results of review, under § 355.22(h)(1)(iii), the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination based on changed circumstances are met;

(iv) If the Secretary's preliminary decision under paragraph (d)(3)(iii) of this section is affirmative, publish with the notice of preliminary results of review, under § 355.22(h)(1)(iv), a notice of "Intent to Revoke Order (in Part)" or, if appropriate, "Intent to Terminate Suspended Investigation;"

(v) Include in the final results of review, under § 355.22(h)(1)(vii), the Secretary's final decision whether the requirements for revocation or termination based on changed circumstances are met; and

(vi) If the Secretary's final decision under paragraph (d)(3)(v) of this section is affirmative, publish with the notice of final results of review, under § 355.22(h)(1)(viii), a notice of "Revocation of Order (in Part)" or, if appropriate, "Termination of Suspended Investigation."

(4)(i) If for four consecutive annual anniversary months no interested party requested an administrative review, under § 355.22(a), of an order or suspended investigation, not later than the first day of the fifth consecutive annual anniversary month, the Secretary will publish in the Federal Register, a notice of "Intent to Revoke Order" or, if appropriate, "Intent to Terminate Suspended Investigation."

(ii) Not later than the date of publication of the notice described in paragraph (d)(1) of this section, the Secretary will serve written notice of the intent to revoke or terminate on each party to the proceeding listed on the Department's service list and on any other person which the Secretary has reason to believe produces or sells a like product in the United States.

(iii) If by the last day of that fifth annual anniversary month no interested party objects, or requests an administrative review under § 355.22(a), the Secretary at that time will conclude that the requirements of paragraph (d)(1)(i) of this section for revocation or termination are met, revoke the order or terminate the suspended investigation, and publish in the Federal Register the notice described in paragraph (d)(3)(vi) of this section.

(5) If the Secretary under this paragraph revokes an order or revokes an order in part, the Secretary will order this suspension of liquidation ended for the merchandise covered by the revocation on the effective date of the notice of revocation, and will instruct the Customs Service to release the cash deposit or bond, if any.

(e) *Revocation or Termination Based on Injury Reconsideration.* If the Commission issues negative final results of administrative review under section 751(b) of the Act, the Secretary will revoke the countervailing duty order or terminate the suspended countervailing duty investigation, and will publish in the Federal Register a notice of "Revocation of Countervailing Duty Order" or, if appropriate, "Termination of Suspended Countervailing Duty Investigation."

Subpart C—Information and Argument

§ 355.31 Submission of factual information

(a) *Time Limits in General.* (1) All submissions of factual information for the Secretary's consideration shall be submitted not later than:

(i) For the Secretary's final determination, the day before the scheduled date on which the verification is to commence; or

(ii) For the Secretary's final results of an administrative review, the earlier of the date of publication of the notice of preliminary results of review or 180 days after the date of publication of the notice of initiation of the review.

(2) The Secretary will not consider in the final determination or the final results, or retain in the record of the proceeding, any factual information submitted after the applicable time limit.

(b) *Questionnaire Responses and Other Submissions on Request.* (1) Notwithstanding paragraph (a) of this section, the Secretary may request any person to submit factual information at any time during a proceeding.

(2) In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the time limit for response. The

Secretary normally will not consider or retain in the record of the proceeding unsolicited questionnaire responses, and in no event will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination.

(3) Ordinarily, the Secretary will not extend the time limit stated in the questionnaire or request for other factual information. Before the time limit expires, the recipient of the Secretary's request may request an extension. The request must be in writing and state the reasons for the request. Only the following employees of the Department may approve an extension: The Deputy Assistant Secretary for Import Administration, the Director of the Office of Investigations, the Director of the Office of Compliance, and the division director responsible for the proceeding. An extension must be approved in writing.

(4) Subject to the other provisions of this subsection, questionnaire responses in administrative reviews must be submitted not later than 60 days after the date of receipt of the questionnaire.

(c) *Time Limits for Certain Allegations.* (1) Except for an allegation of upstream subsidies submitted in an investigation (see §§ 355.15(d) and 355.20(b)), the Secretary will not consider any subsidy allegation submitted by the petitioner or other interested party, as defined in paragraph (i) (3), (4), (5), or (6) of § 355.2, later than:

(i) In an investigation, the twentieth day after the date of publication of the notice of initiation; or

(ii) In an administrative review, 120 days after the date of publication of the notice of initiation of the review.

(2) The Secretary will not consider any allegation in an investigation that the petitioner lacks standing unless the allegation is submitted, together with supporting factual information, not later than 10 days before the scheduled date for the Secretary's preliminary determination.

(3) Any interested party may request in writing not later than the time limits specified in paragraph (c) (1) or (2) of this section, as applicable, an extension of those time limits. If the Assistant Secretary for Trade Administration in an investigation, or the Deputy Assistant Secretary for Import Administration in an administrative review, concludes that an extension would facilitate the proper administration of the law, the Assistant Secretary or Deputy Assistant Secretary may grant an extension of not longer than 10 days in an investigation or 30 days in an administrative review.

(d) *Where to File: Time of Filing.* Address and submit documents to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th St., N.W., Washington, D.C. 20230, between the hours of 8:30 a.m. and 5:00 p.m. on government business days. For all time limits in this part, the Secretary will consider documents received when stamped by the Central Records Unit with the date and time of receipt. If the time limit expires on a non-business day, the Secretary will accept documents that are filed on the next following government business day.

(e) *Format and Number of Copies.*—

(1) *In General.* Unless the Secretary alters the requirements of this paragraph, submitters shall make all submissions in the format specified in this subsection. The Secretary may refuse to accept for the record of the proceeding any submission that does not conform to the requirements of this paragraph.

(2) *Documents.* In an investigation, submit 10 copies of any document and, if a person has requested that the Secretary treat portions of the document as proprietary information, submit five copies of a public version of the document, including the public summary required under § 255.32(b) as a substitute for the portions for which the person has requested proprietary treatment. In an administrative review submit five copies and three copies respectively. In all proceedings, submit documents on letter-size paper, double-spaced, and securely bind each copy as a single document with any letter of transmittal as the first page of the document. Mark the first page of each document in the upper right hand corner with the following information in the following format: (i) On the first line, except for a petition, the Department case number; (ii) on the second line, the total number of pages in the document including cover pages, appendices, and any numbered pages; (iii) on the third line, state whether the document is for an investigation or an administrative review and, if the latter, the period of review; and (iv) on the fourth and subsequent lines, state whether or not the document contains classified, privileged, or proprietary information and the applicable page numbers.

(3) *Computer Tapes.* The Secretary may require submission of factual information on computer tape unless the Secretary decides that the submitter does not maintain records in computerized form or otherwise cannot supply the requested information on

computer tape without unreasonable additional burden in time and expense.

(f) *Translation to English.* Unless the Secretary waives in writing this requirement for an individual document, any document submitted which is in a foreign language must be accompanied by an English translator.

(g) *Service of Copies on Other Parties.* The submitter of a document shall serve a copy, by mail or personal service, on the government of the affected country and any interested party on the Department's service list. The submitter shall attach to each document a certificate of service listing the parties served and, for each, the date and method of service.

(h) *Service List.* The Central Records Unit will maintain and make available a service list for each proceeding. Each interested party who asks to be on the service list shall designate a person to receive service of documents filed in a proceeding.

§ 355.32 Request for proprietary treatment of information.

(a) *Submission and Content of request.* (1) Any person who submits factual information to the Secretary in connection with a proceeding may request that the Secretary treat that information or any specified part, as proprietary.

(2) The submitter shall identify proprietary information on each page by placing brackets around the proprietary information and clearly stating at the top of each page "Proprietary Treatment Requested." The submitter shall provide a full explanation why each piece of factual information subject to the request is entitled to proprietary treatment under § 355.4. The request and explanation shall be a part of or securely bound with the document containing the information.

(b) *Public Summary.* All requests for proprietary treatment shall include or be accompanied by:

(1) An adequate public summary of all proprietary information incorporated in the public version of the document (Generally, numeric data are adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure, and if an individual portion of the data is voluminous, at least one percent of that portion is individually summarized in this manner.); or

(2) A statement itemizing those portions of the proprietary information which cannot be summarized adequately and all arguments supporting that conclusion for each portion.

(c) *Agreement to Release.* All requests for proprietary treatment shall include either an agreement to permit disclosure under administrative protective order, or a statement itemizing which portions of the proprietary information should not be released under administrative protective order and all arguments supporting that conclusion for each portion. The Secretary ordinarily will not provide the submitter further opportunity for argument on whether to grant a request for disclosure under administrative protective order.

(d) *Return of Information as a Result of Nonconforming Request.* The Secretary may return to the submitter any factual information for which the submitter requested proprietary treatment when the request does not conform to the requirements of this section. If the Secretary returns the information, the Secretary will provide an explanation of the reasons why it does not conform and will not consider it unless it is resubmitted with a new request which complies with the requirements of this section not later than 48 hours after the return.

(e) *Status During Consideration of Request.* While considering whether to grant a request for proprietary treatment, the Secretary will not disclose or make public the information. The Secretary normally will decide no later than 14 days after the Secretary receives the request.

(f) *Treatment of Proprietary Information.* The Secretary may disclose factual information which the Secretary decides is proprietary only to: (1) A representative of an interested party who requests and is granted an administrative protective order under § 355.34;

(2) An employee of the Department of Commerce directly involved in the proceeding for which the information is submitted;

(3) An employee of the Commission directly involved in the proceeding for which the information is submitted;

(4) An employee of the Customs Service for use in connection with a fraud investigation concerning the merchandise; and

(5) Any person to whom the submitter specifically authorizes (in writing) disclosure. Unless the Secretary otherwise provides, the person to whom the Secretary discloses information shall not disclose the information to any other person.

(g) *Denial of Request for Proprietary Treatment.* If the Secretary decides that the factual information does not warrant proprietary treatment in whole or in part, the Secretary will notify the submitter. Unless the submitter agrees

that the information be considered public, the Secretary will return it and not consider it in the proceeding.

§ 353.33 Information exempt from disclosure.

Privileged or classified information is exempt from disclosure to the public or to representatives of interested parties.

§ 355.34 Disclosure of proprietary information under administrative protective order.

(a) *In General.* The Secretary may disclose proprietary information under an administrative protective order to an attorney or other representative of an interested party if the Secretary decides that the representative has stated a sufficient need for disclosure and would adequately protect the proprietary status of the information disclosed. In deciding whether to disclose information under administrative protective order, the Secretary will consider the probable effectiveness of sanctions for violation of the order, including those described in paragraph (b)(4) of this section. The Secretary will also consider the ability of the Secretary to obtain factual information in the future.

(b) *Request for Disclosure.* (1) A representative must file a request for disclosure under an administrative protective order not later than 10 days after the later of:

(i) The date of publication in the Federal Register of the notice of initiation under §§ 355.11 or 355.13, or the notice of initiation of administrative review under § 355.22; or

(ii) The date the representative's client or employer becomes a party to the proceeding, but in no event later than 10 days after the date of publication of the Secretary's preliminary determination or preliminary results of administrative review.

(2) The representative must file the request for disclosure on the standard form provided by the Secretary (Form ITA-367). The standard form will require only such particularity in the description of the requested information as is consistent with both the criteria the Secretary uses to decide whether to disclose, and with the fact that a request may be made for factual information not yet submitted.

(3) The request shall obligate the representative:

(i) Not to disclose the proprietary information to anyone other than the submitter and other persons authorized by an administrative protective order to have access to the information;

(ii) To use the information solely for the segment of the proceeding then in progress;

(iii) To ensure the security of the proprietary information at all times; and

(iv) To report promptly to the Secretary any apparent violation of the terms of the protective order.

(4) The request shall contain an acknowledgment by the representative that violation of the order may:

(i) Subject the following persons to prohibition from practice before the Department for up to seven years following the Secretary's decision that a violation has occurred:

(A) The representative;

(B) Any firm or business of which the representative is a partner, associate, or employee, and

(C) The representative's partners, associates, employer, and employees;

(ii) In the case of an attorney, lead to the Secretary's referral of the violation to the disciplinary panel of appropriate bar associations; and

(iii) Subject the representative and the client or employer to other administrative sanctions, including removal from the official record of any factual information or written argument submitted on behalf of the interested party.

(c) *Opportunity to Withdraw Proprietary Information.* If the Secretary decides to disclose proprietary information under administrative protective order without the consent of the submitter, the Secretary will notify the submitter of the decision and permit the submitter to withdraw the information from the official record within 24 hours. The Secretary will not consider withdrawn information.

(d) *Disposition of Proprietary Information Disclosed Under Administrative Protective Order.* (1) At the expiration of the time for filing for judicial review of a decision by the Secretary, if there is no filing by any party to the proceeding, or at an earlier date the Secretary decides appropriate, the representative must return or destroy all proprietary information released under this section and all other materials containing the proprietary information (such as notes or memoranda). The representative at that time must certify to the Secretary full compliance with the terms of the protective order and the return or destruction of all proprietary information.

(2) The representative of a party to the proceeding that files for judicial review or intervenes in the judicial review may retain the proprietary information, provided that the party applies for a

court protective order for the information not later than 15 days after the Secretary files the administrative record with the court. If the court denies the party's application for a court protective order, the representative must return or destroy the proprietary information and all other materials containing the proprietary information not later than 48 hours after the court's decision and certify to the Secretary as provided under paragraph (d)(1).

(e) *Violation of Administrative Protective Order.* The Secretary will refer to the General Counsel of the Department any allegation of a violation of an administrative protective order, and the General Counsel will then investigate the allegation and prepare a report and recommendation (including recommended sanctions, if appropriate) for the Secretary, who will decide.

§ 355.35 Ex parte meeting.

The Secretary will prepare for the official record a written memorandum of any *ex parte* meeting between any person providing factual information in connection with a proceeding and the person to whom the Secretary has delegated the authority to make determinations or the person making a final recommendation to that person. The memorandum will include the date, time, and place of the meeting, the identity and affiliation of all persons present, and a public summary of the factual information submitted.

§ 355.36 Subsidy practice discovered during investigation or review.

(a) *Inclusion in Proceeding.* If during an investigation or an administrative review the Secretary discovers a practice which appears to provide a subsidy with respect to the merchandise and the practice was not alleged or examined in the proceeding, the Secretary will examine the practice if the Secretary concludes that sufficient time remains before the scheduled date for the Secretary's final determination or final results of review.

(b) *Deferral of Examination.* If the Secretary concludes that insufficient time remains, before the scheduled date for the Secretary's final determination or final results of review, to examine the practice described in paragraph (a), the Secretary will:

(1) During an investigation, allow the petitioner to withdraw the petition without prejudice and resubmit it with an allegation with regard to the newly discovered subsidy practice; or

(2) During an investigation or review, defer consideration of the newly discovered practice until the next review under § 355.22(c).

(c) *Notice.* The Secretary will notify the parties to the proceeding of any practice the Secretary discovered and whether or not it will be included in the then on-going proceeding.

§ 355.37 Verification of Information.

(a) *In General.* (1) The Secretary will verify all factual information the Secretary relies on in:

- (i) A final determination under § 355.18(i) or 355.20;
- (ii) A revocation under § 355.25; and
- (iii) The final results of an administrative review under § 355.22(c), (h), or (i) if the Secretary decides that good cause for verification exists; or
- (iv) The final results of an administrative review under § 355.22(c) if:

(A) An interested party, as defined in paragraph (i) (3), (4), (5), or (6) of § 355.2, not later than 120 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

(B) The Secretary conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.

(2) If the Secretary decides that, because of the large number of producers and exporters included in an administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample. The Secretary will apply the results of the verification of the sample to all producers and exporters included in the review.

(b) *Notice of verification.* In publishing a notice of final determination, revocation, or final results of administrative review, the Secretary will report the methods and procedures used to verify under this section.

(c) *Procedures for Verification.* In verifying under this section, the Secretary will request the government of the affected country to allow employees of the Department to visit with producers, exporters, or government agencies in order to verify the accuracy of submitted factual information. As part of the verification, employees of the Department will request access to all files, records, and personnel of the producers, exporters, or the government agencies which the Secretary considers relevant to factual information submitted by those persons.

§ 355.38 Best Information Available.

(a) *Use of Best Information Available.* The Secretary may use the best information available whenever the Secretary:

(1) Does not receive a complete, accurate, and timely response to the Secretary's request for factual information; or

(2) Is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted.

(b) *What Is Best Information Available.* The best information available includes the factual information submitted in support of the petition or subsequently submitted by interested parties, as defined in paragraph (i) (3), (4), (5), or (6) of § 355.2. If an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take into account in determining what is the best information available.

§ 355.39 Written argument and hearings.

(a) *Written Argument.* The Secretary will consider in making the final determination under §§ 355.18(i) or 355.20 or final results under § 355.22 only written arguments in case or rebuttal briefs filed within the time limits in this section. The Secretary will not consider or retain in the record of the proceeding any written argument, unless requested by the Secretary, that is submitted after the time limits specified in this section. At any time during the proceeding, the Secretary may request written argument on any issue from any interested party or United States government agency.

(b) *Case Brief; Request for Hearing.* Not later than 35 days after the date of publication of the Secretary's preliminary determination in an investigation, unless the Secretary alters this time limit, and not later than 30 days after the date of publication of the preliminary results of administrative review, any interested party or United States government agency may submit a "case brief." The case brief shall:

(1) Separately identify and present in full all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results; and

(2) Include any request for the Secretary to hold a public hearing on any of the arguments raised in the case brief. At a hearing in an administrative review, an interested party or agency may make an affirmative presentation only on arguments included in that party's case brief and identified in the brief for affirmative presentation at the hearing.

(c) *Rebuttal Brief; Request for Hearing.* Not later than the time limit stated in the notice of the Secretary's preliminary determination or preliminary results, ordinarily seven days after the time limit for filing the case brief, any interested party or United States government agency may submit a "rebuttal brief." The rebuttal brief shall:

(1) Only respond to arguments raised in case briefs and shall separately identify and present in full all rebuttal arguments; and

(2) Include any request for the Secretary to hold a public hearing on any of the arguments raised in the rebuttal brief. At a hearing in an administrative review, an interested party or agency may make a rebuttal presentation only on arguments included in that party's rebuttal brief and identified in the brief for rebuttal presentation at the hearing.

(d) *Service of Briefs.* The submitter of either a case or rebuttal brief shall serve a copy of that brief on the government of the affected country and on any interested party on the Department's service list. If the party has designated under § 355.31(h) an agent in the United States, serve either by personal service on the same day the brief is filed with the Secretary or by overnight mail or courier on the next day and, if the party has designated an agent outside the United States, serve by first class airmail. The submitter shall attach to each brief a certificate of service listing the parties served and, for each, the date and method of service.

(e) *Hearings.* If an interested party submits a request under paragraph (b) or (c) of this section, the Secretary will hold a public hearing on the date stated in the notice of the Secretary's preliminary determination or preliminary results of administrative review, unless the Secretary alters the date. Ordinarily, the hearing will be held, in an investigation, seven days after the scheduled date for submission of rebuttal briefs and, in an administrative review, 14 days after the scheduled date for submission of rebuttal briefs.

(1) The Secretary will place a verbatim transcript of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript.

(2) One of the following employees of the Department will chair the hearing: the Deputy Assistant Secretary for Import Administration, the Director of the Office of Investigations, the Director of the Office of Compliance or another

supervisory employee of the Department responsible for the proceeding.

(3) The hearing is not subject to the Administrative Procedure Act. Witness testimony, if any, shall not be under oath or subject to cross-examination by another interested party or witness. During the hearing, the chair may question any interested party or witness and may permit interested parties to present an additional round of rebuttal argument.

(f) *Where to File; Time of Filing.* The requirements in § 355.31(d) apply to this section.

(g) *Format and Number of Copies.* The requirements in § 355.31(e) apply to this section, except that in an administrative review submit 10 copies of each brief and five copies of the public version, including the public summary required under § 355.32(b).

Subpart D—Quota Cheese Subsidy Determinations

§ 355.41 Definition of "subsidy".

For purposes of this subpart, "subsidy" means both "subsidy" and "net subsidy" as defined in sections 771(5) and 771(6) of the Act.

§ 355.42 Annual list and quarterly update.

(a) *Annual List.* Not later than January 1st of each year, the Secretary, in consultation with the Secretary of Agriculture, will determine based on the available information whether any foreign government is providing a subsidy, as defined in § 355.41, with respect to any article of quota cheese, as defined in the Federal Register a list of the type amount of each subsidy. The Secretary will incorporate in each annual list any changes and additional subsidies for the preceding calendar year determined under paragraph (b) of this section or under § 355.43(b).

(b) *Quarterly Update.* Not later than April 1st, July 1st, and October 1st of each year, the Secretary, in consultation with the Secretary of Agriculture, will determine based on the available information whether there have been any changes in or additions to the latest annual list, and will publish in the Federal Register a quarterly update of those changes and additions.

§ 355.43 Determination upon request.

(a) *Request for determination.* Any person, including the Secretary of Agriculture, who has reason to believe there have been changes in or additions to the latest annual list may request in writing that the Secretary determine whether there are any changes or additions. The person shall file the request at the time and place specified

in § 355.31(d). The request shall allege either a change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update provided by a foreign government, and shall contain the following, to the extent reasonably available to the requesting person:

(1) The name and address of the person;

(2) The article of quota cheese allegedly benefitting from the changed or additional subsidy;

(3) The country of origin of the article of quota cheese; and

(4) The alleged subsidy or charged subsidy and relevant factual information (particularly documentary evidence) regarding the alleged changed or additional subsidy including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the article.

The requirements of § 355.31 (d) and (f) apply to this section.

(b) *Determination.* Not later than 30 days after receiving an acceptable request, the Secretary will:

(1) In consultation with the Secretary of Agriculture, determine based on the available information whether there has been any change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update is being provided by a foreign government;

(2) Notify the Secretary of Agriculture and the person making the request of the determination; and

(3) Promptly publish in the Federal Register notice of any changes or additions.

§ 355.44 Complaint or price-undercutting by subsidized imports.

Upon receipt of a complaint filed with the Secretary of Agriculture under section 702(b) of the Trade Agreements Act concerning price-undercutting by subsidized imports, the Secretary will promptly determine, under § 355.43(b), whether or not the alleged subsidies are included in or should be added to the latest annual list or quarterly update. The Department of Agriculture regulations concerning complaints of price-cutting by subsidized imports of quota cheese are published in 7 CFR Part 6.

§ 355.45 Access to information.

Subpart C of this part applies to factual information submitted in connection with this subpart.

Annex I—List of Countries Under the Agreement.

1. As of the date of publication of this part, the Agreement applies between the United States and the following countries, as determined under section 2(b) of the Trade Agreements Act of 1979: Australia, Austria, Brazil, Canada, Chile, Egypt, European Economic Community (accepted for member states), United Kingdom for Hong Kong, Indonesia, Finland, India, Japan, Korea, Norway, Pakistan, Philippines, Portugal, Spain, Sweden, Switzerland, Turkey, and Uruguay. See section 701(b)(1) of the Act.

2. Taiwan and Mexico have assumed obligations with respect to the United States which the President has determined are substantially equivalent to obligations under the Agreement. See section 701(b)(2) of the Act.

3. The following countries are entitled to an injury test under section 701(b)(3) of the Act: Venezuela, Honduras, Nepal, North Yemen, El Salvador, Paraguay, and Liberia.

For further information, contact the Office of Policy, Import Administration, at the address stated in § 355.31(d).

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 31

Conditions Under Which Non-Eligible Students May Attend Bureau of Indian Affairs-Funded Schools

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rules; Extension of comment period.

SUMMARY: This notice extends the comment period from June 10, 1985 to July 5, 1985, on the proposed rule concerning conditions under which non-Indians and Indians of less than one-quarter degree blood quantum of a Federally recognized tribe may attend Bureau-funded schools. This proposed rule was published in the Federal Register on May 10, 1985 (50 FR 19701). The extension of the comment period is in response to requests received from the public to allow additional time for comment.

DATE: Comments by July 5, 1985.

ADDRESS: Comments should be mailed to Acting Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th

and C Streets, N.W., Room 3512, Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Holmgren, Washington, D.C. at (202) 343-4071.

John W. Fritz,
Deputy Assistant Secretary—Indian Affairs
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BILLING CODE 4310-02-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule change and request for comments.

SUMMARY: As part of its continuing effort to enhance equity among similarly situated offenders, as well as to assist in relieving prison overcrowding, the Parole Commission added a provision to its rules concerning the referral to the Bureau of Prisons, and ultimately to the sentencing court, of certain selected cases where the Commission would recommend reduction of a judicially imposed minimum sentence. Due to an extremely small number of cases which have been referred to the sentencing court for reduction by the Bureau of Prisons and to the amount of staff time consumed to identify, prepare and process the cases, the Director of the Bureau of Prisons has requested that the Parole Commission jointly discontinue the program. Pursuant to that request, the Parole Commission seeks public comment concerning the proposal to delete § 2.62 from 28 CFR Part 2.

DATE: Public comment must be received by July 15, 1985.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4986.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: As part of the Parole Commission's response to a request from the Bureau of Prisons and Department of Justice for assistance in addressing the problem of federal prison overcrowding and pursuant to its mandate to provide consistency in release dates for similarly situated offenders by reducing unwarranted

sentence disparity, the Commission published a proposed rule in the Federal Register (48 FR 22949, May 23, 1983) designed to relieve prison overcrowding by referring selected cases to the Bureau of Prisons which then might petition the sentencing court for reduction of judicially imposed minimum sentences. After receiving favorable public comment, the Parole Commission published a final rule in the Federal Register (48 FR 44525, September 29, 1983) promulgating § 2.62 of 28 CFR Part 2, effective October 1, 1983.

The rule involved a joint effort by the Bureau of Prisons and the Parole Commission (1) to identify certain prisoners who could be safely released from prison under current Parole Commission standards (see 18 U.S.C. 4206 and 28 CFR 2.20) but who must remain in custody beyond the maximum of the applicable guideline range because of a judicially imposed minimum sentence and (2) to seek a reduction of the minimum sentence in such cases through the provisions of 18 U.S.C. 4205(g). Under 18 U.S.C. 4205(g), the Director of the Bureau of Prisons may at any time petition the sentencing court to reduce a minimum term and the court can act on such application without convening a hearing. As contemplated by the rule, referrals to the sentencing court were to be made by the Bureau in the identified and approved cases for a reduction to the time required by the maximum of the applicable guideline range. Prisoners whose offenses had been rated as Category Eight (the most serious offenses) under the guidelines were not eligible for referrals under the rule because there is no maximum to the Category Eight guideline range.

Pursuant to this rule, the Parole Commission first reviewed 1,473 files of prisoners previously given presumptive parole dates at the completion of the minimum sentence for possible sentence reduction recommendations to the Bureau of Prisons. After hearing examiner and Regional Commissioner consideration and review, 401 cases, where the disparity between the minimum sentence and the maximum of the applicable guideline range appeared unwarranted, were identified and forwarded to the Bureau. The remainder were rejected either because of insufficient time remaining on the sentence to fully process the motion or because there existed in the files aggravating factors that could have caused the Commission itself to go above the applicable guidelines. The Parole Commission next began reviewing current files for possible