

# GENERAL AGREEMENT ON

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Committee on Anti-Dumping Practices

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RESPONSES OF THE GOVERNMENT OF THE UNITED STATES  
TO QUESTIONS SUBMITTED BY THE GOVERNMENT OF KOREA

### Question (5)

Section 773(a)(5).--Fictitious Market.

This provision seems to stipulate that different movements in the prices of different forms of merchandise, in turn resulting in a dumping margin decline, could evidence the establishment of a fictitious market. However, the respective prices of merchandise whose brands or models are diverse might be changed differently, even in the opposite direction, due to changes in market conditions, fluctuations in the prices of raw materials, productivity improvements, or technical advancements in some production lines.

What does the U.S. mean by a fictitious market? How can the U.S. determine the true price change resulting from adjusting to volatile market conditions, etc., from the fictitious market case?

### U.S. Response

Section 773(a)(1) of the Tariff Act of 1930, as amended, directs that the foreign market value (*i.e.*, normal value) of imported merchandise shall generally be based on the price at which such or similar merchandise is sold, or offered for sale, in the home market of the country from which it is exported. Section 773(a)(1) further states that, in ascertaining foreign market value, no sale or offer for sale intended to establish a "fictitious market" shall be taken into account.

The 1988 "fictitious market" amendment to section 773(a)(1) merely clarifies authority that the U.S. Department of Commerce previously maintained to disregard certain sales in computing normal value, and provides guidance concerning how the heretofore undefined term, "fictitious market," should be interpreted. For example, if, after the issuance of an antidumping order, the Department were to find that, for home market sales of the like product:

- (1) the price of the home market merchandise used for comparison purposes moved differently than home market prices of similar, non-comparison merchandise, and

(2) the movement in the home market price of the comparison merchandise results in lower dumping margins,

there would be sufficient grounds for investigating whether the exporter was actually leveraging dumped sales through home market sales of the non-comparison merchandise. That is, if a foreign manufacturer produces and sells multiple forms of the same like product, and it exports only one of such forms to an export market where such sales are found to have been dumped, that firm may artificially realign its home market prices of the different forms of the like product to reduce the amount by which the normal value of the comparison merchandise exceeds the export price of the same merchandise. This, obviously, can result in the disguising of dumping.

It is important to note, however, that evidence of different price movements of the home market merchandise would not necessarily be dispositive in determining whether a fictitious market, in fact, exists. As Korea correctly points out, divergent movements in home market prices may be in response to particular supply/demand conditions present in that market, or other factors unrelated to the establishment of a fictitious market. These factors would be carefully weighed by Commerce in determining whether a fictitious market in fact exists. In the one instance since enactment of this provision in which the Department was requested to find a fictitious market (Cyanuric Acid and Its Chlorinated Derivatives from Japan; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination to Revoke in Part, 53 Federal Register 46896-46898, November 21, 1988), the Department preliminarily determined that such a market did not exist on the basis of inconclusive evidence relating to price movements and sales volumes of the different forms of merchandise.

#### Question (6)(2)

Section 780.--Downstream Product Monitoring.

(2) In this provision, the U.S. seems to envision a scenario in which a component part incorporated into a downstream product is sold at unfairly low prices in the country of origin or in a third country at a price similar to that at which it would have been dumped into the U.S. and, in turn, because of these low prices, the downstream products produced at a relatively low price are then imported into the U.S. Does the U.S. have conclusive positive evidence or a strong theoretical expectation as to support the idea that there exists low prices for component parts in such a third-party country? In addition, how will the U.S. calculate the dumping margin for these downstream products?

### U.S. Response

The purpose of the "downstream product monitoring" provision is not to monitor the volume or prices of component parts imported into third countries; neither is it to monitor the prices charged for component parts to downstream producers in the country of origin.

As Section 780 indicates, any monitoring undertaken pursuant to this provision would be concerned only with imports of downstream products into the United States. Moreover, the basis for initiating any such monitoring would be at a minimum: (1) the existence of a U.S. dumping or subsidy finding on the component part of at least 15% during the previous five years; (2) a determination by the Department of Commerce that there is a reasonable likelihood that imports into the United States of the downstream product will increase as an indirect result of any diversion with respect to the component part; and (3) a finding by the Department either that (a) the component part is already subject to import monitoring under the President's Steel Program, or (b) that merchandise related to the component part and made in the same foreign country has been the subject of a significant number of antidumping or countervailing duty investigations that did not result in negative findings, or (c) that merchandise produced or exported by the manufacturer or exporter of the component part and that is similar in description and use to the component part has been the subject of at least two antidumping or countervailing duty investigations that did not result in negative findings. In addition, in determining whether there is a reasonable likelihood of component part-to-downstream product diversion, the Department may, if appropriate, take into account: (1) the value of the component part in relation to the value of the downstream product; (2) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; and (3) the relationship (if any) between the producers of the component parts and producers of the downstream products.

As these criteria suggest, the provision establishes a fairly high threshold of evidence and analysis before a downstream product would even be designated for monitoring. Moreover, if monitoring is ever initiated for a particular product, the Department is required to request the U.S. International Trade Commission to cease monitoring if the information reported by the Commission indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion.

In response to Korea's final question, this provision in no way alters the determination or calculation of any dumping margin. Its relationship to antidumping and countervailing duty proceedings is only to provide information that the Department may consider in determining whether to initiate investigations of

downstream products. As such, the provision provides merely for monitoring in situations where there is a reasonable likelihood of the existence of diversionary practices due to significant antidumping or countervailing duties on component parts, the relationship of the parties and products involved, and a demonstrated, historic prevalence of unfair trade in that product sector.

#### Question (7)(1)(a)

##### Section 781.--Circumvention

##### Section 781(a) and (b)

What is the procedure for extending an outstanding anti-dumping duty to merchandise assembled in the U.S. or in other foreign countries? Is the petition by an interested party for the extension of an anti-dumping duty prerequisite to the initiation of an investigation on assembled products? What kind of investigation on assembled products is to be conducted? How does the U.S. decide the amount of the anti-dumping duty on assembled products? During the investigation and final decision will the U.S. take into account the usage ratio of local parts and components or any other factor?

#### U.S. Response

Neither the statutory language nor the legislative history stipulates any particular administrative procedure for the Department of Commerce to follow in determining whether to clarify the scope of an antidumping or countervailing duty order to include certain merchandise referred to in either the U.S. assembly provision (section 781(a)), the third country assembly provision (section 781(b)), the minor alterations provision (section 781(c)) or the later developed product provision (section 781(d)) of the anticircumvention amendment. Moreover, the Department has not yet introduced regulations for implementing this section of the law. We note, however, that the few inquiries into possible circumvention that have been initiated thus far have all been based on a written request brought by the petitioner in the original proceeding which alleges the basis for potential circumvention and provides evidence in support of that allegation (e.g., data indicating increasing imports of parts and components and decreasing imports of finished merchandise from the country subject to the order following the issuance of the order).

Once an inquiry has been initiated, our experience to date has been to request information from the relevant firms in accordance with the applicable statutory requirements and factors that the

law recommends that we consider. Thus, in the case of alleged circumvention via U.S. assembly, section 781(a), we would request information from the assembly plants on the value of the parts and components imported from the country subject to the antidumping/countervailing duty order, as well information that would enable us to determine the total value of the assembled merchandise. In addition, we would take into account information that would allow us to consider how or whether the pattern of trade, any relationship between the assembler and the foreign parts supplier, or any increase in the imports of parts from the country subject to the antidumping/countervailing duty order after the issuance of the order should affect a determination of whether circumvention is occurring. Finally, in those cases involving U.S. or third country assembly or later-developed merchandise and where the U.S. International Trade Commission has made an injury determination, the Department would notify the Commission of the proposed inclusion of certain parts and components or third country merchandise and take into account any advice the Commission may choose to provide on whether the proposed inclusion would be consistent with its prior injury determination.

Until the regulations are promulgated, it will be difficult to describe with precision the procedural aspects of an anticircumvention inquiry. In general, however, the administrative, servicing and confidentiality requirements are similar to those applicable to an antidumping or countervailing duty investigation or review.

Duties would be applied to the parts and components imported from the country subject to the antidumping/countervailing duty order under the U.S. assembly provision; whereas the imported assembled merchandise would be subject to the duties under the third country assembly provision. A methodology for determining the amount of duty to be applied has not yet been definitively established.

In response to Korea's last question, the "usage rates of local parts and components" will not be a factor in determining whether circumvention is occurring. The only distinction the statute draws is between the value of the merchandise originating in the country subject to the finding of unfair trade versus the value of the finished merchandise. The "origin" of that incremental value will make no difference in the administration of this amendment.

Question (7)(1)(b)

What is the meaning of the word "related" in Sec. 781(a)(2)(B)? How does the U.S. decide whether one manufacturer is related to others?

### U.S. Response

Neither the statute nor the legislative history provides any definition or guidance as to the meaning of the term "related" for purposes of section 781(a)(2)(B). Insofar as we have not yet had to address this question in the context of administrative practice, it is difficult to provide a reliable indication of what we would consider to constitute "relationship" except in the relatively incontestable example of a wholly-owned subsidiary.

One alternative which we might come to rely upon, however, is the definition of "related parties" contained in section 773(e)(4), which is applied in the context of using a constructed value to represent normal value in antidumping duty investigations and administrative reviews. Under this section, related parties are defined as:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

### Question (7)(1)(c)

What provision of GATT is Section 781(b) based upon?

### U.S. Response

All aspects of the U.S. anticircumvention amendment, like all aspects of the U.S. antidumping and countervailing duty statutes, are based upon Article VI of the GATT, as interpreted by either the Antidumping Code or the Subsidies Code.

**Question (7)(2)(a)****Section 781(c)**

Could the U.S. present its interpretation of the concept of like products as noted in Article 2:2 of the GATT Anti-Dumping Code? Does the U.S. consider products with minor alterations to be included in like products with respect to the product on which an anti-dumping duty order is issued?

**U.S. Response**

See U.S. response to Korea's question concerning downstream product monitoring for an explanation of the U.S. interpretation of the term "like product." By definition, if an alteration is so small as to be termed "minor," the altered product presumptively remains the like product.

**Question (7)(2)(b)**

What defines or determines a minor alteration? How does the U.S. make a distinction between a minor alteration of merchandise from other alterations?

**U.S. Response**

The term "minor alteration" is not specifically defined in U.S. law. However, the legislative history provides some indication of how the U.S. Congress intended for the provision to be implemented. Essentially, the report language for the predecessor legislation in the Senate refers to alterations "in form or appearance in minor respects," particularly insofar as such alterations would result in a change in the product's tariff classification (without resulting in any substantial alteration in the product itself). Thus, in applying the provision, the Department was directed to consider such traditional product scope criteria as the overall characteristics of the merchandise, the expectations of ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported product.

**Question (7)(3)****Section 781(d)**

Often a new product is developed by attaching new additive functions to an existing good or changing the good's design. The

new product often has the same expectation from consumers and follows similar distribution channels and/or advertising as the existing product, but it has some improvement in quality, function, etc., with respect to the old product.

On the basis of which GATT provisions does the U.S. justify its attempt to extend an outstanding anti-dumping duty on present products to future products still on the drawing board, in the name of the same expectation, distribution channel, etc., given that such aspects are but typical features of developing a new product, apart from the real nature of the new product? In other words, in concordance with GATT, how does the U.S. define "newness"?

### U.S. Response

Section 781(d) provides that, in determining whether merchandise developed after the initiation of an antidumping or countervailing duty investigation is within the scope of an outstanding antidumping or countervailing duty order issued pursuant to such an investigation, the Department shall consider whether: (a) the later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued and ("the earlier product"); (b) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product; (c) the ultimate use of the earlier product and the later-developed product are the same; (d) the later-developed merchandise is sold through the same channels of trade as the earlier product; and (e) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

The legislative history suggests that the amendment is meant to address the application of outstanding antidumping and countervailing duty orders to merchandise that is essentially the same as merchandise subject to the order but was developed after the original investigation was initiated. The provision explicitly prohibits the Department from excluding a later-developed product from the order merely because it is classified under a different item of the tariff schedules or adds functions, unless the additional functions constitute the primary use of the product and are more than a significant proportion of the production cost.

If, as Korea suggests, the later-developed product can be meaningfully distinguished from the earlier product on the basis of quality, function, etc., it is likely that the administering authority will do so on the basis of differences in physical characteristics, in customer expectations and in ultimate use. As for justification with GATT provisions, we draw Korea's

attention to our earlier responses concerning sections 781(b) and (c). In this regard, we note that where the later-developed product incorporates a significant technological advance or significant alteration of the earlier product, Commerce is required to ask for the advice of the U.S. International Trade Commission is sought with respect to whether inclusion of the later-developed product would be consistent with the Commission's prior injury determination.

### Question (3)

#### Industry Producing Processed Agricultural Products

(1) According to section 771(4)(E), the U.S. seems to regard raw agricultural products and their processed products as like products in the case of meeting certain conditions such as a single continuous line of production and a substantial coincidence of economic interest, etc.

On the other hand, the GATT Antidumping Code defines, from the viewpoint of physical identity, a like product as a product which is identical, i.e., alike in all respects to or has characteristics closely resembling the product under consideration.

How does the U.S. intend to resolve incongruities in the definitional scope of the section 771(4)(E) concept of like product with the concept as set in the Antidumping Code (Article 2:2)?

(2) Why does the U.S. define the domestic industry in agro-fishery products differently from manufactured products? What provision of the Antidumping Code is used to justify these differing definitions of the domestic industry?

(3) Is section 771(4)(E) valid even in cases where a raw agricultural product is transformed into many processed products through diverse continuous production lines if a substantial coincidence of economic interest between the producer of the raw product and the processors exists?

(4) In relation with the expression "substantially or completely" in section 771(4)(E)(ii), could the U.S. present its quantitative criteria for judging substantially or completeness?

## U.S. Response

(1) The question misapprehends the effect statutory provision concerning agricultural products. That provision does not deal with treating raw and processed agricultural products as a single like product. The provision applies exclusively in cases in which the like product is solely a processed agricultural product. In those cases, the Commission is directed to consider whether the industry making the processed product is comprised only of processors or of processors and growers of the raw agricultural input.

Section 1326(a) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) amended the definition of domestic industry in section 771(4) to provide that, if an investigation involves a processed agricultural product,<sup>1</sup> the producers or growers of the raw agricultural input may be considered part of the industry producing the processed product if: (1) there is a single continuous line of production from the raw agricultural product to the processed product and (2) there is substantial coincidence of economic interest between the producers or growers and the processors.<sup>2</sup> These provision are fully consistent with the Code's provisions on the like product.

(2) The new section deals with the issue of domestic industry in cases involving processed agricultural products. The Commission considers common manufacturing facilities and production employees to be an important factor in its like product determinations, whether they involve agricultural products or manufactured products.<sup>3</sup>

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<sup>1</sup> This term is defined as "any farm or fishery product." See section 1326(a), inserting a new section 771(4)(E)(IV).

<sup>2</sup> The Senate Report indicates that this provision was intended to "codify Commission practice in prior cases in which 'a single continuous line or production' was found to exist. . ." S. Rep. 71, 100th Cong. 1st Sess. 109 (1987).

<sup>3</sup> See, e.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Invs. Nos. 303-TA-19 and 20 and 731-TA-391-399 (Final), USITC Pub. 2185 (May 1989) at 11.

(3) The test of whether growers should be included in the domestic industry is conjunctive, i.e., both prongs of the test must be satisfied. If the requirement of a single continuous line of production is not met, growers are not included in the domestic processed product industry.<sup>4</sup>

The House and Senate Committee Reports indicate that Congress does not expect this test to be met if the raw product is devoted to production of several different processed products, or if the processed product is produced from several different raw products.<sup>5</sup>

(4) The House Report specifies that "substantially or completely" means "all or almost all."<sup>6</sup> The Senate Report also indicates that "substantially or completely devoted" does not necessarily imply a fixed percentage but should be interpreted in light of the circumstances of each investigation.<sup>7</sup> For example, in Live Swine and Pork from Canada, the Commission determined that the single continuous line of production standard was met in that "the raw product is primarily sold in only one market, and the primary purpose of raising slaughter hogs is to produce pork meat."<sup>8</sup>

#### Question (4)

Section 771(7)(C)(v).--Treatment of Negligible Imports.

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<sup>4</sup> See new section 771(4)(e)(ii); Certain Table Wine from France and Italy, Invs. Nos. 701-Ta-210-211 (Preliminary), USITC Pub. 1502 (Mar. 1984).

<sup>5</sup> See H.R. Rep. 40, Part I, 100th Cong., 1st Sess. (1987) at 121; S. Rep. 71 at 109.

<sup>6</sup> See H.R. Rep. 40, Part I, 100th cong. 1st Sess. (1987) at 121.

<sup>7</sup> See S. Rep. 71 at 109-110 (noting as an example that certain grapes have multiple uses, wine variety grapes are used almost exclusively in the production of wine and still others have a predominant use but have other uses as well).

<sup>8</sup> USITC Pub. 1733 at 6. See also Fresh, Chilled, or Frozen Pork from Canada, Inv. No. 701-TA-298 (Final), USITC Pub. 2218 (Sept. 1989); Certain Table Wine from France and Italy, Invs. Nos. 701-TA-210-211 (Preliminary), USITC Pub. 1502 (mar. 1984).

(1) What degree of volume and market share of imports does the U.S. consider to be negligible and have no discernable adverse impact?

(2) In case the market share of an import is found to be negligible even though sales transactions involving the import are not isolated and sporadic but continuous, might it be reasonable to judge that there is no adverse impact on domestic industry?

U.S. Response (6) (1)

Under 19 U.S.C. section 1677(7)(C), the Commission, in determining whether there is material injury or threat thereof to the U.S. industry, cumulatively assesses the volume and price effects of imports from two or more countries under investigation, provided that certain conditions indicative of cumulative impact, the so-called "hammering effect," are met. If the Commission determines that imports from a given country are negligible and have no discernible adverse impact on the domestic industry, it may exclude the imports from such country from its cumulative analysis. In making the decision whether to exclude such country's imports, the Commission must consider all relevant economic factors including whether the volume and market share of the imports are negligible, whether import sales transactions are isolated and sporadic, and whether the U.S. market for the like product is price sensitive by reason of the nature of the product, so that a small amount of imports could nonetheless result in price suppression or depression. "Negligible" is not further defined or quantified.

The negligible imports provision was added by the 1988 Act. Because the provision is relatively new, the Commission has not had extensive experience in its use. In Certain Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan,<sup>9</sup> the Commission noted that one respondent had argued against cumulating its imports with others because its imports were negligible, but the Commission found that the imports were not negligible and determined to cumulate.<sup>10</sup> No criteria were stated in that determination for determining whether imports are negligible or have no discernable impact.

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<sup>9</sup> Invs. Nos. 731-TA-426-428 (Preliminary), USITC Pub. 2156 (Feb. 1989). The particular volumes involved are business proprietary information, and cannot be disclosed.

<sup>10</sup> Id. at 33-34. The Commission also discussed, but did not apply, the negligible imports provision in an investigation initiated prior to the 1988 Act, Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany, Invs. Nos. 701-TA-293 and 731-TA-412-419 (Final), USITC Pub. 2194 at 16-18 (May 1989).

(2) The Commission will make the determination of whether the volume and market share of certain imports are negligible on the basis of the facts of each investigation and on a consideration of the statutory factors and all other appropriate factors. No one factor, such as whether sales are isolated and sporadic or continuous, is controlling.

Moreover, even if the Commission determines not to cumulatively assess the effects of imports from a country because of factors such as negligible volumes, the Commission must still make a determination on whether those imports are causing material injury.

### Question

#### Section 780 - Downstream product monitoring

(1) Section 780(a) gives a producer of a component part a right to petition for a finished product (or a downstream product). Does this mean that the U.S. considers component parts and finished products to be like products? If so, please explain in what cases or under which circumstances component and finished products could be determined as being identical, *i.e.*, alike in all respects according to the definition of like product under the Antidumping Code. If not, what is the reason the U.S. acknowledges a component producer as a petitioner for a finished product? What articles of GATT support this view?

### U.S. Response

Article 2.2 of the Antidumping Code provides that the term "like product" means:

[A] product which is identical, *i.e.*, alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

This definition does not limit the application of the like product designation to products that are identical, but rather requires that the domestic product have characteristics that closely resemble those of the imported product.

The Commission has included parts and components in the like product definition in many investigations.<sup>11</sup> The Commission has also in appropriate cases determined that parts are separate like products, and made separate injury determinations.<sup>12</sup> Similarly, semi-finished articles have been included in the like product in investigations of finished goods.<sup>13</sup> Such determinations are based on the examination of all relevant factors, which have included: (1) physical characteristics and uses, (2) interchangeability, (3) channels of distribution, (4) common manufacturing employees and production facilities, (5) customer or producer perceptions, and (6), where appropriate, price.<sup>14</sup> No single factor is necessarily dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a given investigation. The Commission has found minor product variations to be an insufficient basis for a separate like product analysis, and instead, has looked for clear dividing lines among products.<sup>15</sup>

The downstream product monitoring provision of the statute does not, however, provide that a component part is like the downstream product that incorporates the part. The statute provides that Commerce may designate a downstream product for monitoring if it suspects that the issuance of an antidumping or countervailing duty order that resulted in a diversion of

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<sup>11</sup> See e.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Invs. Nos. 303-TA-19 and 20 and 731-TA-391-399 (Final), USITC Pub. 2185 (May, 1989) at 12-13, n.11, 12; Digital Readout Systems and Subassemblies Thereof from Japan, Inv. NO. 731-TA-390 (Final), USITC Pub. 2150 (Jan. 1989).

<sup>12</sup> Cellular Mobile Telephones and Subassemblies Thereof from Japan, Inv. No. 731-TA-207 (Final), USITC Pub. 1786 (1985).

<sup>13</sup> See e.g., Oil Country Tubular Goods from Argentina and Spain, Invs. No. 731-TA-191 and 195 (Final), USITC Pub. 1694 (May 1985) (like product included semi-finished "green tubes").

<sup>14</sup> See e.g., Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany, Invs. Nos. 701-TA-293 and 731-TA-412-419 (Final), USITC Pub. 2194 at 7 (May 1989); Light-Duty Integrated Hydrostatic Transmissions and Subassemblies Thereof, With or Without Attached Axles, from Japan, Inv. No. 731-TA-425 (Preliminary), USITC Pub. No. 2149 (January 1989).

<sup>15</sup> See Sony Corp. of America v. United States, Slip Op. 89-55 (Ct. Int'l Trade April 26, 1989) at 6.

exports of a component part subject to such an order <sup>16</sup> into increased production and exportation to the United States of such downstream product. Upon such designation, the Commission would monitor trade in the downstream product. If the Commission found that imports of the downstream product increased during any calendar quarter by 5 percent or more over the preceding quarter, the Commission would analyze that increase in the context of overall economic conditions in the product sector. The Commission would make quarterly reports to the administering authority regarding such monitoring and analyses. Commerce would then review and consider the information in the reports in determining whether to initiate an investigation regarding the downstream product.

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<sup>16</sup> The determination would have to have been made during the most recent 5-year period and have found at least a 15 percent dumping or subsidy margin.