

# GENERAL AGREEMENT ON

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# TARIFFS AND TRADE

Special Distribution

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Committee on Anti-Dumping Practices

INFORMATION ON IMPLEMENTATION AND  
ADMINISTRATION OF THE AGREEMENT

Revised Anti-Dumping Regulations  
of the United States

Supplement

Reproduced herewith are interim-final rules published in the  
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**REGISTRATION**  
**RECORDS**

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**Friday**  
**March 9, 1990**

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**Part II**

**Department of**  
**Commerce**

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**International Trade Administration**

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**19 CFR Parts 353 and 355**  
**Antidumping and Countervailing Duties;**  
**Interim Final Rule**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**19 CFR Parts 353 and 355**

[Docket No. 91033-9233]

RIN 0625-AA32

**Antidumping and Countervailing Duties**

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Interim-final rules.

**SUMMARY:** The International Trade Administration ("ITA") hereby amends its regulations on antidumping and countervailing duty proceedings on an interim basis in order to implement certain provisions of the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act").

The interim rules provide, in particular, for procedures for evaluating whether merchandise is within the scope of an existing antidumping or countervailing duty finding or order; correcting ministerial errors in final antidumping and countervailing duty determinations and in the final results of administrative reviews; downstream product monitoring; and processing administrative protective order ("APO") applications expeditiously. The interim rules also clarify effective dates of the provisions of the 1988 Act. ITA regulations implementing the remaining antidumping and countervailing duty provisions of the 1988 Act will be published at a later time.

**EFFECTIVE DATES:** Interim rule effective [insert date of publication in Federal Register]. Comments on this interim rule must be submitted on or before [insert date 60 days after date of publication in the Federal Register].

**ADDRESSES:** Address written comments (10 copies) to Eric I. Garfinkel, Assistant Secretary for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Comments should be addressed: Attention: 1988 Act Antidumping and Countervailing Duty Interim-Final Regulations. Each person submitted a comment should include his or her name and address, and give reasons for any recommendation.

**FOR FURTHER INFORMATION CONTACT:** Lynn Kamarck, Senior Counsel, Office of Chief Counsel for Import Administration (202) 377-1754.

**SUPPLEMENTARY INFORMATION:** On August 23, 1988, the Omnibus Trade and Competitiveness Act of 1988 ("1988

Act") was enacted. This new trade legislation contains provisions which, *inter alia*, amend Title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.) ("the Act"). The interim rules described below amend ITA's regulations concerning antidumping and countervailing duty procedures in order to conform to the new legislation. The ITA invites public comments on these interim-final rules within 60 days from their date of publication.

These interim-final rules are effective on date of publication and will remain in effect until the ITA adopts final rules after considering comments in response to this notice of interim-final rules. The information collection requirements subject to OMB approval under the Paperwork Reduction Act have been approved under OMB control number 0625-0200.

**Explanation of the Interim Rules**

The rules set forth below reflect changes in the law made by the 1988 Act.

Sections 353.27 and 355.27 implement section 780 of the Act, (as added by section 1320 of the 1988 Act). These provisions create a procedure whereby domestic producers of an article that is like a component part or a downstream product may file an application with the Secretary of Commerce ("Secretary") to designate the downstream product for monitoring. Such petition must identify the downstream product to be monitored, the relevant component part, and the reasons for suspecting the likely diversion of foreign exports of the component part into increased exports of the downstream product to the United States. The regulations set forth the conditions that must be met before the Secretary will determine that an application is sufficient. Finally, the regulations define the terms "downstream product" and "component part." One of the conditions that must be met before an imported article will be considered a "component part" is that, during the previous five-year period, the imported article has been subject to a countervailing or antidumping duty order or a suspension agreement which included a determination that the estimated net subsidy or antidumping duty margin applicable to the particular manufacturer or exporter was at least 15 percent *ad valorem*. The term "applicable to the particular manufacturer or exporter" includes an "all other" or a country-wide rate.

Sections 353.28 and 355.28 implement sections 705(e), 735(e), and 751(e) of the Act (as added by section 1333 of the 1988 Act). These provisions establish procedures for the correction of

ministerial errors in final antidumping and countervailing duty determinations and in the final results of administrative reviews. The regulations establish time limits for receipt of comments and require that comments be served on parties to the proceeding. The regulations also define the term "ministerial error." This term is limited to mathematical, clerical, or other unintentional errors. Comments upon earlier versions of these procedures, published at 53 FR 5813 and 53 FR 41617, were considered in preparing these provisions.

To implement section 781 of the Act (as added by section 1321 of the 1988 Act), new §§ 353.29 and 355.29 establish procedures for the Secretary to conduct inquiries to determine whether merchandise is included within the scope of an existing antidumping or countervailing duty finding or order. The procedures apply to all scope determinations, including those under section 781 of the Act. In applying these procedures to scope determinations other than those under section 781, the ITA is codifying existing practice. These procedures can be initiated either upon request of an interested party or on the Secretary's own initiative. Under these procedures, all interested parties on the Department's service lists will have an opportunity to comment on proposed scope rulings. The procedures also provide that, when the Secretary determines that a scope ruling presents issues of "significant difficulty," the Secretary will issue a preliminary scope ruling and provide all interested parties on the Department's service list with an opportunity to comment thereon. The procedures require the Secretary to notify the U.S. International Trade Commission ("Commission") of the proposed inclusion of merchandise in an antidumping or countervailing duty order pursuant to section 781(e) of the Act, where the orders were based upon a finding of injury by the Commission. Upon request of the Commission, the Secretary is required to consult upon the possible inclusion of the merchandise, and any such consultation is to be completed within established deadlines.

In order to clarify that information submitted in the context of a scope inquiry may be released under an administrative protective order, §§ 353.34(b) and 355.34(b) are amended to explicitly so provide.

Pursuant to Section 777 of the Act, as amended by section 1332 of the 1988 Act, §§ 353.34 and 355.34 of the current regulations are amended, and §§ 353.31(g) and 355.31(g) are added, to require that parties directly serve

business proprietary, as well as public, materials on counsel for all representatives of parties to the proceeding. As a result, parties will no longer obtain business proprietary information generated by outside parties from the Department of Commerce. In the case of business proprietary information, service is appropriate only where the party's counsel or representative is subject to an administrative protective order.

Section 777(c)(1)(A) of the Act, as amended by section 1332 of the 1988 Act, also modifies the standard that the Department is to use in deciding whether or not to release materials under administrative protective order. In particular, this provision shifts the burden of proof from the requester of the proprietary information having to prove need for it to the submitter of the information having to establish a clear and compelling need to withhold it. Sections 353.34(a) and 355.34(a) are amended to reflect this change.

Section 777(c)(1)(C) of the Act, as amended by section 1332 of the 1988 Act, also mandates the amendment of §§ 353.34(b) and 355.34(b) of the antidumping and countervailing duty regulations to establish time limits for the Secretary to determine whether to require parties to disclose under administrative protective order business proprietary information submitted during a proceeding. Any determination by the Secretary to release business proprietary information under administrative protective order applies to all information submitted to the Secretary prior to the date of the determination, as well as all future submissions.

Sections 353.34(c) and 355.34(c) of the antidumping and countervailing duty regulations are amended pursuant to section 1332 of the 1988 Act (section 777(c)(1)(E) of the Act) to provide that, where the Secretary determines that a party should disclose its business proprietary information under administrative protective order, and the party refuses to do so, the Secretary will not consider such information.

Sections 353.31(e)(2) and 355.31(e)(2) are modified to specify the format and number of copies that will be required for downstream product monitoring petitions and scope inquiry procedures.

Pursuant to section 1337 of the 1988 Act, §§ 353.71 and 355.52 establish the effective dates for the provisions of the 1988 Act which affect the authorities administered by the Secretary.

It should be noted that all references to antidumping or countervailing duty orders issued under §§ 353.21 or 355.21 or antidumping or countervailing duty

suspension agreements entered into under §§ 353.18 or 355.18 include orders or suspension agreements issued or entered into under the predecessor regulatory provisions.

#### Administrative Procedure Act ("APA")

ITA rules to implement new legislation ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the APA (5 U.S.C. 553). The ITA did not utilize that procedure (with the exception of procedures for the correction of ministerial errors noted above) in this instance because the new legislation became effective upon enactment and requires that implementing procedures be in place promptly with regard to the particular provisions addressed by this interim rule.

Therefore, the ITA determined to adopt interim rules that are effective immediately and will remain in effect until the ITA can adopt final rules after considering comments in response to the notice of interim-final rules. The ITA's authority to adopt interim rules without following all steps listed in section 553 of the APA is derived from the provisions of paragraph (b)(1) of section 553 of the APA which makes those steps inapplicable to "rules of agency \* \* \* procedure, or practice \* \* \*." The ITA finds that these interim-final rules are "agency rules of procedure or practice," as contemplated by paragraph (b)(1) of section 553.

#### Executive Order 12291

The ITA has determined that these amendments do not constitute a major rule for the purposes of Executive Order 12291 (EO) (46 FR 13193, February 17, 1981) because they do not meet the criteria described in section 1(b) of the EO.

#### Paperwork Reduction Act

The information collection requirements contained in 19 CFR 353.27 and 355.27 have 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 have been assigned OMB control number 0625-0200. Public reporting burden for these collection of information requirements is estimated to average 15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send COMMENTS regarding these burden estimates or any other aspect of these collection of information requirements, including suggestions for reducing this

burden, to Reports Clearance Officer, International Trade Administration, Room 4001, U.S. Department of Commerce, Washington, DC 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625-0200), Washington, DC 20503.

#### Regulatory Flexibility Act

Because notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

#### List of Subjects in 19 CFR Parts 353 and 355

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

Dated: December 13, 1989.

Eric I. Garfinkel,  
Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR parts 353 and 355 are amended as follows:

#### PART 353—[AMENDED]

1. The authority citation for part 353 is revised to read as follows:

Authority: 5 U.S.C. 301, and subtitle IV, parts II, III, and IV of the Tariff Act of 1930, as amended by Title I of The Trade Agreements Act of 1978, Pub. L. 96-39, 83 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 294, and Title I, subtitle C, part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988).

2. Section 353.27 is added to subpart b to read as follows:

#### § 353.27 Procedures for initiation of downstream product monitoring.

(a) *In general.* A domestic producer of an article that is like a component part or a downstream product may file an application pursuant to this section requesting that the Secretary designate a downstream product for monitoring.

(b) *Contents of application.* The application shall contain the following information, to the extent reasonably available to the applicant:

(1) The name and address of the person requesting the monitoring and a description of the article it produces which is the basis for filing its application;

(2) A detailed description of the downstream product in question;

(3) A detailed description of the component product incorporated into such downstream product, including the value of the component part in relation to the value of the downstream product, and the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product;

(4) The name of the home market country of both the downstream and component products and the name of any intermediate country through which these products are transshipped;

(5) The name and address of all known producers of component parts and downstream products in the relevant countries and a detailed description of any relationship between such producers;

(6) Whether the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement within the meaning of Section 804 of the Trade and Tariff Act of 1984;

(7) A list of all antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21 on merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured;

(8) A list of all antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18 or antidumping or countervailing orders issued under § 353.21 or § 355.21 on merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part; and

(9) The reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component parts into increased production and exportation to the United States of such downstream product.

(c) *Determination of sufficiency of application*—(1) *In general.* Within 14 days after an application is filed under paragraph (b) of this section, the Secretary will determine the sufficiency of the application. An application is considered to be filed at the time it is received by the Secretary. In order to determine that an application is sufficient, the Secretary must find:

(i) There is a reasonable likelihood that imports of the downstream product into the United States will increase as an indirect result of any diversion with respect to the component part; and

(ii) That—

(A) The component part is already subject to monitoring with respect to the enforcement of a bilateral arrangement within the meaning of Section 804 of the Trade and Tariff Act of 1984, or

(B) Merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21, or

(C) Merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least two antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing orders issued under § 353.21 or § 355.21.

(2) In making a determination under paragraph (c)(1)(i) of this section, the Secretary will consider all factors the Secretary considers relevant and may, if appropriate, take into account such factors as:

(i) The value of the component part in relation to the value of the downstream product;

(ii) The extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; and

(iii) The relationship between the producers of the component part and producers of the downstream product.

(d) *Notice of Determination.* The Secretary will publish in the Federal Register notice of each affirmative or negative "monitoring" determination made under paragraph (c) of this section and if the determination under (c)(1)(i) and under any clause of (c)(1)(ii) are affirmative, will transmit to the Commission a copy of the determination and the application. The Secretary will make available to the Commission, and to its employees directly involved in the monitoring, all information upon which the Secretary based the initiation.

(e) *Action on basis of monitoring reports.* The Secretary will review the information in any monitoring reports submitted to the Department by the Commission under section 780 of the Act and will:

(1) Consider the information in determining whether to initiate an investigation under § 353.11 regarding any downstream product; and

(2) Request the Commission to cease monitoring any downstream product if the information indicates that imports

into the United States are not increasing and there is no reasonable likelihood of diversion with respect to the component part.

(f) *Definitions.* (1) "Downstream product" means any manufactured product imported into the United States into which a component part is incorporated.

(2) "Component part" means any imported article which:

(i) During the previous five-year period, ending on the date on which the application is filed under paragraph (b) of this section, has been subject to—

(A) An antidumping or countervailing duty order issued under § 353.21 or § 355.21 that required the deposit of estimated antidumping or countervailing duties, applicable to the particular manufacturer or exporter, at a rate of at least 15 percent *ad valorem* or,

(B) A suspension agreement entered into under § 353.18 or § 355.18 after a preliminary determination under § 353.15 or § 355.15 was made by the Secretary which included a determination that the estimated net antidumping margin or subsidy rate, applicable to the particular manufacturer or exporter, was at least 15 percent *ad valorem*; and

(ii) Due to its inherent characteristics, is routinely used as a major part, material, component, assembly, or subassembly in a downstream product.

(g) *Where to file; time of filing; format and number of copies.* The requirements of § 353.31(d), (e), (f), and (g) apply to this section.

3. Section 353.28 is added to Subpart B to read as follows:

§ 353.28 *Procedures for the correction of ministerial errors.*

(a) *In general.* The Secretary will disclose the calculations performed in connection with a final antidumping duty determination pursuant to § 353.20, or in a final results of an administrative review of an antidumping duty order pursuant to § 353.22, to any party to the proceeding making a request in accordance with this section. A party to the proceeding must file such a request in writing with the Secretary within five business days of the date of publication of the relevant final determination or final results of administrative review. A party to whom the Secretary has disclosed final calculations may submit comments concerning any ministerial errors in such calculations.

(b) *Time limits.* Comments must be filed within five business days after the date of disclosure unless the Secretary extends the time limit based upon a written request for extension that is

filed within five business days after the date of disclosure and showing cause for such extension. Comments shall be submitted in writing to the Secretary and shall be served on all interested parties on the Department's service list. Interested parties may file replies to any comments submitted under paragraph (a) of this section. Any replies must be filed with the Secretary within five business days after the date the relevant comments under paragraph (a) of this section are received by that party and shall be served on all interested parties on the Department's service list. All service of interested parties on the Department's service list pursuant to this paragraph shall be in accordance with § 353.31(g). Notwithstanding the provisions of § 353.34(d), the Secretary may permit representatives to retain proprietary information released under administrative protective order under § 353.34 until the expiration of the time for filing for judicial review of the Secretary's correction of any ministerial errors. If the Secretary determines there are no ministerial errors, proprietary information will be returned in accordance with the provisions of § 353.34(d).

(c) *Corrections.* The Secretary will analyze any comments received and, if appropriate, correct any ministerial errors by amending the final antidumping determination or final results of administrative review. Such corrections will be published in the Federal Register. A correction notice does not alter the anniversary month of an order or suspension of investigation for purposes of requesting an administrative review under § 353.22.

(d) *Definition of "ministerial error."* For purposes of this section, "ministerial error" means an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.

4. Section 353.29 is added to subpart B to read as follows:

**§ 353.29 Scope determination.**

(a) *Self-initiation.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is included within the scope of an antidumping order, the Secretary will initiate an inquiry and notify all interested parties on the Department's service lists of its initiation of a scope inquiry.

(b) *By application.* Any interested party, as defined in § 353.2(k), may file an application to determine whether a particular product is within the scope of an order. The application shall contain

the following, to the extent reasonably available to the interested party:

(1) A detailed description of the product, including technical characteristics and uses of the product, and its current U.S. Tariff Classification number;

(2) A statement of the interested party's position as to whether the product is within the scope of an antidumping order, including—

(i) A summary of the reasons for this conclusion,

(ii) Citations to any applicable statutory authority, and

(iii) Attachment of any factual support for this position, including applicable portions of the Secretary's or the Commission's investigation.

Where all of these conditions are met, the Secretary will evaluate the application. If the Secretary determines that no inquiry is warranted to determine whether a product is included within the scope of an order, the Secretary will issue a final ruling as to whether the merchandise which is the subject of the application is included in the existing order. The Secretary will, by mail, notify all interested parties on the Department's service lists of its determination. If, however, the Secretary determines that a scope inquiry is warranted, the Secretary will, by mail, notify all interested parties on the Department's service lists of the initiation of a scope inquiry.

(c) *Notice.* Any initiation of a scope inquiry issued pursuant to paragraphs (a) or (b) of this section will include:

(1) A description of the product that is the subject of the scope inquiry; and

(2) An explanation of the reasons for the Secretary's decision to initiate a scope inquiry; and

(3) A schedule for submission of comments.

(d) *Procedures for scope inquiry.* Except as provided under paragraph (d)(6) of this section, the procedures for scope inquiries will be as follows:

(1) Interested parties shall file any comments not later than twenty days after receipt of the notification described in paragraph (c) of this section, unless the Secretary alters this time limit;

(2) Not later than the time limit stated in the notification described in paragraph (c) of this section (ordinarily five days after the time limit for filing the comments described in paragraph (d)(1) of this section), any interested party may submit rebuttal comments;

(3) Whenever the Secretary determines that a scope inquiry presents an issue of significant difficulty, the Secretary will issue a preliminary scope

ruling, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product subject to a scope inquiry is included within the order. The Secretary will, by mail, notify all interested parties on the Department's service lists of its preliminary scope ruling and provide an invitation for comment. Unless otherwise specified, the Secretary will provide all interested parties thirty days from the date of receipt of the notification for comment;

(4) The Secretary may issue questionnaires or verify submissions received, where appropriate;

(5) The Secretary will issue a final ruling as to whether the product which is the subject of the scope inquiry is included in the existing order, including an explanation of the factual and legal conclusions on which the final ruling is based. The Secretary will, by certified mail, return receipt requested, notify all interested parties on the Department's service lists of its final scope ruling;

(6) When a § 353.22 review is in progress at the time the Secretary provides the notification outlined in paragraph (c) of this section, the scope inquiry, in the Secretary's discretion, may be conducted in conjunction with a § 353.22(c) review;

(7) Prior to issuing a ruling in accordance with paragraph (d) (3) or (5) of this section or § 353.22(c)(4) or § 353.22(c)(8) to include products within the scope of an order pursuant to—

(i) Paragraph (e) of this section, other than operations in the United States involving minor completion or assembly,

(ii) Paragraph (f) of this section, or

(iii) Paragraph (h) of this section, with respect to later-developed products which incorporate a significant technological advance or significant alteration of an earlier product, the Secretary will notify the Commission in writing of the proposed inclusion of such products in the order. Upon the written request of the Commission, the Secretary will consult with the Commission regarding the proposed inclusion, and any such consultation will be completed within 15 days after the date of such request. If the Commission believes, after such consultation, that a significant injury issue is presented by the proposed inclusion, the Commission may provide written advice to the Secretary as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order is based; and

(8) On a quarterly basis, the Secretary will publish in the Federal Register a list

of scope rulings completed within the last three months. This list will include the case name, reference number, and a brief description of the ruling.

(e) *Products completed or assembled in the United States.*

(1) *In General. If—*

(i) A product sold in the United States is of the same class or kind as merchandise that is the subject of an order, and

(ii) Such product sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies, and

(iii) The difference between the value of such product sold in the United States and the value of the imported parts and components referred to in paragraph (e)(1)(ii) is small,

the Secretary, after taking into account any advice provided by the Commission under paragraph (d)(7) of this section, may include within the scope of such order the imported parts or components referred to in paragraph (e)(1)(ii) that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect.

(2) *Factors to consider.* In determining whether to include parts or components in an order under paragraph (e)(1) of this section, the Secretary will take into account such factors as:

(i) The pattern of trade;

(ii) Whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order described in paragraph (e)(1) of this section applies; and

(iii) Whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order.

(f) *Products completed or assembled in other foreign countries—(1) In General. If—*

(i) A product imported into the United States is of the same class or kind as the merchandise that is the subject of an order,

(ii) Before importation into the United States, such imported product is completed or assembled in another foreign country from merchandise which is subject to such order, or is produced in the foreign country with respect to which such order applies,

(iii) The difference between the value of such imported product and the value of the merchandise described in paragraph (f)(1)(ii) is small, and

(iv) The Secretary determines that action is appropriate under this paragraph to prevent evasion of such order,

the Secretary, after taking into account any advice provided by the Commission under paragraph (d)(7) of this section, may include such imported products within the scope of such order at any time such order is in effect.

(2) *Factors to consider.* In determining whether to include a product in an order under paragraph (f)(1) of this section, the Secretary will take into account such factors as:

(i) The pattern of trade;

(ii) Whether the manufacturer or exporter of the product described in paragraph (f)(1)(ii) is related to the person who uses the merchandise described in paragraph (f)(1)(ii) to assemble or complete in the foreign country the product that is subsequently imported into the United States; and

(iii) Whether imports into the foreign country of the product described in paragraph (f)(1)(ii) have increased after the issuance of such order.

(g) *Minor alterations of merchandise—(1) In general.* The class or kind of merchandise subject to an investigation or order will include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) *Exception.* Paragraph (g)(1) of this section will not apply with respect to altered merchandise if the Secretary determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation or order.

(h) *Later-developed products—(1) In general.* For purposes of determining whether a product developed after an antidumping investigation is initiated (hereafter in this paragraph referred to as the "later-developed merchandise") is within the scope of an order, the Secretary will consider whether:

(i) The later-developed product has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the "earlier merchandise");

(ii) The expectations of the ultimate purchasers of the later-developed product are the same as for the earlier merchandise;

(iii) The ultimate use of the earlier merchandise and the later-developed product are the same;

(iv) The later-developed product is sold through the same channels of trade as the earlier merchandise; and

(v) The later-developed product is advertised and displayed in a manner similar to the earlier merchandise.

The Secretary will take into account any advice provided by the Commission under paragraph (d)(7) of this section before making a determination under this paragraph.

(2) *Exclusion from orders.* The Secretary may not exclude later-developed products from an order merely because the products:

(i) Are classified under a tariff classification other than that identified in the petition or the Secretary's prior notices during the proceeding; or

(ii) Permit the purchaser to perform additional functions, unless such additional functions constitute the primary use of the products and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the products.

(i) *Other scope determinations.* With respect to those scope determinations that are not covered under paragraph (e) through (h) of this section, in considering whether a particular product is within the class or kind of merchandise described in an existing order, the Secretary will take into account the following:

(1) The descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary and the Commission.

(2) When the above criteria are not dispositive, the Secretary will further consider:

(i) The physical characteristics of the product;

(ii) The expectations of the ultimate purchasers;

(iii) The ultimate use of the product; and

(iv) The channels of trade.

(j) *Suspension of liquidation.*

(1) When the Secretary initiates a scope inquiry pursuant to paragraph (c) of this section, and the subject product is already subject to suspension of liquidation, that suspension of liquidation will be continued pending a preliminary or a final scope ruling. Any suspension of liquidation will be at the cash deposit of estimated duty rate that will apply if the subject product is ruled to be included within the scope of the order.

(2) If the Secretary issues a preliminary scope ruling pursuant to paragraph (d)(3) of this section to the effect that the subject product is included within the scope of the order,

any suspension of liquidation described in paragraph (j)(1) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each suspended entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary scope ruling. If the Secretary issues a preliminary scope ruling to the effect that the subject product is not included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(3) If the Secretary issues a final scope ruling, pursuant to either paragraph (b) or (d) (5) of this section, to the effect that the subject product is included within the scope of the order, any suspension of liquidation pursuant to paragraph (j)(1) or (j)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the final scope ruling. If the Secretary's final scope ruling is to the effect that the subject product is not included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(k) *Where to file; time of filing; format and number of copies.* The requirements of § 353.31 (d), (e), (f), and (g) apply to this section.

5. Section 353.31 is amended by revising paragraph (e)(2) and (g) to read as follows:

**§ 353.31 Submission of factual information.**

(e) \* \* \*

(2) *Documents.* In an investigation, submit 10 copies of any document, except a computer printout, 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 any public summaries required under § 353.32(b) as substitutes for the portions for which the person has requested proprietary

treatment; and if administrative protective order versions are required to be served pursuant to § 353.31(g) (1) or (2), submit one copy of the cover page, marked as described in paragraph (e)(2)(v), together with only those pages that differ from the public or proprietary versions. In an administrative review, scope inquiry, or downstream product monitoring application, submit seven copies of any document, except a computer printout; and if a person has requested that the Secretary treat portions of the document as proprietary information, submit three copies of a public version of the document, as described above; and submit one copy of any administrative protective order versions required to be served pursuant to § 353.31(g) (1) or (2), as described above. In an investigation, administrative review, scope inquiry, or downstream product monitoring application, submit documents, if prepared for that segment of the proceeding, on letter-size paper, single-sided and double-spaced. 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 unnumbered pages;
- (iii) On the third line, state whether the document is for an investigation, scope inquiry, downstream product monitoring application, or an administrative review and, if the latter, the inclusive dates of the review;
- (iv) On the fourth and subsequent lines, state whether any portion of the document contains classified, privileged, or proprietary information and, if so, list the applicable page numbers and state either "Document May be Released Under APO" or "Document May Not be Released Under APO" (see §§ 353.32(c) and 353.34); and
- (v) For administrative protective order versions, described in § 353.31(g) (1) or (2), complete the marking as required in paragraphs (i)-(iv) above for the proprietary document, but conspicuously mark the first page "APO Version Prepared for [Name of party entitled to receive materials]"; and
- (vi) For public versions of proprietary documents, required by § 353.32(b), complete the marking as required in paragraphs (e)(2) (i)-(iv) of this section for the proprietary document, but

conspicuously mark the first page "Public Version."

(g) *Service of copies on other parties.* With the exception of petitions, proposed suspension agreements submitted under § 353.18(g)(1)(i), and factual information submitted under § 353.32(a) that is not required to be served on an interested party, the submitter of a document shall, at the same time, serve either a copy of the document or a copy of the public version required by § 353.32(b), on all interested parties on the Department's service list by first class mail or personal service. In addition, where proprietary information is involved, the submitter shall serve the following administrative protective order versions:

(1) With respect to parties to the proceeding that are subject to administrative protective orders under § 353.34, the submitter of a document shall include that proprietary information that the interested party is entitled to receive under the terms of the administrative protective order, as well as the party's own proprietary information, but no other proprietary information;

(2) With respect to interested parties that are not subject to an administrative protective order, but when the submission contains that interested party's proprietary information, the submitter of a document shall serve the interested party with a version that contains just the interested party's own proprietary information.

The Secretary will not accept any document that is not accompanied by a certificate of service listing the parties served, the type of document served, and, for each, indicating the date and method of service.

6. In § 353.34, paragraphs (a), (b)(1), (b)(5), and (c) are revised, and paragraph (b)(6) is added to read as follows:

**§ 353.34 Disclosure of proprietary information under administrative protective order.**

(a) *In general.* Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the Secretary shall require all proprietary information presented to, or obtained by it, during a segment of a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) to be

disclosed to interested parties who are parties to the proceeding under a protective order described in this section, regardless of when the information is submitted during the segment of the proceeding.

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

(i) 30 days after the date of publication in the Federal Register of the notice of initiation under § 353.11 or § 353.13, or the notice of initiation of administrative review under § 353.22; or

(ii) 30 days after the initiation of a scope inquiry pursuant to § 353.29(a) or (b); or

(iii) 10 days after the date the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 353.38 are due.

(5) The Secretary will decide whether to disclose information under administrative protective order:

(i) Not later than 14 days after the date on which the information is submitted; or

(ii) If—  
(A) The person who submitted the information raises objection to its release, or

(B) The information is usually voluminous or complex, not later than 30 days after the date on which the information is submitted.

(6) If the Secretary decides that disclosure of information under administrative protective order is proper under paragraph (5), above:

(i) With respect to proprietary information submitted to the Secretary on or before the date of the decision to disclose, the submitting party shall, within two business days of the date of decision, serve the party which requested such disclosure, in accordance with § 353.31(g); and

(ii) The submitting party shall serve all future submissions of proprietary information directly on the requesting party as required by § 353.31(g).

(c) *Opportunity to withdraw proprietary information.* If the Secretary decides to require disclosure of proprietary information under administrative protective order without the consent of the submitter, the Secretary will provide to the submitter written notice of the decision and the reasons therefor and will permit the submitter to withdraw the information from the official record within two business days. The Secretary will not consider withdrawn information.

Furthermore, if the submitter does not withdraw the information but fails to serve the party requesting such information, in accordance with § 353.34(b)(6), the Secretary will not consider such information.

7. Subpart E consisting of § 353.71 is added to Part 353 to read as follows:

#### Subpart E—Effective Dates

§ 353.71 *Effective dates of amendments to the Tariff Act of 1930 made by the Omnibus Trade and Competitiveness Act of 1988.*

In accordance with section 1337 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100-418) ("the 1988 Act"), the amendments to the Tariff Act of 1930 made by the 1988 Act are deemed effective as follows:

(a) Except as provided in paragraphs (b), (c), (d), (e), and (f) of this section, all amendments made by Title I, Subtitle C, Part II of the 1988 Act which affect authorities administered by the Secretary are deemed effective as of August 23, 1988.

(b) Amendments made by sections 1312, 1315, 1316, 1318, 1325, 1326, 1327, 1331, and 1332 of the 1988 Act which affect authorities administered by the Secretary are deemed to take effect immediately with respect to all investigations, section 736(c) reviews, or section 751 reviews initiated after August 23, 1988.

(c) The amendment made by section 1324 of the 1988 Act which affects authorities administered by the Secretary is deemed to apply only to investigations initiated after August 23, 1988.

(d) The amendments made by sections 1321(a) and 1334 of the 1988 Act which affect authorities administered by the Secretary are deemed to be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after August 23, 1988.

(e) The amendments made by sections 1321(b) and 1335 of the 1988 Act which affect authorities administered by the Secretary are deemed to be effective with respect to entries, and withdrawals from warehouse for consumption, that are liquidated on or after August 23, 1988.

(f) The amendment made by section 1319 is deemed effective with respect to all section 736(c) and section 751 reviews initiated on or after August 23, 1988, as well as to all section 736(c) and section 751 reviews for which there is a request for revocation pending on August 23, 1988.

(g) Notwithstanding the provisions of paragraphs (a) through (f) of this section, the Secretary may implement the amendments of the 1988 Act at a date later than August 23, 1988, if the Secretary determines that implementation in accordance with paragraphs (a) through (f) of this section would prevent the Department from complying with other requirements of law.

#### PART 355—[AMENDED]

8. The authority citation for part 355 is revised to read as follows:

Authority: 5 U.S.C. 301, and subtitle IV, parts, II, III, and IV of the Tariff Act of 1930, as amended by Title I of The Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 294, and Title I, subtitle C, Part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988).

9. Section 355.27 is added to subpart B to read as follows:

#### § 355.27 *Procedures for initiation of downstream product monitoring.*

(a) *In general.* A domestic producer of an article that is like a component part or a downstream product may file an application pursuant to this section requesting that the Secretary designate a downstream product for monitoring.

(b) *Contents of application.*—The application shall contain the following information, to the extent reasonably available to the applicant:

(1) The name and address of the person requesting the monitoring and a description of the article it produces which is the basis for filing its application;

(2) A detailed description of the downstream product in question;

(3) A detailed description of the component product incorporated into such downstream product, including the value of the component part in relation to the value of the downstream product, and the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product;

(4) The name of the home market country of both the downstream and component products and the name of any intermediate country through which these products are transshipped;

(5) The name and address of all known producers of the component part and downstream product in the relevant countries and a detailed description of any relationship between such producers;

(6) Whether the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement within the meaning of Section 804 of the Trade and Tariff Act of 1984;

(7) A list of all antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21 on merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured;

(8) A list of all antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing orders issued under § 353.21 or § 355.21 on merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part; and

(9) The reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of such downstream product.

(c) *Determination of sufficiency of application*—(1) *In general.* Within 14 days after an application is filed under paragraph (b) of this section the Secretary will determine the sufficiency of the application. An application is considered to be filed at the time it is received by the Secretary. In order to determine that an application is sufficient, the Secretary must find:

(i) There is a reasonable likelihood that imports of the downstream product into the United States will increase as an indirect result of any diversion with respect to the component part; and

(ii) That—

(A) The component part is already subject to monitoring with respect to the enforcement of a bilateral arrangement within the meaning of Section 804 of the Trade and Tariff Act of 1984, or

(B) Merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of antidumping or countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21, or

(C) Merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least two antidumping or

countervailing duty investigations suspended under § 353.18 or § 355.18, or antidumping or countervailing duty orders issued under § 353.21 or § 355.21.

(2) In making a determination under paragraph (c)(1)(i) of this section, the Secretary will consider all factors the Secretary considers relevant and may, if appropriate, take into account such factors as:

(i) The value of the component part in relation to the value of the downstream product;

(ii) The extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; and

(iii) The relationship between the producers of the component part and producers of the downstream product.

(d) *Notice of determination.* The Secretary will publish in the Federal Register notice of each affirmative or negative "monitoring" determination made under paragraph (c) of this section and if the determination under (c)(1)(i) and under any clause of (c)(1)(ii) are affirmative, will transmit to the Commission a copy of the determination and the application. The Secretary will make available to the Commission and to its employees directly involved in the monitoring all information upon which the Secretary based the initiation.

(e) *Action on basis of monitoring reports.* The Secretary will review the information in any monitoring reports submitted to the Department by the Commission under Section 780 of the Act and will:

(1) Consider the information in determining whether to initiate an investigation under § 355.11 regarding any downstream product; and

(2) Request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to the component part.

(f) *Definitions.* (1) "Downstream product" means any manufactured product imported into the United States into which a component part is incorporated.

(2) "Component part" means any imported article which:

(i) During the previous five-year period, ending on the date on which the application is filed under paragraph (b) of this section, has been subject to—

(A) An antidumping or countervailing duty order issued under § 353.21 or § 355.21 that required the deposit of estimated antidumping or countervailing duties, applicable to the particular

manufacturer or exporter, at a rate of at least 15 percent *ad valorem* or,

(B) A suspension agreement entered into under § 353.18 or § 355.18 after a preliminary determination under § 353.15 or § 355.15 was made by the Secretary which included a determination that the estimated net antidumping margin or subsidy rate, applicable to the particular manufacturer or exporter, was at least 15 percent *ad valorem*; and

(ii) Due to its inherent characteristics, is routinely used as a major part, material, component, assembly, or subassembly in a downstream product.

(g) *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.

10. Section 355.28 is added to subpart B to read as follows:

**§ 355.28 Procedures for the correction of ministerial errors.**

(a) *In general.* The Secretary will disclose the calculations performed in connection with a final countervailing duty determination pursuant to § 355.20, or in a final results of an administrative review of a countervailing duty order pursuant to § 355.22, to any party to the proceeding making a request in accordance with this section. A party to the proceeding must file such a request in writing with the Secretary within five business days of the date of publication of the relevant final determination or final results of administrative review. A party to whom the Secretary has disclosed final calculations may submit comments concerning any ministerial errors in such calculations.

(b) *Time limits.* Comments must be filed within five business days after the date of disclosure unless the Secretary extends the time limit based upon a written request for extension that is filed within five business days after the date of disclosure and showing cause for such extension. Comments shall be submitted in writing to the Secretary and shall be served on all interested parties on the Department's service list. Interested parties may file replies to any comments submitted under paragraph (a) of this section. Any replies must be filed with the Secretary within five business days after the date the relevant comments under paragraph (a) are received by that party and shall be served on all interested parties on the Department's service list. All service of interested parties on the Department's service list pursuant to this paragraph shall be in accordance with § 355.31(g). Notwithstanding the provisions of § 355.34(d), the Secretary may permit

representatives to retain proprietary information released under administrative protective order under § 355.34 until the expiration of the time for filing for judicial review of the Secretary's correction of any ministerial errors. If the Secretary determines there are no ministerial errors, proprietary information will be returned in accordance with the provisions of § 355.34(d).

(c) *Corrections.* The Secretary will analyze any comments received and will correct any ministerial errors by amending the final countervailing duty determination or final results of administrative review. Such corrections will be published in the Federal Register. A correction notice does not alter the anniversary month of an order or suspension of investigation for purposes of requesting an administrative review under § 355.22.

(d) *Definition of "ministerial error".* For purposes of this section, "ministerial error" means an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.

11. Section 355.29 is added to Subpart B to read as follows:

**§ 355.29 Scope determination.**

(a) *Self-initiation.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is included within the scope of a countervailing duty order, the Secretary will initiate an inquiry and notify all interested parties on the Department's service lists of its initiation of a scope inquiry.

(b) *By application.* Any interested party, as defined in § 355.2(i), may file an application to determine whether a particular product is within the scope of an order. The application shall contain the following, to the extent reasonably available to the interested party:

(1) A detailed description of the product, including technical characteristics and uses of the product, and its current U.S. Tariff Classification number;

(2) A statement of the interested party's position as to whether the product is within the scope of an order, including—

(i) A summary of the reasons for this conclusion,

(ii) Citations to any applicable statutory authority, and

(iii) Attachment of any factual support for this position, including applicable portions of the Secretary's or the Commission's investigation.

Where all of these conditions are met, the Secretary will evaluate the application. If the Secretary determines that no inquiry is warranted to determine whether a product is included within the scope of an order, the Secretary will issue a final ruling as to whether the merchandise which is the subject of the application is included in the existing order. The Secretary will, by mail, notify all interested parties on the Department's service lists of its determination. If, however, the Secretary determines that a scope inquiry is warranted, the Secretary will, by mail, notify all interested parties on the Department's service lists of the initiation of a scope inquiry.

(c) *Notice.* Any initiation of a scope inquiry issued pursuant to paragraphs (a) or (b) of this section will include:

(1) A description of the product that is the subject of the scope inquiry; and

(2) An explanation of the reasons for the Secretary's decision to initiate a scope inquiry; and

(3) A schedule for submission of comments.

(d) *Procedures for scope inquiry.* Except as provided under paragraph (d)(6) of this section, the procedures for scope inquiries will be as follows:

(1) Interested parties shall file any comments not later than twenty days after receipt of the notification described in paragraph (c) of this section, unless the Secretary alters this time limit;

(2) Not later than the time limit stated in the notification described in paragraph (c) of this section (ordinarily five days after the time limit for filing the comments described in paragraph (d)(1) of this section), any interested party may submit rebuttal comments;

(3) Whenever the Secretary determines that a scope inquiry presents an issue of significant difficulty, the Secretary will issue a preliminary scope ruling based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product subject to a scope inquiry is included within the order. The Secretary will, by mail, notify all interested parties on the Department's service lists of its preliminary scope ruling and provide an invitation for comment. Unless otherwise specified, the Secretary will provide all interested parties thirty days from the date of receipt of the notification for comment;

(4) The Secretary may issue questionnaires or verify submissions received, where appropriate;

(5) The Secretary will issue a final ruling as to whether the product which is the subject of the scope inquiry is

included in the existing order, including an explanation of the factual and legal conclusions on which the final ruling is based. The Secretary will, by certified mail, return receipt requested, notify all interested parties on the Department's service lists of its final scope ruling;

(6) When a § 355.22 review is in progress at the time the Secretary provides the notification outlined in paragraph (c) of this section, the scope investigation, in the Secretary's discretion, may be conducted in conjunction with a § 355.22(c) review;

(7) With respect to countervailing duty proceedings in which the Commission made an affirmative injury determination, prior to issuing a ruling in accordance with paragraph (3) or (5) of this section or § 355.22(c)(4) or § 355.22(c)(8) to include products within the scope of an order pursuant to—

(i) Paragraph (e) of this section, other than operations in the United States involving minor completion or assembly,

(ii) Paragraph (f) of this section, or

(iii) Paragraph (h) of this section, with respect to later-developed products which incorporate a significant technological advance or significant alteration of an earlier product,

the Secretary will notify the Commission in writing of the proposed inclusion of such products in the order. Upon the written request of the Commission, the Secretary will consult with the Commission regarding the proposed inclusion and any such consultation will be completed within 15 days after the date of such request. If the Commission believes, after such consultation, that a significant injury issue is presented by the proposed inclusion, the Commission may provide written advice to the Secretary as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order is based; and

(8) On a quarterly basis, the Secretary will publish in the Federal Register a list of scope rulings completed within the last three months. This list will include the case name, reference number and a brief description of the ruling.

(e) *Products completed or assembled in the United States.*

(1) *In General.* If—

(i) A product sold in the United States is of the same class or kind as merchandise that is the subject of an order, and

(ii) Such product sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies, and

(iii) The difference between the value of such product sold in the United States and the value of the imported parts and components referred to in paragraph (e)(1)(ii) is small.

the Secretary, after taking into account any advice provided by the Commission under paragraph (d)(7) of this section, may include within the scope of such order the imported parts or components referred to in paragraph (e)(1)(ii) that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect.

(2) *Factors to consider.* In determining whether to include parts or components in an order under paragraph (e)(1) of this section, the Secretary will take into account such factors as:

(i) The pattern of trade;  
(ii) Whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order described in paragraph (e)(1) of this section applies; and

(iii) Whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order or finding.

(f) *Products completed or assembled in other foreign countries—(1) In General. If—*

(i) A product sold in the United States is of the same class or kind as the merchandise that is the subject of an order,

(ii) Before importation into the United States, such imported product is completed or assembled in another foreign country from merchandise which is subject to such order, or is produced in the foreign country with respect to which such order applies,

(iii) The difference between the value of such imported products and the value of the merchandise described in paragraph (f)(1)(ii) is small, and

(iv) The Secretary determines that action is appropriate under this paragraph to prevent evasion of such order,

the Secretary, after taking into account any advice provided by the Commission under paragraph (d)(7) of this section, may include such imported products within the scope of such order at any time such order is in effect.

(2) *Factors to consider.* In determining whether to include a product in an order under paragraph (f)(1) of this section, the Secretary will take into account such factors as:

(i) The pattern of trade;

(ii) Whether the manufacturer or exporter of the product described in paragraph (f)(1)(ii) is related to the person who uses the merchandise described in paragraph (f)(1)(ii) to assemble or complete in the foreign country the product that is subsequently imported into the United States; and

(iii) Whether imports into the foreign country of the product described in paragraph (f)(1)(ii) have increased after the issuance of such order.

(g) *Minor alterations of merchandise—(1) In general.* The class or kind of merchandise subject to an investigation or order will include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) *Exception.* Paragraph (g)(1) of this section will not apply with respect to altered merchandise if the Secretary determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation or order.

(h) *Later-developed products—(1) In general.* For purposes of determining whether a product developed after a countervailing duty investigation is initiated (hereafter in this paragraph referred to as the "later-developed merchandise") is within the scope of an order, the Secretary will consider whether:

(i) The later-developed product has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the "earlier merchandise");

(ii) The expectations of the ultimate purchasers of the later-developed product are the same as for the earlier merchandise;

(iii) The ultimate use of the earlier merchandise and the later-developed product are the same;

(iv) The later-developed product is sold through the same channels of trade as the earlier merchandise; and

(v) The later-developed product is advertised and displayed in a manner similar to the earlier merchandise.

The Secretary will take into account any advice provided by the Commission under paragraph (d)(7) of this section before making a determination under this paragraph.

(2) *Exclusion from orders.* The Secretary may not exclude later-developed products from an order merely because the products:

(i) Are classified under the tariff classification other than that identified

in the petition or the Secretary's prior notices during the proceeding; or

(ii) Permit the purchaser to perform additional functions, unless such additional functions constitute the primary use of the products and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the products.

(i) *Other scope determinations.* With respect to those scope determinations that are not covered under paragraphs (e) through (h) of this section, in considering whether a particular product is within the class or kind of merchandise described in an existing order, the Secretary will take into account the following:

(1) The descriptions of the product contained in the petition, the initial investigation, and the determinations of the Secretary and the Commission.

(2) When the above criteria are not dispositive, the Secretary will further consider:

(i) The physical characteristics of the product;

(ii) The expectations of the ultimate purchasers;

(iii) The ultimate use of the product; and

(iv) The channels of trade.

(j) *Suspension of liquidation.*

(1) When the Secretary initiates a scope inquiry pursuant to paragraph (c) of this section, and the subject product is already subject to suspension of liquidation, that suspension of liquidation will be continued pending a preliminary or a final scope ruling. Any suspension of liquidation will be at the cash deposit of estimated duty rate that will apply if the subject product is ruled to be included within the scope of the order.

(2) If the Secretary issues a preliminary scope ruling pursuant to paragraph (d)(3) of this section to the effect that the subject product is included within the scope of the order, any suspension of liquidation described in paragraph (j)(1) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each suspended entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary scope ruling. If the Secretary issues a preliminary scope ruling to the effect that the subject product is not included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs

Service to refund any cash deposits or release any bonds relating to this product.

(3) If the Secretary issues a final scope ruling, pursuant to either paragraph (b) or (d)(5) of this section, to the effect that the subject product is included within the scope of the order, any suspension of liquidation pursuant to paragraph (j)(1) or (j)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of the final scope ruling. If the Secretary's final scope ruling is to the effect that the subject product is not included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(k) *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.

12. Section 355.31 is amended by revising paragraphs (e)(2) and (g) to read as follows:

**§ 355.31 Submission of factual information.**

(e) \* \* \*

(2) *Documents.* In an investigation, submit 10 copies of any document, except a computer printout, 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 any public summaries required under § 355.32(b) as substitutes for the portions for which the person has requested proprietary treatment; and if administrative protective order versions are required to be served pursuant to § 355.31(g) (1) or (2), submit one copy of the cover page, marked as described in paragraph (e)(2)(v), together with only those pages that differ from the public or proprietary versions. In an administrative review, scope inquiry, or downstream product monitoring application, submit seven copies of any document, except a computer printout; and if a person has requested that the Secretary treat portions of the document as proprietary information, submit three copies of a public version of the document, as described above; and submit one copy of any administrative protective order

versions required to be served pursuant to § 355.31(g) (1) or (2), as described above. In an investigation, administrative review, scope inquiry, or downstream product monitoring application, submit documents prepared for that segment of the proceeding, on letter-size paper, single-sided and double-spaced. 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 unnumbered pages;

(iii) On the third line, state whether the document is for an investigation, scope inquiry, downstream product monitoring application, or an administrative review and, if the latter, the inclusive dates of the review;

(iv) On the fourth and subsequent lines, state whether any portion of the document contains classified, privileged, or proprietary information and, if so, list the applicable page numbers and state either "Document May be Released Under APO" or "Document May Not be Released Under APO" (see §§ 355.32(c) and 355.34);

(v) For administrative protective order versions, described in § 355.31(g) (1) or (2), complete the marking as required in paragraphs (i)-(iv) above for the proprietary document, but conspicuously mark the first page "APO Version Prepared for [Name of party entitled to receive materials]"; and

(vi) For public versions of proprietary documents, required by § 355.32(b), complete the marking as required in paragraphs (e)(2) (i) through (iv) of this section for the proprietary document, but conspicuously mark the first page "Public Version."

**(g) Service of copies on other parties.**

With the exception of petitions, proposed suspension agreements submitted under § 355.18(g)(1)(i), and factual information submitted under § 355.32(a) that is not required to be served on an interested party, the submitter of a document shall, at the same time, serve either a copy of the document or a copy of the public version required by § 355.32(b) on the government of the affected country and all interested parties on the Department's service list by first class mail or personal service. In addition, where proprietary information is

involved, the submitter shall serve the following administrative protective order versions:

(1) With respect to parties to the proceeding that are subject to administrative protective orders under § 355.34, the submitter of a document shall include that proprietary information that the interested party is entitled to receive under the terms of the administrative protective order, as well as the party's own proprietary information, but no other proprietary information;

(2) With respect to interested parties that are not subject to an administrative protective order, but when the submission contains that interested party's proprietary information, the submitter of a document shall serve the interested party with a version that contains just the interested party's own proprietary information.

The Secretary will not accept any document that is not accompanied by a certificate of service listing the parties served, the type of document served, and, for each, indicating the date and method of service.

13. In § 355.34, paragraphs (a), (b)(1), (b)(5) and (c) are revised and paragraph (b)(6) is added to read as follows:

**§ 355.34 Disclosure of proprietary information under administrative protective order.**

(a) *In general.* Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the Secretary shall require all proprietary information presented to, or obtained by it, during a segment of a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) to be disclosed to interested parties who are parties to the proceeding under a protective order described in this section, regardless of when the information is submitted during the segment of the proceeding.

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

(i) 30 days after the date of publication in the *Federal Register* notice of initiation under § 355.11 or § 355.13, or the notice of initiation administrative review under § 355.32

(ii) 30 days after the initiation of a scope inquiry pursuant to § 355.29 (a) or (b); or

(iii) 10 days after the date the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38 are due.

(5) The Secretary will decide whether to disclose information under administrative protective order

(i) Not later than 14 days after the date on which the information is submitted; or

(ii) If—

(A) The person who submitted the information raises objection to its release, or

(B) The information is unusually voluminous or complex, not later than 30 days after the date on which the information is submitted.

(6) If the Secretary decides that disclosure of information under administrative protective order is proper under paragraph (b)(5) of this section:

(i) With respect to proprietary information submitted to the Secretary on or before the date of the decision to disclose, the submitting party shall, within two business days of the date of decision, serve the party which requested such disclosure, in accordance with § 355.31(g); and

(ii) The submitting party shall serve all future submissions of proprietary information directly on the requesting party as required by § 355.31(g).

(c) *Opportunity to withdraw proprietary information.* If the Secretary decides to require disclosure of proprietary information under administrative protective order without

the consent of the submitter, the Secretary will provide to the submitter written notice of the decision and the reasons therefor and will permit the submitter to withdraw the information from the official record within two business days. The Secretary will not consider withdrawn information. Furthermore, if the submitter does not withdraw the information but fails to serve the party requesting such information, in accordance with § 355.34(b)(6), the Secretary will not consider such information.

14. Subpart E consisting of § 355.51 is added to Part 355 to read as follows:

#### Subpart E—Effective Dates

§ 355.51 *Effective dates of amendments to the Tariff Act of 1930 made by the Omnibus Trade and Competitiveness Act of 1988.*

In accordance with section 1337 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100-418) ("the 1988 Act"), the amendments to the Tariff Act of 1930 made by the 1988 Act are deemed effective as follows:

(a) Except as provided in paragraphs (b), (c), (d), (e), and (f) of this section, all amendments made by Title I, Subtitle C, Part II of the 1988 Act which affect authorities administered by the Secretary are deemed effective as of August 23, 1988.

(b) Amendments made by sections 1312, 1315, 1316, 1318, 1325, 1327, 1331, and 1332 of the 1988 Act which affect authorities administered by the Secretary are deemed to take effect immediately with respect to all investigations, section 736(c) reviews, or section 751 reviews initiated after August 23, 1988.

(c) The amendment made by section 1324 of the 1988 Act which affects authorities administered by the Secretary is deemed to apply only to investigations initiated after August 23, 1988.

(d) The amendments made by sections 1321(a) and 1334 of the 1988 Act which affect authorities administered by the Secretary are deemed to be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after August 23, 1988.

(e) The amendments made by section 1321(b) and 1335 of the 1988 Act which affect authorities administered by the Secretary are deemed to be effective with respect to entries, and withdrawals from warehouse for consumption, that are liquidated on or after August 23, 1988.

(f) The amendment made by section 1319 is deemed effective with respect to all section 736(c) and section 751 reviews initiated on or after August 23, 1988, as well as to all section 736(c) and section 751 reviews for which there is a request for revocation pending on August 23, 1988.

(g) Notwithstanding the provisions of paragraphs (a) through (f) of this section, the Secretary may implement the amendments of the 1988 Act at a date later than August 23, 1988, if the Secretary determines that implementation in accordance with paragraphs (a) through (f) of this section would prevent the Department from complying with other requirements of law.

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