

section 771(20) of the Act, merchandise imported by, or for the use of, a department or agency of the United States Government is subject to the imposition of countervailing duties or anti-dumping duties under this part.

§ 351.102 Definitions.

(a) *Introduction.* The Act contains many technical terms applicable to antidumping and countervailing duty proceedings. In the case of terms that are not defined in this section or other sections of this part, readers should refer to the relevant provisions of the Act. This section:

- (1) Defines terms that appear in the Act but are not defined in the Act;
- (2) Defines terms that appear in this Part but do not appear in the Act; and
- (3) Elaborates on the meaning of certain terms that are defined in the Act.

(b) *Definitions.*

Act. “Act” means the Tariff Act of 1930, as amended.

Administrative review. “Administrative review” means a review under section 751(a)(1) of the Act.

Affiliated persons; affiliated parties. “Affiliated persons” and “affiliated parties” have the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

Aggregate basis. “Aggregate basis” means the calculation of a country-wide subsidy rate based principally on information provided by the foreign government.

Anniversary month. “Anniversary month” means the calendar month in which the anniversary of the date of

publication of an order or suspension of investigation occurs.

APO. “APO” means an administrative protective order described in section 777(c)(1) of the Act.

Applicant. “Applicant” means a representative of an interested party that has applied for access to business proprietary information under an administrative protective order.

Article 4/Article 7 Review. “Article 4/Article 7 review” means a review under section 751(g)(2) of the Act.

Article 8 violation review. “Article 8 violation review” means a review under section 751(g)(1) of the Act.

Authorized applicant. “Authorized applicant” means an applicant that the Secretary has authorized to receive business proprietary information under an APO under section 777(c)(1) of the Act.

Changed circumstances review. “Changed circumstances review” means a review under section 751(b) of the Act.

Consumed in the production process. Inputs “consumed in the production process” are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the product.

Cumulative indirect tax. “Cumulative indirect tax” means a multi-staged tax levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production.

Customs Service. “Customs Service” means the United States Customs Service of the United States Department of the Treasury.

Department. “Department” means the United States Department of Commerce.

Direct tax. “Direct tax” means a tax on wages, profits, interests, rents, royalties, and all other forms of income, a tax on the ownership of real property, or a social welfare charge.

Domestic interested party. “Domestic interested party” means an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) of the Act.

Expedited antidumping review. “Expedited antidumping review” means a review under section 736(c) of the Act.

Expedited sunset review. “Expedited sunset review” means an expedited sunset review conducted by the Department where respondent interested parties provide inadequate responses to a notice of initiation under section 751(c)(3)(B) of the Act and § 351.218(e)(1)(ii).

Export insurance. “Export insurance” includes, but is not limited to, insurance against increases in the cost of exported products, nonpayment by the customer, inflation, or exchange rate risks.

Factual information. “Factual information” means:

- (1) Initial and supplemental questionnaire responses;
- (2) Data or statements of fact in support of allegations;
- (3) Other data or statements of facts; and
- (4) Documentary evidence.

Fair value. “Fair value” is a term used during an antidumping investigation, and is an estimate of normal value.

Firm. For purposes of subpart E (Identification and Measurement of Countervailable Subsidies), “firm” is used to refer to the recipient of an alleged countervailable subsidy, including any individual, company, partnership, corporation, joint venture, association, organization, or other entity.

Full sunset review. “Full sunset review” means a full sunset review conducted by the Department under section 751(c)(5) of the Act where both domestic interested parties and respondent interested parties provide adequate response to a notice of initiation under section 751(c)(3)(B) of the Act and §§ 351.218(e)(1)(i) and 351.218(e)(1)(ii).

Government-provided. “Government-provided” is a shorthand expression for an act or practice that is alleged to be a countervailable subsidy. The use of the term “government-provided” is not intended to preclude the possibility that a government may provide a countervailable subsidy indirectly in a manner described in section 771(5)(B)(iii) of the Act (indirect financial contribution).

Import charge. “Import charge” means a tariff, duty, or other fiscal charge

that is levied on imports, other than an indirect tax.

Importer. “Importer” means the person by whom, or for whose account, subject merchandise is imported.

Indirect tax. “Indirect tax” means a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge.

Investigation. Under the Act and this Part, there is a distinction between an antidumping or countervailing duty *investigation* and a *proceeding*. An “investigation” is that segment of a proceeding that begins on the date of publication of notice of initiation of investigation and ends on the date of publication of the earliest of:

- (1) Notice of termination of investigation,
- (2) Notice of rescission of investigation,
- (3) Notice of a negative determination that has the effect of terminating the proceeding, or
- (4) An order.

Loan. “Loan” means a loan or other form of debt financing, such as a bond.

Long-term loan. “Long-term loan” means a loan, the terms of repayment for which are greater than one year.

New shipper review. “New shipper review” means a review under section 751(a)(2) of the Act.

Order. An “order” is an order issued by the Secretary under section 303, section 706, or section 736 of the Act or a finding under the Antidumping Act, 1921.

Ordinary course of trade. “Ordinary course of trade” has the same meaning as in section 771(15) of the Act. The Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise

produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price.

Party to the proceeding. "Party to the proceeding" means any interested party that actively participates, through written submissions of factual information or written argument, in a segment of a proceeding. Participation in a prior segment of a proceeding will not confer on any interested party "party to the proceeding" status in a subsequent segment.

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

Price adjustment. "Price adjustment" means any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay.

Prior-stage indirect tax. "Prior-stage indirect tax" means an indirect tax levied on goods or services used directly or indirectly in making a product.

Proceeding. A "proceeding" begins on the date of the filing of a petition under section 702(b) or section 732(b) of the Act or the publication of a notice of initiation in a self-initiated investigation under section 702(a) or section 732(a) of the Act, and ends on the date of publication of the earliest notice of:

- (1) Dismissal of petition,
- (2) Rescission of initiation,
- (3) Termination of investigation,
- (4) A negative determination that has the effect of terminating the proceeding,
- (5) Revocation of an order, or
- (6) Termination of a suspended investigation.

Rates. "Rates" means the individual weighted-average dumping margins, the individual countervailable subsidy rates, the country-wide subsidy rate, or the all-others rate, as applicable.

Respondent interested party. "Respondent interested party" means an interested party described in subparagraph (A) or (B) of section 771(9) of the Act.

Sale. A "sale" includes a contract to sell and a lease that is equivalent to a sale.

Secretary. "Secretary" means the Secretary of Commerce or a designee. The Secretary has delegated to the Assistant Secretary for Import Administration the authority to make determinations under title VII of the Act and this Part.

Section 753 review. "Section 753 review" means a review under section 753 of the Act.

Section 762 review. "Section 762 review" means a review under section 762 of the Act.

Segment of proceeding.

(1) *In general.* An antidumping or countervailing duty proceeding consists of one or more *segments*. "Segment of a proceeding" or "segment of the proceeding" refers to a portion of the proceeding that is reviewable under section 516A of the Act.

(2) *Examples.* An antidumping or countervailing duty investigation or a review of an order or suspended investigation, or a scope inquiry under § 351.225, each would constitute a segment of a proceeding.

Short-term loan. "Short-term loan" means a loan, the terms of repayment for which are one year or less.

Sunset review. "Sunset review" means a review under section 751(c) of the Act.

Suspension of liquidation. "Suspension of liquidation" refers to a suspension of liquidation ordered by the Secretary under the authority of title VII of the Act, the provisions of this Part, or section 516a(g)(5)(C) of the Act, or by a court of the United States in a lawsuit involving action taken, or not taken, by the Secretary under title VII of the Act or the provisions of this Part.

Third country. For purposes of subpart D, "third country" means a country other than the exporting country and the United States. Under section 773(a) of the Act and subpart D, in certain circumstances the Secretary may determine normal value on the basis of sales to a third country.

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URAA. "URAA" means the Uruguay Round Agreements Act.

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§ 351.103 Central Records Unit and Administrative Protective Order Unit.

(a) Import Administration's Central Records Unit maintains a Public File Room in Room B-099 and a Dockets Center in Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. The office hours of the Public File Room and Dockets Center are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each antidumping and countervailing duty proceeding (see § 351.104), the Subsidies Library (see section 775(2) and section 777(a)(1) of the Act), and the service list for each proceeding (see paragraph (c) of this section).

(b) *Filing of documents with the Department.* While persons are free to provide Department officials with courtesy copies of documents, no document will be considered as having been received by the Secretary unless it is submitted to the Import Administration Dockets Center in Room 1870 and is stamped with the date and time of receipt.

(c) *Service list.* The Central Records Unit will maintain and make available a service list for each segment of a proceeding. Each interested party that asks to be included on the service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment. The service list for an application for a scope ruling is described in § 351.225(n).

(d) Import Administration's Administrative Protective Order Unit (APO Unit) is located in Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230. The office hours of the APO Unit are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the APO Unit is responsible for issuing administrative protective orders (APOs), maintaining the APO service list, releasing business

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proprietary information under APO, and APO violation investigations. The APO Unit also is the contact point for questions and concerns regarding claims for business proprietary treatment of information and proper public versions of submissions under § 351.105 and § 351.304.

[63 FR 24401, May 4, 1998]

§ 351.104 Record of proceedings.

(a) *Official record—(1) In general.* The Secretary will maintain in the Central Records Unit an official record of each antidumping and countervailing duty proceeding. The Secretary will include in the official record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of a proceeding that pertains to the proceeding. The official record will include government memoranda pertaining to the proceeding, memoranda of *ex parte* meetings, determinations, notices published in the FEDERAL REGISTER, and transcripts of hearings. The official record will contain material that is public, business proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each segment of the proceeding.

(2) *Material returned.* (i) The Secretary, in making any determination under this part, will not use factual information, written argument, or other material that the Secretary returns to the submitter.

(ii) The official record will include a copy of a returned document, solely for purposes of establishing and documenting the basis for returning the document to the submitter, if the document was returned because:

(A) The document, although otherwise timely, contains untimely filed new factual information (see § 351.301(b));

(B) The submitter made a nonconforming request for business proprietary treatment of factual information (see § 351.304);

(C) The Secretary denied a request for business proprietary treatment of factual information (see § 351.304);