

§ 351.222

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subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated countervailable subsidy.

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§ 351.222 Revocation of orders; termination of suspended investigations.

(a) *Introduction.* “Revocation” is a term of art that refers to the end of an antidumping or countervailing proceeding in which an order has been issued. “Termination” is the companion term for the end of a proceeding in which the investigation was suspended due to the acceptance of a suspension agreement. Generally, a revocation or termination may occur only after the Department or the Commission have conducted one or more reviews under section 751 of the Act. This section contains rules regarding requirements for a revocation or termination; and procedures that the Department will follow in determining whether to revoke an order or terminate a suspended investigation.

(b) *Revocation or termination based on absence of dumping.* (1)(i) In determining whether to revoke an antidumping duty order or terminate a suspended antidumping investigation, the Secretary will consider:

(A) Whether all exporters and producers covered at the time of revocation by the order or the suspension agreement have sold the subject merchandise at not less than normal value for a period of at least three consecutive years; and

(B) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

(ii) If the Secretary determines, based upon the criteria in paragraphs (b)(1)(i)(A) and (B) of this section, that the antidumping duty order or suspension of the antidumping duty investigation is no longer warranted, the Secretary will revoke the order or terminate the investigation.

(2)(i) In determining whether to revoke an antidumping duty order in part, the Secretary will consider:

(A) Whether one or more exporters or producers covered by the order have sold the merchandise at not less than

normal value for a period of at least three consecutive years;

(B) Whether, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value; and

(C) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

(ii) If the Secretary determines, based upon the criteria in paragraphs (b)(2)(i)(A) through (C) of this section, that the antidumping duty order as to those producers or exporters is no longer warranted, the Secretary will revoke the order as to those producers or exporters.

(3) Revocation of nonproducing exporter. In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will revoke an order in part under paragraph (b)(2) of this section only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for the revocation.

(c) *Revocation or termination based on absence of countervailable subsidy.* (1)(i) In determining whether to revoke a countervailing duty order or terminate a suspended countervailing duty investigation, the Secretary will consider:

(A) Whether the government of the affected country has eliminated all countervailable subsidies on the subject merchandise by abolishing for the subject merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable;

(B) Whether exporters and producers of the subject merchandise are continuing to receive any net countervailable subsidy from an abolished program referred to in paragraph (c)(1)(i)(A) of this section; and

(C) Whether the continued application of the countervailing duty order or suspension of countervailing duty

investigation is otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(1)(i)(A) through (C) of this section, that the countervailing duty order or suspension of the countervailing duty investigation is no longer warranted, the Secretary will revoke the order or terminate the suspended investigation.

(2)(i) In determining whether to revoke a countervailing duty order or terminate a suspended countervailing duty investigation, the Secretary will consider:

(A) Whether all exporters and producers covered at the time of revocation by the order or the suspension agreement have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years; and

(B) Whether the continued application of the countervailing duty order or suspension of the countervailing duty investigation is otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(2)(i)(A) and (B) of this section, that the countervailing duty order or the suspension of the countervailing duty investigation is no longer warranted, the Secretary will revoke the order or terminate the suspended investigation.

(3)(i) In determining whether to revoke a countervailing duty order in part, the Secretary will consider:

(A) Whether one or more exporters or producers covered by the order have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years;

(B) Whether, for any exporter or producer that the Secretary previously has determined to have received any net countervailable subsidy on the subject merchandise, the exporter or producer agrees in writing to their immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, has received any net countervailable subsidy on the subject merchandise; and

(C) Whether the continued application of the countervailing duty order is

otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(3)(i)(A) through (C) of this section, that the countervailing duty order as to those exporters or producers is no longer warranted, the Secretary will revoke the order as to those exporters or producers.

(4) Revocation of nonproducing exporter. In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will revoke an order in part under paragraph (c)(3) of this section only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for the revocation.

(d) *Treatment of unreviewed intervening years*—(1) *In general*. The Secretary will not revoke an order or terminate a suspended investigation under paragraphs (b) or (c) of this section unless the Secretary has conducted a review under this subpart of the first and third (or fifth) years of the three-and five-year consecutive time periods referred to in those paragraphs. The Secretary need not have conducted a review of an intervening year (*see* paragraph (d)(2) of this section). However, except in the case of a revocation or termination under paragraph (c)(1) of this section (government abolition of countervailable subsidy programs), before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply.

(2) *Intervening year*. “Intervening year” means any year between the first and final year of the consecutive period on which revocation or termination is conditioned.

(e) *Request for revocation or termination*—(1) *Antidumping proceeding*.

During the third and subsequent annual anniversary months of the publication of an antidumping order or suspension of an antidumping investigation, an exporter or producer may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (b) of this section with regard to that person if the person submits with the request:

(i) The person's certification that the person sold the subject merchandise at not less than normal value during the period of review described in § 351.213(e)(1), and that in the future the person will not sell the merchandise at less than normal value;

(ii) The person's certification that, during each of the consecutive years referred to in paragraph (b) of this section, the person sold the subject merchandise to the United States in commercial quantities; and

(iii) If applicable, the agreement regarding reinstatement in the order or suspended investigation described in paragraph (b)(2)(iii) of this section.

(2) *Countervailing duty proceeding.* (i) During the third and subsequent annual anniversary months of the publication of a countervailing duty order or suspension of a countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(1) of this section if the government submits with the request its certification that it has satisfied, during the period of review described in § 351.213(e)(2), the requirements of paragraph (c)(1)(i) of this section regarding the abolition of countervailable subsidy programs, and that it will not reinstate for the subject merchandise those programs or substitute other countervailable subsidy programs;

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

(A) Certifications for all exporters and producers covered by the order or suspension agreement that they have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (see paragraph (c)(2)(i) of this section);

(B) Those exporters' and producers' certifications that they will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (see paragraph (c)(2)(ii) of this section); and

(C) A certification from each exporter or producer that, during each of the consecutive years referred to in paragraph (c)(2) of this section, that person sold the subject merchandise to the United States in commercial quantities; or

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

(A) A certification that the person has not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (see paragraph (c)(3)(i) of this section), including calculations demonstrating the basis for the conclusion that the person received zero or *de minimis* net countervailable subsidies during the review period of the administrative review in connection with which the person has submitted the request for revocation;

(B) A certification that the person will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (see paragraph (c)(3)(ii) of this section);

(C) The person's certification that, during each of the consecutive years referred to in paragraph (c)(3) of this section, the person sold the subject

merchandise to the United States in commercial quantities; and

(D) The agreement described in paragraph (c)(3)(iii) of this section (reinstatement in order).

(f) *Procedures.* (1) Upon receipt of a timely request for revocation or termination under paragraph (e) of this section, the Secretary will consider the request as including a request for an administrative review and will initiate and conduct a review under § 351.213.

(2) In addition to the requirements of § 351.221 regarding the conduct of an administrative review, the Secretary will:

(i) Publish with the notice of initiation under § 351.221(b)(1), notice of “Request for Revocation of Order (in part)” or “Request for Termination of Suspended Investigation” (whichever is applicable);

(ii) Conduct a verification under § 351.307;

(iii) Include in the preliminary results of review under § 351.221(b)(4) the Secretary’s decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary decides that there is a reasonable basis to believe that the requirements for revocation or termination are met, publish with the notice of preliminary results of review under § 351.221(b)(4) notice of “Intent to Revoke Order (in Part)” or “Intent to Terminate Suspended Investigation” (whichever is applicable);

(v) Include in the final results of review under § 351.221(b)(5) the Secretary’s final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary determines that the requirements for revocation or termination are met, publish with the notice of final results of review under § 351.221(b)(5) notice of “Revocation of Order (in Part)” or “Termination of Suspended Investigation” (whichever is applicable).

(3) If the Secretary revokes an order in whole or in part, the Secretary will order the suspension of liquidation terminated for the merchandise covered by the revocation on the first day after the period under review, and will in-

struct the Customs Service to release any cash deposit or bond.

(g) *Revocation or termination based on changed circumstances.* (1) The Secretary may revoke an order, in whole or in part, or terminate a suspended investigation if the Secretary concludes that:

(i) Producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) or suspended investigation pertains have expressed a lack of interest in the order, in whole or in part, or suspended investigation (*see* section 782(h) of the Act); or

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

(2) If at any time the Secretary concludes from the available information that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct a changed circumstances review under § 351.216.

(3) In addition to the requirements of § 351.221, the Secretary will:

(i) Publish with the notice of initiation (*see* § 353.221(b)(1), notice of “Consideration of Revocation of Order (in Part)” or “Consideration of Termination of Suspended Investigation” (whichever is applicable);

(ii) If the Secretary’s conclusion regarding the possible existence of changed circumstances (*see* paragraph (g)(2) of this section), is not based on a request, the Secretary, not later than the date of publication of the notice of “Consideration of Revocation of Order (in Part)” or “Consideration of Termination of Suspended Investigation” (whichever is applicable) (*see* paragraph (g)(3)(i) of this section), will serve written notice of the consideration of revocation or termination on each interested party listed on the Department’s service list and on any other person that the Secretary has reason to believe is a domestic interested party;

(iii) Conduct a verification, if appropriate, under § 351.307;

(iv) Include in the preliminary results of review, under § 351.221(b)(4), the Secretary’s decision whether there is a reasonable basis to believe that

changed circumstances warrant revocation or termination;

(v) If the Secretary's preliminary decision is that changed circumstances warrant revocation or termination, publish with the notice of preliminary results of review, under § 351.221(b)(4), notice of "Intent to Revoke Order (in Part)" or "Intent to Terminate Suspended Investigation" (whichever is applicable);

(vi) Include in the final results of review, under § 351.221(b)(5), the Secretary's final decision whether changed circumstances warrant revocation or termination; and

(vii) If the Secretary determines that changed circumstances warrant revocation or termination, publish with the notice of final results of review, under § 351.221(b)(5), notice of "Revocation of Order (in Part)" or "Termination of Suspended Investigation" (whichever is applicable).

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

(h) *Revocation or termination based on injury reconsideration.* If the Commission determines in a changed circumstances review under section 751(b)(2) of the Act that the revocation of an order or termination of a suspended investigation is not likely to lead to continuation or recurrence of material injury, the Secretary will revoke, in whole or in part, the order or terminate the suspended investigation, and will publish in the FEDERAL REGISTER notice of "Revocation of Order (in Part)" or "Termination of Suspended Investigation" (whichever is applicable).

(i) *Revocation or termination based on sunset review—(1) Circumstances under which the Secretary will revoke an order or terminate a suspended investigation.* In the case of a sunset review under § 351.218, the Secretary will revoke an order or terminate a suspended investigation:

(i) Under section 751(c)(3)(A) of the Act, where no domestic interested

party files a Notice of Intent to Participate in the sunset review under § 351.218(d)(1), or where the Secretary determines under § 351.218(e)(1)(i)(C) that domestic interested parties have provided inadequate response to the Notice of Initiation, not later than 90 days after the date of publication in the FEDERAL REGISTER of the notice of initiation;

(ii) Under section 751(d)(2) of the Act, where the Secretary determines that revocation or termination is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (*see* section 752(b) and section 752(c) of the Act), as applicable, not later than 240 days (or 330 days where a full sunset review is fully extended) after the date of publication in the FEDERAL REGISTER of the notice of initiation; or

(iii) Under section 751(d)(2) of the Act, where the International Trade Commission makes a determination, under section 752(a) of the Act, that revocation or termination is not likely to lead to continuation or recurrence of material injury, not later than seven days after the date of publication in the FEDERAL REGISTER of the International Trade Commission's determination concluding the sunset review.

(2) *Effective date of revocation—(i) In general.* Except as provided in paragraph (i)(2)(ii) of this section, where the Secretary revokes an order or terminates a suspended investigation, pursuant to section 751(c)(3)(A) or section 751(d)(2) of the Act (*see* paragraph (i)(1) of this section), the revocation or termination will be effective on the fifth anniversary of the date of publication in the FEDERAL REGISTER of the order or suspended investigation, as applicable. This paragraph also applies to subsequent sunset reviews of transition orders (*see* paragraph (i)(2)(ii) of this section and section 751(c)(6)(A)(iii) of the Act).

(ii) *Transition orders.* Where the Secretary revokes a transition order (defined in section 751(c)(6)(C) of the Act) pursuant to section 751(c)(3)(A) or section 751(d)(2) of the Act (*see* paragraph (i)(1) of this section), the revocation or termination will be effective on January 1, 2000. This paragraph does not apply to subsequent sunset reviews of

transition orders (*see* section 751(c)(6)(A)(iii) of the Act).

(j) *Revocation of countervailing duty order based on Commission negative determination under section 753 of the Act.* The Secretary will revoke a countervailing duty order, and will order the refund, with interest, of any estimated countervailing duties collected during the period liquidation was suspended under section 753(a)(4) of the Act upon being notified by the Commission that:

(1) The Commission has determined that an industry in the United States is not likely to be materially injured if the countervailing duty order in question is revoked (*see* section 753(a)(1) of the Act); or

(2) A domestic interested party did not make a timely request for an investigation under section 753(a) of the Act (*see* section 753(a)(3) of the Act).

(k) *Revocation based on Article 4/Article 7 review—(1) In general.* The Secretary may revoke a countervailing duty order, in whole or in part, following an Article 4/Article 7 review under § 351.217(c), due to the imposition of countermeasures by the United States or the withdrawal of a countervailable subsidy by a WTO member country (*see* section 751(g)(2) of the Act).

(2) *Additional Requirements.* In addition to the requirements of § 351.221, if the Secretary determines to revoke an order as the result of an Article 4/Article 7 review, the Secretary will:

(i) Conduct a verification, if appropriate, under § 351.307;

(ii) Include in the final results of review, under § 351.221(b)(5), the Secretary's final decision whether the order should be revoked;

(iii) If the Secretary's final decision is that the order should be revoked:

(A) Determine the effective date of the revocation;

(B) Publish with the notice of final results of review, under § 351.221(b)(5), a notice of "Revocation of Order (in Part)," that will include the effective date of the revocation; and

(C) Order any suspension of liquidation ended for merchandise covered by the revocation that was entered on or after the effective date of the revocation, and instruct the Customs Service to release any cash deposit or bond.

(l) *Revocation under section 129.* The Secretary may revoke an order under section 129 of the URAA (implementation of WTO dispute settlement).

(m) *Transition rule.* In the case of time periods that, under section 291(a)(2) of the URAA, are subject to review under the provisions of the Act prior to its amendment by the URAA, and for purposes of determining whether the three-or five-year requirements of paragraphs (b) and (c) of this section are satisfied, the following rules will apply:

(1) *Antidumping proceedings.* The Secretary will consider sales at not less than foreign market value to be equivalent to sales at not less than normal value.

(2) *Countervailing duty proceedings.* The Secretary will consider the absence of a subsidy, as defined in section 771(5) of the Act prior to its amendment by the URAA, to be equivalent to the absence of a countervailable subsidy, as defined in section 771(5) of the Act, as amended by the URAA.

(n) *Cross-reference.* For the treatment in a subsequent investigation of business proprietary information submitted to the Secretary in connection with a changed circumstances review under § 351.216 or a sunset review under § 351.218 that results in the revocation of an order (or termination of a suspended investigation), *see* section 777(b)(3) of the Act.

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§ 351.223 Procedures for initiation of downstream product monitoring.

(a) *Introduction.* Section 780 of the Act establishes a mechanism for monitoring imports of "downstream products." In general, section 780 is aimed at situations where, following the issuance of an antidumping or countervailing duty order on a product that is used as a component in another product, exports to the United States of that other (or "downstream") product increase. Although the Department is responsible for determining whether trade in the downstream product should be monitored, the Commission is responsible for conducting the actual