

CHAPTER 11

PREPARATION OF PRELIMINARY AND FINAL DETERMINATIONS,  
OTHER FEDERAL REGISTER NOTICES, AND OTHER DOCUMENTS

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LIST OF ACRONYMS & ABBREVIATIONS

A	ADVISORY
AD	ANTIDUMPING
APO	ADMINISTRATIVE PROTECTIVE ORDER
AS	ASSISTANT SECRETARY
CCIA	CHIEF COUNSEL FOR IMPORT ADMINISTRATION
CEP	CONSTRUCTED EXPORT PRICE
CFR	CODE OF FEDERAL REGULATIONS
COP	COST OF PRODUCTION
CRU	CENTRAL RECORDS UNIT
CV	CONSTRUCTED VALUE
DAS	DEPUTY ASSISTANT SECRETARY
DOC	DEPARTMENT OF COMMERCE
EP	EXPORT PRICE
F	FULL
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENTS ON TARIFFS AND TRADE

LIST OF ACRONYMS & ABBREVIATIONS

HTSUS	HARMONIZED TARIFF SYSTEM OF THE UNITED STATES
IA	IMPORT ADMINISTRATION
ICA	IMPORT COMPLIANCE ASSISTANT
IP	INTERESTED PARTY
ITC	INTERNATIONAL TRADE COMMISSION
N	NO
NME	NON-MARKET ECONOMY
NV	NORMAL VALUE
OA	OFFICE OF ACCOUNTING
OD	OFFICE DIRECTOR
OP	OFFICE OF POLICY
PM	PROGRAM MANAGER
POI	PERIOD OF INVESTIGATION
POR	PERIOD OF REVIEW
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT

January 22, 1998

LIST OF ACRONYMS & ABBREVIATIONS

THE ACT

THE TARIFF ACT OF 1930, AS AMENDED

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References:

The Tariff Act of 1930, as amended (the Act)

Section 733(d) - preliminary customs notification for investigations

Section 733(f) - preliminary determinations for investigations and the  
International Trade Commission (ITC) and interested party  
notifications

Section 735(c) - final customs notification for investigations

Section 735(d) - final determinations for investigations and ITC and interested  
party notifications

Section 735(e) - correction of ministerial errors for final determinations for  
investigations

Section 736(c) - expedited **administrative reviews**

Section 751(h) - correction of ministerial errors for final determinations for  
administrative reviews

Sections 751(a) (b) and (c) - time limits for administrative review  
determinations

Section 777(i) - publication of determinations; requirements for final  
determinations for investigations and administrative reviews

Section 781(f) - time limits for scope reviews

Department of Commerce (DOC) Regulations

19 CFR 351.205 - preliminary determinations for investigations, interested party,  
ITC, and Customs notifications

19 CFR 351.210 - final determinations, interested party, ITC, and Customs  
notifications for investigations

19 CFR 351.213 - time limits and exceptions for administrative review  
determinations

19 CFR 351.224 - preliminary and final determination disclosures and  
corrections of ministerial errors for investigations and  
administrative reviews

19 CFR 351.225 - time limits for scope determinations

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SAA

Section A.10 - public notice and explanation of determinations for investigations

Section C.5 - provisional measures for investigations

Section C.7.a - time limits for completion of administrative reviews

Section C.10 - publication of determinations for investigations and  
administrative reviews

Antidumping Agreement

Article 6.9 - preliminary determination disclosures for investigations

Article 7 - provisional measures for investigations

Article 11.4 - procedures for administrative reviews

Article 12.2 - public notice of preliminary and final determinations for  
investigations

Article 12.2.1 - public notice of provisional measures for investigations

Article 12.3 - public notice of determinations for administrative reviews

**I. TIME LIMITS FOR PRELIMINARY AND FINAL DETERMINATIONS FOR  
INVESTIGATIONS, ADMINISTRATIVE REVIEWS, AND SCOPE  
DETERMINATIONS**

**A. Time Limits for Investigations**

Under section 733(b)(1)(A) of the Act, a preliminary determination in an investigation shall be made within 140 days of the date on which the DOC initiates an investigation. Preliminary determinations for “short life cycle” merchandise shall be made within either 100 days or 80 days from the date of the initiation (see 733(b)(1)(B)) depending on whether the manufacturer is a second-time or multiple offender. Finally, preliminary determinations for investigations where there is a waiver of **verification** shall be made within 75 days after initiation (see 733(b)(2)). (Note: this rarely occurs)

As required by section 735(a)(1) of the Act, the time limit for final determinations for all of the different types of investigations specified above is within 75 days after the date of

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the publication of the preliminary determination (see Chapter 12 for information on time limits for postponements of preliminary and final determinations for investigations).

**B. Time Limits for Administrative Reviews and Scope Determinations**

Under section 751(a)(3) of the Act, preliminary results of annual antidumping duty order and suspension agreement administrative reviews shall be made within 245 days after the last day of the anniversary month of the publication of the antidumping order or suspension agreement. Under section 751(a)(2)(B), for reviews involving new shippers, the preliminary results shall be made within 180 days after the date on which the review is initiated. There are no deadlines for preliminary results for changed circumstances or five-year administrative reviews. There are no preliminary results published for expedited reviews under section 736(c) of the Act or scope reviews under section 781 of the Act.

Section 751(a)(3) of the Act requires that final results of administrative reviews of antidumping duty orders or suspension agreements be made within 120 days after the date on which the preliminary results are published. Section 751(a)(2)(B) requires that final results for new shipper reviews be made within 90 days after the preliminary results are issued. For changed circumstances and five-year administrative reviews, section 751(b)(5) requires that final determinations be made within 240 days after the date on which the review was initiated. For expedited reviews under section 736(c) of the Act, final determinations are due 90 days after the date of publication of the order. For scope reviews under section 781(f), final determinations, to the maximum extent practicable, shall be made within 300 days from the date of initiation of the **circumvention** inquiry (see Chapter 12 for information on time limits for postponements of preliminary and final results of administrative reviews).

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## II. PRE-SIGNATURE RESPONSIBILITIES

### A. Federal Register Notices and Other Documents

#### 1. Background

- a. Preliminary/Final Determination Federal Register (FR) Notices. For investigations, the DOC is required to publish a FR notice of “Affirmative (or Negative) Preliminary Antidumping Determination,” including the **dumping** margin. The DOC is also required to publish a FR notice of “Affirmative (or Negative) Final Antidumping Duty Determination,” including the final dumping margins. For administrative reviews, the DOC is required to publish FR notices of “Preliminary Results of Administrative Review” and “Final Results of Administrative Review,” including the assessment rates for individual exporters and producers (see part E.4. of this section for concurrence chain information).
- b. Other FR Documents: In addition to preliminary and final determination FR documents for investigations and administrative reviews, there are many other FR documents that may be prepared during an antidumping (AD) proceeding. For a list of additional types of FR documents and the required concurrence chains, see part E.4. of this section. See part D. of this section to determine the procedures you must follow in preparing these documents.
- c. Other Documents: In addition to FR documents, you will be required to prepare other types of documents that will require movement through a concurrence chain. For a list of these documents, see part E.5. of this section. Consult with your supervisor or program manager (PM) to determine the procedures you must follow in preparing these documents.

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**B. Concurrence Meetings**

Concurrence meetings for preliminary and final determinations for investigations and administrative reviews must be held at each of the following levels, in the order noted:

1. Team

The case analyst and assigned staff from the Office of the Chief Counsel for Import Administration (CCIA), and Office of Accounting (OA) (when appropriate) meet to discuss the major issues in the investigation or review. Once issues are defined, an effort is made to reconcile differing views. If consensus appears to be impossible, the representatives of each office are requested to discuss the issues with their supervisors for resolution. To avoid last-minute conflicts and to identify issues for supervisors as early as possible, this meeting should take place, if possible, at least 30 days before a preliminary determination and shortly after parties file their case briefs and any hearing is held for a final determination.

2. Supervisor or PM

When case analysts meet with their PMs to discuss any outstanding issues, team members from CCIA and OA should attend, when appropriate. Concurrence memos (or whatever is used in their place, see below) (hereinafter referred to as concurrence memos) are required to be delivered no later than one day in advance of the meeting, but preferably sooner .

3. Office Director (OD)

The case analyst will schedule a team concurrence meeting with the office director, if deemed necessary. Concurrence memos are required to be delivered one day in advance of the meeting.

4. Deputy Assistant Secretary (DAS) and Assistant Secretary (AS)

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The case analyst must provide a copy of the concurrence memo to the DAS at least one day prior to the concurrence meeting with the DAS (always check to see what the current practice may be for your DAS). If necessary, a meeting with the AS will then be scheduled. In that event, a copy of the concurrence memo to the AS must also be provided at least one day prior to the concurrence meeting with the AS (always check to see what current practice may be). For both meetings, the team, supervisor or PM, and OD meet with each of the aforementioned parties to discuss the highlights of the investigation or administrative review and the pending decision. The team should be prepared to address any pertinent questions regarding the investigation.

### **C. Concurrence Memos**

#### **1. Early Warning Memo**

This memo identifies and describes the key issues for consideration in the investigation or administrative review in advance of the concurrence memo and/or concurrence meeting. This type of memo should be prepared as soon as potential major issues are determined in consultation with your team, and forwarded to the DAS for feedback and approval. It should be written in bullet form and be no longer than one page. Recommendations are not made in these memos. A copy should be sent to the OD when the DAS copy is sent.

#### **2. Concurrence Memo Content**

In the past, we have prepared a concurrence memo for both preliminary and final determinations for investigations. The concurrence memo would typically contain the following information:

- a. team members: a list of the names and offices of all personnel in your DAS group, CCIA and OA;

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- b. case calendar: as appropriate, a list of important investigation, including the date of the filing of the petition, date of initiation, the review period, date of ITC preliminary or final determination, date of DOC preliminary or final determination; and date of the order;
  - c. dates for the **period of investigation** (POI);
  - d. scope of the investigation or administrative review: a statement describing the product under investigation or review (usually same as in the notice of initiation);
  - e. quantity and value of imports: a chart listing the year, quantities and values of imports of the product under investigation for two or three complete years prior to the POI, depending on the availability of data (see the DOC IM-146 import statistics);
  - f. petitioner and respondents: list of the participants and respective counsel involved in the investigation;
  - g. charges and adjustments: for each company under investigation, the calculation of **normal value** (NV) and export price (EP) or **constructed export price** (CEP), including the applicable deductions from and additions to the price, and
  - h. issues: identification of any major issues for consideration in the investigation (consult with your supervisor or PM and team members for final identification of the major issues).
3. Concurrence Memo Alternatives

For your information, different types of memos have been prepared for different cases, depending on the work load and the complexities of each case. Before you start to draft your concurrence memo, find out what type of

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concurrence memo was used in the most recent case involving your DAS and then consult with your PM on the type of memo you should prepare.

Different variations are possible; these procedures have been followed over the past year:

- a. The preparation of a full concurrence memo including all information outlined above for both the preliminary and final determinations. Alternatively, an abbreviated concurrence memo that only includes part of the information outlined above (although the issues section would definitely need to be included) for both the preliminary and final determinations. Consult with your supervisor or PM before you attempt to do an abbreviated memo.
- b. Do a concurrence memo just for the preliminary determination but, use the “Interested Party Comments” section of the final determination FR notice to lay out the issues that need to be decided for the final determination. This has worked in the past since most issues in a final determination are raised by interested parties anyway. An informal decision memo for other small issues not addressed by interested parties (and therefore not included in the FR notice) will probably need to be developed. Also, because the FR notice is drafted late in a case, this method may cause difficulty where there is significant internal disagreement about an issue. Consult with your supervisor or PM and team members about this.
- c. The preparation of a decision memo that only contains issues in place of the concurrence memo for both the preliminary and final determinations. This could include all issues raised by interested parties as well as smaller issues not specifically addressed in the FR notice. Such a memo will be necessary when any issue requires discussion of **proprietary information** which cannot be included in the FR notice.

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**D. Preparation and Circulation of Concurrence Packages**

The following documents should be prepared and included in the concurrence package for any preliminary or final determination:

1. Fact Sheet.

For investigations, prepare a fact sheet for the Office of Public, Congressional & Intergovernmental Affairs. The fact sheet is released on announcement day, and it should include a brief description of the scope, dumping margins, IM-145 import volume and value data, case calendar, and name(s) of petitioner(s) and respondent(s). Analysts should check with their DAS's special assistant office on the need to prepare a fact sheet for an investigation or review.

2. ITC Letter.

A letter (to be signed by the DAS) advising the ITC Chairman of our determination for an investigation.

3. E-mail

For investigations, prepare e-mail instructions to the U.S. Customs Service advising field offices of our determination and instructions on how they should proceed (see Chapter 18 for detailed instructions on e-mails for administrative reviews).

4. FR Notice

The case analyst, in consultation with the other case analyst(s) and/or supervisor or PM, begins preparation of the FR notice after completion of the review of the questionnaire response (for prelims) or the case briefs and rebuttals (for finals) by following these steps:

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First, obtain a copy of the FR notice used in the most recent antidumping determination and adapt the information as necessary, including the following topics: 1) the applicable statutory and regulatory citations; 2) a summary; 3) the case history; 4) the scope of the investigation or review; 5) the POI or POR; 6) the use of **facts available** (if applicable); 7) **separate rates** (for NME cases); 8) fair value comparisons; 9) EP and/or CEP; 10) NV, which may include any of the following topics: **home market** price, third-country price, sales made below **cost of production** (COP) over an extended period of time, **constructed value** (CV), **factors of production** and valuation of factors of production in NME cases); 11) country-wide rate (in NME cases); 12) verification, if appropriate; 13) interested party comments (for final determinations only); 14) suspension of liquidation for investigations; 15) ITC notification for investigations; and 16) public comment (for preliminary determinations only).

17) For investigations, check to ensure that your Harmonized Tariff Systems of the United States (HTSUS) numbers are current. If you move into a new calendar year since the date of your last FR action notice, the HTSUS numbers may have changed

#### 5. Concurrence Record Sheet for FR Notices

All FR notices for the preliminary and final determinations must include a "Concurrence Record," a standard form obtainable electronically or from an import compliance assistant (ICA) or program secretary. The concurrence record must be completed by the case analyst and ready for circulation with the final version of the FR notice. This is the sheet on which the parties in the concurrence chain initial when they concur with the FR notice. The FR notice must include initials from all parties listed on the sheet before it is passed to the appropriate official for signature (see section B.4 of this chapter to determine the names that will be placed on the concurrence record sheet for the action involved). The following information must be included on the concurrence record in the applicable blanks:

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- a. subject of the FR notice and memo - copy the title/country from the top line of the FR notice;
  - b. name and office of the originator - fill in the names of the team members and appropriate office, including yourself and the appropriate representatives from your DAS group, CCIA and OA;
  - c. telephone number of the analyst circulating the FR notice;
  - d. deadline date - should be the date the signature is due for the notice. However, since notices are due to the AS one week in advance, you should note that deadline as well; and
  - e. 'submitted to' blocks - as appropriate, and in descending order, each of the following persons must be included: supervisor or PM, senior counsel from CCIA, director of OA (if there is a CV or COP analysis), office director (OD), DAS, and AS. Names of team members should appear in the block where your name is placed.
6. Circulation Requirements

Circulate copies of the FR notice to any other case analyst(s) and the team leader involved in the investigation or review for comment, and edit documents accordingly once you receive their comments.

Next, circulate copies of the FR notice to team members, including members in CCIA, and OA, in the event of a CV or COP analysis. Always set a date for return of the draft with comments. Review comments with any other case analysts and the team leader, and edit the document accordingly. Consult with your supervisor or PM if you do not receive timely comments.

Finally, prepare the document for circulation with the concurrence record described in part D.5. of this section.

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7. Timetable

In general, the case analyst should follow the timetable outlined below to ensure adequate review and concurrence prior to determination due date of the FR notice (check with your supervisor or PM to ensure that this is the appropriate timetable for your case as these deadlines change from time to time or from DAS to DAS):

- a. Supervisor or PM: In general, a draft of the FR notice should be given to the supervisor at least 14 days prior to the preliminary or final determination due date.
- b. OD: A draft of the FR notice should be given to the OD at least 12 days prior to the preliminary or final determination due date. Unless time does not permit, the OD, the senior attorney in CCIA and must concur on the FR before it is given to the DAS.
- c. DAS: A final concurrence version of the FR notice should be given to the DAS at least eight to ten days prior to the preliminary or final determination due date.
- d. AS: A final concurrence version of the FR notice should be in the office of the AS at least seven calendar days prior to the determination due date, approved by all the persons identified on the concurrence record (always check to determine current policy for delivery time).

**E. Concurrence Levels**

The following categories refer to the level of concurrence necessary for the many different FR packages that are prepared for circulation on particular actions. Note that all documents must at least be agreed to by your team.

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1. No Concurrence (N)

The analyst will notify everyone in the chain below the signing official by e-mail, but the document is directly passed from the team (the team includes the case analyst, case attorney, case policy analyst, and case accountant, if appropriate) to the signing official. However, because of occasional difficulties in the past, analysts should always check to see that documents have been received and opened by addressees. Therefore, everyone is informed, but only the signing official has to “concur.” This category does not apply to the preparation of preliminary and final determinations.

2. “Advisory” (Limited) Concurrence (A)

The document is concurred on by the team members and the supervisor. The document then goes directly to the signing official. The rest of the people in the chain below the signing official receive the document by e-mail and it is their responsibility to raise any issues they have with the team within a reasonable time period (e.g., two days; note: the team will determine what is a “reasonable” time period).

3. Full Concurrence (F)

This is reserved for major documents/issues. This category includes all preliminary and final determination decision memos and FR notices.

4. List of FR Notices.

The following list shows the concurrence chains for various types of FR notices:

a. Investigations

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<u>Concurrence</u>	<u>Signing Official</u>	<u>Description</u>
F	AS	Initiation
F	AS	Postponement of Initiation
F	AS	Preliminary Determination
A	DAS	Postponement of Preliminary. Determination.
F	AS	Amended Prelim. Determination
F	AS	Agreement Suspending the Investigation
F	AS	Final Determination
A	DAS	Postponement of Final Determination
F	AS	Amended Final Determination
A	DAS	Order
F	DAS	Critical Circumstances
F	AS	<b>Termination</b> of Investigation
F	AS	Notice of Court Decision - change in Department policy
A	DAS	Notice of Court Decision - “Timken notice”

b. Administrative Reviews

<u>Concurrence</u>	<u>Signing Official</u>	<u>Description</u>
N	DAS	Opportunity to Request Review
N	DAS	Initiation
F	AS	Preliminary Results of Review
A	DAS	Postponement of Prelim. Results
F	AS	Final Results
A	DAS	Postponement of Final Results
F	AS	Amended Final Results
A	DAS	Termination of Admin. Review
F	AS	Results of Changed Circumstances

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		AD Administrative Review
F	AS	Notice of Price Determination (Suspension Agreement)
F	AS	Terminate Suspended Investigation
F	AS	Terminate Suspension Agreement
N	DAS	Intent to Revoke Order - old law procedure will be followed for old law cases
N	DAS	Determination to Revoke Order - old reg procedure will be followed for old reg cases
F	AS	Intent to Revoke Order
F	AS	Determination to Revoke Order
F	AS	Initiation of Anti circumvention Inquiry
F	DAS*	Preliminary Determination of Scope Inquiry
F	DAS*	Final Determination of Scope Inquiry
N	DAS	Quarterly Notice of Scope Rulings
F	DAS	Notice of Scope Amendment
F	AS	Notice of Court Decision - change in Department policy
A	DAS	Notice of Court Decision - "Timken notice"
A	AS	No Comment Finals
A	AS	Initiation of New Shipper Reviews
F	AS	Initiation of Changed Circumstance Review
A	AS	No Shipment Finals

\* Except for complicated cases. See your supervisor or PM on complex issues.

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5. List of Other Documents.

The following list shows the concurrence chain for other types of investigative and administrative review documents that may be prepared:

<u>Concurrence</u>	<u>Signing Official</u>	<u>Description</u>
N	PM	Draft petition comment/deficiency list
N	PM	Petition deficiency list
A	DAS	Initiation Checklist
N	PM	Interested Party letters
A-F	DAS	Decision Memoranda
N	PM	Embassy Notification
N-A	PM	Questionnaire
N	PM	Questionnaire cover letters
A	PM	Supplemental questionnaires
<u>Concurrence</u>	<u>Signing Official</u>	<u>Description</u>
N	OD	Deadline extension requests
N	PM	Calculation Memo
N	OD	Suspension agreement analysis memo
F	OD	Quarterly prelim and final NV determination (suspension agreement)
N	PM	Verification outline
N	PM	Verification Reports
A	PM	Customs e-mail (initiation, prelim., final, order, amendments)
A	OD	Clerical error memos
F	AS	Draft Remand Results
F	AS	Final Remand Results
N	DAS	Early Warning Memoranda
A-F	DAS	Briefing Papers

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N	DAS	Factual Taskers as indicated
N	DAS	Controlled correspondence as indicated
N	OD	Scope Inquiry Packages
N-A	OD	Scope Initiations
N-A	DAS	Scope Decisions
N-A	OD	Return/Rejection of Data
N-A	OD	COP initiations
A	OD	Automatic Liquidation E-mail (note: scope team must concur)
A	OD	Liquidation Instructions - (CCIA must confirm no pending litigation)
N-A	PM	Other Correspondence: Soliciting matching comments, factor values, responding to inquiries about the case, etc.

### **F. Calculation Review Panel**

All margin calculations must be checked by the designated calculation review panel prior to signature of the FR by the AS (see Chapter 9, section V, for information on calculation review panels).

## **III. POST-SIGNATURE RESPONSIBILITIES**

The case analyst is responsible for ensuring that the following tasks are completed after the signature and announcement of each preliminary and final determination in an investigation or review.

### **A. Announcement of Results**

#### **1. Phone Calls**

After consultation with the supervisor or PM and/or other analysts, telephone

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or cable each of the following entities for investigations or reviews, as appropriate:

- a. U.S. embassy of foreign government(s) (investigations only);
- b. petitioner(s) or counsel for petitioner(s);
- c. respondent(s) or counsel for respondent(s);
- d. Market Analysis and Compliance country desk officer (investigations only); and
- e. analyst at the ITC (investigations only).

2. Copies

Distribute copies of the signed and dated FR notice to the following:

- a. Central Records Unit (CRU): the FR notice with the original signature and three additional copies must be sent to the CRU (in addition, the diskette with FR notice saved in Word Perfect 5.1 and a certification form must also be provided to the CRU);
- b. Crimsing - CRU: two copies with the concurrence record sheet attached to the back must be crimsed (one to official and one to public file);
- c. Petitioner(s) and respondent(s): set up for messenger pick-up after telephone notification of the results;
- d. Analyst working file;
- e. Supervisor or PM, OD, DAS, and other IA DASs and Office Directors;  
and

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- f. Team members (if they request a copy);

The program ICA or secretary will distribute copies of the notice to other parties that regularly obtain copies of our notices. In addition, any other parties not identified above can pick-up copies of the FR notice in CRU, room B-099, prior to publication in the FR.

3. Interested Parties/ITC Letters

- a. Statutory Provisions: For investigations, in accordance with section 733(f) of the Act for preliminary determinations and 735(d) for final determinations, the DOC is required to notify all parties to the proceeding and the ITC of the results of its determinations. For reviews, there are no statutory requirements to notify. However, notifications are made as a matter of policy. Notifications to significant interested parties are made telephonically and followed up with a letter enclosing the FR. Other interested parties receive notice by mail only.
- b. ITC Notification: for investigations, the case analyst is required to prepare and send a letter, including a copy of the FR notice, to the Chairman of the ITC. This letter is signed by the DAS and the letter must include a statement regarding ITC access to all information included in our files in accordance with section 733(d)(3) of the Act and 19 CFR 351.205(d) for preliminary determinations and section 735(c)(1)(a) of the Act and 19 CFR 351.210(j) for final determinations.
- c. Special Interested Party Letters: for investigations, the case analyst is required to prepare and send a letter to each of the special interested parties identified below. A FR notice does not need to accompany these letters. Consult with the program ICA or secretary for the latest version of this letter and appropriate addresses. For administrative reviews, check with your supervisor or PM to determine if any of the individuals listed below should be notified.

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- 1) Special Trade Activities Division, Bureau of Economic and Business Affairs - U.S. Department of State;
  - 2) Majority Trade Counsel - Senate Finance Committee;
  - 3) Assistant General Counsel - Office of the U.S. Trade Representative;
  - 4) Minority Chief International Counsel - Senate Finance Committee
  - 5) Majority Staff Director, Subcommittee on Trade - Committee on Ways and Means
  - 6) Minority Staff Director, Subcommittee on Trade - Committee on Ways and Means
  - 7) Foreign Embassy Commercial Attache (include a copy of the FR notice if requested)
4. U.S. Customs Service Notifications for Investigations and Administrative Reviews
- a. Statutory Provisions
    - 1) Preliminary Affirmative Determinations: For investigations, in accordance with section 733(d) of the Act and 19 CFR 351.205(d), the DOC instructs the U.S. Customs Service (Customs) to require a cash deposit or a bond equal to the estimated dumping margin for each entry of the merchandise suspended by the affirmative preliminary determination. For reviews, there are no requirements to notify Customs of our preliminary determinations.
    - 2) Final Affirmative Determinations: For investigations, in accordance with section 735(c) of the Act and 19 CFR 351.210(d), the DOC instructs Customs to continue to require a cash deposit or bond equal to the estimated dumping margin for each suspended entry of the

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merchandise entered or withdrawn from warehouse on or after the date of publication of the affirmative final FR notice. There is no requirement to notify Customs for final determinations for reviews. However, section 736 (a) of the Act directs the DOC to notify Customs of assessment (appraisement) amounts (see Chapter 18, section I, for detailed information on assessment notifications).

- 3) Preliminary Negative Determination and Final Affirmative Determinations: For investigations, in accordance with section 735(c)(1)(C) of the Act and 19 CFR 351.210(d), the DOC instructs Customs to order the suspension of liquidation and the posting of a cash deposit or bond for unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final affirmative FR notice.
  - 4) Preliminary Affirmative and Final Negative Determination: For investigations, in accordance with section 735(c)(2) of the Act and 19 CFR 351.210(k), the DOC instructs Customs to terminate the suspension of liquidation, and to release any bond or other security, and refund any cash deposit upon publication of the final negative determination (see Chapter 18 for information on Customs notifications involving **revocations** for antidumping orders).
- b. Internal Procedures for E-Mail and AD Module Notifications for Investigations: For security reasons, your office (or DAS group) has only one or two people (usually ICAs or secretaries) who have been designated as the ones responsible for all Customs electronic communications. You should always know who these people are. Notification of Customs involves two actions: updating the AD module and sending Customs an e-mail message. The AD module is a computer database which contains relevant case information to identify those import entries which may be subject to suspension of liquidation and AD duties. E-mail is an electronic mail system which connects the various units within Customs to each other, to Commerce, and to participating importers and brokers nationwide.

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Since information from both the AD module and e-mail is needed to determine whether import entries are subject to suspension of liquidation and AD duties, it is important that the case information in the AD module and the e-mail message always be consistent with each other. Therefore, between the signature date and publication date of a FR notice, the following two actions need to be completed by IA personnel for investigations:

- 1.) update the AD module with the new case information from our determination, and
- 2.) transmit the final e-mail message informing Customs units and the importing public of the results of our determination.

For affirmative determinations, it is vital that both of these actions be accomplished before the FR publication date in order to ensure maximum enforcement of the AD law.

- c. Internal Procedures for E-Mail and AD Module Notifications for Administrative Reviews: Notifications to Customs involve updating the AD module to reflect cash deposit amounts for all exporters and producers subject to an antidumping duty order and a separate e-mail message identifying the updated rates and effective dates. Because weighted-average rates can vary substantially from review period to review period, it is extremely important that the information in these systems be as current as possible. Care must be taken to ensure that both systems contain the same information. E-mails containing detailed appraisal instructions for specific periods of review are sent to Customs (see Chapter 18 for specific information on e-mails).
- d. Internal Procedures in Detail for Initiations, Preliminary and Final Determinations, Orders, Terminations and Suspension Agreements:

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For investigations, a draft e-mail message informing Customs and the importing public of our determination will be included as part of the concurrence packages for initiation, preliminary and final determinations, amended preliminary and final determinations, orders, terminations and suspension agreements. The case analyst will draft the text of the e-mail message, and the program ICA will enter (but not send) the e-mail text to the Customs' computer. At this stage, all the information in the draft e-mail message will be complete except for the FR publication date.

The signed FR notice will be taken to the CRU in Room B099. Within a few days, CRU will notify the IA contact persons listed in the FR of the publication date. The analyst immediately should insert the publication date into the draft e-mail message and give copies to the ICA for e-mail transmission and for input into the AD module.

The ICA will insert the FR publication date into the e-mail message, update the module, and transmit the completed e-mail message to Customs. After review, Customs will transmit the final e-mail message to all Customs units, to participating importers and brokers, and to IA.

The publication date of an affirmative preliminary determination in the FR is the effective date at which Customs starts to suspend liquidation. The effective date does not change at the final determination; however, the margins may change. At the time of the publication of an AD order, we will instruct Customs that it must require a cash deposit. The use of bonds in lieu of cash deposits of potential duties by importers is no longer allowable.

If critical circumstances are found, the effective date which suspension of liquidation begins is 90 days before the publication date of the preliminary determination (see Chapter 10 for a discussion on the retroactive suspension of liquidation).

The final e-mail message from Customs will appear in the ICA's e-mail "In Box." The ICA must check the "In Box" every day for the final e-mail

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message and, when it arrives, must print the e-mail message and give it to the case analyst. The final e-mail message will contain a "Document ID" number and the Customs' transmission date should be put into the case file by the analyst.

If the final e-mail message has not been received by the afternoon before the FR publication date, the case analyst should immediately request that the ICA find out why the e-mail message has not been transmitted by Customs.

Every effort should be made to ensure that the final e-mail message goes out on or before the FR publication date.

Along with the draft e-mail message and the FR publication date, the analyst must give the ICA a condensed, three-or-four line version of the product scope for inclusion in the AD module. The ICA will enter the case information into the AD module and will give the case analyst a printout of the revised case information.

The case analyst and supervisor will initial the printout, and return it with any changes to the ICA. Once the changes are made to the AD module, the program assistant will give the case analyst a printout of the case information for the files.

See Chapter 18 for detailed information on Customs AD module and e-mail notifications for appraisement activities.

d. Internal Procedures for ITC Negative Preliminary and Final Findings

For investigations, report all ITC negative preliminary and final determinations immediately to the ICA so that the AD module can be updated.

5. Update the Lotus Notes case tracking system.

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**B. Disclosure of Calculation Methodology**

1. Regulatory Provisions

In accordance with 19 CFR 351.224(b), for preliminary and final determinations in investigations or reviews, the DOC provides a further explanation of the calculation methodology used in making a determination for parties to the proceeding which request disclosure.

2. Internal Procedures

19 CFR 351.224(b) also specifies that, normally, within five days after the public announcement of the preliminary or final determination in an investigation or the final determination in a review, a full disclosure of all calculations, including the computer printouts and worksheets used, will be made to the petitioner(s) and respondent(s), under **administrative protective order** (APO). The disclosure period for a preliminary determination for a review is normally within ten days of the date of announcement. The DOC will not extend the deadline for disclosing ministerial errors in a preliminary determination for an investigation. The case analyst is responsible for ensuring that the information provided during disclosure is released only to the person(s) which are covered by an APO. The case analyst should contact the APO coordinator prior to disclosure for instruction.

3. Meeting

The case analyst is responsible for arranging the disclosure meeting if one is to be held. In most cases this meeting should also take place no more than five days after the public announcement date (five days after publication of the FR notice if there is no public announcement) because parties only have five days from the earlier of the document disclosure or meeting to identify errors as discussed below (ministerial errors cannot be claimed for administrative review preliminary determinations). The case analysts and the team member from CCIA should be present during the disclosure. The supervisor or program

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manager must be notified of the time and location of the meeting. The case analyst "walks through" the computer program, explaining the various factors used, i.e., the charges and adjustments, in our calculations. During a disclosure conference, petitioner(s) and respondent(s) or their legal representatives are not allowed to question why a particular methodology was used in the determination or why certain factors were included, excluded, or adjusted in the analysis. The only purpose of the disclosure meeting is to explain how the calculations were done. In the event ministerial error claims are made during the disclosure, the case analyst should advise the petitioner(s) and respondent(s) that such concerns will not be addressed during disclosure, but, instead, must be provided in writing to the DOC as discussed in section C.2. below.

#### 4. Memo

After the disclosure, the case analyst prepares a memo to the file which identifies the participants and the date. The case analyst must submit the memo to the supervisor for review. After approval from the supervisor, the case analyst should retain a copy for the working file and submit two copies to CRU for the official and public files.

#### 5. No Disclosure Meeting

In some cases, usually reviews, parties wish only to have calls, but do not require a meeting. If that is the case, ensure that you release proprietary documents appropriately.

### **C. Ministerial Error Procedures**

#### 1. Background

In accordance with sections 735(e) and 752(h) of the Act and 19 CFR 351.224(e), the DOC is required to correct all significant ministerial (clerical) errors in a preliminary determination for an investigation and all ministerial errors in a final determination for an investigation of a review. The DOC is

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normally required to do this within 30 days from the date of the preliminary or final determination. All parties to the proceeding are granted the opportunity to comment on ministerial errors in the preliminary (investigation only) or final determination.

The term "ministerial error" is defined in 19 CFR 351.224(f) as an error in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and other types of unintentional errors. A "significant ministerial error" in a preliminary determination for an investigation is defined in section 351.224(g) as one in which the correction of the error, either singly or in combination with other errors 1) would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination in an investigation, or 2) would result in a difference between a weighted-average dumping margin of zero (or de minimis) and a weighted-average dumping margin of greater than de minimis or vice versa, also in an investigation. Note that these terms refer to errors in the DOC's calculation rather than errors in the submitted information. If significant ministerial errors have occurred, amended preliminary or final determination must be prepared for publication in the FR. Ministerial errors are sometimes referred to as "clerical" errors.

## 2. Claims

Under 19 CFR 351.224(c), petitioner(s) and respondent(s) have five days from release of documents either prior to disclosure or at the disclosure meeting (whichever occurs first) to review the information and to submit in writing any comments on ministerial errors in the calculations for preliminary determinations for investigations and for final determinations in investigations and reviews. Comments can only be made regarding the calculations. Comments on methodological or other issues will be disregarded. For final determinations in investigations and reviews, replies to ministerial error comments are permitted within five days of the date the original comments are filed with the DOC. No replies to ministerial error comments are allowed for

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preliminary determinations in investigations. Parties can make ministerial error claims for preliminary results of reviews in their case brief.

### 3. Procedures for Analyzing Ministerial Error Claims

The case analyst usually prepares a memo addressed to the DAS through the OD which includes a brief summary of each ministerial error allegation and the team analysis and recommendation (always check with your supervisor or PM for current procedure). The memo is reviewed by the team and the supervisor, and forwarded to the OD for concurrence and the DAS for final approval. After signature, the case analyst should retain a copy for the working file and submit two copies (one is a public version) to CRU for the official and public files. If there has been a change in any calculated margin, an amended preliminary determination for an investigation or final determination for an investigation or review FR notice must be published reflecting the new margin(s).

#### **D. Certification of Case Files**

The case analyst should, within two weeks after the signature date of the AD duty order or final results of review, certify in writing through the supervisor or PM to the office director that the official and public versions of the file are complete (see Chapter 2).