

access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.”

#### FAA AD Differences

**Note 2:** This AD differs from the MCAI and/or service information as follows: No differences.

#### Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(g) Refer to MCAI National Agency of Civil Aviation (ANAC) AD No.: 2006-10-01, dated October 25, 2006, EMBRAER Service Bulletin S.B. No.: 110-00-0007, dated May 10, 2006, and EMBRAER Alert Service Bulletin S.B. No.: 110-00-A007, dated March 6, 2006 for related information.

Issued in Kansas City, Missouri, on December 28, 2006.

**John R. Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7-51 Filed 1-5-07; 8:45 am]

**BILLING CODE 4910-13-P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 270

[File No. S7-03-04]

**RIN 3235-AJ62**

### Investment Company Governance

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of comment deadline.

On December 21, 2006, the Commission published a document in the **Federal Register** reopening the

comment period on its June 2006 request for comment regarding amendments to investment company governance provisions (“Request for Additional Comment”) (Investment Company Release No. 27600 (Dec. 15, 2006) [71 FR 76618 (Dec. 21, 2006) (FR Doc. No. E6-21903)]). The purpose of the additional comment period is to permit public comment on two papers prepared by the Office of Economic Analysis on this topic. The Request for Additional Comment stated that comments must be received on or before 60 days after publication of the second of the two staff economic papers in the public comment file. The second of these papers was published in the public comment file on December 29, 2006, and both papers are available on the Commission’s Internet Web site (<http://www.sec.gov/rules/proposed/s70304/oeamemo122906-powerstudy.pdf>; <http://www.sec.gov/rules/proposed/s70304/oeamemo122906-litreview.pdf>).

Comments must be received on or before March 2, 2007.

Dated: December 29, 2006.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E7-13 Filed 1-5-07; 8:45 am]

**BILLING CODE 8011-01-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### 19 CFR Part 351

[Docket No. 061121303-6301-01]

**RIN 0625-AA73**

### Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures; Proposed Rule

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

**ACTION:** Proposed Rule; request for Comments.

**SUMMARY:** The Department of Commerce (“the Department”) proposes to amend its regulations in antidumping (“AD”) and countervailing duty (“CVD”) proceedings governing information submitted to the Department and administrative protective orders in order to improve the Department’s procedures and provide clarification to some aspects of the Department’s regulations. Specifically, the Department proposes to amend its regulations as follows: To reflect a transfer in the function of

receiving submissions filed in AD/CVD proceedings from the Central Records Unit to the Administrative Protective Order (“APO”) Unit, and to change the name of the APO Unit to APO/Dockets Unit; to reflect a transfer in the function of maintaining public service lists from the Central Records Unit to the APO/Dockets Unit; to update the definition of “Customs Service” to reflect the reorganization of the Executive Branch; to clarify that documents filed with the Department will only be time stamped when appropriate, for example, when an interested party submits a request for treatment as a voluntary respondent; to clarify when an APO will be placed on the record with respect to new shipper reviews, applications for scope rulings and changed circumstances reviews; to clarify when a party must serve business proprietary information already on the administrative record to new authorized applicants to the APO; to require a formal letter of appearance to request placement on the service list of any segment of an AD/CVD proceeding; and to clarify when a party is to be considered an “interested party” for the purposes of the APO. Finally, the Department proposes amending its short form application for an APO (Form ITA-367).

**DATES:** To be assured of consideration, written comments must be received no later than February 28, 2007.

**ADDRESSES:** Submit comments to David M. Spooner, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; Attention: APO Regulations.

**FOR FURTHER INFORMATION CONTACT:** Ann Sebastian at (202) 482-3354 or William Kovatch at (202) 482-5052.

#### SUPPLEMENTARY INFORMATION:

#### Background

Pursuant to section 777(c)(1)(A) of the Tariff Act of 1930, as amended (“the Act”) (19 U.S.C. 1677f(c)(1)(A)), the Department must make available to interested parties, under an APO, all business proprietary information submitted to it during the course of an antidumping or countervailing duty proceeding. Section 777(c)(1)(B) of the Act authorizes the Department to issue regulations governing the APO process. The Department’s current regulations are codified at 19 CFR Part 351.

The Department last amended its APO regulations in 1998 (*see* 63 FR 24391). The Department is always interested in reviewing its APO procedures and improving them through its regulations. Since the adoption of regulations in

1998, the Department has gained insight into how its APO procedures work in practice. The Department believes that it is appropriate to propose improvements to those procedures and provide clarification to them where necessary. Such clarifications include not only amendments to the regulations, but also amendments to the short form application for APO access (Form ITA-367).

In addition, since the publication of the 1998 APO regulations, the Department has transferred the function of receiving submissions from parties in antidumping and countervailing duty proceedings from Import Administration's Central Records Unit to the APO Unit. The Department therefore is amending the regulations to reflect this change.

#### Explanation of Particular Provisions

##### *Section 351.102(b). Definitions. Definition of "Customs Service" and "Interested party."*

Section 351.102(b) defines terms that appear in the Act but are not defined in the Act, defines terms that appear in the Department's regulations but do not appear in the Act, and elaborates on the meaning of certain terms that are defined in the Act. Currently, this section of the regulations contains a list of terms in alphabetical order. The terms themselves are not sequentially numbered. For administrative purposes, the Department proposes setting forth the terms defined in section 351.102(b) in sequentially numbered paragraphs. Specifically, as discussed below, numbering the terms will allow the Department to administer the APO function in a more precise manner. Sequentially numbering the terms defined in section 351.102(b) creates no additional requirements on parties appearing before the Department.

Section 351.102(b) currently defines "Customs Service" as "the United States Customs Service of the United States Department of the Treasury." Since the publication of the regulations, the Customs Service has been transferred to the U.S. Department of Homeland Security and renamed U.S. Customs and Border Protection. The Department therefore proposes amending this definition of "Customs Service" to reflect this change.

Section 351.102(b) currently does not contain a definition for the term "interested party." This has created some confusion and difficulty in processing APO applications. Form ITA-367, the APO application, requires the applicant to disclose the interested party status of the party the applicant

represents. The current version of the form allows the applicant to check "petitioner," "respondent," or "other." If the applicant checks "other," the form requires the applicant to identify the section of the Department's regulations that defines the party's interested party status.

The Department's experience with this version of Form ITA-367 is that the provision of the broad category "other" has led to some confusion. First, as stated above, the term "interested party" is not currently defined by the regulations. In addition, the Department, and other parties to the proceeding, have had difficulty in determining whether a party identifying itself as "other" qualifies as an importer of subject merchandise or one of the other categories of interested parties as defined by statute. This has led to difficulties in confirming the status of a party as an interested party as defined by the Act.

The Department proposes amending section 351.102(b), by including the definition of "interested party." This definition does not differ from the definition of "interested party" as stated in section 771(9) of the Act, except that an importer of subject merchandise is defined in a different subparagraph from a manufacturer, producer and exporter of the subject merchandise. Defining "importer" in its own subparagraph is necessary to permit Department officials to readily identify when an applicant for APO access is an importer. Should this amendment be adopted, applicants would be required to indicate on Form ITA-367 the precise subparagraph of section 351.102(b) that applies to the party the applicant represents.

##### *Sections 351.103(a), 351.103(b), 351.103(c), 351.103(d), and 351.303(b). Location and Functions of the Central Records Unit and the APO Unit, Filing Documents, and Service Lists*

Sections 351.103(a), 351.103(b), 351.103(c), and 351.103(d) discuss the functions of Import Administration's Central Records Unit and APO Unit. Since the publication of the regulations, the Department has transferred the function of receiving submissions in antidumping and countervailing duty proceedings (*i.e.*, the docket function) from the Central Record Unit to the APO Unit. The Department proposes amending these sections to reflect this change, and to change the name of the APO Unit to the APO/Dockets Unit.

Currently, section 351.103(b) provides that a document is not considered to be officially received by the Department unless it is stamped with the date and time of receipt. Upon review, the

Department no longer believes that it is necessary to time-stamp every document submitted. In most instances, to be considered filed in a timely manner, a document need only be submitted by the close of business on the due date. Date stamping a document in such instance would be sufficient to establish that the document was submitted in a timely fashion. There are, however, a few instances where it is necessary to time-stamp a document to establish timeliness. In some instances, the Department may establish a time other than the close of business as the deadline for the submission. In other instances, such as when the Department exercises its discretion to accept voluntary respondents, it is necessary to establish the order in which the Department receives requests to be treated as a voluntary respondent. The Department proposes amending the regulations to remove the general requirement that all documents be time-stamped, and clarify that a document will only be time-stamped where necessary. Department officials and the APO/Dockets Unit will continue to coordinate with each other to determine whether it is necessary for a document to be time-stamped, and to communicate such necessity with interested parties. This proposed change will not affect the filing requirements on outside parties, and only addresses internal Department procedure.

The Department also proposes amending the regulations to require an interested party to file a letter of appearance to request placement on the service lists of any segment of a proceeding. The letter of appearance should be a filing, separate from other filings, identifying the name of the interested party, how that party qualifies as an interested party, and the name of the firm representing that interested party if appropriate. If the interested party is a coalition or association as defined in sections 771(9)(A), (E), (F) or (G) of the Act, the letter of appearance must identify all members of the coalition or association. Because the letter of appearance includes factual information (*i.e.*, the name of the interested party, how the party qualifies as an interested party), the certification requirements of section 351.303(g) would apply. Requiring the letter of appearance to be a separate document will help ensure that Department officials update the public service list when a party begins participating in an administrative proceeding. Currently, many parties already file a letter of appearance when

they are participating in an administrative proceeding before the Department. Therefore, the burden on the public would be minimal.

Section 351.303(b) of the Department's regulations provide instructions on how to address and submit documents to the Secretary for consideration in an antidumping or countervailing duty proceeding. Currently, the regulations require that submissions be addressed to the Central Records Unit and provides the room number. As stated above, the function of receiving submissions has been transferred to the APO/Dockets Unit. Accordingly, the Department proposes amending section 351.303(b) to reflect the transfer in function to the APO/Dockets Unit.

*Section 351.204(d). Requests for Treatment as a Voluntary Respondent*

As provided in section 351.204(d) of the Department's regulations, if the Department limits the number of exporters or producers individually examined under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, the Department will examine voluntary respondents in accordance with section 782(a) of the Act. In order to be able to clearly identify voluntary respondents, and discern the order in which requests for voluntary respondent treatment have been submitted, the Department proposes to require an interested party seeking voluntary respondent treatment to indicate its request clearly on the first page of the first submission. This will alert the APO/Dockets Unit to the fact that the submission should be time stamped.

This requirement of placing the words "Request for Voluntary Respondent Treatment" in the title of the first page of the first submission will not create any undue burden on interested parties.

*Section 351.305(a). Placing APOs on the Record in New Shipper Reviews, Applications for Scope Rulings, and Changed Circumstances Reviews*

Under section 351.305(a) of the current regulations, the Department places an APO on the record of a segment of a proceeding within two days of the filing of a new petition or an initiation of an investigation on the Department's own initiative and within five days after the initiation of any segment other than an investigation. The Department proposes clarifying that the reference to "days" in this section of the regulations refers to business days.

With respect to new shipper reviews, an exporter or producer must first submit a request with certain

certifications and documentation detailed in section 351.214(b)(2) of the Department's regulations. The Department decides whether to initiate a new shipper review by evaluating the certifications and other documentation submitted along with the request. At times, this evaluation includes the analysis of business proprietary information. Interested parties may wish to comment on this information before the Department decides whether to initiate the new shipper review. However, interested parties may only gain access to the business proprietary information under an APO. Under the current regulations, the Department does not issue an APO until after the new shipper review has been initiated. Therefore, to allow interested parties to have access to business proprietary information relevant to the potential initiation of a new shipper review, the Department proposes to amend its regulations by indicating that an APO will be placed on the record within five business days of the filing of a request for a new shipper review.

Similarly, section 351.225(c) of the Department's regulations permits an interested party to request a ruling as to whether a particular product is within the scope of an order or a suspended investigation. If the Secretary can make this determination based solely on the information contained in the application and the description of the merchandise contained in the original petition, the initial investigation, and the prior determinations of the Secretary and the International Trade Commission, then the Secretary will issue a final ruling without requesting further information. During this evaluation, the Secretary may be required to analyze business proprietary information submitted by the applicant, and interested parties may wish to comment on this information. However, like new shipper reviews, under the current regulations the Department issues the APO after the initiation of a scope inquiry. Under section 351.225(e), the Secretary will only initiate a scope inquiry if more information is required than that submitted with the application. To permit parties to have access to business proprietary information and comment on that information before the initiation of a scope inquiry, the Department proposes to amend its regulations by indicating that an APO will be placed on the record within five business days of the filing of an application for a scope ruling.

Finally, section 351.216(b) states that the Department will determine whether to initiate a changed circumstances

review within forty-five days after the date on which a request is filed. The Department may also self-initiate a changed circumstances review. The request for the initiation of a changed circumstances review may contain business proprietary information. Under the current regulations, the Department issues an APO only after initiating a changed circumstances review. Because interested parties may wish to have access to the business proprietary information and to comment on this information before the initiation of a changed circumstances review, we propose amending section 351.305(a) to place an APO on the record within five business days of the filing of a changed circumstances request or the self-initiation of a changed circumstances review by the Department.

*Section 351.305(b). Service Requirement of Documents Already on the Administrative Record to New Authorized Applicants*

Prior to the adoption of the current regulations in 1998, when a party had already submitted business proprietary information to the Department and a new party applied for access to business proprietary information subject to APO, the Department required the first party to serve that information on the new party within two days of the Secretary's granting of access. The Department inadvertently deleted this requirement from the regulations adopted in 1998. We propose amending section 351.305(b) to restore the requirement that business proprietary information already on the administrative record be served on a party filing a timely application for access to business proprietary information under the APO within two business days of the approval of that application. The Department does not anticipate that this proposed requirement will increase any burden or cause undue hardship. In practice, parties have been serving information on a new party within two business days of that party's approval as an authorized applicant despite the absence of any regulatory requirement.

In addition, the current regulations state that in order to minimize any disruption caused by late applications, a party should file its APO application before the first response to a questionnaire has been submitted. Section 351.305(b)(3) of the current regulations indicates that all parties who have already submitted business proprietary information to the administrative record must serve that information on the new authorized applicant within five days of the approval of the application. This five-

day time period was meant to apply when the application was filed after the submission of the first questionnaire response, as opposed to the two-day time period proposed above, which is meant to apply to parties who apply for APO access before the submission of the first questionnaire response. The Department proposes amending this regulation to clarify that the five-day time period only applies when the authorized applicant has filed its application for APO access after the submission of the first response to a questionnaire.

As stated, many parties already adhere to this practice. The regulations already contain a service requirement. This proposal merely addresses the timing of that service.

*Section 351.305(d). Additional Documentation Required for Importers*

As discussed above, the Department and other interested parties have had difficulty in identifying whether a party who identifies itself as "other" on Form ITA-367 is an importer of the subject merchandise. Given the sensitive nature of the business proprietary information submitted to the Department, it is imperative that the Department be able to confirm that a party applying for APO access is indeed an "interested party" as defined by the Act. The Department proposes to require parties claiming to be importers of the subject merchandise to submit documentary evidence confirming their status as importers. The Department's preferred evidence is a copy of the Customs Form 7501 demonstrating that the party imported subject merchandise during the relevant period of investigation or period of review.

The Department recognizes that some segments do not necessarily involve a specific time period, such as a changed circumstances review or a scope inquiry. In such circumstances, where a representative of an importer of subject merchandise desires to apply for APO access, the importer need only show that it imported subject merchandise at some time since the beginning of the original period of investigation. Thus, the Department intends that in changed circumstances reviews and scope inquiries, it will only require that the importer submit documentary evidence, such as a Customs Form 7501, demonstrating that the party imported subject merchandise at any time since the beginning of the original period of investigation.

In other instances, such as where a party requests a scope ruling on a particular product it intends to import, a Customs Form 7501 may not be

available. In such circumstances, the interested party may satisfy the proposed requirement by submitting any other credible documentary evidence demonstrating its intention to import the product subject to the scope inquiry.

*Form ITA-367, Short Form Application for APO*

Form ITA-367 requires the applicant to identify the specific segment of the proceeding covered by the APO. Applicants in a new shipper review currently check the box next to "other," identifying the segment and citing the **Federal Register** notice wherein the Department initiated the proceeding. The Department can initiate separate new shipper reviews on the same day, however, covering the same merchandise and the same period of review but a different exporter or producer. For this reason, typically, new shipper reviews are identified based on the name of the exporter or producer being reviewed. In order to provide further clarity, the Department proposes amending Form ITA-367 to provide for an option to check "new shipper review" and specifically identify the name of the exporter/producer that is covered by the new shipper review.

With respect to scope inquiries, there may be several scope inquiries during the existence of an order. Therefore, in order to provide further clarity, the Department proposes amending Form ITA-367 to specifically identify the product that is covered by the scope review.

In the case of changed circumstances reviews, such a review may not necessarily be tied to a specific period of review. Thus, in order to provide further clarity, the Department proposes amending Form ITA-367 to provide for an option to check "changed circumstances review" and require the applicant to identify the date on which the request for a changed circumstances review was filed.

To allow the Department to identify when an interested party applying for APO access is an importer, the Department proposes amending Form ITA-367 to require the applicant to identify the specific subsection of the Department's regulations that define its status as an interested party. This proposed amendment to Form ITA-367 correlates to the proposed changes to the regulations as set forth in this notice.

Section 351.305(c) states that the Secretary will provide, by the most expeditious means available, the APO service list to parties to the proceeding on the day the service list is issued or

amended. The application is also being expanded to identify the "Lead Applicant," and to request an e-mail address for the receipt of service lists in order to ensure timely notice of the issuance or amendment of the service list.

The Department would like to take this opportunity to remind those who practice before it, that the entire Form ITA-367 must be submitted to the Department in order to gain access to business proprietary information under the APO. If any portion of the form is not applicable, the applicant should so indicate on the form itself, and submit the entire application form to the Department. Form ITA-367 is available on the Department's Web site at <http://ia.ita.doc.gov/apo/index.html> and may be reproduced using the applicant's word processor. The format of the application under items 8 and 9 must be exactly as provided in the printed form, with no deviation. The exact format under items 8 and 9 may be repeated to include additional applicants, as required (e.g., (2), (3), (4), etc.). Each applicant must sign and date the application in their own hand.

The Department would also like to remind authorized applicants that an acknowledgment for support staff is a requirement under item 2 of the APO. Failure by a firm to maintain an acknowledgment for support staff for each segment of each proceeding when APO access has been granted would be a violation of the APOs. Support staff do not apply separately for APO access, but they are required to sign the acknowledgment maintained by the firm.

**Comments—Deadline, Format, Number of Copies**

The deadline for the submission of comments is February 28, 2007. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

Parties wishing to comment should submit a signed original and two copies of each set of comments, including reasons for any recommendations. To help simplify the processing and distribution of comments, the Department requests that a submission in electronic form accompany the required paper copies. Comments filed in electronic form should be on CD-ROM in either WordPerfect format or a format that the WordPerfect program can convert into WordPerfect.

The Department will not accept comments accompanied by a request

that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in connection with this request for comment.

Comments received on CD-ROM will be made available to the public on the Web at the following address: <http://ia.ita.doc.gov/>. In addition, upon request, the Department will make comments filed in electronic form available to the public on CD-ROMs (at cost) with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Web, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, at (202) 482-0866 or via e-mail at [webmaster-support@ita.doc.gov](mailto:webmaster-support@ita.doc.gov).

#### Classification

*E.O. 12866*

It has been determined that this notice is not significant for purposes of E.O. 12866.

#### *Regulatory Flexibility Act*

The Chief Counsel for Regulation at the Department certified to the Chief Counsel for Advocacy, Small Business Administration that this rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

The Department proposes to amend its regulations in antidumping ("AD") and countervailing duty ("CVD") proceedings governing information submitted to the Department and administrative protective orders in order to improve the Department's procedures and provide clarification to some aspects of the Department's regulations. Specifically, the Department proposes to amend its regulations as follows: (1) To reflect a transfer in the function of receiving submissions filed in AD/CVD proceedings from the Central Records Unit to the Administrative Protective Order ("APO") Unit, and to change the name of the APO Unit to APO/Dockets Unit; (2) to reflect a transfer in the function of maintaining public service lists from the Central Records Unit to the APO/Dockets Unit; (3) to update the definition of "Customs Service" to reflect the reorganization of the Executive Branch; (4) to clarify that documents filed with the Department will only be time stamped when appropriate, for example, when an interested party submits a request for

treatment as a voluntary respondent; (5) to clarify when an APO will be placed on the record with respect to new shipper reviews, applications for scope rulings and changed circumstances reviews; (6) to clarify when a party must serve business proprietary information already on the administrative record to new authorized applicants to the APO; (7) to require a formal letter of appearance to request being placed on the service list of any segment of an AD/CVD proceeding; and (8) to clarify when a party is to be considered an "interested party" for the purposes of the APO. Finally, the Department proposes amending its short form application for an APO (Form ITA-367).

The Department is unable to estimate the number of small entities that will be affected by this rule, as the Department does not collect this information. However, there is the possibility that this rule would impact some number of small entities. Although the number of small entities that may be impacted is unknown, this rule would not impose a significant economic impact.

If implemented, this rule is not expected to impose a significant economic impact on the affected entities. Most of the amendments are procedural in nature and would not impose any new requirements or result in a significant compliance cost. The proposed requirement to submit a formal letter of appearance to request being placed on the service list of any segment of an AD/CVD proceeding; the proposed amendment to require an importer to submit documentary evidence of its status as an importer; and the proposed amendment to its short form application for an APO (Form ITA-367) may result in a slight increase in recordkeeping and reporting burden hours. ITA anticipates that these requirements would result in \$80 or 4 additional burden hours per respondent. Although this proposed rule may impact a substantive number of small entities, the cost to these entities would be minimal. For this reason, the Chief Counsel for Regulation at the Department of Commerce certified that this rule would not have a significant economic impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 et seq.).

*E.O. 12612*

This proposed rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

#### List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: December 27, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary, for Import Administration.*

For the reasons stated, it is proposed that 19 CFR Ch. III be amended as follows:

#### **PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES**

1. The authority citation for part 351 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 et seq.; and 19 U.S.C. 3538.

2. Section 351.102 is revised as follows:

#### **§ 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.*

(1) *Act.* "Act" means the Tariff Act of 1930, as amended.

(2) *Administrative review.*

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

(3) *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.

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

(5) *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.

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

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

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

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

(10) *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.

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

(12) *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.

(13) *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.

(14) *Customs Service*. “Customs Service” means the United States Customs and Border Protection of the United States Department of Homeland Security.

(15) *Department*. “Department” means the United States Department of Commerce.

(16) *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.

(17) *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.

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

(19) *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).

(20) *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.

(21) *Factual information*. “Factual information” means:

(i) Initial and supplemental questionnaire responses;

(ii) Data or statements of fact in support of allegations;

(iii) Other data or statements of facts; and

(iv) Documentary evidence.

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

(23) *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.

(24) *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).

(25) *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).

(26) *Import charge*. “Import charge” means a tariff, duty, or other fiscal charge that is levied on imports, other than an indirect tax.

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

(28) *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.

(29) *Interested party*. For the purpose of submitting an application for APO access (Form ITA-367), “Interested Party” means:

(i) A foreign manufacturer, producer, or exporter of subject merchandise,

(ii) the United States importer of subject merchandise,

(iii) a trade or business association a majority of the members of which are producers, exporters, or importers of subject merchandise,

(iv) the government of a country in which subject merchandise is produced or manufactured or from which such merchandise is exported,

(v) a manufacturer, producer, or wholesaler in the United States of a domestic like product,

(vi) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(vii) a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(viii) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) of section 771(9) of the Act with respect to a domestic like product, and

(ix) a coalition or trade association as described in section 771(9)(G) of the Act.

(30) *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:

(i) Notice of termination of investigation,

(ii) Notice of rescission of investigation,

(iii) Notice of a negative determination that has the effect of terminating the proceeding, or

(iv) An order.

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

(32) *Long-term loan*. “Long-term loan” means a loan, the terms of

repayment for which are greater than one year.

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

(34) *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.

(35) *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.

(36) *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.

(37) *Person*. “Person” includes any interested party as well as any other individual, enterprise, or entity, as appropriate.

(38) *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.

(39) *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.

(40) *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:

- (i) Dismissal of petition,
- (ii) Rescission of initiation,

- (iii) Termination of investigation,
- (iv) A negative determination that has the effect of terminating the proceeding,
- (v) Revocation of an order, or
- (vi) Termination of a suspended investigation.

(41) *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.

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

(43) *Sale*. A “sale” includes a contract to sell and a lease that is equivalent to a sale.

(44) *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.

(45) *Section 753 review*. “Section 753 review” means a review under section 753 of the Act.

(46) *Section 762 review*. “Section 762 review” means a review under section 762 of the Act.

(47) *Segment of proceeding*.

(i) *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.

(ii) *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.

(48) *Short-term loan*. “Short-term loan” means a loan, the terms of repayment for which are one year or less.

(49) *Sunset review*. “Sunset review” means a review under section 751(c) of the Act.

(50) *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.

(51) *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.

(52) *URAA*. “URAA” means the Uruguay Round Agreements Act.

3. Section 351.103 is revised as follows:

**§ 351.103 Central Records Unit and Administrative Protective Order and Dockets Unit.**

(a) Import Administration’s Central Records Unit maintains a Public File Room in Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. The office hours of the Public File Room are between 8:30 a.m. and 5 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), and the Subsidies Library (see section 775(2) and section 777(a)(1) of the Act).

(b) Import Administration’s Administrative Protective Order and Dockets Unit (APO/Dockets Unit) is located in Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. The office hours of the APO/Dockets Unit are between 8:30 a.m. and 5 p.m. on business days. Among other things, the APO/Dockets Unit is responsible for receiving submissions from interested parties, issuing administrative protective orders (APOs), maintaining the APO service list and the public service list as provided for in paragraph (d) of this section, releasing business proprietary information under APO, and conducting APO violation investigations. The APO/Dockets 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.

(c) *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’s APO/Dockets Unit in Room 1870 and is stamped with the date, and where necessary the time, of receipt.

(d) *Service list*. The APO/Dockets Unit will maintain and make available a public service list for each segment of a proceeding. The service list for an application for a scope ruling is described in § 351.225(n).

(1) To be included on the public service list for a particular segment,



each interested party must file a letter of appearance. The letter of appearance must identify the name of the interested party, how that party qualifies as an interested party, and the name of the firm, if any, representing the interested party in this segment of the proceeding. The letter of appearance must be filed separately from any other document filed with the Department. If the interested party is a coalition or association as defined in subparagraph (A), (E), (F) or (G) of section 771(9) of the Act, the letter of appearance must identify all of the members of the coalition or association.

(2) Each interested party that asks to be included on the public service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment.

4. Amend § 351.204 by adding paragraph (d)(4) to read as follows:

**§ 351.204 Time periods and persons examined; voluntary respondents; exclusions.**

\* \* \* \* \*

(d) \* \* \*

(4) *Requests for voluntary respondent treatment.* An interested party seeking treatment as a voluntary respondent must so indicate by including as a title on the first page of the first submission, "Request for Voluntary Respondent Treatment."

\* \* \* \* \*

5. Revise paragraph (b) of section 351.303 as follows:

**§ 351.303 Filing, format, translation, service, and certification of documents.**

\* \* \* \* \*

(b) *Where to file; time of filing.* Persons must address and submit all documents to the Secretary of

Commerce, Attention: Import Administration, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, between the hours of 8:30 a.m. and 5 p.m. on business days (see § 351.103(b)). If the applicable time limit expires on a non-business day, the Secretary will accept documents that are filed on the next business day.

\* \* \* \* \*

6. Section 351.305 is amended by revising paragraphs (a) introductory text and (b)(3) and by adding paragraphs (b)(4) and (d) to read as follows:

**§ 351.305 Access to business proprietary information.**

(a) *The administrative protective order.* The Secretary will place an administrative protective order on the record within two business days after the day on which a petition is filed or an investigation is self-initiated, within five business days after the day on which a request for a new shipper review is properly filed in accordance with § 351.214 and § 351.303 or an application for a scope ruling is properly filed in accordance with § 351.225 and § 351.303, within five business days after the day on which a request for a changed circumstances review is properly filed in accordance with § 351.216 and § 351.303 or a changed circumstances review is self-initiated, or five business days after initiating any other segment of a proceeding. The administrative protective order will require the authorized applicant to:

\* \* \* \* \*

(b) \* \* \*

(3) With respect to proprietary information submitted to the Secretary

on or before the date on which the Secretary grants access to a qualified applicant, except as provided in paragraph (b)(4) of this section, within two business days the submitting party shall serve the party which has been granted access, in accordance with paragraph (c) of this section.

(4) To minimize the disruption caused by late applications, an application should be filed before the first questionnaire response has been submitted. Where justified, however, applications may be filed up to the date on which the case briefs are due, but any applicant filing after the first questionnaire response is submitted will be liable for costs associated with the additional production and service of business proprietary information already on the record. Parties have five business days to serve their business proprietary information already on the record to a party who has filed an application after the submission of the first questionnaire response and is authorized to receive such information after such information has been placed on the record.

\* \* \* \* \*

(d) *Additional filing requirements for importers.* If an applicant represents a party claiming to be an interested party by virtue of being an importer, then the applicant shall submit, along with the Form ITA-367, documentary evidence demonstrating that the party imports merchandise either subject to the antidumping or countervailing duty order, or subject to a scope inquiry.

**Note:** The following form will not appear in the Code of Federal Regulations.

BILLING CODE 3510-DS-P



Case Number \_\_\_\_\_  
 Segment of Proceeding \_\_\_\_\_  
 (Period of Review) \_\_\_\_\_  
 Number of Pages \_\_\_\_\_  
 Public Document \_\_\_\_\_

United States Department of Commerce  
 International Trade Administration

APPLICATION FOR ADMINISTRATIVE PROTECTIVE ORDER  
 in  
 ANTIDUMPING OR COUNTERVAILING DUTY PROCEEDING

In the Matter of the  
**Antidumping/Countervailing Duty (indicate one)**  
 Proceeding on

\_\_\_\_\_  
 \_\_\_\_\_ from \_\_\_\_\_  
 \_\_\_\_\_ (Country)  
 \_\_\_\_\_  
 (Product)

ACCEPTED \_\_\_\_\_  
 REJECTED \_\_\_\_\_  
 DATE \_\_\_\_\_

This application covers business proprietary information in the following segment of the proceeding:

- ☐ Investigation - petition filed on \_\_\_\_\_ : \_\_\_\_\_
- ☐ Administrative Review initiated on \_\_\_\_\_ : \_\_\_\_\_ ( \_\_\_\_\_ FR \_\_\_\_\_ )  
 for period \_\_\_\_\_ : \_\_\_\_\_ to \_\_\_\_\_
- ☐ New Shipper Review, request filed on \_\_\_\_\_ : \_\_\_\_\_  
 for period \_\_\_\_\_ : \_\_\_\_\_ to \_\_\_\_\_  
 covering the following exporter/producer : \_\_\_\_\_
- ☐ Changed Circumstances Review, request filed on \_\_\_\_\_ : \_\_\_\_\_
- ☐ Scope Inquiry, request filed on \_\_\_\_\_ : \_\_\_\_\_  
 product \_\_\_\_\_ : \_\_\_\_\_
- ☐ Other \_\_\_\_\_ : \_\_\_\_\_ ( \_\_\_\_\_ FR \_\_\_\_\_ )  
 (specify)

This application is:

- ☐ the initial firm application to be placed on the APO service list; or
- ☐ a request to amend the firm's list of authorized applicants.

### **REPRESENTATION**

1. I am an applicant for: \_\_\_\_\_ who is an interested party/parties as follows:
1. ☐ petitioner; ☐ respondent; ☐ other interested party, as defined in 19 C.F.R. §351.102(b)(29)(\_\_\_\_) of the Department's regulations.
2. If the interested party/parties I represent have another authorized applicant or representative, \_\_\_\_\_ is the lead firm.

### **REQUEST FOR INFORMATION**

3. I request disclosure of all business proprietary information under administrative protective order ("APO") which will be or has been placed on the record of this segment of this proceeding that is releasable under 19 C.F.R. § 351.305 for the purpose of fully representing the interests of my client:
- ☐ all business proprietary information, including hard copy and electronic data; or
- ☐ all business proprietary information in hard copy form only.

### **INDIVIDUAL STATEMENTS**

#### **4. TO BE COMPLETED BY ATTORNEY APPLICANTS**

- A. I **am/am not** (indicate one) an officer of the interested party or parties listed in paragraph 1, or of other competitors of the person submitting the business proprietary information requested in this application.
- B. I **do/do not** (indicate one) participate in the competitive decision-making activity of the interested party or parties listed in paragraph 1, or of other competitors of the person submitting the business proprietary information requested in this application. I understand that competitive decision-making activity includes advice on production, sales, operations, or investments, but does not include legal advice.
- C. I **do/do not** (indicate one) have an official position or other business relationship other than providing advice for the purpose of this segment of the proceeding with the interested party or parties listed in paragraph 1, or with other competitors of the person

submitting the business proprietary information requested in this application.

- D. I **do/do not** (indicate one) currently intend within 12 months after the date upon which the final determination/results is/are published to enter into any of the relationships described in paragraphs 4A, B and C.

- E. Explain for each applicant any affirmative response to paragraph 4A, B, C or D:

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5. TO BE COMPLETED BY NON-ATTORNEY APPLICANTS

- A. I **am/am not** (indicate one) **employed by/retained by** (indicate one) a law firm representing the interested party or parties listed in paragraph 1.

- B. If I am retained by an attorney, the name of the lawyer and law firm are:

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- C. If I am not an employee of a law firm and have not been retained by the attorney for the interested party or parties listed in paragraph 1, in a separate attachment to this application I am providing information concerning my practice before the International Trade Administration ("ITA").

- D. I **am/am not** (indicate one) an officer or employee of a interested party or parties listed in paragraph 1, or of other competitors of the submitter of the business proprietary information requested in this application.

- E. I **do/do not** (indicate one) participate in the competitive decision-making activity of the interested party or parties listed in paragraph 1, or of other competitors of the person submitting the business proprietary information requested in this application. I understand that competitive decision-making activity includes advice on production, sales, operations, or investments, but does not include legal advice.

- F. I **do/do not** (indicate one) have an official position or other business relationship other than providing advice for the purpose of this segment of the proceeding with the interested party or parties listed in paragraph 1, or with other competitors of the person submitting the business proprietary information requested in this application.

- G. I **do/do not** (indicate one) currently intend within 12 months after the date upon which

the final determination/results is/are published to enter into any of the relationships described in paragraphs 5D, E and F.

H. Explain for each applicant any affirmative response paragraph 5D, E, F or G:

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**AGREEMENT TO BE BOUND**

6. Recognizing the penalties for perjury under the laws of the United States, I affirm that all statements in this application are true, accurate, and complete to the best of my knowledge. I agree, individually and on behalf of my law firm, corporate law office, or company, if any, to be bound by the terms stated in the administrative protective order issued in this segment of the proceeding.
7. I certify that this application is a *true and accurate* copy of the Department's "Application for Administrative Protective Order", FORM ITA-367 (5.98). If there are any discrepancies, I agree to be bound by the Department's standard form.

**INDIVIDUAL SIGNATORIES**

**8. ATTORNEY APPLICANTS (REQUIRED FORMAT)**

Individual applicants:

(1) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(name of applicant) (signature) (date)

of \_\_\_\_\_  
(name and address of law firm)

I am admitted to practice in the following jurisdiction(s) and before the following court(s):

\_\_\_\_\_.

9. NON-ATTORNEY APPLICANTS **(REQUIRED FORMAT)**

Individual applicants:

(1) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(name of applicant) (signature) (date)

of \_\_\_\_\_  
(name and address of firm)

I am a member of the following professional association(s):

\_\_\_\_\_.

10. The "Lead Applicant" for the purposes of service is: \_\_\_\_\_.

The email address to be used for service of the APO service list is:

\_\_\_\_\_.

**COURTESY PAGE**  
**FOR**  
**WAIVER OF SERVICE**

If my application for administrative protective order ("APO") in this proceeding is granted, I waive service of the following business proprietary information that I would be authorized to receive under the APO:

o

o

o

o

*Inadvertent service of a document  
containing business proprietary information  
on a party that has been granted APO access  
and has waived service  
IS NOT A VIOLATION OF THE APO.*

FORM ITA-367 (10.06)