

prohibited off-the-record communication.

(2) If a person knowingly makes or causes to be made a prohibited off-the-record communication, the Commission may disqualify and deny the person, temporarily or permanently, the privilege of practicing or appearing before it, in accordance with Rule 2102 (Suspension).

(3) Commission employees who are found to have knowingly violated this rule may be subject to the disciplinary actions prescribed by the agency's administrative directives.

(j) *Section not exclusive.* (1) The Commission may, by rule or order, modify any provision of this section as it applies to all or part of a proceeding, to the extent permitted by law.

(2) The provisions of this section are not intended to limit the authority of a decisional employee to decline to engage in permitted off-the-record communications, or where not required by any law, statute or regulation, to make a public disclosure of any exempted off-the-record communication.

8. The heading of § 385.2202 is revised to read as follows:

§ 385.2202 Separation of Functions (Rule 2202).

Note: This Appendix will not appear in the Code of Federal Regulations

Appendix A—List of Commenters

Adirondack Mountain Club
Advisory Council on Historic Preservation (ACHP)
American Gas Association (AGA)
ANR Pipeline Company/Colorado Interstate Gas Company (ANR/CIG)
Bonneville Power Administration (BPA)
California Electric Oversight Board (Cal Board)
Chevron Pipe Line Company (Chevron)
Edison Electric Institute (EEI)
Electric Power Supply Association (EPSA)
Environmental Protection Agency (EPA)
Executive Office of the President/Council on Environmental Quality (CEQ)
Hydropower Reform Coalition (HRC)
Indicated Shippers
Interstate Natural Gas Association of America (INGAA)
Louisiana Department of Wildlife And Fisheries (La W&F)
National Association of Regulatory Utility Commissioners (NARUC)
National Marine Fisheries Services (NMFS)
National Hydropower Association (NHA)
National Rural Electric Cooperative Association/American
Public Power Supply Association (Joint Commenters)
Natural Gas Supply Association (NGSA)
Public Service Commission of New York (PSCNY)
Public Utilities Commission of State of California (PUCAL)

Public Utilities Commission of State of California/Independent (Cal-ISO) System Operator
Process Gas Consumers Group (Process Gas)
Sacramento Municipal Utilities District (SMUD)
Semptra Energy Companies (Semptra)
Southern California Edison Company (SoCalEd)
Southern Companies Services, Inc. (SCSI)
Southern Natural Gas Company (SoNat)
United States Department of the Interior (Interior)
Williams Companies (Williams)
Williston Basin Interstate Pipeline Company (Williston)
Wisconsin Public Power, Inc. (WPPI)

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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 990521142-9252-02]

RIN 0625-AA54

Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (the "Department" or "DOC") is amending its regulation, which governs the revocation of antidumping and countervailing duty orders, in whole or in part, and the termination of suspended antidumping and countervailing duty investigations, based upon an absence of dumping or subsidization, respectively. The amended regulation conforms the existing regulation to the United States' obligations under Article 11 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Antidumping Agreement") and Article 21 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). The amended paragraph relating to revocation or termination based on absence of dumping provides that the Secretary, upon considering whether producers or exporters have sold subject merchandise at not less than normal value for at least three consecutive years, and whether the continued application of the antidumping duty order is otherwise necessary to offset dumping, will revoke an antidumping duty order if warranted. The amended paragraph relating to

revocation or termination based on absence of countervailable subsidy provides that the Secretary, upon considering whether the government of the affected country has eliminated all countervailable subsidy programs covering the subject merchandise for at least three consecutive years, or exporters or producers have not applied for or received countervailable subsidies for at least five consecutive years, and whether the continued application of the countervailing duty order is otherwise necessary to offset subsidization, will revoke a countervailing duty order if warranted.

EFFECTIVE DATE: November 1, 1999.

FOR FURTHER INFORMATION CONTACT:

Melissa G. Skinner, Office of Policy, Import Administration, U.S. Department of Commerce, at (202) 482-1560, or Myles S. Getlan, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482-5052.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1999, the Department published a Notice of Proposed Rulemaking which proposed to amend 19 CFR 351.222(b).¹ See 64 FR 29818 (the "Proposed Rule"). The Department explained that the process of amending this regulation arose from the findings of a dispute settlement panel convened under the auspices of the World Trade Organization ("WTO") that considered various aspects of the Department's final results of administrative review in Dynamic Random Access Memory Semiconductors (DRAMs) Of One Megabit Or Above From Korea (62 FR 39809, July 24, 1997) ("DRAMs From Korea").

On January 29, 1999, the Panel determined that the Department's standard for revoking an antidumping duty order contained in 19 CFR 353.25(a)(2) (the precursor to 19 CFR 351.222(b)) was inconsistent with the United States' obligations under Article 11.2 of the WTO Antidumping Agreement. See United States—Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above From Korea, WT/DS99/R ("Panel Report"). Specifically, the Panel determined that requiring the Secretary

¹ This amendment does not affect the Department's regulations at 19 CFR 351.218, which implements the statutory provision at 19 U.S.C. 1675(c) and governs the Department's five-year sunset reviews, in which the Department determines whether revocation of an order "would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury."

to conclude that "it is not likely" that the persons requesting revocation will dump merchandise subject to an antidumping duty order in the future did not implement properly Article 11.2 of the Antidumping Agreement. This provision requires an administering authority to consider whether "the continued imposition of [an antidumping] duty is necessary to offset dumping" in determining whether to revoke an antidumping duty order. Thus, the Panel recommended that the United States "bring section 353.25(a)(2)(ii) of the DOC regulations * * * into conformity with its obligations under Article 11.2 of the AD Agreement." The Dispute Settlement Body ("DSB") adopted the Panel Report on March 19, 1999. On April 15, 1999, the United States announced its intention to implement the recommendations and rulings of the DSB. Consistent with section 123(g) of the Uruguay Round Agreements Act ("URAA"), which governs the Department's implementation of adverse panel reports, the Department is revising 19 CFR 351.222(b) and (c).

Explanation of the Final Rule

The proposed amendment to the Department's revocation regulation concerned only antidumping proceedings, as the Department focused upon implementing the specific findings contained in the Panel Report. Consequently, at that time, the Department did not propose amending the companion revocation provision applicable to countervailing duty proceedings. However, we believe that a decision not to amend the countervailing duty provision would render the revocation standards in antidumping and countervailing duty cases inconsistent with each other. The "not likely" standard in 19 CFR 351.222(b), which governs the revocation of antidumping duty orders, is identical to the standard in 19 CFR 351.222(c), which governs revocation in countervailing duty cases. In addition, the "necessary" standard in Article 11 of the Antidumping Agreement, to which we have conformed the antidumping regulation, is identical to the standard in Article 21 of the SCM Agreement which regulates the duration of countervailing duties. Since the revocation standards in the two WTO agreements are identical, and since at least one party commented on this issue during the public comment period, we conclude that the public was on notice that the countervailing duty regulation could similarly be revised. Therefore, we are making conforming amendments to the countervailing duty provision as

well in order to maintain consistency between the Department's procedures governing revocation in both antidumping and countervailing duty cases and the standards in both the Antidumping Agreement and SCM Agreement.

In addition, in response to comments, the final rule incorporates several changes to the Proposed Rule. First, the language which read "[t]he Secretary may revoke an antidumping order * * *" has been altered to read "[t]he Secretary will revoke the antidumping duty order." Second, the final rule no longer states that the Secretary will consider whether the continued application of the order is "no longer necessary to offset dumping." Instead, the final rule provides that, *inter alia*, the Secretary will consider "whether the continued application of the antidumping duty order is otherwise necessary to offset dumping." These changes are discussed in more detail below.

We received comments concerning the Proposed Rule from various parties. One commenter believes that the proposed revision to the Department's regulation, which incorporates the standard set forth in Article 11.2 of the WTO Antidumping Agreement, responds appropriately to the concerns articulated by the WTO panel decision and represents a fair implementation of the panel's recommendation. Moreover, this commenter states that the proposed revision should not negatively affect the protection afforded U.S. industries against unfairly traded imports.

Several commenters insist that the revised "necessity" standard is "effectively not a standard at all." In this respect, these commenters note the Panel's finding that there must be a demonstrable basis for consistently and reliably determining that the maintenance of an order is necessary to offset injurious dumping. These commenters contend that the Proposed Rule contains no guidelines or definitions of the "evidence" that would be relevant to the continued necessity of an order. Consequently, these commenters argue that the Proposed Rule will not improve the demonstrability, consistency, and reliability of revocation decisions or ensure that decisions to maintain antidumping or countervailing duty orders are based upon positive evidence demonstrating the continued need for the order. One commenter suggests that using a "likely to recur" standard "would have been the most logical, direct means to meet the WTO requirement that a positive finding is

necessary to support continuation of an [antidumping duty] order."

However, another commenter noted that the amended regulation establishes a "necessity" standard which reflects the same standard established in the Antidumping Agreement. Thus, this commenter believes the revised standard does in fact provide the "demonstrable basis upon which to reliably conclude that the continued imposition of the duty is necessary to offset dumping."

We disagree with those commenters who state that the revised "necessity" standard is "effectively not a standard at all." Article 11.2 of the Antidumping Agreement allows interested parties to request authorities to examine whether the continued imposition of the duty is "necessary" to offset dumping. To say that the "necessity" standard contained in the Department's revised regulation is effectively no standard at all is to say that Article 11.2 contains no standard. This is illogical given that this process of revising the revocation regulation stems from a panel finding that the Department's existing regulation did not properly implement the "necessary" standard contained in Article 11.2. On the other hand, we agree that each determination made pursuant to this new regulation will need to be supported by positive evidence. Moreover, we are confident that the revised standard, along with our established practice of considering evidence relating to the likelihood of future dumping, will provide for consistent and reliable decisions regarding revocation.

One commenter urges the Department to discontinue its practice of applying a presumption in favor of revocation in the absence of dumping for three consecutive years. As support, this commenter refers to the Court of International Trade's ("CIT") characterization of the Department's regulation as a three-part test for revocation and states that the "not likely" (or the revised "necessary") prong constitutes an independent criterion that must be established to attain revocation. See *Hyundai Electronics Co., Ltd. v. United States*, Slip. Op. 99-44 (Ct. Int'l Trade, May 19, 1999). This commenter believes that the presumption nullifies the satisfaction of the second ("necessary") prong.

In this regard, two commenters assert that a presumption favoring revocation unfairly and improperly shifts the burden to petitioners to come forward with affirmative evidence. Since respondents are in possession of information relevant to revocation, as argued by these commenters, the burden

of producing such evidence should rest with the respondents. One commenter requested that the Department include in its initial questionnaire a solicitation of data and other information from the respondent seeking revocation on why the antidumping duty order in the respondent's opinion is no longer needed to offset dumping. While this commenter conceded that this procedural element could be implemented without regulatory modification, the commenter contended that there was no reason that such a provision could not be incorporated in the regulations.

By contrast, several commenters stated that the revised regulation continues to place a burden on respondents to prove eligibility for revocation, rather than placing the burden on the Department to find positive evidence establishing that the maintenance of the order is necessary. These commenters contend that placing the burden on the Department necessitates a reformulation of the regulation, such that the revised regulation should not treat maintaining the order as the norm. Thus, these commenters suggested that the new regulation require the Secretary to revoke if the respondent has not dumped for three consecutive years and has furnished the required reinstatement agreement, "unless the Secretary reliably demonstrates on the basis of a foundation of positive evidence that the continued application of the antidumping duty order as to the exporter or producer is necessary to offset dumping."

However, one commenter welcomed the Department's confirmation that the regulation reflects a rebuttable presumption that favors revoking an order when there is an absence of dumping for three or more years. In this regard, this commenter states that the initial burden should clearly rest on the petitioners, as the beneficiaries of the continuation of the order, to provide evidence that the order is still necessary. Thus, this commenter states that the Department should not request information from a respondent until petitioners make allegations supported by tangible evidence that the order is still necessary.

As discussed in the Proposed Rule, in situations where there is an absence of dumping (or subsidization) for three (or five) consecutive years, the Department intends to presume that an order is not necessary in the absence of additional evidence. We believe that such a presumption is consistent with prior Department practice as well as U.S. obligations under Article 11.2 of the

Antidumping Agreement and Article 21.2 of the SCM Agreement. As the Panel recognized, a decision to maintain an order must be substantiated by positive evidence. If the only evidence on record is a respondent's ability to sell subject merchandise at not less than normal value for three consecutive years, the record would not support a decision to maintain the order in light of the requirement in Article 11.2, as interpreted by the Panel, that there be positive evidence reflecting the continued necessity of the order.

We decline at this time to adopt the commenter's suggestion that we solicit information from respondents at the outset of an administrative review. The absence of dumping for three consecutive years,² while satisfying the first prong of the regulatory standard, is also sufficient evidence relevant to the continued necessity of the order to shift the burden of production to the petitioners. However, if a party raises an issue relating to the necessity of an order, the Department may seek additional information relevant to that issue. Nonetheless, since the manner in which we collect evidence is not necessarily a regulatory matter, we may revisit this issue at a later time in the development of our practice in applying the revised regulation.

We disagree with those commenters who suggest that the revised regulation continues to place a burden on respondents, rather than the Department, to prove eligibility for revocation. The threshold requirement for revocation continues to be that respondents not sell at less than normal value for at least three consecutive years and that, during each of those years, respondents exported subject merchandise to the United States in commercial quantities. See 19 CFR 351.222(d)(1). The Panel did not disturb this aspect of the Department's revocation practice. Moreover, we re-emphasize our statement in the Proposed Rule that "the absence of dumping for three consecutive years served as a presumption in favor of revoking the order, which could be rebutted by positive evidence indicating that dumping may recur if the order were revoked." Thus, we disagree that an impermissible burden is placed on respondents. Instead, a thorough analysis of all relevant information requires a system in which there is a shifting burden of production such that the parties in the best position to

provide relevant information are compelled to do so. All parties may be in a position to provide information concerning trends in prices and costs, currency movements, and other market and economic factors that may be relevant to the likelihood of future dumping. If no party provides information addressing these issues, we rest with the presumption that an order is not necessary in the absence of dumping. If the petitioner comes forward with information demonstrating that the maintenance of the order is necessary, that initial presumption is rebutted, and the burden of production shifts to respondents. While the burden of producing evidence shifts among the parties, we emphasize that the Department does not impose a burden of proof on any party. The Department must weigh all of the evidence on the record and determine whether the continued application of the order is necessary to offset dumping (or subsidization). Each revocation determination must be based upon substantial, positive evidence and be otherwise in accordance with law.

One commenter stated that, unlike the "not likely" standard, "necessity" is a minimum standard that has no shades or degrees within it. Stated differently, something that is not "no longer necessary" is necessary.

However, another commenter claimed that the Department's revised standard retains the negative and passive elements which rendered the prior regulatory standard inconsistent with the Antidumping Agreement. This commenter noted the Panel's distinction between failing to establish something as a negative finding and establishing something as a positive finding in the context of the "not likely" criterion and concluded that this same principle applies to the proposed regulation.

We have formulated the final rule in a way that clarifies that the Secretary must make an affirmative finding of necessity in order to retain an antidumping or countervailing duty order. While this reformulation does not affect the process by which the Department considers revocation, the reformulated regulation more closely tracks the wording of Article 11.2 of the Antidumping Agreement and Article 21.2 of the SCM Agreement.

Several commenters argue that the continued use of the discretionary term "may" in the Proposed Rule conflicts with the mandatory term "shall" contained in Article 11.2 of the Antidumping Agreement. These commenters suggest that the Panel rejected the existing regulation, in part, because the regulation allows the

² In accordance with 19 CFR 351.222(e)(ii), to be considered for revocation, the producers and exporters must have sold the subject merchandise in commercial quantities in each of the three years.

Department to maintain an order where Article 11.2 of the Antidumping Agreement requires revocation. Thus, these commenters believe that the Proposed Rule, which contains the permissive "may" and not the mandatory "shall" or "must," is inconsistent with the Panel's findings.

In the final rule, we have substituted the term "will" for "may." We do not agree that the use of the term "may" imbued the Department with unbridled discretion in making revocation determinations, as argued by these commenters. The Department's determinations are constrained by general legal principles. Every decision must be based upon substantial evidence and otherwise in accordance with law. In addition, each decision must be consistent with prior practice unless we reasonably explain the departure from prior practice. However, by adopting the "necessary" standard contained in the Antidumping and SCM Agreements, we are persuaded that it is more appropriate to use the term "will" instead of the term "may" in the amended regulation. The "necessary" standard represents the full spectrum of circumstances under which the Department could maintain an order and be consistent with the United States' WTO obligations under Article 11.2 of the Antidumping Agreement and Article 21.2 of the SCM Agreement. In other words, considering the comprehensive nature of the new standard, the Secretary can only retain an antidumping or countervailing duty order if there is positive evidence on the record indicating the continued necessity of such order to offset dumping or subsidization. Thus, in accordance with Article 11.2 of the Antidumping Agreement and Article 21.2 of the SCM Agreement, we are substituting the term "will" for "may" in the amended regulation.

Several commenters took issue with the Department's claim in the Proposed Rule that the "Panel's ruling was not based upon the Department's application of the standard in DRAMs from Korea." These commenters note that the Panel specifically found that the regulation and the third review final results in DRAMs were inconsistent with Article 11.2 of the Antidumping Agreement.

While we accept that, based upon the inconsistency of the revocation regulation applied in DRAMs from Korea with the Antidumping Agreement, the Panel invalidated the third review final results, we maintain that several aspects of our practice were not invalidated by the Panel and, thus, do not require revision. As discussed

above and in the preamble to the Proposed Rule, we continue to believe that, while an absence of dumping for three years is evidence that the antidumping duty order is no longer necessary, it is not conclusive in all cases. Evidence relating to the likelihood of future dumping will still be considered under the revised regulation because such evidence relates to the necessity of the order. Thus, while the Panel decision necessitated revising the standard by which the Department considers revocation, it did not necessitate changes to these specific aspects of our practice.

One commenter, citing Hyundai Electronics, in which the CIT affirmed the Department's final results of administrative review in DRAMs from Korea, argued that it is unnecessary to amend the regulation because the CIT determined that the "not likely" standard is consistent with U.S. international obligations and with U.S. obligations under Article 11.2 of the Antidumping Agreement.

The CIT decision in Hyundai does not preclude amending the regulation in question. While the Court stated that the Panel Report was not binding precedential authority on the Court, it recognized that "Congress provided that the response to an adverse WTO panel report is the province of the executive branch and, more particularly, the Office of the U.S. Trade Representative." The United States Trade Representative and the DOC have decided to respond to the Panel Report by amending the regulation in question, and we are confident that the amended regulation, if challenged, will be found to be consistent with the statute as well as U.S. obligations under the WTO Antidumping Agreement.

Another commenter expressed concern with the Department's practice of relating an absence of dumping to declining imports following the imposition of an order. This commenter asserts that numerous factors, including changes in the strengths of alternative markets, exchange rates, changes in production capacity, changes in marketing strategies, and changes in the technology of production, may contribute to the decline in imports rather than the exporter's inability to sell in the U.S. market without dumping.

This matter is appropriate for consideration on a case-by-case basis, rather than in a rulemaking proceeding because, as the commenter suggests, numerous factors underlying an absence of dumping may be considered when evidence relating to those factors is

developed on the record of each proceeding.

Classification

Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866.

Paperwork Reduction Act

This rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Executive Order 12612

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

Regulatory Flexibility Act

In issuing the proposed regulation, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The Department's existing regulations provide a procedural and substantive process by which the Secretary considers whether to revoke an antidumping duty order. The rule retains the current procedural process and revises the substantive standard used by the Secretary to make the appropriate revocation determination. As discussed above, the regulation would not significantly change the Department's practice in determining whether to maintain an antidumping duty order. Moreover, as the revised regulation only changes the standard by which the Department considers whether to revoke an antidumping duty order, this action, in and of itself, will not have a significant economic impact. Therefore, the Chief Counsel concluded that the rule would not have a significant impact on a substantial number of small business entities, and a regulatory flexibility analysis was not prepared. We received no comments concerning this conclusion.

List of Subjects in 19 CFR Part 351

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

Dated: September 16, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR part 351 is amended to read 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.

Subpart B—Antidumping and Countervailing Duty Procedures

2. Section 351.222 is amended by revising paragraphs (b) and (c) to read as follows:

§ 351.222 Revocation of orders; termination of suspended investigations.

* * * * *

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

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

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

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

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

(A) Whether one or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;

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

sold the subject merchandise at less than normal value; and

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

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

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

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

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

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

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

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

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

(A) Whether all exporters and producers covered at the time of revocation by the order or the suspension agreement have not applied

for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years; and

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

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

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

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

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

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

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

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

* * * * *

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