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# SUMMARY OF PROCEDURES UNDER THE UNITED STATES ANTIDUMPING AND COUNTERVAILING DUTY LAWS†

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Procedures for the application of the United States antidumping and countervailing duty laws are contained in Title I of the Trade Agreements Act of 1979 (the Act),<sup>1</sup> and in the implementing regulations of the International Trade Administration of the Department of Commerce (Commerce)<sup>2</sup> and the International Trade Commission (Commission).<sup>3</sup> Antidumping and countervailing duty proceedings may be begun either by the filing of a petition by a private, "interested" party<sup>4</sup> or by self-initiation by the administering authority, Commerce.<sup>5</sup> If the investigation is self-initiated, Commerce must first allow the affected foreign government an opportunity for consultation.<sup>6</sup> In practice, however, virtually all cases are begun by private petition, in part because Commerce is unlikely to initiate an investigation where injury must be shown to

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<sup>1</sup> See Pub. L. No. 96-39, 93 Stat. 144, 150 (codified as amended in scattered sections of 19 U.S.C. (1982)).

<sup>2</sup> See 19 C.F.R. §§ 353, 355 (1984).

<sup>3</sup> See *id.* § 207.

<sup>4</sup> See 19 U.S.C. § 1671a(b) (1982) (initiating countervailing duty proceeding); *id.* § 1673a(b) (initiating antidumping duty proceeding). An "interested party" may file a petition with the Secretary of Commerce (Commerce) and the Commission on behalf of a domestic industry. *Id.* §§ 1671a(b), 1673a(b). The statute and customs regulations define interested parties to include: domestic and foreign manufacturers and producers, exporters, importers and wholesalers of goods, domestic labor unions, trade or business associations, and foreign governments. See *id.* § 1677(9); 19 C.F.R. §§ 207.2(h), 353.12(c), 355.7(c) (1984).

<sup>5</sup> See 19 U.S.C. §§ 1671a(a), 1673a(a) (1982); 19 C.F.R. §§ 353.35, 355.23 (1984) (enumerating procedures for initiation of investigation by Commerce).

<sup>6</sup> See Art. 3.1, Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreements on Tariffs and Trade, *incorporated by reference into U.S. law*, Trade Agreements Act of 1979, Pub. L. No. 96-39, § 2, 93 Stat. 144, 147 [hereinafter cited as Subsidies Code]; 19 C.F.R. §§ 353.35(a), 355.25(a) (1984).

the Commission and no injured party has come forward.

The petition usually must be filed with both Commerce and the Commission.<sup>7</sup> Petitioners should review a draft of the petition with the Office of Investigations of the Commission and with the Office of Import Administration in Commerce prior to filing. Otherwise, any defects in the petition will lead to a warning that the petition will be dismissed if it is not perfected within the period allowed before initiation.

A decision whether to initiate an investigation must be made by Commerce within 20 days of receipt of the petition.<sup>8</sup> Commerce has little leeway to refuse to investigate an allegation that a given foreign government practice is a subsidy or that dumping is occurring, as long as the claim is supported by *some* evidence.<sup>9</sup> Thus, if alleging a subsidy, the petitioner should cite and attach a copy of the foreign law or regulation under which the alleged subsidy is paid.

In most instances, the Commission has 45 days from the date of the filing of a petition or of self-initiation to determine "whether there is a reasonable indication that . . . an industry in the United States . . . is materially injured, or . . . is threatened with material injury . . . ."<sup>10</sup> The Commission's determination follows a staff in-

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<sup>7</sup> See 19 U.S.C. §§ 1671a(b)(2), 1673a(b)(2) (1982). The petitioner must file his petition with Commerce and the Commission on the same day. *Id.* Although Commerce may provide forms for such petitions, petitioners are not required to use forms. 19 C.F.R. §§ 353.36(a)(15), 355.26(a)(14) (1984). For a detailed list of what a petition should contain see *id.* § 353.36(a)(1)-(15) (antidumping petition); *id.* § 355.26(a)(1)-(14) (countervailing duty petition).

<sup>8</sup> See 19 U.S.C. §§ 1671a(c)(2), 1673a(c)(2) (1982); 19 C.F.R. §§ 353.37(a), 355.27(a) (1984). If Commerce affirms the sufficiency of the petition, the agency files a notice in the Federal Register and initiates the investigation. See 19 U.S.C. §§ 1671a(c)(2), 1673a(c)(2) (1982). If Commerce determines that the petition is insufficient, it must give the petitioner a written notice of termination articulating the reasons for its decision and must publish a notice of termination in the Federal Register. See *id.* §§ 1671a(c)(3), 1673a(c)(3).

<sup>9</sup> See 19 U.S.C. §§ 1671a(c), 1673a(c) (investigation initiated if petition "contains information reasonably available to the petitioner supporting the allegations"); S. REP. No. 249, 96th Cong., 1st Sess. 63, reprinted in 1979 U.S. CODE CONG. & AD. NEWS 381, 449 (unless Commerce is convinced supporting information fails to state a claim upon which relief can be granted, it is obliged to investigate); see also *United States v. Roses Inc.*, 706 F.2d 1563, 1568-71 (Fed. Cir. 1983) (standards for acceptable petitions in antidumping proceedings).

<sup>10</sup> 19 U.S.C. §§ 1671b(a)(1), 1673b(a)(a) (1982). The Act defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." *Id.* § 1677(7). The customs duties regulations sharpen this definition and list factors for the Commission to consider in determining material injury. 19 C.F.R. § 207.26 (1984). The factors subject to consideration are the volume of imports that are under investigation, the impact of the imports on prices, and the impact of the imports on domestic procedures of similar merchandise. *Id.*

vestigation and, usually, a conference. The conference is, in effect, a hearing before the Commission's Director of Operations or Investigations. The petitioner's counsel will want to be fully prepared for this prior to filing a petition. At that time, a copy of the Commission's questionnaire should be obtained and filled out, possible problem areas should be thought over, and briefs should be planned. Conversely, the respondent's counsel typically has very little warning of the filing of the petition and must review with his client and the experts possible weaknesses in the petitioning industry's case, as well as consult with the Commission staff to make sure that the right questions are asked of the petitioning industry.

If the Commission does not find a reasonable indication of injury to a United States industry, the investigation is terminated as to both the Commission and Commerce.<sup>11</sup> Although in theory there is no rule against refiling a petition with new evidence, in practice it would be unwise absent a major change in the facts or the law. If the Commission finds a reasonable indication of injury, the investigation continues at Commerce,<sup>12</sup> which probably already has sent out questionnaires and started gathering information.

The sending of a questionnaire by Commerce to the foreign government and the companies is the first step in a formal investigation. The petitioner's counsel should make sure that the appropriate questions are asked before the questionnaire is sent, since a later, supplementary questionnaire can lead to delays in the case. A response to the questionnaire is required within 30 days of receipt of the questionnaire. Extensions of time for the response are possible if appropriate. In requesting an extension of time for an-

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No particular enumerated factor, however, is dispositive of material injury. See *Atlantic Sugar, Ltd. v. United States*, 519 F. Supp. 916, 922 (Ct. Int'l Trade 1981). See generally 1 P. FELLER, U.S. CUSTOMS AND INTERNATIONAL TRADE GUIDE § 17.04, at 17-11 to 15 (1983) (discussing material injury requirement); 1 R. STURM, CUSTOMS LAW AND ADMINISTRATION BOOKLET 25, § 58.6, at 35-42 (1984) (same).

Some countervailing duty cases, however, do not require proof of injury to domestic industry. In countervailing duty cases involving countries that are not signatories to the Subsidies Code, *supra* note 6, and that have not assumed substantially equivalent obligations, no injury test is made available except in certain cases involving non-dutiable merchandise. 19 U.S.C. §§ 1303, 1671 (1982). An injury test is required in proceedings involving goods exported from the European Economic Community and the following countries: Austria, Brazil, Canada, Chile, El Salvador, Finland, Honduras, Japan, Liberia, Nepal, Norway, North Yemen, Pakistan, Paraguay, Sweden, Switzerland, Taiwan, Uruguay, and Venezuela. See 1 P. FELLER, *supra*, § 17.04[1], at 17-12.

<sup>11</sup> See 19 U.S.C. §§ 1671b(a), 1673b(a) (1982).

<sup>12</sup> See *id.* §§ 1671b(b), 1673b(b).

swering the questionnaire, the respondent must show evidence of cooperation, together with good reason why 30 days are insufficient. The questionnaire response is the respondent's opportunity to shape its case in the way most advantageous to it,<sup>13</sup> subject to verification of any information contained therein.<sup>14</sup> Once the questionnaire response is received, the petitioner should set to work immediately to analyze it as quickly and thoroughly as possible to alert Commerce to any sins of omission or commission.

Verification of the questionnaire response normally will be conducted by a Commerce case analyst, possibly with help from people within the Import Administration or from outside accountants under contract to Commerce. The case analyst in a verification is basically checking to determine whether the responses are supported by hard evidence. Commerce takes the position that a verification may be made on the basis of a random selection of data.<sup>15</sup> In theory, a verification should be very simple: the respondent, in putting together the questionnaire response, should have assembled the "paper trail" leading to each item in the response. Respondents should *not* waste their time arguing that a response is the word of a foreign government and therefore beyond reproach.

Access to confidential information under a protective order is available to both sides in a proceeding.<sup>16</sup> In theory, the required

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<sup>13</sup> The respondent's answers to the questionnaire should be carefully framed because the completed questionnaire becomes part of the record of the proceedings. See 19 C.F.R. § 207.2(i)(1) (1984).

<sup>14</sup> See 19 C.F.R. § 207.4(b) (1984) (Commerce may exercise discretion to audit or verify completed questionnaire); see also *infra* note 15 and accompanying text (discussing Commerce's methods of verification).

<sup>15</sup> See 19 C.F.R. §§ 353.51, 355.39 (1984). *But see* 19 U.S.C. § 1677e (1982) (Commerce statutorily required to verify all information used to make its determination unless petitioner waives verification).

<sup>16</sup> 19 U.S.C. § 1677f(c) (1982); 19 C.F.R. §§ 353.30, 355.20 (1984). Information is considered confidential if it is designated as confidential by the party submitting it to Commerce, 19 U.S.C. § 1677f(b) (1982), and Commerce agrees that it warrants confidential treatment, see 19 C.F.R. §§ 353.28, 355.18 (1984). To determine whether material is confidential, Commerce considers, *inter alia*, whether the submitting party will suffer adverse effects, including substantial harm to its competitive position, if the material is disclosed. See 19 C.F.R. §§ 353.29, 355.19 (1984).

Disclosure of confidential material is closely regulated. See *id.* §§ 353.30, 355.20 (1984). The party requesting disclosure must describe the requested information with particularity and must articulate reasons for the release of the information. *Id.* §§ 353.30(a)(1)(i), (iii), 355.20(a)(1)(i), (iii). These procedural requirements must be complied with strictly. See *Sacilor, Acieries et Laminoids de Lorraine v. United States*, 542 F. Supp. 1020, 1025 (Ct. Int'l Trade 1982). In making its determination as to whether such confidential information should be disclosed, Commerce must "weigh whether the need of the person requesting the

non-confidential summary<sup>17</sup> should be sufficient in most countervailing duty cases, but in practice the petitioner's counsel will want to see the confidential responses to the questions. The petitioner's counsel usually should seek the confidential numbers in an antidumping response in order to doublecheck the calculations and claims of the respondent. The petitioner should request access to confidential information as soon as it is received by Commerce, but it is doubtful that access will be granted immediately, since Commerce may only release information pursuant to a carefully reasoned decision.<sup>18</sup> This may create great time pressure for petitioners seeking to analyze information, especially during the short time period allotted for antidumping and countervailing duty investigations.

One of the few procedural distinctions between countervailing duty and antidumping cases is the time limit for preliminary determinations. In countervailing duty cases, an extension of time beyond the "normal" 85 day limit for preliminary determinations<sup>19</sup> may be obtained for as much as an additional 65 days if the case is novel, complex, or involves a large number of responding companies.<sup>20</sup> In practice, most countervailing duty investigations are extended, so the petitioner's counsel should expect a longer period before the preliminary determination. The "normal" time limit for an antidumping investigation is 160 days,<sup>21</sup> subject to a potential

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information outweighs the need of the person submitting it for continued confidential treatment." 19 C.F.R. §§ 353.30(a)(3), 355.20(a)(3) (1984). The protective order under which information is made available requires the receiving party to sign a sworn statement affirming that he will not divulge any of the information received, nor use the information for any other purpose except for that proceeding. *See id.* §§ 353.30(b), 355.20(b). If the person who has submitted the confidential information does not want the information revealed, even under a protective order, the information shall not be released to the requesting party, nor will it be considered by Commerce when it makes its determination. *See id.* §§ 353.30(a)(4), 355.20(a)(4). Certain confidential information, such as that made confidential pursuant to statute or Executive Order, will not be divulged even under a protective order. *See id.* §§ 353.31, 355.21.

<sup>17</sup> *See* 19 U.S.C. § 1677f(4) (1982); 19 C.F.R. §§ 353.28(a)(1)-(3), 355.18(a)(1)-(3) (1984). A "nonconfidential summary" must be provided by the submitting party when a request has been made to give confidential treatment to the submitted information, unless the party provides a statement that the information cannot be so summarized and includes the reason why such summation is not possible. *See* 19 U.S.C. § 1677f(4) (1982); 19 C.F.R. §§ 353.28(a)(1)-(3), 355.18(a)(1)-(3) (1984).

<sup>18</sup> *See* *Sacilor, Acieries et Laminoirs de Lorraine v. United States*, 542 F. Supp. 1020, 1025 (Ct. Int'l Trade 1982).

<sup>19</sup> *See* 19 U.S.C. § 1671b (1982); 19 C.F.R. § 355.28(b) (1984).

<sup>20</sup> *See* 19 U.S.C. § 1671b(c)(1) (1982); 19 C.F.R. § 355.28(b) (1984).

<sup>21</sup> *See* 19 U.S.C. § 1673b(b)(1) (1982).

extension of up to 210 days if the statutory criteria of novelty, complexity, or number of firms involved are met.<sup>22</sup>

An affirmative preliminary determination will lead to the suspension of the liquidation of duties and posting of bonds for the imported merchandise under investigation, effective on the date of publication of the preliminary determination in the Federal Register.<sup>23</sup> In addition, an affirmative preliminary determination by Commerce will trigger a 120 day period within which the Commission must make its final injury determination.<sup>24</sup> Moreover, in certain specified circumstances, Commerce can order that the withholding of appraisement be made retroactive for up to 90 days to prevent importers from rushing in merchandise known to be dumped or subsidized prior to the preliminary determination.<sup>25</sup> A negative preliminary determination will lead to a continuation of the investigation, with neither a suspension of liquidation nor a requirement that a bond be posted.<sup>26</sup>

The preliminary determination is Commerce's presentation of its policy decisions on issues raised in the investigation. This presentation clarifies the issues of the case and affords all parties an opportunity to develop their respective strategies. The preliminary determination is followed closely by a disclosure conference at which each party is told separately the details of the calculations leading to the preliminary determination. The purpose of the disclosure conference is to give the parties the detailed knowledge which will enable them to participate effectively in the remainder of the investigation. It is not a good idea to use the disclosure conference to argue with the staff about the results. That is done at a hearing, which may be requested by either party before the final

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<sup>22</sup> See *id.* § 1673b(c)(1).

<sup>23</sup> See *id.* §§ 1671b(d)(1)-(2), 1673d(d)(1)-(2).

<sup>24</sup> See *id.* §§ 1671d(b)(2), 1673d(b)(2).

<sup>25</sup> See *id.* Suspension of liquidation can be made retroactive when there is a reasonable basis to believe that critical circumstances are present. See *id.* §§ 1671b(e)(2), 1673b(e)(2). Critical circumstances in countervailing duty cases are created where a subsidy is inconsistent with the Subsidies Code, *supra* note 6, and there have been substantial imports of the affected merchandise over a short period of time, see 19 U.S.C. § 1671b(e)(1) (1982). Similarly, critical circumstances in antidumping cases involve situations where there has been a sudden influx of imports of the merchandise and either a history of dumping of such merchandise or circumstances indicating that the importer knew or should have known that the merchandise was sold at less than fair market value. See *id.* § 1673b(e)(2).

<sup>26</sup> Cf. 19 U.S.C. §§ 1671d(c)(1)(B), 1673d(c)(1)(B) (1982) (suspension of liquidation and posting of cash deposit required where Commerce issued negative preliminary determination but made affirmative final determination).

determination.<sup>27</sup> The hearing also serves the function of getting one's arguments on the record for purposes of possible judicial review.<sup>28</sup> During the period between the preliminary determination and the final determination, all parties will be making their best arguments on questions of fact, law, and policy. Because of the time constraints, the ultimate decisionmakers will only have time for the most concise briefs.

Commerce must make a final determination as to the existence of a subsidy within 75 days of a preliminary determination in a countervailing duty case.<sup>29</sup> Similarly, Commerce must reach a final determination of whether the merchandise is being sold at less than fair market value within 75 days, extendable by 135 days at the request of the party "losing" the preliminary determination, in an antidumping case.<sup>30</sup> If the final determination is negative, the investigation is terminated.<sup>31</sup> If the final determination is affirmative, the case is sent to the Commission for a final determination of the existence of material injury.<sup>32</sup> At this time the Commission may require cash deposits if the Commission's preliminary determination had been negative.<sup>33</sup>

In general, the Commission must make a final determination of injury between 45 and 75 days after a final affirmative determination of dumping or subsidization by Commerce,<sup>34</sup> except in those countervailing duty cases in which no injury test applies.<sup>35</sup> This process involves a full-fledged hearing before the Commission, pre-hearing and post-hearing briefs, and testimony by expert economic and technical witnesses, all within a very short time. If the Commission's final determination is negative, the investigation is terminated.<sup>36</sup> If the final determination is affirmative, Commerce must

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<sup>27</sup> See *id.* § 1677c.

<sup>28</sup> See *id.* § 1516a(b)(2)(A) (record for judicial review consists of all information presented to agencies, including transcripts or records of hearings).

<sup>29</sup> See *id.* § 1671d(a)(1).

<sup>30</sup> *Id.* § 1673d(a)(1)-(2).

<sup>31</sup> See *id.* §§ 1671d(c)(2), 1673d(c)(2). In addition to the termination of the investigation, the Commission will also "release any bond or other security, and refund any cash deposit" that had been required. See *id.* §§ 1671d(c)(2)(B), 1673d(c)(2)(B).

<sup>32</sup> See *id.* §§ 1671d(b)(2)-(3), 1673d(b)(2)-(3).

<sup>33</sup> See *id.* §§ 1671d(c)(1), 1673d(c)(1). It should be noted that cash deposits are more harmful to the exporter than bonds, since cash deposits tie up his working capital.

<sup>34</sup> See *id.* §§ 1671d(b)(2)-(3), 1673d(b)(2)-(3).

<sup>35</sup> See *supra* note 10.

<sup>36</sup> See 19 U.S.C. §§ 1671d(c)(3), 1673d(c)(3) (1982).



issue an antidumping or countervailing duty order.<sup>37</sup>

Judicial review may be sought by a party for almost any decision in an antidumping or countervailing duty investigation, starting with the initiation of the investigation.<sup>38</sup> In practice, the ability to obtain interlocutory review may tend to favor the government and large law firms, since a small firm is stretched thin handling the other aspects of the investigation. Nevertheless, interlocutory review of procedural matters often makes more sense than an interlocutory challenge to the substance of a preliminary determination, for the latter will probably be made moot by the final determination.

Commerce also conducts an annual review of antidumping or countervailing duty orders. Pursuant to section 751 of the Trade Agreements Act of 1979 (section 751),<sup>39</sup> such review proceeds in much the same manner as the original investigation.<sup>40</sup> The annual review presents a chance to raise new facts, including those that may have been missed in the initial investigation, and, to a lesser extent, a chance to reargue the original points, although at some risk of irritating the staff.<sup>41</sup> Although Commerce, under section 751(c), may revoke an order for changed circumstances,<sup>42</sup> Commerce has so far refused to use section 751 as a vehicle for revising recently issued orders.

Settlement of cases may be obtained either by termination or by suspension agreements. Commerce may terminate an investigation upon withdrawal of the petition by the petitioner.<sup>43</sup> For purposes of termination, Commerce defines as petitioners only those parties filing sufficient petitions prior to the initiation of the inves-

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<sup>37</sup> *Id.* §§ 1671d(2), 1673d(2).

<sup>38</sup> *See id.* § 1516a(a)(2). An action to review a determination must be commenced within 30 days after publication of the determination in the Federal Register. *Id.* § 1516a(a)(2)(A). Interlocutory determinations are reviewable under an "arbitrary and capricious" standard. *See id.* § 1516a(b)(1)(A). The standard of review for final determinations, however, is whether the determination is "unsupported by substantial evidence on the record . . ." *Id.* § 1516a(b)(1)(B).

<sup>39</sup> Pub. L. No. 96-39, 93 Stat. 144, 175 (codified at 19 U.S.C. § 1675 (1982)).

<sup>40</sup> *See* 19 C.F.R. §§ 353.53(b)(1), 355.41(b)(1) (1984). A review will not be commenced within 24 months after the date of notice of the determination, unless good cause is shown. *See id.* Commerce will accept written comments on proposed revisions at any time, but will not review such comments until 90 days before the redetermination, unless changed circumstances are alleged. *See id.*

<sup>41</sup> *See id.* §§ 353.53(c)-(d), 355.41(c)-(d).

<sup>42</sup> Trade Agreements Act of 1979, Pub. L. No. 96-39, § 751(c), 93 Stat. 144, 176 (codified at 19 U.S.C. § 1675(c) (1982)).

<sup>43</sup> *See* 19 U.S.C. §§ 1671c(a), 1673c(a) (1982); 19 C.F.R. §§ 353.41(a), 355.30(a) (1984).

tigation.<sup>44</sup> Parties filing only statements of support or filing petitions after the initiation of the investigation are not regarded as petitioners. The 1982 antidumping and countervailing duty cases involving certain European Economic Community steel producers were settled by such withdrawal of petitions.<sup>45</sup>

Cases also may be settled by suspension agreements.<sup>46</sup> There are three useful types of suspension agreements for countervailing duty cases: (1) renunciation of the subsidy by the foreign government or recipient company,<sup>47</sup> (2) imposition of an export tax equal to the amount of the subsidy,<sup>48</sup> and (3) quantitative restraints.<sup>49</sup> The other possible statutory suspension agreement, cessation of exports,<sup>50</sup> has yet to prove useful. Antidumping investigations may be suspended upon an agreement by the exporters to revise their prices to a level that completely eliminates any dumping margin.<sup>51</sup> The other type of suspension agreement in antidumping cases, ces-

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<sup>44</sup> See 19 C.F.R. §§ 353.41, 355.30 (1984).

<sup>45</sup> See *Certain Steel Products from Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, the Netherlands, and the United Kingdom, Termination of Countervailing Duty and Antidumping Investigations*, 47 Fed. Reg. 49,058 (1984). In January, 1982, United States Steel Corp., Bethlehem Steel Corp., Republic Steel Corp., Inland Steel Co., Jones and Laughlin Steel, Inc., National Corp., and Cyclops Corp. filed petitions on behalf of the United States steel industry, alleging that subsidies were being provided directly or indirectly to the manufacturers, producers, or exporters of steel in certain member states of the European Economic Community (EEC). *Id.* Antidumping petitions were also filed by U.S. Steel Corp. and Bethlehem Steel Corp. in January, 1982, on behalf of the United States steel industry against the same members of the EEC. *Id.* at 49,059. In October, 1982, the petitions were withdrawn pursuant to an agreement between the petitioners and the European Coal and Steel Community (ECSC). *Id.* at 49,060-61. The objective of the arrangement was to give the ECSC time to restructure its steel industry and to create a period of trade stability. *Id.* at 49,061. As consideration for this arrangement, the ECSC agreed to restrict exports to, or destined for consumption in, the United States. *Id.* Because of the withdrawal of the petitions, Commerce terminated the investigation. *Id.*

<sup>46</sup> See 19 U.S.C. §§ 1671c(b)-(f), 1673c(b)-(f) (1982); 19 C.F.R. §§ 353.42(a)-(k), 355.31(a)-(k) (1984).

<sup>47</sup> 19 U.S.C. § 1671c(b)(1) (1982); 19 C.F.R. § 355.31(a)(1) (1984). For an illustration of this type of suspension agreement, see *Prestressed Concrete Steel Wire Strand from South Africa, Suspension of Investigation*, 47 Fed. Reg. 22,173 (1984). Commerce may not accept such an agreement unless the agreement would eliminate at least 85% of the subsidy. 19 U.S.C. § 1671(c)(2)(B) (1982); 19 C.F.R. § 355.31(b)(2)(ii) (1984).

<sup>48</sup> 19 U.S.C. § 1671c(b)(1) (1982); see 19 C.F.R. § 355.31(a)(1) (1984). For an example of a suspension agreement involving the imposition of an export tax, see *Tool Steel from Brazil, Suspension of Investigation*, 48 Fed. Reg. 11,731 (1983).

<sup>49</sup> 19 U.S.C. § 1671c(c)(3) (1982); see 19 C.F.R. § 355.31(b)(3) (1984). This type of suspension agreement has yet to be employed.

<sup>50</sup> 19 U.S.C. § 1671c(b)(2); see 19 C.F.R. § 355.31(a)(2).

<sup>51</sup> 19 U.S.C. § 1673c(b)(1); see 19 C.F.R. § 353.42(a)(1).

sation of exports,<sup>52</sup> is rarely practicable.

The procedures for a suspension agreement are complex. Essentially, the agreement between Commerce and the respondent must be finalized 30 days prior to the date of the final determination to allow the domestic petitioner its statutory right of comment.<sup>53</sup> The investigation will be continued if Commerce receives a request to continue the investigation from either the foreign government or an "interested party" within 20 days after the publication of notice of inspection.<sup>54</sup> The petitioner may also compel the Commission to reinvestigate by petitioning Commerce within 20 days after suspension of the investigation.<sup>55</sup> Finally, a dissatisfied party may seek judicial review of any suspension agreement.<sup>56</sup>

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<sup>52</sup> 19 U.S.C. § 1673c(b)(2); see 19 C.F.R. § 353.42(a).

<sup>53</sup> 19 U.S.C. §§ 1671c(e)(1), 1673c(e)(1) (1982); see 19 C.F.R. §§ 353.42(i), 355.31(i) (1984).

<sup>54</sup> 19 U.S.C. §§ 1671c(g), 1673c(g) (1982); see 19 C.F.R. §§ 353.43(1), 355.31(1) (1984).

<sup>55</sup> 19 U.S.C. §§ 1671c(h)(i)(2), 1673c(h)(i)(2) (1982); see 19 C.F.R. §§ 353.42(k), 355.31(k) (1984). The Commission has 75 days to act upon the petition seeking reimplementation of the investigation. 19 U.S.C. §§ 1671c(h)(2), 1673(h)(2) (1982). If the alleged injurious acts by the foreign trader or government have not been completely eliminated by the suspension agreement, the investigation must be resumed. *Id.* Upon a finding that the problems that gave rise to the investigation have been cured, any suspension of liquidation will be terminated, all estimated antidumping or countervailing duties refunded, and all bonds or other securities released. 19 C.F.R. §§ 353.43(1), 355.31(1) (1984).

<sup>56</sup> 19 U.S.C. 1516a(a)(2)(B)(iv) (1982). An action to review a suspension agreement must be commenced within 30 days after publication of the agreement in the Federal Register, and the complaint must be issued within 30 days after the action is commenced. *Id.* § 1516a(a)(2)(A).