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Import Law and Policy Series: Review and Revocation of Antidumping and Countervailing Duty Orders

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CURRENT DEVELOPMENTS

Import Law and Policy Series: **Review and Revocation of Antidumping and Countervailing Duty Orders**

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In recent years, antidumping and countervailing duty investigations have received heightened congressional, press, and business and labor attention. An initial investigation is often noteworthy—domestic producers are not yet protected against possible unfair trade practices, the Department of Commerce (Commerce) and the International Trade Commission (Commission or ITC) have not yet found unfair trade practices, and the investigations sometimes create new tensions with our trading partners.

Less often in the headlines, but often more important, are annual and “changed circumstances” reviews of antidumping (AD) and countervailing duty (CVD) orders issued as a result of investigations. The statutory requirement for annual reviews and opportunity for revocations, effected in 1979, have recently been amended and supplemented by changes in Commerce’s regulations. Moreover, Commerce and the Commission have begun to apply the new law and regulations. This article reviews these developments and comments on their importance.

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The views expressed in this article are solely those of the authors.

I. The Trade Agreements Act of 1979

A. ADMINISTRATIVE PRACTICE PRIOR TO THE TRADE AGREEMENTS ACT

Prior to the Trade Agreements Act of 1979,¹ neither the antidumping² nor the countervailing duty law³ required review of orders issued under these laws at stated intervals.⁴ Until January 2, 1980,⁵ the Department of the Treasury made determinations of sales at less-than-fair-value (LTFV) in dumping cases and of bounties or grants in CVD cases. Treasury's antidumping and countervailing duty regulations did not require regular reviews of orders, although they did establish a procedure for modification or revocation of a dumping or subsidy finding, either by request of a party or by the Secretary of the Treasury on his own initiative if there were "changed circumstances."⁶ The Commission's regulations provided for review of an injury finding in an AD or CVD case on the ITC's own motion, at the request of an interested party, or upon advice from Treasury that there were "changed circumstances."⁷

B. ORIGINS OF SECTION 751

Private sector and Congressional dissatisfaction with the AD and CVD laws and their administration by the Treasury Department led to their significant revision through the Trade Agreements Act, and a transfer of Treasury's responsibilities under them to Commerce.⁸ Among the principal problems perceived was Treasury's alleged "lax enforcement after the investigation was completed, permitting lengthy postponement of antidumping duties, or an outright waiver of the duty in some countervailing duty cases. . . ."⁹ As one member of the House Ways and Means Committee summarized:

The Committee has been very dissatisfied with the track record of the Treasury Department in the assessment of antidumping and countervailing duties. The

1. Pub. L. No. 96-39, 93 Stat. 144 (1979).

2. Antidumping Act, 1921, 19 U.S.C. §§ 160-171 (1975).

3. 19 U.S.C. § 1303 (1983).

4. The CVD law provided for revision of the amount of a countervailing duty from time to time, as the Secretary "deems necessary." The AD law required assessment on an entry-by-entry basis, but did not establish time limits for such assessments.

5. Reorg. Plan No. 3 of 1979, §§ 2(a), 5(a)(1)(C), *reprinted in* 5 U.S.C. app. at 1170 (Supp. III 1979); *and in* 93 Stat. 1381 (1979); 3 C.F.R. § 513 (1979); Exec. Order No. 12,188, 3 C.F.R. §§ 131, 135 (1980).

6. 19 C.F.R. §§ 153.44, 159.47 (1979). (The latter section simply provided that: "countervailing duties shall be assessed in accordance with Part 353, Chapter III, of this title.")

7. 19 C.F.R. §§ 207.5, .9 (1979).

8. Reorg. Plan No. 3, *supra* note 5, §§ 2(a), 5(a)(1)(C).

9. 125 CONG. REC. 20,171 (1979) (remarks of Sen. Danforth).

average 3–3½ year delay in assessment is unacceptable. This bill [the Trade Agreements Act] remedies this situation by imposing strict time limits on assessment.¹⁰

In addition to Congressional and private sector pressures and preferences, the Executive Branch had recently concluded international agreements during the Tokyo Round of Multilateral Trade Negotiations. The main purpose of the Trade Agreements Act was to implement those international agreements into U.S. domestic law. Two of these agreements were the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (Antidumping Code),¹¹ and the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code).¹²

Article 8(3) of the Antidumping Code precludes the amount of any antidumping duties from exceeding the margin of dumping, and requires prompt reimbursement of any amount collected in excess of the actual dumping margin. Moreover, Article 9(1) of that code allows an antidumping duty to remain in force “only as long as, and to the extent necessary to counteract dumping which is causing injury.” Article 9(2) requires signatories to review the need “for the continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.”

Similarly, Article 4(9) of the Subsidies Code allows a countervailing duty order to remain in force “only as long as, and to the extent necessary to counteract the subsidization which is causing injury.” As under the Antidumping Code, this Subsidies Code provision requires each signatory to review the need for continued imposition of a duty, where warranted, on its own initiative or at the request of any interested party.

Consequently, these code provisions require a procedure to assure that antidumping and countervailing duties assessed do not exceed the actual dumping margin or level of subsidies, and to facilitate the revocation of an order if LTFV sales or subsidies are no longer causing or threatening material injury to a U.S. industry, or materially retarding the establishment of such an industry.

10. 125 CONG. REC. H5596 (1979) (remarks of Rep. Shannon). See also S. REP. NO. 249, 96th Cong., 1st Sess. 76–77 (1979), reprinted in 1979 U.S. CODE CONG. & AD. NEWS 381, 462–63. In discussing § 736(c) of the Tariff Act of 1930, as amended by the Trade Agreements Act, the Senate report notes:

In light of the dismal performance of the Department of the Treasury in assessing special dumping duties in the recent past, the Committee considers this time limit on assessment to be an extremely important addition to the law.

Id. See also Shambon, *Annual Review of Antidumping and Countervailing Duty Orders*, in THE COMMERCE DEPARTMENT SPEAKS ON DUMPING AND COUNTERVAILING DUTIES 179, 181–82 (P.L.I. 1982) [hereinafter cited as Shambon].

11. 31 U.S.T. 4919, T.I.A.S. No. 9650.

12. 31 U.S.T. 513, T.I.A.S. No. 9619.

C. ENACTMENT OF SECTION 751

To meet Congressional and private sector concerns and to implement the Antidumping and Subsidies Codes, the Trade Agreements Act further amended the Tariff Act of 1930 (the Act).¹³ New section 751 established procedures for automatic and special reviews and for possible revocation of orders or termination of suspended investigations. Section 751(a) required a review in each twelve-month period beginning on the anniversary of the date of publication of a CVD order, an AD order (or finding),¹⁴ or a notice of the suspension of an AD or CVD investigation.¹⁵ The purpose of this annual review was to determine the amount of any net subsidy or dumping margin, or to review the status of and compliance with any suspension agreement, as appropriate.¹⁶

Section 751(b) supplemented the regular administrative reviews required by section 751(a) with optional reviews upon information or request. Section 751(b)(1) generally authorized Commerce¹⁷ or the Commission to conduct special reviews upon receipt of a request and information showing "changed circumstances sufficient to warrant a review" of suspension agreements or of affirmative determinations of LTFV sales, subsidization, material injury, or complete elimination of injurious effect of imports through a suspension agreement. However, "in the absence of good cause shown," section 751(b)(2) precluded changed circumstances reviews¹⁸ during the first twenty-four months following publication of the notice of the determination or suspension to be reviewed.

Section 751(c) authorized Commerce to revoke an AD or CVD order or to terminate a suspended investigation after review under section 751. Section 751(d) required either Commerce or the Commission to hold a

13. 19 U.S.C.A. § 1675.

14. A "finding" refers to an action of the Treasury Department under the Antidumping Act, 1921, 19 U.S.C. §§ 160-171 (1975), which preceded and was repealed by § 106(a) of the Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 193 (1979).

15. Sections 704 and 734 of the Act prescribe the circumstances under which Commerce may suspend countervailing duty and antidumping investigations, respectively. 19 U.S.C. §§ 1671c, 1673c (1982).

16. Based upon the final results of review, Commerce assesses duties on past entries (and thus the entries may finally be liquidated), and establishes a new estimated duty deposit rate for prospective entries. Sections 706, 736 of the Act, 19 U.S.C. §§ 1671e, 1673e (1982).

17. Like the rest of the antidumping and countervailing duty law, this section actually refers to "the administering authority." Under Reorg. Plan No. 3 and Exec. Order 12,188, *supra* note 5, Commerce is the administering authority.

18. The only exception is reviews of determinations under §§ 704(h)(2) and 734(h)(2), which require the Commission to determine upon request whether the injurious effect of imports is eliminated completely by a suspension agreement concluded on that basis under § 704(c) (for CVD) or § 734(c) (for AD).

hearing during any review under section 751 if an interested party requested a hearing.¹⁹

Legislative history indicates that the reason for section 751 was to “[expedite] the administration of the assessment phase of antidumping and countervailing duty investigations.”²⁰ Section 751 was further designed broadly to provide a greater role for domestic interested parties and to introduce more procedural safeguards (through hearings and required publication of notices).²¹

D. REGULATIONS IMPLEMENTING SECTION 751

Both Commerce and the Commission promulgated regulations implementing section 751. In both its antidumping²² and countervailing duty regulations,²³ Commerce implemented separately section 751’s requirement for administrative reviews and for the establishment of procedures for possible revocation of orders and termination of suspended investigations. The regulations on administrative reviews²⁴ provided for annual reviews as well as reviews based on “changed circumstances,” which the regulations do not describe. These regulations also established general procedures for all reviews under section 751.²⁵

The regulations on revocation and termination,²⁶ on the other hand, authorized the Secretary to revoke orders or terminate suspended investigations, ordinarily in connection with administrative reviews, whenever he determined that LTFV sales or subsidies were no longer being made nor were likely to be resumed. Parties to the proceeding could apply to the Secretary for revocation or termination, supported by detailed information demonstrating the discontinuation of LTFV sales or subsidies. The regulations prescribed that “ordinarily” the Secretary would consider revocation or termination applications only if LTFV sales or subsidies had been discontinued for at least two years following publication of the order or suspension concerned.

19. Section 751(e) prescribes what happens if, in reviewing a suspension agreement, the Commission determines that an agreement concluded under § 704(c) or § 734(c) (that is, a suspension agreement based upon complete elimination of injurious effect of the subsidy or LTFV sales) has not, in fact, completely eliminated the injurious effect.

20. S. REP. NO. 249, 96th Cong., 1st Sess. 80–81, 446–67 (1979), *reprinted in* 1979 U.S. CODE CONG. & AD. NEWS 381, 466–67.

21. *Id.*

22. Department of Commerce Antidumping Regulations, 45 Fed. Reg. 8182 (1980), codified at 19 C.F.R. pt. 353 (1985).

23. Department of Commerce Countervailing Duty Regulations, 45 Fed. Reg. 4932 (1980), codified at 19 C.F.R. pt. 355 (1985).

24. 19 C.F.R. §§ 353.53, 355.41 (1985).

25. 19 C.F.R. §§ 353.53(c), 355.41(c) (1985).

26. 19 C.F.R. §§ 353.54, 355.42 (1985).

In addition to revocation in response to application by a party to the proceeding, the Secretary was authorized to revoke orders and terminate suspensions on his own initiative after three years, if he were satisfied that: (1) LTFV sales or subsidies have been eliminated; (2) there is no likelihood that LTFV sales or subsidies will resume; or (3) other "changed circumstances" warrant revocation or termination. Neither the antidumping nor countervailing duty regulations clarified what might constitute "changed circumstances." The regulations did prescribe in detail the procedures by which orders may be revoked or suspensions terminated.²⁷

The Commission also promulgated new regulations to implement section 751.²⁸ The new rules implemented four major changes. First, they established procedures specifically applicable to section 751(b) "changed circumstances" investigations.²⁹ The new procedures clarified that the Commission makes two distinct determinations in every section 751(b) investigation. It first determines whether changed circumstances warrant a review.³⁰ If so, it then determines whether an industry in the United States would be materially injured or threatened with material injury, or whether establishment of an industry in the United States would be materially retarded, by reason of the imports concerned if the order covering them were modified or revoked.³¹

Second, the Commission's new rules stated the focus of the investigation in the affirmative rather than the negative. The Commission must determine if the requisite injury would result from revocation of an order, rather than to determine if such injury would not result.³² Third, the new rules required causation: the Commission must determine that the requisite injury is "by reason of imports of the merchandise covered" by the order under review.³³ Finally, the new rules added material injury to threat of material injury and material retardation of establishment as bases for the determination concerning the modification or revocation of an order.³⁴

27. The regulatory requirement that revocation or termination ordinarily be made in the context of annual reviews was not required by the Trade Agreements Act, but was adopted by Commerce because in accord with past practice of the Treasury Department. Trade Agreements Act of 1979: Statements of Administrative Action, H.R. Doc. No. 153, pt. 2, 96th Cong., 1st Sess. 430 (1979) [Statements of Administrative Action].

28. 46 Fed. Reg. 18,022 (1981) (codified at 19 C.F.R. § 207.45 (1985)).

29. 46 Fed. Reg. 18,023 (1981) (codified at 19 C.F.R. § 207.45(b) (1985)). The old rule had simply adopted the procedures for 120-day investigations; *i.e.*, the regulations applicable to final investigations in AD and CVD cases. 19 C.F.R. § 207.20-28 (1985).

30. 46 Fed. Reg. 18,023 (1981) (codified at 19 C.F.R. § 207.45(b)(3) (1985)).

31. 46 Fed. Reg. 18,022-23 (1981) (codified at 19 C.F.R. § 207.45(a)).

32. *Id.*

33. *Id.*

34. *Id.*

E. PRACTICE UNDER SECTION 751 FROM 1980 TO 1984

The Commission's role in implementing section 751 is far smaller than Commerce's, since it is authorized to conduct reviews only upon request based upon "changed circumstances." Unlike Commerce, it does not regularly review orders to determine whether the imports concerned still cause or threaten material injury, or materially retard the establishment of a U.S. industry. As a result, the Commission conducted only nine reviews under section 751 between enactment of the Trade Agreement Act of 1979 and the Trade and Tariff Act of 1984.³⁵

35. Pub. L. No. 98-573, 98 Stat. 2948 (1984). The Commission conducted nine changed circumstances reviews in 1980-1984: Electric Golf Cars from Poland, Inv. No. 751-TA-1, USITC Pub. 1069 (1980) (AD order was revoked after Commission found that exporter's capacity was limited, that domestic models were more popular and expensive, and that further LTFV sales would not increase the market share of golf cars from Poland); Television Receiving Sets from Japan, Inv. No. 751-TA-2, USITC Pub. 1153 (1981) (Commission found that the U.S. industry would be threatened with material injury if the AD order were revoked, based in part on the failure of importers and exporters to present any information about their pricing and other marketing trends); Potassium Chloride from Canada, Inv. No. 751-TA-3, USITC Pub. 1137 (1981) (order was revoked, without opposition from domestic producers, as to the sole Canadian producer that remained subject to it, which had only small market shares in the U.S. and Canada; other producers had been excluded by Treasury or order had already been revoked with respect to them by Treasury or Commerce); Synthetic L-Methionine from Japan, Inv. No. 751-TA-4, USITC Pub. 1167 (1981) (order was revoked with respect to synthetic L-methionine because the ITC found that it had never been within the scope of the Commission injury investigation, that there were no attempts to begin U.S. production of that chemical, and that all U.S. consumption had been supplied by imports); Salmon Gill Fish Netting of Manmade Fibers from Japan, Inv. No. 751-TA-5, USITC Pub. 1234 (1982) (Commission found that the establishment of an industry in the United States would be materially retarded by such imports if the order were revoked, where the potential market entrants' plan to compete with the higher quality Japanese products would be impeded by any aggressive Japanese underselling discouraging consumer acceptance of domestic higher quality and more expensive product); Birch Three-Ply Door Skins from Japan, Inv. No. 751-TA-6, USITC Pub. 1271 (1982) (Commission found that a U.S. industry would be threatened with material injury if the order were modified or revoked); Salmon Gill Fish Netting of Manmade Fibers from Japan, Inv. No. 751-TA-7, USITC Pub. 1387 (1983) (Commission found that a U.S. industry would be materially injured by such imports if the antidumping order were revoked); Acrylic Sheet from Japan, Inv. No. 751-TA-8, 49 Fed. Reg. 17,643 (1984) (Commission dismissed petition as moot, without prejudice); Dry Cleaning Machinery from the Federal Republic of Germany, Inv. No. 751-TA-9, USITC Pub. 1617 (1984) (Commission found that a U.S. industry would be materially injured if the order were modified or revoked).

In addition, the Commission has rejected a request to conduct a review within twenty-four months of its affirmative determination, in Kraft Condenser Paper from Finland and France (letter from Universal Manufacturing Corp. dated May 23, 1980). It has also dismissed requests for review investigations because of the requestors' failure to establish changed circumstances (e.g., Melamine in Crystal Form from Japan, 49 Fed. Reg. 20,765 (1984); Dry Cleaning Machinery from Federal Republic of Germany, 47 Fed. Reg. 6119 (1982)). See generally Easton, "Modification or Revocation of Outstanding Antidumping and Countervailing Duty Orders: ITC Review Investigations," *THE COMMERCE DEPARTMENT SPEAKS ON DUMPING AND COUNTERVAILING DUTIES* 223-51 (1982).

When Commerce became the administering authority effective January 2, 1980, it promulgated regulations to implement section 751³⁶ and established an office to conduct such reviews.³⁷ Under section 751, Commerce has revoked numerous AD and CVD orders since 1980. Many of these revocations were the result of injury reviews by the Commission pursuant to section 104(b) of the Trade Agreements Act.³⁸ Section 104(b) required the Commission to review for the first time all countervailing duty orders issued under section 303 of the Act by the Department of the Treasury and in effect on January 1, 1980, involving products from "countries under the Agreement,"³⁹ if the government of the country concerned (or exporters accounting for a significant proportion of exports to the U.S.) requested such reviews by January 1, 1983. Where the Commission made a negative determination (that is, it found that no domestic industry would be materially injured or threatened with material injury, nor would the establishment of a domestic industry be materially retarded, by revocation or the order), Commerce revoked the order.⁴⁰

36. 45 Fed. Reg. 8182 (1980) (codified at 19 C.F.R. §§ 353.53, .54; 355.41, .42 (1985)).

37. The Office of Compliance within Import Administration. The Director of the Office of Compliance reports to the Deputy Assistant Secretary for Import Administration, who in turn reports to the Assistant Secretary for Trade Administration. That Assistant Secretary reports to the Under Secretary for International Trade, who reports to the Secretary of Commerce.

38. 93 Stat. 191, 19 U.S.C. § 1671 note (1982).

39. Under 19 U.S.C. § 1671(b) (1982), a "country under the Agreement" is:

(1) A country with respect to which the United States applies the Subsidies Code (currently, Australia, Austria, Brazil, Canada, Chile, member states of the European Economic Community, Finland, India, Indonesia, Japan, Korea, Norway, Pakistan, Philippines, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom for Hong Kong and Uruguay; U.S. Dept. of State, *Treaties in Force* 296 (1985). 50 Fed. Reg. 8428, 9342, 11,471 (1985); 48 Fed. Reg. 52,664 (1983); 47 Fed. Reg. 16,697 (1982); 46 Fed. Reg. 24,059, 46,263, 48,391, 48,807 (1981); 45 Fed. Reg. 1181, 18,547, 36,569, 63,402 (1980). (The Office of the United States Trade Representative terminated New Zealand's status as a "country under the Agreement" on April 1, 1985, 50 Fed. Reg. 13,111).

(2) A country whose government has assumed obligations to the United States substantially equivalent to those under the Subsidies Code (currently Taiwan and Mexico, 45 Fed. Reg. 1181 (1980), 50 Fed. Reg. 18,335 (1985)).

(3) El Salvador, Honduras, Liberia, Nepal, North Yemen, Paraguay, and Venezuela (see President's Memorandum of Dec. 14, 1979, Transmitting Determination Regarding the Multilateral Trade Negotiations, 44 Fed. Reg. 74,781 (1979); S. REP. NO. 249, 96th Cong., 1st Sess. 45, reprinted in 1979 U.S. CODE CONG. & AD. NEWS 381, 431; Statements of Administrative Action, *supra* note 27, at 394).

40. Oleoresins from India, 50 Fed. Reg. 23,484 (1985); Oleoresins of Paprika from Spain, 50 Fed. Reg. 23,330 (1985); Chain of Iron and Steel from Japan, 50 Fed. Reg. 19,063 (1985); Ampicillin Trihydrate and Its Salts from Spain, 50 Fed. Reg. 9307 (1985); Amoxicillin Trihydrate and Its Salts from Spain, 50 Fed. Reg. 2600 (1985); Tomato Products from Greece, 50 Fed. Reg. 2073 (1985); Butter from Australia, 49 Fed. Reg. 49,317 (1984); Vitamin K from Spain, 49 Fed. Reg. 48,783 (1984); Ferroalloys from Spain, 49 Fed. Reg. 46,922 (1984); Unwrought Zinc from Spain, 49 Fed. Reg. 46,923 (1984); Cotton Yarn from Brazil, 49 Fed. Reg. 34,546 (1984); Bottled Green Olives from Spain, 49 Fed. Reg. 23,671 (1984); Certain Scissors and Shears from Brazil, 49 Fed. Reg. 7638 (1984); Certain Footwear from India, 48

Commerce revoked other orders or findings or terminated suspended investigations, in entirety or in part, based upon determinations that products had not been subsidized,⁴¹ or had been sold at not LTFV,⁴² for at least two years; had not been imported into the U.S. for at least four years in an

Fed. Reg. 29,723 (1983); Non-Rubber Footwear from Brazil, 48 Fed. Reg. 28,310 (1983); Non-Rubber Footwear from Spain, 48 Fed. Reg. 28,310 (1983); Bicycle Tires and Tubes from Korea, 48 Fed. Reg. 26,654 (1983); Bicycle Tires and Tubes from Taiwan, 48 Fed. Reg. 26,655 (1983); Float Glass from Italy, 48 Fed. Reg. 25,255 (1983); Float Glass from Belgium, 48 Fed. Reg. 11,307 (1983); Michelin X-Radial Steel-Belted Tires from Canada, 47 Fed. Reg. 29,696 (1982); Molasses from France, 47 Fed. Reg. 29,697 (1982); Barley from France, 47 Fed. Reg. 18,637 (1982); Compressors and Parts Thereof from Italy, 47 Fed. Reg. 6909 (1982); Steel Units for Electrical Transmission Towers from Italy, 47 Fed. Reg. 5449 (1982); Refrigerators, Freezers, Other Refrigeration Equipment and Parts from Italy, 47 Fed. Reg. 5279 (1982); Ski-Lifts and Parts Thereof from Italy, 47 Fed. Reg. 1164 (1982); Die Presses from Italy, 46 Fed. Reg. 60,486 (1981); Cap Screws from Italy, 46 Fed. Reg. 52,407 (1981); Steel Welded Wire Mesh from Italy, 46 Fed. Reg. 52,407 (1981); Spirits from Ireland, 46 Fed. Reg. 44,212 (1981); Optic Liquid Level Sensing Systems from Canada, 46 Fed. Reg. 42,897 (1981); Certain Textiles and Textile Products from Pakistan, 46 Fed. Reg. 12,955 (1981); Chains and Parts Thereof, of Cast Iron, Iron or Steel from Italy, 45 Fed. Reg. 73,921 (1980), as corrected, 46 Fed. Reg. 3500 (1981); and Certain Steel Products from Italy, 45 Fed. Reg. 68,930 (1980). *See also* Certain Fasteners from India, 47 Fed. Reg. 31,305 (preliminary), 44,129 (final) (1982), in which Commerce revoked a CVD order issued after Jan. 1, 1980, and before India became a "country under the [Subsidies Code]" on September 25, 1981. The ITC considered it had no authority to review such an order under § 104(b) despite the Government of India's request. Commerce considered that under § 303(a)(2) of the Act, it had no authority to impose countervailing duties without an affirmative injury determination. Consequently, it revoked the order.

See also Certain Fasteners from Japan, 50 Fed. Reg. 26,060 (1985) (request for public comment on termination of countervailing duty investigation), and Float Glass from the Federal Republic of Germany and the United Kingdom, 50 Fed. Reg. 26,060 (1985) (termination). In the former case, the ITC proposed to terminate its § 104(b) injury investigation because the original petitioner withdrew its request for imposition of countervailing duties. In the latter cases, the ITC terminated the § 104(b) injury investigations when the original petitioners likewise withdrew their request for duties. While the Commission noted the absence of express authority to terminate a § 104(b) investigation (unlike a new CVD investigation under § 704(a), 19 U.S.C. § 1671c(a)), it concluded that such authority is implied with respect to existing CVD orders.

41. In the following cases, Commerce revoked countervailing duty orders on the grounds that net subsidies were *de minimis* for at least two years: Certain Handbags from Korea, 46 Fed. Reg. 13,213 (1981); Glass Beads from Canada, 46 Fed. Reg. 16,099 (1981); Footwear from Korea, 46 Fed. Reg. 17,014 (1981); Butter from Denmark, 46 Fed. Reg. 26,472 (1981); Sugar from the United Kingdom, 46 Fed. Reg. 32,925 (1981); Canned Tomatoes and Canned Tomato Concentrates from Italy, 46 Fed. Reg. 37,066 (1981); Canned Tomato Paste from France, 46 Fed. Reg. 39,195 (1981). Moreover, Commerce revoked one countervailing duty order because of an absence of imports into the United States for twenty-two years: Cordage from Cuba, 49 Fed. Reg. 39,888 (1984).

In Molasses from France, 46 Fed. Reg. 53,200 (1981), Commerce declined to revoke a CVD order although there had been no exports to the U.S. for 10 years, because the program still existed.

42. Commerce revoked antidumping orders or findings in the following cases, based upon sales of not LTFV for at least two years: Ice Cream Sandwich Wafers from Canada, 45 Fed. Reg. 75,730 (1980) (preliminary), 46 Fed. Reg. 15,135 (1981) (final); Clear Plate and Float Glass from Japan, 46 Fed. Reg. 10,970, 32,926 (1981) (preliminary, final); Elemental Sulfur from Canada, 46 Fed. Reg. 21,214 (1981) (preliminary), 47 Fed. Reg. 3811 (1981) (final and

AD case;⁴³ or had been sold at not LTFV for at least one year and not imported into the U.S. for three years.⁴⁴ In any of these cases, Commerce also found no likelihood of resumption of subsidization or LTFV sales,⁴⁵ and foreign exporters agreed in writing to an immediate suspension of liquidation and reinstatement of the order or continuation of the investigation, as appropriate, if subsidies or LTFV sales resumed.⁴⁶

partial revocation); Ceramic Wall Tile from the United Kingdom, 47 Fed. Reg. 3812, 13,020 (1982) (preliminary, final); Clear Sheet Glass from Japan, 46 Fed. Reg. 33064 (1981) (preliminary), 47 Fed. Reg. 14,506 (1982) (final); Elemental Sulfur from Canada, 47 Fed. Reg. 18,016, 31,716 (1982) (preliminary, final); Polyvinyl Chloride Sheet and Film from Taiwan, 48 Fed. Reg. 53,586 (1983) (preliminary), 49 Fed. Reg. 7640 (1984) (final, partial) [revocation for two firms was on the basis of sales at not LTFV for at least two years; revocation for two other firms was based upon no shipments to the U.S. for nearly three years]; Kraft Condenser Paper from France, 49 Fed. Reg. 8541, 30,987 (1984) (preliminary, final); Ferrite Cores (of the Type Used in Consumer Electronic Products) from Japan, 49 Fed. Reg. 31,311, 43,737 (1984) (preliminary, final).

43. Commerce revoked antidumping orders or findings in the following cases because of an absence of imports of the merchandise concerned into the U.S. for the time period specified: Portland Cement, Other Than White, Non-Staining Portland Cement, from Belgium, 45 Fed. Reg. 80,571 (1980) (preliminary), 46 Fed. Reg. 17,190 (1981) (final), 17 years; Steel Bars, Reinforcing Bars, and Shapes from Australia, 46 Fed. Reg. 15,190, 22,754 (1981) (preliminary, final), 4-½ years; Elemental Sulfur from Mexico, 46 Fed. Reg. 21,216, 35,539 (1981) (preliminary, final), 7-½ years; Large Power Transformers from the United Kingdom, 46 Fed. Reg. 30,168, 40,064 (1981) (preliminary, final), 5 years; Tapered Roller Bearings and Certain Components Thereof from Japan, 46 Fed. Reg. 14,371 (1981) (preliminary), 47 Fed. Reg. 25,757 (1982) (final, partial), 5-½ years; Pig Iron from West Germany and Finland, 48 Fed. Reg. 13,472, 15,309 (preliminaries), 45,486 (final) (1983), 3-¾ years; Polyvinyl Chloride Sheet and Film from Taiwan, 48 Fed. Reg. 53,586 (1983) (preliminary), 49 Fed. Reg. 7640 (1984) (final, partial), 3 years [revocation for two firms was on this basis; for two other firms, revocation was based on sales at not LTFV for at least two years]; Tempered Sheet Glass from Japan, 47 Fed. Reg. 8037 (1982) (preliminary), 49 Fed. Reg. 8975 (1984) (final), 5 years; Viscose Rayon Staple Fiber from Belgium, 48 Fed. Reg. 45,141 (1983) (preliminary), 49 Fed. Reg. 9939 (1984) (final), 4 years (and the one known exporter to the U.S. was no longer in business); Pig Iron from Czechoslovakia, 48 Fed. Reg. 52,345 (1983) (preliminary), 49 Fed. Reg. 10,694 (1984) (final), 15 years; Perchloroethylene from Belgium, 49 Fed. Reg. 7263, 22,843 (1984) (preliminary, final), 4 years; Large Power Transformers from Italy, 49 Fed. Reg. 9935, 31,313 (1984) (preliminary, final), 12 years; Printed Vinyl Film from Brazil, 49 Fed. Reg. 6958, 33,158 (1984) (preliminary, final), 9 years; Printed Vinyl Film from Argentina, 49 Fed. Reg. 1262, 34,385 (1984) (preliminary, final), 10 years; Pig Iron from Romania, the U.S.S.R. and East Germany, 49 Fed. Reg. 32,635 (1984) (preliminary), 50 Fed. Reg. 870 (1985) (final), 15 years.

44. See generally Shambon, *supra* note 10, at 192-94. In practice, Commerce also reviewed imports concerned after the review period up to the date of publication of the tentative revocation. This further review effectively delayed possible revocation. *Id.* at 194.

45. Commerce has declined to revoke an antidumping order or finding even if there have been no shipments to the U.S. for at least four years, if it concludes that resumption of LTFV sales is not unlikely. Canned Bartlett Pears from Australia, 47 Fed. Reg. 3393, 13,020 (1982) (preliminary, final) (no shipments for over eight years); Cadmium from Japan, 46 Fed. Reg. 50,815-16 (1981) (no shipments for over seven years). See also Tempered Sheet Glass from Japan, 48 Fed. Reg. 8975 (revocation of AD finding) (Comment 2 and Department's Position).

46. Commerce's regulations require such an agreement for revocation. 19 C.F.R. §§ 353.54(e), 355.42(e) (1985).

In addition to revocations, Commerce conducted annual administrative reviews covering outstanding orders and suspension agreements.⁴⁷ Despite its best efforts and the widespread Congressional and private sector concern about Treasury's backlog in assessing duties,⁴⁸ Commerce faced increasing difficulty in reducing this backlog. This was because of: (1) the size of the backlog inherited from Treasury;⁴⁹ (2) the systemic increase in the number of orders issued and investigations suspended; and (3) the increased complexity of the cases. The number of antidumping and countervailing duty cases increased significantly after 1980; since then over five hundred investigations have been initiated. While many of these initiations do not result in the issuance of orders or suspension of investigations (because of a negative preliminary or final determination by the Commission, or a negative final determination by Commerce), each order issued or investigation suspended must then be reviewed annually under section 751. Since many more orders are issued and investigations suspended than are outstanding orders revoked or suspensions terminated, the section 751 workload tends to increase unremittingly.

This increase was exacerbated in 1982-83 by the radical increase in petitions filed. For example, on January 11, 1982 alone, one hundred thirty-two petitions were filed on numerous carbon steel products from eleven countries.⁵⁰ To meet the stringent statutory deadlines prescribed in investigations⁵¹ and to develop significant new methodologies to apply in these and future cases,⁵² personnel were detailed from the Office of Compliance, which is responsible for conducting annual reviews, to work instead on investigations. The backlog of reviews under section 751 necessarily rose.

To reduce the backlog, personnel and resources in the Office of Compliance were increased significantly in fiscal years 1985 and 1986. However, in view of the systemic nature of the increase in section 751 reviews and the limited ability to increase resources in an era of budgetary restraint, Commerce sought other means to expedite its section 751 reviews. This effort led to Administration support for Congressional proposals regarding section 751, which ultimately culminated in provisions in the Trade and Tariff Act of 1984.⁵³

47. Certain cases that were suspended by the Department of the Treasury are an exception to this rule.

48. See *supra* notes 8-10 and accompanying text.

49. Shambon, *supra* note 10, at 181-84.

50. See, e.g., Certain Steel Products from Belgium, 47 Fed. Reg. 5744 (1982) (initiation).

51. E.g., §§ 703, 705, 733, 735, 19 U.S.C. §§ 1671b, 1671d, 1673b, 1673d (1982).

52. Appendix B to Certain Steel Products from Belgium, 47 Fed. Reg. 26,300, 26,307 (1982) (preliminary); and Appendix 2 to Certain Steel Products from Belgium, 47 Fed. Reg. 39,304, 39,316 (1982) (final).

53. Pub. L. No. 98-573, 98 Stat. 2948, 3031 (1984).

II. The Trade and Tariff Act of 1984

A. AMENDMENTS TO SECTION 751 REVIEWS AND REVOCATIONS

On February 8, 1984, Sam M. Gibbons, Chairman of the House Ways and Means Subcommittee on Trade, and others introduced H.R. 4784, the Trade Remedies Reform Act of 1984.⁵⁴ Section 103 of this bill proposed to amend section 751(a)(1) of the Act to require annual reviews of AD and CVD orders and suspension agreements only if Commerce received a request for such a review.⁵⁵ According to the report of the Subcommittee on Trade, the purpose was to:

reduce the administrative burden on the Department of Commerce of automatically reviewing every outstanding order even though circumstances do not warrant it and parties to the cases are satisfied with the existing order. The increasing number of outstanding orders subject to review each year imposes an unnecessarily heavy burden on limited staff resources.⁵⁶

The Trade and Tariff Act also added specific statutory requirements for verifications in some reviews under section 751. Prior to the Trade and Tariff Act, section 776(a) of the Act⁵⁷ required Commerce to verify information relied upon in making a final determination in an investigation, but not in any review under section 751.⁵⁸ As approved by the Trade Subcommittee, section 107 of H.R. 4784 proposed to amend section 776(a) to require verification of information whenever Commerce revokes an AD or CVD order under section 751(c).⁵⁹

The Ways and Means Committee concurred with its Trade Subcommittee that verification should be required in revocation actions, since the consequence of such an action is that an outstanding order no longer exists. In such circumstances, the Committee considered it "essential" to protect domestic producers by requiring verification, "so that duty protection will not be eliminated on the basis of erroneous information."⁶⁰

Further, the Ways and Means Committee amended section 107 of H.R.

54. 130 CONG. REC. H652 (daily ed. Feb. 8, 1984). Other original sponsors of H.R. 4784 were Representatives Frenzel, Pease, Schulze, Hance and Moore. *Id.*

55. H.R. 4784, 98th Cong., 2d Sess. § 103 (1984).

56. House Subcomm. on Trade of the Comm. on Ways and Means, 98th Cong., 2d Sess., Report on H.R. 4784: Trade Remedies Reform Act of 1984 at 16 (Comm. Print 1984) ["Trade Subcommittee Report"]. See also H.R. Rep. No. 725, 98th Cong., 2d Sess. 19-23 (1984).

57. 19 U.S.C. § 1677e(a) (1982).

58. But cf. *Al Tech Specialty Steel Corp. v. United States*, 575 F. Supp. 1277 (1983), *aff'd*, 745 F.2d 632 (Fed. Cir. 1984), which was implicitly overruled by § 618 of the Trade and Tariff Act of 1984, 98 Stat. 3037-38 (1984).

59. H.R. 4784, § 107, *supra* note 48; see also Trade Subcommittee Report, *supra* note 56, at 32.

60. H.R. Rep. No. 725, 98th Cong., 2d Sess. 43 (1984).

4784 to require verification in any review under section 751(a) in which an interested party timely requests it, unless

"it has occurred upon timely request in the two immediately previous annual reviews under section 751 involving the same order, finding, or notice. . . ." ⁶¹

However, verification could occur more frequently if "good cause for verification is shown." ⁶² In explaining this amendment, the Committee stressed that proper enforcement of the AD and CVD laws required assurance that assessed rates (as opposed to estimated duty deposit rates) are accurate to the extent possible. Yet verification was conditioned upon timely requests because "requiring verification in every review would result in an unnecessary additional administrative burden on . . . Commerce. . . ." ⁶³

The House-Senate Conference Report ⁶⁴ explains the conferees' intention to adopt the House provision, presumably as drafted. ⁶⁵ However, as re-drafted, section 618 of the Trade and Tariff Act, ⁶⁶ amending section 776 (a) of the Act, ⁶⁷ requires verification upon timely request in a review under section 751(a) only if there has been no verification in either of the two immediately preceding reviews. While the legislative history indicates an intention to require verification (if timely requested) in two of every three

61. *Id.* at 42-43. The proposed amendment would have required verification in any review if "no verification was made under this paragraph during the 2 immediately preceding reviews and determinations. . . ." H.R. 4784 (as amended by the House Ways and Means Committee and appended to H.R. REP. NO. 725, *supra* note 56), 98th Cong., 2d Sess. (1984).

62. *Id.* at 43. "Good cause" was defined in the report (not in § 107 of the bill) as including "such factors as a significant issue of law or fact, changed or special circumstances, discrepancies found in previous verifications, or the likelihood of a significant impact on the result." *Id.* These are the factors Commerce already took into account in practice (prior to the Trade and Tariff Act) in deciding whether to verify information in a review under section 751.

63. *Id.*

64. H.R. REP. NO. 1156, 98th Cong., 2d Sess. 176-77 (1984) ["Conference Report"].

65. The Senate bill did not include such a provision. Conference Comparison of H.R. 3398 As Passed by the House and the Senate, 98th Cong., 2d Sess. 124-25 (1985). The House bill was properly described as not requiring verification "if it has occurred upon timely request in the two immediately previous annual reviews. . . ." *Id.* at 125.

The House passed H.R. 4784 on July 26, 1984. 130 CONG. REC. H7904, H7951-53 (daily ed. July 26, 1984). It had already passed H.R. 3398, a bill originally covering only noncontroversial, miscellaneous tariff issues. 130 CONG. REC. H4516-24 (daily ed. June 28, 1984). The Senate added to H.R. 3398 many AD and CVD amendments and other import relief measures. 130 CONG. REC. S11,229-263 (daily ed. Sept. 17, 1984); S11,355-392 (daily ed. Sept. 18, 1984); S11,477-507 (daily ed. Sept. 19, 1984); and S11,544-581 (daily ed. Sept. 20, 1984). The Senate passed H.R. 3398 as amended on Sept. 20, 1984. 130 CONG. REC. S11,581 (daily ed. Sept. 20, 1984). The House then reconsidered and passed H.R. 3398, adding the provisions of H.R. 4784, among others. 130 CONG. REC. H11,079, 11,085 (daily ed. Oct. 3, 1984). The Committee of Conference met October 4 and 5 to resolve their differences, and issued the Conference Report, *supra* note 64, on Oct. 5.

66. 98 Stat. 3037-38 (to be codified at 19 U.S.C. § 1677e).

67. 19 U.S.C. § 1677e (1982).

section 751(a) reviews, the unambiguous terms of the Trade and Tariff Act require verification (if timely requested) in only one of every three section 751(a) reviews ("unless good cause for verification is shown").

Another change regarding reviews under section 751 effected by the Trade and Tariff Act is assignment of the burden of persuasion, as to whether there are changed circumstances sufficient to warrant revocation, to the party seeking revocation of an AD order.⁶⁸ The Senate rather than the House proposed this provision.⁶⁹ The Senate's concern was that a foreign manufacturer subject to an AD order had already been found to have engaged in injurious dumping.

For that reason, a section 751 review does not begin from an entirely neutral starting point. The party seeking revocation of the order has a burden of persuasion, in the sense that at the end of the investigation, the ITC must be convinced that revocation of the order is appropriate. This amendment was intended to reverse a judicial decision that the Congress believed incorrectly placed the burden of persuasion on the domestic industry in section 751 review investigations.⁷⁰

Finally with respect to section 751 reviews and revocations, the Trade and Tariff Act amended section 751(c) to preclude revocation of a CVD order or termination of a suspended CVD investigation, in whole or in part, on the basis of "any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received."⁷¹

B. COMMERCE REGULATIONS IMPLEMENTING THE TRADE AND TARIFF ACT AMENDMENTS

On June 10, 1985, Commerce published a notice of proposed rulemaking setting forth proposed new countervailing duty regulations.⁷² (It plans to

68. Section 611(a)(2)(B)(iii) of the Trade and Tariff Act of 1984, 98 Stat. 3031 (to be codified at 19 U.S.C. § 1675(b)(1)).

69. This amendment was added at Sen. Heinz's request. 130 CONG. REC. S11,366, S11,371 (daily ed. Sept. 18, 1984).

70. In *Matsushita v. United States*, 569 F. Supp. 853 (Ct. Int'l Trade 1983), the court reviewed the Commission's determination in *Television Receiving Sets from Japan*, Inv. No. 751-TA-2, USITC Pub. 1153 (1981). The Commission had found that U.S. television producers would be threatened with material injury if the AD order on Japanese televisions were revoked. The court held that the Commission did not establish the continuing need for the injury determination. 569 F. Supp. at 859. The court reasoned that a section 751(b) review should result in revocation unless the court finds "reason for continuation of the duty. . . ." *Id.* Therefore, the court held that the Commission determination was not supported by substantial evidence of threat, since it had not established the continued need for an AD order. *See also* Conference Report, *supra* note 64, at 182-83.

71. Section 611(a)(3) of the Trade and Tariff Act of 1984, 98 Stat. 3031 (to be codified at 19 U.S.C. § 1675 (c)). *See* Conference Report, *supra* note 64, at 181.

72. 50 Fed. Reg. 24,207-34 (1985) (to be codified at 19 C.F.R. pt. 355) (proposed June 10, 1985).

publish soon proposed new antidumping regulations.) These regulatory revisions were intended to implement the CVD provisions in Title VI of the Trade and Tariff Act of 1984, to modify outdated CVD regulations to reflect current practice, and to improve administration of the CVD law. While some other changes were effected concerning regulations implementing section 751, Commerce incorporated the following changes to implement the amendments discussed above.

First, the regulations allow interested parties to request in writing an administrative review of an order or suspension agreement during the anniversary month of the publication of an order or suspension of investigation.⁷³ The request may cover all producers or exporters covered by an order or agreement, or may be submitted by a producer or exporter covered by the order to cover a review of only that person. In the latter case, the person requesting review must submit with his request a certification that he did not apply for or receive any net subsidy on the merchandise during the period concerned from any program previously found counter-vailable, and that he will not do so in the future. He must also submit a certification of the government of the affected country that it did not subsidize that person. Finally, if the person requesting review is not the producer of the merchandise, he must submit the above-described certifications by the suppliers and producers of the merchandise and of the government.

After receipt of the timely request or on his own initiative, the Secretary will initiate a review within ten days after the anniversary month of the order or agreement concerned. Within three hundred sixty-five days after the month of the Secretary's initiation, he will issue final results of review. Thus the new regulations propose, for the first time, that reviews be completed within one year of initiation.

If the Secretary does not receive a timely request for a review and does not initiate one on his own initiative, then he will instruct the Customs Service to assess countervailing duties on past entries at rates equal to the estimated countervailing duty rate required for cash deposit purposes, and to continue to collect the cash deposit previously ordered.⁷⁴

Apart from reviews upon timely request or upon the Secretary's own initiative, reviews may be conducted based upon "changed circumstances sufficient to warrant a review."⁷⁵ Such reviews are conducted pursuant to the same procedures as for other reviews, except that: (1) in a changed circumstances review, final results of review must be issued within two

73. 50 Fed. Reg. 24,207, 24,225-228 (1985) (to be codified at 19 C.F.R. § 355.22).

74. 50 Fed. Reg. 24,207, 24,227 (1985) (to be codified at 19 C.F.R. § 355.22(g)).

75. 50 Fed. Reg. 24,207, 24,227 (1985) (to be codified at 19 C.F.R. § 355.22(h)).

hundred seventy days of the date of initiation of the review; (2) the notice of initiation and of preliminary results may be issued simultaneously if the Secretary believes that expedited action is warranted; and (3) the Secretary will not initiate a changed circumstances review before the end of the second annual anniversary month after the publication date of the Secretary's affirmative preliminary determination or suspension of investigation.

Separate regulations address revocations of orders and terminations of suspended investigations.⁷⁶ These regulations differ significantly from their predecessors. While the prior regulations had required that subsidies be eliminated for at least two years, the new regulations require that all subsidy programs be eliminated for at least three consecutive years, or that all subsidies on the merchandise have been eliminated (for all or part of the producers, depending upon whether a complete or partial revocation is sought) for at least five consecutive years. In each case, Commerce must also find that it is unlikely that the government will reinstate the programs or that the producers concerned will reapply for or receive such subsidies. Finally, as under prior regulations, the producers and exporters concerned must agree to the immediate reinstatement of the order if the Secretary subsequently concludes that they have received, subsequent to revocation, any net subsidy.⁷⁷

The government of the country concerned may request a CVD revocation or termination based upon elimination of all relevant subsidy programs beginning in the third and subsequent annual anniversary months of publication of an order or suspension of investigation. Some or all of the producers and exporters may request a partial or complete CVD revocation or termination, beginning in the fifth and subsequent annual anniversary months. Such requests must include the required certifications that subsidy programs have been eliminated or subsidies have neither been sought nor received. Procedurally, the request for a revocation or termination is treated as a request for an administrative review as well.⁷⁸

Revocations or terminations may be obtained based upon changed circumstances, as well as upon the absence of subsidies. These circumstances include an express statement by the petitioner in the proceeding that it is no longer interested in the order or agreement. They also include the absence of a request by any interested party for an administrative review of an order or suspended investigation for four consecutive annual anniversary months. In that circumstance, not later than the first day of the fifth consecutive annual anniversary month, the Secretary will publish a notice of his intent to revoke the order or terminate the suspended investigation. The Secretary

76. 50 Fed. Reg. 24,207, 24,228 (1985) (to be codified at 19 C.F.R. § 355.25).

77. *Id.*

78. *Id.*

will also serve written notice of such intent on each party to the proceeding and on any other person reasonably believed to produce or sell a like product in the United States. If, by the last day of that fifth annual anniversary month, no interested party objects or requests an administrative review, the Secretary will revoke the order or terminate the suspended investigation. The new regulation thus effectively creates a sunset provision (albeit limited), under which an order will be revoked or a suspended investigation terminated if interested parties do not seek reviews or object to revocation or termination.⁷⁹

Finally, the regulations provide for revocation or termination based upon the Commission's injury reconsideration.⁸⁰

In reviews involving revocation or termination, the regulations require verification pursuant to section 618 of the Trade and Tariff Act.⁸¹ They also require verification in any administrative review if an interested party timely requests it and Commerce has not verified in either of the last two immediately preceding reviews.⁸²

C. APPLICATION OF THE SECTION 751 AMENDMENTS

Commerce's most prominent application of these amendments is its recent tentative revocations of antidumping and countervailing duty orders covering various steel products. As a result of voluntary restraint agreements concluded with many countries,⁸³ Commerce has proposed to revoke outstanding AD and CVD orders or terminate suspension agreements on steel products covered by VRAs from the countries concerned.⁸⁴ Most of

79. *Id.*

80. *Id.*

81. 50 Fed. Reg. 24,207, 24,232 (1985) (to be codified at 19 C.F.R. § 355.37).

82. *Id.*

83. Pres. Mem. 3 C.F.R. 251 (1984).

84. Carbon Steel Wire Rod from Spain, 50 Fed. Reg. 23,485 (1985) (AD order); Carbon Steel Wire Rod from Spain, 50 Fed. Reg. 23,487 (1985) (CVD order); Certain Steel Products from Spain, 50 Fed. Reg. 23,488 (1985) (AD order); Hot Rolled Carbon Steel Plate in Coil from Brazil, 50 Fed. Reg. 24,005 (1985) (AD order); Hot Rolled Carbon Steel Sheet from Brazil, 50 Fed. Reg. 24,006 (1985) (AD order); Hot Rolled Carbon Steel Plate Cut to Length from Brazil, 50 Fed. Reg. 24,006 (1985) (AD order); Oil Country Tubular Goods from Mexico, 50 Fed. Reg. 24,793 (1984) (CVD order); Carbon Steel Wire Rod from Brazil, 50 Fed. Reg. 24,923 (1985); Certain Carbon Steel Products from Brazil, 50 Fed. Reg. 25,437 (1985) (CVD order); Oil Country Tubular Goods from Brazil, 50 Fed. Reg. 25,438 (1985) (CVD order); Oil Country Tubular Goods from Spain, 50 Fed. Reg. 25,439 (1985) (CVD order); Carbon Steel Wire Rod from South Africa, 50 Fed. Reg. 25,615 (1985) (CVD order); Small Diameter Welded Carbon Steel Pipes and Tubes from Brazil, 50 Fed. Reg. 26,235 (1985) (CVD suspension agreement). Only three cases involved orders issued or investigations suspended more than two years prior to issuance of the notice of tentative revocation: Certain Steel Products from Spain, 50 Fed. Reg. 23,488 (1985) (order issued Jan. 3, 1983); Carbon Steel Wire Rod from South Africa, 50 Fed. Reg. 25,615 (1985) (order issued Sept. 27, 1982); Small Diameter

these orders were issued within the last two years.⁸⁵ The "changed circumstances" concerned are affirmative statements of no interest by the petitioner(s) (and, in some cases, other U.S. producers that were interested parties to the proceedings). Section 751(b)(1) of the Act, as interpreted by the legislative history of the Trade and Tariff Act, contemplates revocations "that are no longer of interest to domestic interested parties."⁸⁶ Similarly, the "good cause" required by section 751(b)(2) in order to conduct a changed circumstances review within fewer than 24 months of issuance of the order is the request for revocation by the petitioner(s) (rather than respondent).⁸⁷

An interesting issue could have been presented in *Oil Country Tubular Goods from Mexico*.⁸⁸ Petitioners Lone Star Steel Co., CF&I Steel Corporation, and LTV Corporation were initially reluctant to request revocation.⁸⁹ These companies cumulatively accounted for about thirty percent of the U.S. industry producing oil country tubular goods (OCTG). Commerce's inaction to revoke that OCTG order would have jeopardized the VRA agreement concluded with Mexico.⁹⁰ However, in the absence of a request for a revocation by petitioners, Commerce would have had to determine whether: (1) countries representing about thirty percent of U.S. production were representative of the U.S. industry;⁹¹ and (2) if not, whether a countervailing duty (or dumping) order could be revoked despite their opposition based upon affirmative statements of no interest from the remainder of the industry.⁹² Petitioners and other domestic industry parties

Welded Carbon Steel Pipes and Tubes, 50 Fed. Reg. 26,235 (1985) (investigation suspended Dec. 27, 1982).

85. Conference Report, *supra* note 64, at 181.

86. As indicated *supra* note 72, The "good cause" requirement was not applicable to the tentative revocation in Certain Steel Products from Spain, 50 Fed. Reg. 23,487 (1985), since the order in that case was issued on January 3, 1983, more than two years prior to Commerce's issuance of preliminary results of its changed circumstances review.

87. 50 Fed. Reg. 24,793 (1985).

88. Oil Country Tubular Goods from Mexico, 49 Fed. Reg. 28,292 (1984) (initiation).

89. 50 Fed. Reg. 24,793 (1985).

90. AD and CVD petitions must be filed "on behalf of" a U.S. industry. §§ 702(b)(1), 732(b)(1) of the Act, 19 U.S.C. §§ 1671a(b)(1), 1673a(b)(1) (1982). See generally Bello and Holmer, *U.S. Import Law and Policy Series: Standing, Pre-Initiation Consultations, and Timing of Decisions under AD/CVD Law*, 18 INT'L LAW 1001, 1011-21 (1984).

91. See Carbon Steel Plate from Belgium and the Federal Republic of Germany, 49 Fed. Reg. 3503, 3504 (1984) (rescission of initiation), *aff'd*, *Gilmore Steel Corp. v. United States*, slip op. 84-45, 5 I.T.R.D. 2143 (April 23, 1984); and Bello & Holmer, *supra* note 90, at 1011-21.

92. Under proposed CVD regulation § 35.25(d)(2), Commerce would conduct an administrative review if at any time the Secretary concluded from available information, "including an affirmative statement of no interest from the petitioner in this proceeding," that changed circumstances sufficient to warrant revocation or termination may exist. 50 Fed. Reg. at 24,229. See Conference Report, *supra* note 64, at 181.

(U.S. Steel Corp., Babcock & Wilcox and Armco) ultimately requested revocations, so Commerce did not have to decide these issues.

In addition to Commerce's activity, the Commission has recently applied the new provision placing on the party seeking revocation of an AD order the burden of persuasion to show that changed circumstances warrant such revocation.⁹³ In *Frozen Concentrated Orange Juice from Brazil*,⁹⁴ the ITC considered: (1) whether that requirement should be applied to a CVD suspension agreement despite its unambiguous reference exclusively to AD orders; and (2) what the burden of persuasion entails.

First, the Commission surmised that the provision's reference solely to AD orders was inadvertent, and stemmed from its genesis in a Court of International Trade decision involving an antidumping determination⁹⁵ and the absence of any previous section 751 investigation by the Commission of a CVD order or suspension agreement.⁹⁶ It therefore made its determination in *Frozen Concentrated Orange Juice* "in light of the new provision."⁹⁷

Second, the Commission interpreted the new provision. It concluded that it requires the party seeking revocation or termination to "produc[e] all the evidence within its control that is relevant to the subject matter of the investigation."⁹⁸ While the Commission remains obliged to conduct a thorough investigation, failure by the party seeking revocation or termination to supply supporting information justifies a determination that revocation or termination would cause or threaten material injury to a U.S. industry.⁹⁹

III. Conclusion

As yet it is unclear how significant the section 751 amendments and regulatory changes will be. They could facilitate a streamlined review of antidumping and countervailing duty orders and suspension agreements, as well as conserve both government and private sector resources in this process. On the other hand, their improvements could be limited if interested parties routinely request reviews and oppose any proposal to modify or revoke an order or agreement. Therefore, it will probably be some time before the significance of these changes can be meaningfully assessed.

93. Inv. No. 751-TA-10, USITC Pub. 623 (December 1984).

94. *Matsushita v. United States*, 569 F. Supp. 853 (Ct. Int'l Trade 1983). See *supra* note 70.

95. *Frozen Concentrated Orange Juice from Brazil*, Inv. No. 751-TA-10, USITC Pub. 1623 at 9 n.11 (December 1984), was the Commission's first section 751 review involving a CVD order or suspension agreement.

96. *Id.*

97. *Id.* at 9.

98. *Id.* at 9-10.

99. *Id.*

