

(3) *Amount of the benefit*—(i) *Remission or drawback of import charges.* If the Secretary determines that the remission or drawback, including substitution drawback, of import charges confers a benefit under paragraph (a)(1) or (a)(2) of this section, the Secretary normally will consider the amount of the benefit to be the difference between the amount of import charges remitted or drawn back and the amount paid on imported inputs consumed in production for which remission or drawback was claimed.

(ii) *Exemption of import charges.* If the Secretary determines that the exemption of import charges upon export confers a benefit, the Secretary normally will consider the amount of the benefit to be the import charges that otherwise would have been paid on the inputs not consumed in the production of the exported product, making normal allowance for waste, and the amount of charges other than import charges covered by the exemption.

(iii) *Deferral of import charges.* If the Secretary determines that the deferral of import charges upon export confers a benefit, the Secretary will normally treat a deferral as a government-provided loan in the amount of the import charges deferred on the inputs not consumed in the production of the exported product, making normal allowance for waste, according to the methodology described in §351.505. The Secretary will use a short-term interest rate as the benchmark for deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for deferrals of more than one year.

(4) *Exception.* Notwithstanding paragraph (a)(3) of this section, the Secretary will consider the entire amount of an exemption, deferral, remission or drawback to confer a benefit, unless the Secretary determines that:

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts.

(b) *Time of receipt of benefit.* In the case of the exemption, deferral, remission or drawback, including substitution drawback, of import charges, the Secretary normally will consider the benefit as having been received:

(1) In the case of remission or drawback, as of the date of exportation;

(2) In the case of an exemption, as of the date of the exportation;

(3) In the case of a deferral of one year or less, on the date the import charges became due; and (4) In the case of a multi-year deferral, on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit from the exemption, deferral, remission or drawback of import charges to the year in which the benefit is considered to have been received under paragraph (b) of this section.

#### §351.520 Export insurance.

(a) *Benefit*—(1) *In general.* In the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program.

(2) *Amount of the benefit.* If the Secretary determines under paragraph (a)(1) of this section that premium rates are inadequate, the Secretary normally will calculate the amount of the benefit as the difference between the amount of premiums paid by the firm and the amount received by the firm under the insurance program during the period of investigation or review.

(b) *Time of receipt of benefit.* In the case of export insurance, the Secretary normally will consider the benefit as having been received in the year in which the difference described in paragraph (a)(2) of this section occurs.

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(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit from export insurance to the year in which the benefit is considered to have been received under paragraph (b) of this section.

### § 351.521 Import substitution subsidies. [Reserved]

### § 351.522 Green light and green box subsidies.

(a) *Certain agricultural subsidies.* The Secretary will treat as non-countervailable domestic support measures that are provided to certain agricultural products (*i.e.*, products listed in Annex 1 of the WTO Agreement on Agriculture) and that the Secretary determines conform to the criteria of Annex 2 of the WTO Agreement on Agriculture. *See* section 771(5B)(F) of the Act. The Secretary will determine that a particular domestic support measure conforms fully to the provisions of Annex 2 if the Secretary finds that the measure:

(1) Is provided through a publicly-funded government program (including government revenue foregone) not involving transfers from consumers;

(2) Does not have the effect of providing a price support to producers; and (3) Meets the relevant policy-specific criteria and conditions set out in paragraphs 2 through 13 of Annex 2.

(b) *Research subsidies.* In accordance with section 771(5B)(B)(iii)(II) of the Act, the Secretary will examine the total eligible costs to be incurred over the duration of a particular project to determine whether a subsidy for research activities exceeds 75 percent of the costs of industrial research, 50 percent of the costs of precompetitive development activity, or 62.5 percent of the costs for a project that includes both industrial research and precompetitive activity. If the Secretary determines that, at some point over the life of a particular project, these relevant thresholds will be exceeded, the Secretary will treat the entire amount of the subsidy as countervailable.

(c) *Subsidies for adaptation of existing facilities to new environmental requirements.* If the Secretary determines that a subsidy is given to upgrade existing

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facilities to environmental standards in excess of minimum statutory or regulatory requirements, the subsidy will not qualify for non-countervailable treatment under section 771(5B)(D) of the Act and the Secretary will treat the entire amount of the subsidy as countervailable.

### § 351.523 Upstream subsidies.

(a) *Investigation of upstream subsidies—(1) In general.* Before investigating the existence of an upstream subsidy (*see* section 771A of the Act), the Secretary must have a reasonable basis to believe or suspect that all of the following elements exist:

(i) A countervailable subsidy, other than an export subsidy, is provided with respect to an input product;

(ii) One of the following conditions exists:

(A) The supplier of the input product and the producer of the subject merchandise are affiliated;

(B) The price for the subsidized input product is lower than the price that the producer of the subject merchandise otherwise would pay another seller in an arm's-length transaction for an unsubsidized input product; or

(C) The government sets the price of the input product so as to guarantee that the benefit provided with respect to the input product is passed through to producers of the subject merchandise; and

(iii) The *ad valorem* countervailable subsidy rate on the input product, multiplied by the proportion of the total production costs of the subject merchandise accounted for by the input product, is equal to, or greater than, one percent.

(b) *Input product.* For purposes of this section, "input product" means any product used in the production of the subject merchandise.

(c) *Competitive benefit—(1) In general.* In evaluating whether a competitive benefit exists under section 771A(b) of the Act, the Secretary will determine whether the price for the subsidized input product is lower than the benchmark input price. For purposes of this section, the Secretary will use as a benchmark input price the following, in order of preference: