

**CHAPTER 13:
PREPARATION OF PRELIMINARY AND FINAL DETERMINATIONS,
OTHER FEDERAL REGISTER NOTICES, AND OTHER DOCUMENTS**

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Statute and Regulations:

The Tariff Act of 1930, as amended (the Act)

Section 733(d) - preliminary Customs notification for investigations

Section 733(f) - preliminary determinations for investigations and the International Trade Commission (ITC) and interested party notifications

Section 735(c) - final Customs notification for investigations

Section 735(d) - final determinations for investigations and ITC and interested party notifications

Section 735(e) - correction of ministerial errors for final determinations for investigations

Section 736(c) - expedited administrative reviews

Section 751(h) - correction of ministerial errors for final determinations for administrative reviews

Section 751 - time limits for administrative review determinations

Section 777(i) - publication of determinations; requirements for final determinations for investigations and administrative reviews

Section 781(f) - time limits for scope reviews

Department of Commerce Regulations

19 CFR 351.205 - preliminary determinations for investigations, interested party, ITC, and Customs notifications

19 CFR 351.210 - final determinations, interested party, ITC, and Customs notifications for investigations

19 CFR 351.213 - time limits and exceptions for administrative review determinations

19 CFR 351.224 - preliminary and final determination disclosures and corrections of ministerial errors for investigations and administrative reviews

19 CFR 351.225 - time limits for scope determinations

Statement of Administrative Action

Section A.10 - public notice and explanation of determinations for investigations

Section C.5 - provisional measures for investigations

Section C.7.a - time limits for completion of administrative reviews

Section C.10 - publication of determinations for investigations and administrative reviews

Antidumping Agreement

Article 6.9 - preliminary determination disclosures for investigations

Article 7 - provisional measures for investigations

Article 11.4 - procedures for administrative reviews

Article 12.2 - public notice of preliminary and final determinations for investigations

Article 12.2.1 - public notice of provisional measures for investigations

Article 12.3 - public notice of determinations for administrative reviews

I. TIME LIMITS FOR PRELIMINARY AND FINAL DETERMINATIONS FOR INVESTIGATIONS, ADMINISTRATIVE REVIEWS, AND SCOPE DETERMINATIONS

A. Time Limits for Investigations

Under section 733(b)(1)(A) of the Act, a preliminary determination in an antidumping duty investigation shall be made within 140 days of the date on which the Department initiates an investigation. Preliminary determinations for “short life cycle” merchandise shall be made within either 100 days or 80 days from the date of the initiation (see 733(b)(1)(B)) depending on whether the manufacturer is a second-time or multiple offender. Preliminary determinations for investigations where there is a waiver of verification shall be made within 75 days after initiation (see 733(b)(2)). (Note: waivers of verification rarely occur.)

As required by section 735(a)(1) of the Act, the time limit for final determinations for all of the different types of investigations specified above is within 75 days after the date of the signature of the preliminary determination.

B. Time Limits for Administrative Reviews and Scope Determinations

Under section 751(a)(3) of the Act, preliminary results of annual antidumping duty order and suspension agreement administrative reviews shall be made within 245 days after the last day of the anniversary month of the publication of the antidumping order or suspension agreement. Under section 751(a)(2)(B), for reviews involving new shippers, the preliminary results shall be made within 180 days after the date on which the review is initiated. There are no statutory deadlines for completing the preliminary results for changed circumstances or five-year “sunset”

administrative reviews, although the Department does issue such preliminary decisions. There are no preliminary results published for expedited reviews under section 736(c) of the Act or scope reviews under section 781 of the Act.

Section 751(a)(3) of the Act requires that final results of administrative reviews of antidumping duty orders or suspension agreements be made within 120 days after the date on which the preliminary results are published. Section 751(a)(2)(B) requires that final results for new shipper reviews be made within 90 days after the preliminary results are issued. Where the Department is conducting both an administrative review and new shipper review covering the same period, the Department can, pursuant to 19 CFR 351.214(j)(3), align the two reviews and conduct them concurrently if the respondent that requests the new shipper review agrees in writing to waive the normal time limits for conducting a new shipper review established by 19 CFR 351.214(i).

For changed circumstances and five-year “sunset” administrative reviews, section 751(b)(5) requires that final determinations be made within 240 days after the date on which the review was initiated. For expedited reviews under section 736(c) of the Act, final determinations are due 90 days after the date of publication of the order. For scope inquiries under section 781(f), final determinations, to the maximum extent practicable, shall be made within 300 days from the date of initiation of the circumvention inquiry

II. PRE-SIGNATURE RESPONSIBILITIES

A. Concurrence Process for Decisions and Decision Documents

1. Background

All decision documents must contain a cover sheet called the Concurrence Sheet, whereupon all appropriate offices document their agreement, or concurrence with, the decisions expressed in the Decision Document. This is commonly referred to as “going through the concurrence chain.” The concurrence chain varies for each document, but at a minimum contains the names of the drafter of the document (i.e., the operations analyst), the PM, the staff and senior attorneys, the staff and senior policy analysts, and the operations OD. The concurrence sheet should identify all concurrence parties starting with the operations analyst through to the signing official, which may be the OD, DAS, or AS for Import Administration. Decision documents are items such as Federal Register notices, the Issues and Decision Memorandum for Final Determinations/Results, and various Decision Memoranda cover a myriad of topics. The concurrence process, and appropriate concurrence chain for each type of Decision Document is addressed in detail in Part E.4 of this section, below.

- a. Investigation/Review Federal Register Notices. For investigations, the DEPARTMENT is required to publish FR notices of “Affirmative (or Negative) Preliminary Antidumping Determination,” and “Affirmative (or Negative) Final Antidumping Duty Determination,” including the preliminary and final dumping margins, respectively. For administrative

reviews, the Department is required to publish FR notices of “Preliminary Results of Administrative Review” and “Final Results of Administrative Review,” including the preliminary and final weighted-average dumping margins for each respondent.

- b. **Other FR Documents.** In addition to preliminary and final determinations/results FR documents for investigations and administrative reviews, there are many other FR documents that may be prepared during an antidumping (AD) investigation or review, for example, a rescission notice. For Federal Register Notices relating to other segments of an AD proceeding, e.g., new shipper reviews, changed circumstances reviews, or circumvention investigations, please see the appropriate chapter of the AD manual. For a list of additional types of FR documents and the required concurrence chains, see part E.4 of this section. See part D of this section to determine the procedures you must follow in preparing these documents.
- c. **Other Documents.** In addition to FR documents, you will be required to prepare other types of documents that will require movement through a concurrence chain, such as the Issue and Decision Memoranda that accompanies the final determination/final results of review FR notices. For a list of these documents, see part E.5 of this section. Consult with your PM to determine the procedures you must follow in preparing these documents.

B. Concurrence Meetings

Concurrence meetings for preliminary and final determinations for investigations and results of administrative can be held at various levels. The PM will determine whether a concurrence meeting is held at the team and PM level. However, concurrence meetings must be held at the OD level. The OD will determine whether a concurrence meeting is necessary at higher levels.

1. Team

The case analyst and assigned staff from the Office of the Chief Counsel for Import Administration (CCIA), Office of Policy (OP), and Office of Accounting (OA) (when appropriate) meet to discuss the major issues in the investigation or review. Once issues are defined, an effort is made to reconcile differing views. If consensus appears to be impossible, the representatives of each office are requested to discuss the issues with their supervisors for resolution. To avoid last-minute conflicts and to identify issues for supervisors as early as possible, this meeting should take place, if possible, at least 30 days before a preliminary determination and shortly after parties file their case briefs and any hearing is held for a final determination.

2. Supervisor or PM

When case analysts meet with their PMs to discuss any outstanding issues, team members from CCIA, OP, and OA should attend, when appropriate. Concurrence memos (or whatever is used

in their place, e.g., briefing memos, see below) (hereinafter referred to as concurrence memos) are required to be delivered to the meeting participants no later than one day in advance of the meeting, but preferably sooner. Please check with your PM for specific requirements regarding briefing or concurrence memos for these meetings.

3. Office Director (OD)

The case analyst will schedule a team concurrence meeting with the OD, if deemed necessary. Concurrence memos are required to be delivered to the meeting participants one day in advance of the meeting. Please check with your PM for specific requirements regarding briefing or concurrence memos for these meetings.

4. Deputy Assistant Secretary (DAS) and Assistant Secretary (AS)

The case analyst must provide a copy of the concurrence memo to the DAS office at least one day prior to the concurrence meeting with the DAS. If necessary, a meeting with the AS will then be scheduled. In that event, a copy of the concurrence memo must also be provided to the AS at least one day prior to the concurrence meeting with the AS (always check to see what current practice may be). The team (including the CCIA, OP and OA), PM, and OD attend the DAS/AS meetings to discuss the major issues of the investigation or administrative review and the pending decision. The team should be prepared to address any questions regarding the relevant segment of the proceeding.

C. Briefing Papers

1. Background

All briefing papers are to be marked “*** Pre-Decisional – For Internal Discussion Purposes Only ***” at the top of the memo. Since briefing papers are internal documents, they do not go on the record of the proceeding.

2. Early Warning Memo

This type of memorandum identifies and describes the key issues for consideration in the investigation or administrative review in advance of the briefing paper and/or concurrence meeting. This memo should be prepared as soon as potential major issues are determined in consultation with your team, and forwarded to the DAS for feedback and approval. It should be written in bullet form and be no longer than one page. Recommendations are not made in these memos. A copy should be sent to the OD when the DAS copy is sent.

2. Briefing Paper Content

We prepare briefing papers regarding all issues requiring a DAS or AS decision for both investigation and reviews. The briefing paper would typically contain the following information:

- a. team members: a list of the names and titles of the team members, including operations (consisting of the case analyst, PM, OD, and the SEC in NME cases), CCIA, OP, and OA;
- b. date of relevant deadline: identify the date of the relevant decision, indicating whether the decision is for initiation, preliminary determination/results, final determination/results, or order;
- c. dates for the period of investigation (POI)/period of review (POR);
- d. for investigations, we may add a short summary of the scope of the investigation: e.g., a statement describing the product under investigation; please check with your PM to determine whether a statement about the scope should be included;
- e. for investigations, we may add the quantity and value of imports: a chart listing the year, quantities and values of imports of the product under investigation for two or three complete years prior to the POI/POR, depending on the availability of data (see the IM-146 import statistics); please check with your PM to determine whether the quantity and value information should be included;
- f. list of the participants and respective counsel involved in the segment of the proceeding, e.g., petitioner, respondent, or an importer (if the importer is an active participant in the proceeding);
- g. issues: identification of any major issues for consideration in the investigation or review (consult with your supervisor or PM and team members for final identification of the major issues).

D. Preparation and Circulation of Concurrence Packages

The following documents should be prepared and included in the concurrence package for any preliminary or final determination:

1. Fact Sheet.

For investigations, prepare a fact sheet for the Office of Public, Congressional & Intergovernmental Affairs. The fact sheet is released on announcement day, and it should include a brief description of the scope, dumping margins, IM-145 import volume and value

data, case calendar, and name(s) of petitioner(s) and respondent(s). Analysts should check with the DAS's special assistant on the need to prepare a fact sheet for an administrative review.

2. ITC Letter.

A letter (to be signed by the DAS) advising the ITC Chairman of our determination for an investigation.

3. U.S. Customs and Border Protection E-mail Instructions

For investigations and reviews, prepare e-mail instructions to U.S. Customs and Border Protection (Customs) advising Customs field offices of our determination and instructions on how they should proceed (see Chapter 20 for detailed instructions on how to prepare Customs e-mails instructions).

4. FR Notice

The case analyst, in consultation with the other case analyst(s) and/or supervisor or PM, begins preparation of the FR notice after completion of all necessary analyses and examination of the materials on the case record. In order to preparing the FR notice, follow these steps:

First, obtain a copy of the FR notice used in the most recent antidumping determination and adapt the information as necessary, including the following topics: 1) the applicable statutory and regulatory citations; 2) a summary; 3) the case history; 4) the scope of the investigation or review; 5) the POI or POR; 6) the use of facts available (if applicable); 7) separate rates (for NME cases); 8) fair value comparisons; 9) EP and/or CEP; 10) NV, which may include any of the following topics: home market price, third-country price, sales made below cost of production (COP) over an extended period of time, constructed value (CV), factors of production and valuation of factors of production in NME cases); 11) country-wide rate (in NME cases); 12) verification, if appropriate; 13) interested party comments (for final determinations only); 14) suspension of liquidation for investigations; 15) ITC notification for investigations; 16) public comment (for preliminary determinations only); 17) cash deposit instructions; 18) liquidation instructions in administrative review; and 19) for investigations and reviews, check to ensure that the Harmonized Tariff Systems of the United States (HTSUS) numbers listed in the scope description are current. If you move into a new calendar year since the date of your last FR action notice, the HTSUS numbers may have changed.

5. Concurrence Record Sheet for FR Notices

All FR notices for the preliminary and final determinations must include a "Concurrence Record," a standard form obtainable electronically. The concurrence record must be completed by the case analyst and be ready for circulation with the FR notice that is circulated for concurrence. This is the sheet on which the parties in the concurrence chain initial when they

concur with the FR notice. The FR notice must include initials from all parties listed on the sheet before it is passed to the appropriate official for signature (see section B.4 of this chapter to determine the names that will be placed on the concurrence record sheet for the action involved). The following information must be included on the concurrence record in the applicable blanks:

- a. subject of the FR notice and memo - copy the title/country from the top line of the FR notice;
- b. name and office of the originator - fill in the names of the team members and appropriate office, including yourself as the operations analyst, CCIA, OP, and OA;
- c. telephone number of the analyst circulating the FR notice;
- d. deadline date - should be the date the signature is due for the notice. However, since notices are due to the AS one week in advance, you should note that deadline as well; and
- e. 'submitted to' blocks - as appropriate, and in descending order, each of the following persons must be included: supervisor or PM, senior counsel from CCIA, senior OP, director of OA (if there is a CV or COP analysis), office director (OD), DAS, and AS. Names of team members should appear in the block where your name is placed.

6. Circulation Requirements

Where there are multiple analysts working on the investigation or administrative review, circulate copies of the FR notice to other case analysts for comment, and edit documents accordingly once you receive their comments.

Next, prepare the document for circulation with the concurrence record described in part D.5. of this section. Circulate copies of the FR notice to team members, including members in CCIA, OP, and OA, in the event of a CV or COP analysis. Always set a date for return of the draft with comments. Review comments with any other case analysts and the team leader, and edit the document accordingly. Consult with your supervisor or PM if you do not receive timely comments.

7. Timetable

In general, the case analyst should follow the timetable outlined in the chart below to ensure adequate review and concurrence prior to determination due date of the FR notice (check with your supervisor or PM to ensure that this is the appropriate timetable for your case as these

deadlines change from time to time):

Action	AD Invest. Prelim (unextended)	AD Prelim Invest. (ext.) & Final	CVD Invest. Prelim	CVD Invest. Final ¹	AD/CVD Review
Complete Team Meetings ²	15	16	10	11	22
OD Meeting	14	15	9	10	21
DAS for Operations Meeting	13	14	8	9	20
AS Meeting	12	13	7	8	19
Team Concurs ³	11	12	7	7	17
PM Concurs	10	11	6	6	15
OD Reviews	9	10	5	5	13
SP/SL Concur	7	8	4	4	11
OD Concurs	5	6	3	3	8
DAS for Operations	3	3	2	2	4

E. Concurrence Levels

The following categories show the level of concurrence necessary for the different types of FR

¹ If a CVD case is aligned with a companion AD case, the team should follow the calendar for an AD investigation final for concurrence.

² Day 1 is signature day. The number of days is reflected in business days.

³ The *Federal Register* notice and Issues and Decision Memorandum (as relevant) should be completed prior to the DAS for Operations or AS meeting(s), with the exception of the portion(s) of the notice or memorandum which address the unresolved issue(s). After the DAS for Operations or the AS has given the team guidance, the team will then finalize the notice with regard to that particular section.

notices prepared and circulated for concurrence by the analyst:

a. Investigations

<u>Signing Official</u>	<u>Description</u>
AS	Initiation of Investigation
DAS	Extension of Initiation
AS	Preliminary Determination
AS	Postponement of Preliminary Determination
AS	Amended Preliminary Determination
AS	Agreement Suspending the Investigation
AS	Final Determination
AS	Postponement of Final Determination
AS	Amended Final Determination
AS	AD or CVD Order
AS	Critical Circumstances Determination
AS	Termination of Investigation
AS	Notice of Court Decision - "Timken Notice"

b. Reviews

<u>Signing Official</u>	<u>Description</u>
DAS	Opportunity to Request Review
DAS	Initiation of Administrative/New Shipper Review
AS	Preliminary Results of Review
DAS	Extension of Preliminary Results
AS	Final Results
DAS	Extension of Final Results
AS	Amended Final Results
DAS	Rescission of Administrative/New Shipper Review
DAS	Partial Rescission of Administrative/ New Shipper Review
AS	Initiation of Changed Circumstances Review
AS	Results of Changed Circumstances Review
AS	Notice of Price Determination (Suspension Agreement)
AS	Terminate Suspension Agreement
AS	Intent to Revoke Order
AS	Revocation of Order
AS	Initiation of Anti-Circumvention Inquiry
AS	Anti-Circumvention Determination

DAS	Scope Determination
DAS	Quarterly Notice of Scope Rulings
DAS	Notice of Scope Amendment
DAS	Notice of Court Decision - "Timken notice"
AS	No-Comment Finals
AS	No-Shipment Finals (isn't this a rescission)
DAS	Initiation of Sunset Review
AS	Results of Sunset Review

5. List of Other Documents.

The following list shows the concurrence chain for other types of investigative and administrative review documents that may be prepared:

Signing Official Description

PM	Draft petition comment/deficiency list
PM	Petition deficiency list
DAS	Initiation Checklist
PM	Interested Party letters
DAS	Decision Memoranda
PM	Embassy Notification
PM	Questionnaire
PM	Questionnaire cover letters
PM	Supplemental questionnaires
PM	Deadline extension requests
PM	Calculation Memo
OD	Suspension agreement analysis memo
OD	Quarterly prelim and final NV determination (suspension agreement)
PM	Verification outline
PM	Verification Reports
PM	Customs e-mail (initiation, prelim., final, order, amendments)
OD	Clerical error memos
AS	Draft Remand Results
AS	Final Remand Results
DAS	Early Warning Memoranda
DAS	Briefing Papers
DAS	Factual Taskers as indicated
DAS	Controlled correspondence as indicated
OD	Scope Inquiry Packages
OD	Scope Initiations

DAS	Scope Decisions
OD	Return/Rejection of Data
OD	COP initiations
PM	Automatic Liquidation E-mail
PM	Liquidation Instructions - (CCIA must confirm no pending litigation)
PM	Other Correspondence: Soliciting matching comments, factor values, responding to inquiries about the case, etc.

F. Calculation Review Panel

All margin calculations must be checked by the designated calculation review panel prior to signature of the FR by the AS (see Chapter 11 for information on calculation review panels).

III. POST-SIGNATURE RESPONSIBILITIES

The case analyst is responsible for ensuring that the following tasks are completed after the signature and announcement of each preliminary and final determination in an investigation or review.

A. Announcement of Results

1. Phone Calls

After consultation with the supervisor or PM, telephone each of the entities listed below for investigations or reviews, as appropriate, and fax to them a copy of the factsheet for the decision.

- a. U.S. embassy of foreign government(s) (investigations only);
- b. petitioner(s) or counsel for petitioner(s);
- c. respondent(s) or counsel for respondent(s); and
- d. analyst at the ITC (investigations only).

2. Copies

Distribute copies of the signed and dated FR notice to the following:

- a. Central Records Unit (CRU): the FR notice with the original signature and three additional copies must be sent to the CRU (in addition, the diskette/CD-ROM with FR notice saved and a certification form must also be provided to the CRU);
- b. CRIMSing - CRU: two copies must be CRIMSeD (one to official and one to public file). The concurrence record sheet should be attached to the back of the official file copy;

- c. Petitioner(s) and respondent(s): set up for messenger pick-up after telephone notification of the results;
- d. Analyst working file;
- e. Team members (if they request a copy);

In addition, any other parties not identified above can pick-up copies of the FR notice in CRU prior to publication in the FR.

3. Interested Parties/ITC Letters

- a. **Statutory Provisions:** For investigations, in accordance with section 733(f) of the Act for preliminary determinations and 735(d) for final determinations, the Department is required to notify all parties to the proceeding and the ITC of the results of its determinations. For reviews, there are no statutory requirements to notify. However, notifications are made as a matter of policy. Notifications to significant interested parties are made telephonically and followed up with a letter enclosing the FR. Other interested parties receive notice by mail only.
 - b. **ITC Notification:** for investigations, the case analyst is required to prepare and send a letter, including a copy of the FR notice, to the Chairman of the ITC. This letter is signed by the DAS and the letter must include a statement regarding ITC access to all information included in our files in accordance with section 733(d)(3) of the Act and 19 CFR 351.205(d) for preliminary determinations and section 735(c)(1)(a) of the Act and 19 CFR 351.210(j) for final determinations.
 - c. **Special Interested Party Letters:** For investigations, the Department notifies various government agencies that have an interest in AD/CVD investigations. Import Administration's Office of Communications will issue the factsheet and/or signed FR notice to the appropriate contact persons at the U.S. Department of State, Office of the U.S. Trade Representative, the Commerce Department's Market Access and Compliance, the Foreign Commercial Service, and where appropriate, the Senate Finance Committee and the House Ways and Means Committee. The only special interested party that the case analyst is required to contact is the Commercial Attache of the Foreign Embassy of the country subject to the investigation. You should fax or mail a copy of the factsheet and signed FR notice to the Commercial Attache. For administrative reviews, check with your supervisor or PM to determine if any of the individuals listed below should be notified.
- ### 4. U.S. Customs and Border Protection Notifications for Investigations and Administrative Reviews

The Department sends a variety of e-mail instructions to Customs during the course of

investigations and administrative reviews. A boilerplate version of these instructions is maintained on the Department's website. It is the analyst's responsibility to use the boilerplate language and fill in the case-specific information at the appropriate places noted in the boilerplate. In general, the boilerplate language should not be modified by the case analyst. However, case-specific circumstances may require modification of the boilerplate. In such cases, the analyst should discuss the modification to the boilerplate with the PM and should not implement the modification unless the PM approves. If your case requires modification of the boilerplate language, the analyst should also notify the Department's Customs Liaison Unit to facilitate approval of the non-boilerplate language by Customs.

- a. E-mail notification for investigations and reviews.
 - i. Preliminary Affirmative Determinations: For investigations, in accordance with section 733(d) of the Act and 19 CFR 351.205(d), the Department instructs Customs to require a cash deposit or a bond equal to the estimated dumping margin for each entry of the merchandise suspended by the affirmative preliminary determination. For reviews, there are no requirements to notify Customs of our preliminary determinations.
 - ii. Final Affirmative Determinations: For investigations, in accordance with section 735(c) of the Act and 19 CFR 351.210(d), the Department instructs Customs to continue to require a cash deposit or bond equal to the estimated dumping margin for each suspended entry of the merchandise entered or withdrawn from warehouse on or after the date of publication of the affirmative final FR notice. For reviews, section 751(a)(2)(C) of the Act states that the final results of an administrative review are to be the basis for the deposits of estimated duties. In addition, section 736(a) of the Act requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise. Section 736(a) of the Act also directs the Department to notify Customs of assessment (appraisement) amounts (see Chapter 20 for detailed information on assessment notifications).
 - iii. Preliminary Negative Determination and Final Affirmative Determinations (Investigations only): When the preliminary determination is negative, the Department does not instruct Customs to suspend liquidation at the preliminary determination since there is no evidence of dumping. If the Department reverses its decision, and issues an affirmative Final Determination, in accordance with section 735(c)(1)(C) of the Act and 19 CFR 351.210(d), the Department instructs Customs to order the suspension of liquidation and the posting of a cash deposit or bond for unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final affirmative FR notice.
 - iv. Preliminary Affirmative and Final Negative Determination (Investigations only): When the preliminary determination is affirmative, the Department instructs Customs to begin suspension as indicated in item 1 above. If the Department reverses its decision and issues a negative Final Determination, in accordance with section 735(c)(2) of the Act and 19 CFR

351.210(k), the Department instructs Customs to terminate the suspension of liquidation, and to release any bond or other security, and refund any cash deposit upon publication of the final negative determination (see Chapter 20 for information on Customs notifications involving revocations for antidumping orders).

- b. **Internal Procedures for E-Mail and ACS Module Notifications for Investigations:** For security reasons, your office or cluster has only one or two people who have been designated as the ones responsible for all Customs electronic communications. Notification of Customs involves two actions: updating the ACS module and sending Customs an e-mail message. The ACS module is a computer database which contains relevant case information to identify those parties whose imports may be subject to suspension of liquidation and AD duties. The Customs e-mail instruction is an electronic mail system which connects the various units within Customs to each other, to Commerce, and to participating importers and brokers nationwide. Since Customs requires information from both the ACS module and the e-mail instruction to determine whether import entries are subject to suspension of liquidation and AD duties, it is important that the case information in the ACS module and the e-mail message always be consistent with each other. Therefore, the following two actions need to be completed by the analyst for investigations:
 - i. update the ACS module with the new case information from our determination, and
 - ii. transmit the appropriate e-mail message informing Customs and the importing public of the results of our determination.
- iii. **Internal Procedures for E-Mail and ACS Module Notifications for Administrative Reviews:** Notifications to Customs involve updating the ACS module to reflect cash deposit amounts for all exporters and producers subject to an antidumping duty order and a separate e-mail message identifying the updated rates and effective dates. Because weighted-average rates can vary substantially from review period to review period, it is extremely important that the information in these systems be as current as possible. Care must be taken to ensure that both systems contain the same information. E-mails containing detailed appraisal instructions for specific periods of review are sent to Customs (see Chapter 20 for specific information on e-mails).
- d. **Internal Procedures in Detail for Initiations, Preliminary and Final Determinations, Orders, Terminations and Suspension Agreements:**

For investigations, a draft e-mail message informing Customs and the importing public of our determination will be included as part of the concurrence packages for initiation, preliminary and final determinations, amended preliminary and final determinations, orders, terminations and suspension agreements, and any other determination made by the Department affecting the suspension or liquidation of entries. The case analyst is responsible for drafting the text of the e-mail message (based upon the boilerplate language on the Department's website) and including

it in the concurrence package for review.

After taking the signed FR notice to the CRU for publication, the analyst should monitor the Federal Register to determine upon which day the notice will publish. Once the publication date is known, the analyst immediately should insert the publication date into the draft e-mail message and provide the completed e-mail instruction to the PM for final review. On the appropriate date, the PM will issue the e-mail instruction to the person responsible for the ACS module, who in turn will issue it to Customs. Every effort should be made to ensure that the completed e-mail message is issued to Customs on appropriate date, which is different depending on the type of instruction being sent.

After review, Customs will approve the instruction and transmit the final e-mail message to all Customs units, to participating importers and brokers, and to IA. The person in your office who sends the e-mail instruction to Customs will notify you that your instruction has been accepted, and provide you with a copy of the instruction that Customs has approved. The approved instruction will have a Customs “Document ID” number, often called the message number, and a message date. The e-mail instruction approved by Customs and sent back to the Department is informally referred to as the “comeback copy.”

In investigations, the publication date of an affirmative preliminary determination in the FR is the effective date at which Customs starts to suspend liquidation. The effective date does not change at the final determination; however, the margins may change. At the time of the publication of an AD order, we will instruct Customs that it must require a cash deposit, rather than a bond. If critical circumstances are found, the effective date which suspension of liquidation begins is 90 days before the publication date of the preliminary determination (see Chapter 20 for a discussion on the retroactive suspension of liquidation).

See Chapter 20 for detailed information on Customs ACS module and e-mail notifications for appraisal activities.

e. Internal Procedures for ITC Negative Preliminary and Final Findings

For investigations, in situations when the ITC issues a negative preliminary or final determination, the case analyst prepares a Customs e-mail notification that informs Customs that the investigation has been terminated. For ITC negative final determinations, the Department instructs Customs to end suspension liquidation of entries of subject merchandise and refund any cash deposits collected on such entries.

5. Update the Lotus Notes case tracking system.

B. Disclosure of Calculation Methodology

1. Regulatory Provisions

In accordance with 19 CFR 351.224(b), for preliminary and final determinations in investigations or reviews, the Department provides a further explanation of the calculation methodology used in making a determination for parties to the proceeding which request disclosure.

2. Internal Procedures

19 CFR 351.224(b) also specifies that, normally, within five days after the public announcement of the preliminary or final determination in an investigation or the final determination in a review, a full disclosure of all calculations, including the computer printouts and worksheets used, will be made to the petitioner(s) and respondent(s), under administrative protective order (APO). The disclosure period for a preliminary determination for a review is normally within ten days of the date of announcement. The Department will not extend the deadline for disclosing ministerial errors in a preliminary determination for an investigation. The case analyst is responsible for ensuring that the information provided during disclosure is released only to the person(s) which are covered by an APO. The case analyst should contact the APO coordinator prior to disclosure for instruction.

3. Meeting

The case analyst is responsible for arranging the disclosure meeting if one is requested by an outside party. In most cases this meeting should also take place no more than five days after the public announcement date (five days after publication of the FR notice if there is no public announcement) because parties only have five days from the earlier of the document disclosure or meeting to identify errors as discussed below (ministerial errors cannot be claimed for administrative review preliminary determinations). The case analysts and the team members from CCIA and OP should be present during the disclosure. The supervisor or program manager must be notified of the time and location of the meeting. The case analyst “walks through” the computer program, explaining the various factors used, i.e., the charges and adjustments, in our calculations. During a disclosure conference, petitioner(s) and respondent(s) or their legal representatives are not allowed to question why a particular methodology was used in the determination or why certain factors were included, excluded, or adjusted in the analysis. The only purpose of the disclosure meeting is to explain how the calculations were done. In the event ministerial error claims are made during the disclosure, the case analyst should advise the petitioner(s) and respondent(s) that such concerns will not be addressed during disclosure, but, instead, must be provided in writing to the Department as discussed in section C.2. below.

4. Memo

After the disclosure, the case analyst prepares a memo to the file which identifies the participants and the date. The case analyst must submit the memo to the supervisor for review. After approval from the supervisor, the case analyst should retain a copy for the working file and submit two copies to CRU for the official and public files.

5. No Disclosure Meeting

In some cases, usually reviews, parties wish only to have calls, but do not require a meeting. If that is the case, ensure that you release proprietary documents appropriately.

C. Ministerial Error Allegations

1. Background

In accordance with sections 735(e) and 751(h) of the Act and 19 CFR 351.224(e), the Department is required to correct all significant ministerial (clerical) errors in a preliminary determination for an investigation and all ministerial errors in a final determination for an investigation or a review. The Department will normally do this within 30 days after the date of public announcement, or if there is no public announcement, from the date of publication of the preliminary or final determination. All parties to the proceeding are granted the opportunity to comment on ministerial errors in the preliminary (investigation only) or final determination (both investigations and reviews).

The term “ministerial error” is defined in 19 CFR 351.224(f) as an error in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and other types of unintentional errors. A “significant ministerial error” in a preliminary determination for an investigation is defined in section 351.224(g) as one in which the correction of the error, either singly or in combination with other errors 1) would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination in an investigation, or 2) would result in a difference between a weighted-average dumping margin of zero (or *de minimis*) and a weighted-average dumping margin of greater than *de minimis* or vice versa, also in an investigation. If significant ministerial errors have occurred, an amended preliminary or final determination must be prepared for publication in the FR. Ministerial errors are sometimes referred to as “clerical” errors.

Note that the term “ministerial error” in our regulation refers to errors in the Department’s calculation rather than errors in the data submitted by the respondents. See Alloy Piping Products, Inc., v. Kanzen Tetsu Sdn. Bhd., 334 F.3d 1284, 1290 (Fed. Cir. 2001) (“Because it is Commerce alone that produces the final determination, it is clear that Congress intended ‘ministerial errors’ to mean those errors ‘belonging to the administration of the executive function in government’”). Decisions to correct any errors made by respondents (“ministerial” or otherwise) are made on a case specific basis.

2. Claims

Under 19 CFR 351.224(c), petitioner(s) and respondent(s) have five days from release of documents either prior to disclosure or at the disclosure meeting (whichever occurs first) to review the information and to submit in writing any allegations of ministerial errors in the calculations for preliminary determinations for investigations and for final determinations in investigations and reviews. Comments can only be made regarding the calculations. Comments on methodological or other issues will be disregarded. For final determinations in investigations and reviews, parties are allowed to submit replies to ministerial error comments within five days of the date the original comments are filed with the Department. Parties are not allowed to submit replies to allegations of significant ministerial errors for preliminary determinations in investigations due to the tight time constraints the Department faces when conducting investigations. Instead, replies to significant ministerial error allegations should be included in the parties' case briefs. Furthermore, since parties are not allowed to allege ministerial errors after the release of disclosure documents at the preliminary results of review, parties normally include any such allegations in their case briefs. The Department will address all ministerial error allegations contained in case briefs in the final results of review.

3. Analyzing Ministerial Error Claims

There are many different types of ministerial errors. Arithmetic and duplication errors are easy to identify and rarely are controversial. Other types of errors, however, are more difficult to analyze. Interested parties frequently allege that the Department committed a ministerial error when, in fact, the action in question resulted from a methodological choice. The Department's regulations at 19 CFR 351.224(f) state that, in addition to arithmetic and duplication errors, a ministerial error is also "any other similar type of unintentional error which the Secretary considers ministerial." This part of the regulation provides the Department with the discretion to consider errors other than arithmetic or duplication errors to be "ministerial," provided that such errors are not methodological and were not intended by the analyst. When examining ministerial error allegations that involve more than just arithmetic and duplication errors, the analyst must carefully examine the unique facts of the case to determine whether the Department intended take the action in question. Depending on the facts, the action in question might be an error in one case, but might be a methodological choice in another. Be sure to consult with your program manager when evaluating ministerial error allegations.

Under some circumstances, certain types of SAS programming errors may also be considered ministerial errors. One example of a non-arithmetic programming ministerial error is the failure to include in the calculation of net U.S. price a particular movement expense that was intended to have been included in this calculation. It may also be considered a ministerial error where the Department intended to modify a respondent's data in some way, such as adjusting the CONNUM-specific cost of production, but then mistakenly applied this adjustment. A difficult issue arising in the assessment of a ministerial error allegation is demonstrating the Department's intent to take the action in question. There are several ways that an analyst can

demonstrate intent. One method is to cite statements made by the Department in the Federal Register notice, issues and decision memorandum, calculation memorandum, or other documents from the record of the case that explains the action intended, but ultimately failed, to implement. However, in many instances, there will be no clear statements about our intent on the record of the case. In the absence of a stated intention, citations to the Department's established practice regarding the action in question may be sufficient.