



DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 356

[Docket No. 231127-0278]

RIN 0625-AB20

Procedures and Rules for Article 10.12 of the United States-Mexico-Canada Agreement

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (Commerce) publishes this action to update and make final an interim final rule that amended its regulations pertaining to the procedures and rules related to Article 1904 of the North American Free Trade Agreement (NAFTA) with appropriate references to the United States-Mexico-Canada Agreement (USMCA), which went into effect on July 1, 2020. Article 10.12 of the USMCA, like NAFTA Article 1904, provides a dispute settlement mechanism for purposes of reviewing antidumping and countervailing duty determinations issued by the United States, Canada, and Mexico. Commerce is amending its regulations to replace references to Article 1904 of NAFTA with references to Article 10.12 of the USMCA; to update outdated cross-references to Commerce's antidumping and countervailing duty regulations; update outdated notice, filing, service, and protective order procedures; and adopt other minor corrections and updates.

DATES: This final rule is effective 30 days after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This final rule does not apply to any binational panel review under NAFTA, or any extraordinary challenge arising out of any such review, that was commenced before July 1, 2020.

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SUPPLEMENTARY INFORMATION:

USCMA Background

As background, on November 30, 2018, the “Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada” (the Protocol) was signed to replace the North American Free Trade Agreement (NAFTA). The Agreement Between the United States of America, the United Mexican States (Mexico), and Canada (the USMCA)¹ is attached as an annex to the Protocol and was subsequently amended to reflect certain modifications and technical corrections in the “Protocol of Amendment to the Agreement Between the United States of America, the United Mexican States, and Canada” (the Amended Protocol), which the Office of the United States Trade Representative (USTR) signed on December 10, 2019. The USMCA entered into force on July 1, 2020.²

Article 10.12 of the USMCA, like NAFTA Article 1904, provides a dispute settlement mechanism for purposes of reviewing antidumping and countervailing duty determinations issued by the United States, Canada, and Mexico. The procedures and rules for binational panel review of antidumping and countervailing duty administrative determinations under Article 10.12 of the USMCA are virtually unchanged from Article 1904 of NAFTA.

¹ The Agreement Between the United States of America, the United Mexican States, and Canada is the official name of the USMCA treaty. Please be aware that, in other contexts, the same document is also referred to as the United States-Mexico-Canada Agreement.

² Mexico, Canada, and the United States certified their preparedness to implement the USMCA on December 12, 2019, March 13, 2020, and April 24, 2020, respectively. Pursuant to section 106 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (19 U.S.C. 4205) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the United States adopted the USMCA through the enactment of the United States – Mexico – Canada Agreement Implementation Act (USMCA Implementation Act), Pub. L. 116-113, 134 Stat. 11 (19 U.S.C. Chapter 29), on January 29, 2020. Pursuant to paragraph 2 of the Protocol, which provides that the USMCA will take effect on the first day of the third month after the last signatory party provides written notification of the completion of the domestic implementation of the USMCA through the enactment of implementing legislation, the USMCA entered into force on July 1, 2020. On December 27, 2020, subsequent to the USMCA’s entry into force date of July 1, 2020, the Consolidated Appropriations Act, 2021 (Appropriations Act), Pub. L. 116-260, was enacted with Title VI of the Act containing technical corrections to the USMCA Act. All of the changes contained within Title VI of the Appropriations Act are retroactively effective on July 1, 2020.

Sections 421-433 and 504 of the USMCA Implementation Act provide technical and conforming amendments to the Tariff Act of 1930, as amended (the Act) related to Chapter 10 of the USMCA on antidumping and countervailing duty matters. The Statement of Administrative Action accompanying the USMCA Implementation Act provides that, “[i]n substance, U.S. laws and regulations are already in conformity with the obligations assumed under [Chapter 10 of the USMCA,]” and, therefore, “no changes in administrative regulations, practices, or procedures are required to implement the...antidumping and countervailing duty related provisions of Chapter 10.”³

Pursuant to Article 10.12.14 of the USMCA, the United States, Mexico, and Canada trilaterally negotiated and agreed to rules of procedure for binational panel review modifying and updating the previous rules of procedure for Article 1904 of NAFTA. Effective May 18, 2021, Decision No. 2 of the USMCA Free Trade Commission adopted the rules of procedure applicable to all binational panel reviews under the USMCA. The rules of procedure are contained in Annex II to that decision and are cited as the Article 10.12 Binational Panel Rules.⁴

The Interim Final Rule

On December 9, 2021, at 86 FR 70045, the Department published an interim final rule implementing the following changes and soliciting comments on those revisions. Commerce’s regulations, 19 CFR part 356 (procedures and rules for the implementation of NAFTA Article 1904) were first promulgated in 1994 and have not undergone any updates since that time. Although not required by the USMCA Implementation Act, Commerce is amending its regulations pertaining to the procedures and rules governing the binational panel dispute settlement mechanism to review antidumping duty and countervailing duty determinations issued by the United States as set forth in the USMCA. Because the dispute settlement mechanism in

³ Statement of Administrative Action accompanying the USMCA Implementation Act at 26.

⁴ *Available at:* <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/free-trade-commission-decisions/usmca-free-trade-commission-decision-no-2>. The Secretariat of the USMCA, comprised of a Canadian section, a United States section and a Mexican section, is responsible for the administration of the binational panel review process.

USMCA Article 10.12 is substantively identical to that in NAFTA Article 1904, Commerce adopted non-substantive amendments to ensure that its rules appropriately reference the USMCA. Commerce also adopted additional non-substantive amendments, including updating outdated cross-references to Commerce's antidumping and countervailing duty regulations (19 CFR part 351), updating outdated notice, filing, service, and protective order procedures, and adopting other minor corrections and updates. These changes are explained in the preamble of this rule and reflected in the regulatory text below.

Explanation of Regulatory Updates in the Interim Final Rule

1. Updates to Reflect the Enactment of the USMCA

Commerce's regulations in 19 CFR part 356 implement procedures for disputes pursuant to Article 1904 of NAFTA. Because NAFTA was replaced pursuant to the enactment of the USMCA, Commerce's regulations in this section require updates to reflect the name of the new agreement and the relevant chapter contained in the new Agreement. Therefore, Commerce adopted several changes throughout part 356 to replace references to NAFTA with references to the USMCA. Commerce also adopted several changes throughout part 356 to replace references to section 402(g) of the North American Free Trade Agreement Implementation Act of 1993 with reference to section 412(g) of the United States-Mexico-Canada Agreement Implementation Act of 2020, which authorized Commerce to promulgate such regulations as necessary or appropriate to implement its responsibilities under chapter 10 of the USMCA.⁵

These changes are reflected in the title of part 356 and §§ 356.1, 356.2(d), 356.2(f), and 356.2(kk) (replacing references to North American Free Trade Agreement or NAFTA with United States-Mexico-Canada Agreement or USMCA); §§ 356.1, 356.2(f), (o), (p), and (cc)(3),

⁵ See United States-Mexico-Canada Agreement Implementation Act of 2020, Pub. L. 116-113, 134 Stat. 74 (Jan. 29, 2020); 19 U.S.C. 4582 (2020). See also North American Free Trade Agreement Act of 1993, Pub. L. 103-182, 107 Stat. 2135 (Dec. 8, 1993) (section 402(g) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3432(g))).

356.10(b)(1)(ii)(B), and 356.11(a)(1)(i) and (b)(2)(ii) (replacing references to Article 1904 of NAFTA with Article 10.12 of USMCA); §§ 356.2, 356.3, 356.4, 356.10(b)(4)(i), 356.11(a)(5) and (6) (replacing references to Article 1904 Panel Rules with Article 10.12 Binational Panel Rules); § 356.1 (replacing references to section 402(g) of the North American Free Trade Agreement Implementation Act of 1993 with section 412(g) of the United States-Mexico-Canada Implementation Act of 2020); § 356.2 (replacing the signing date of NAFTA, December 17, 1992 with the signing date of the amended USMCA, November 30, 2018); § 356.2(h), (p), and (w) (replacing references to Chapter Nineteen with Chapter Ten); § 356.2(h) (replacing references to Annex 1901.2 with Annex 10-B.1); in § 356.2(p) (replacing references to Annex 1904.13 with Annex 10-B.3); § 356.2(q) (replacing references to Article 1911 with Article 10.8); § 356.2(ff) (replacing references to Article 2002 with Article 30.6); and § 356.2(r) (replacing references to section 516A(f)(9) of the Act with section 516A(f)(10) of the Act).

Commerce also removed several references to the United States-Canada Free Trade Agreement, which was superseded by NAFTA. Commerce's regulations contained provisions governing dispute resolution pursuant to the United States-Canada Free Trade Agreement. Because there are no active disputes pursuant to that agreement, Commerce removed reference to the United States-Canada Free Trade Agreement throughout its regulations. These changes are reflected in the revised §§ 356.2(d), 356.10(c)(1)(ii), and 356.11(c)(1)(ii).

2. Updates to Address Obsolete Regulatory Cross-references

Commerce also updated outdated regulatory cross-references in 19 CFR part 356 to 19 CFR part 353 (addressing antidumping duty rules and procedures) and 355 (addressing countervailing duty rules and procedures) which became obsolete when Commerce consolidated parts 353 and 355 into a single part 351 in 1997.⁶ Despite the 1997 consolidation, references to

⁶ See 62 FR 27296, 27297 (May 19, 1997) (final rulemaking to eliminate Parts 353 and 355 and promulgate a single Part 351, 19 CFR 351, in their place); see also 61 FR 7308, 7310 (Feb. 27, 1996) (“[I]n response to the President’s Regulatory Reform Initiative, to reduce the amount of duplicative material in the regulations, the Department has consolidated the antidumping and countervailing duty regulations into a new Part 351, and is removing Parts 353 and 355.”).

obsolete parts 353 and 355 remain in part 356. Therefore, Commerce removed obsolete cross-references to parts 353 and 355 and replaced them with updated references to 19 CFR part 351 to reflect the 1997 consolidation of the AD/CVD regulations and any relevant subsequent regulatory changes Commerce made to part 351 thereafter.⁷

These changes are reflected in § 356.2(u) (replacing cross-references to 19 CFR 353.31(e)(2)(i) through (v) or 355.31(e)(2)(i) through (v) with 19 CFR 351.303(d)(2), which outlines Commerce’s current requirements for document submissions with respect to specifications and first page “letter of transmittal” markings); §§ 356.7(b) and 356.8(d) (replacing cross-references to 19 CFR 353.31(d) and (e)(2) and 19 CFR 355.31(d) and (e)(2) with references to 19 CFR 351.303(b) and (d)(2), which outline Commerce’s current format and filing requirements for document submissions); §§ 356.7(c) and 356.8(d) (replacing cross-references to 19 CFR 353.31(g) and 19 CFR 355.31(g) with reference to current 19 CFR 351.303(f) which outlines Commerce’s current service requirements).

3. Updates to Address Outdated Notice, Filing, Service, and Protective Order Procedures

Commerce also updated its regulations relating to certain outdated notice procedures. Specifically, current §§ 356.6 and 356.7 provide that Commerce will notify governments of Free Trade Agreement (FTA) Countries of scope determinations and contemplate that such determinations not be published in the *Federal Register*.⁸ Under current § 356.6, when Commerce makes a scope determination, notice of such scope determination shall be deemed received by the Government of an FTA country when a certified copy of the determination is delivered to the chancery of the Embassy of the FTA.

Under Commerce’s current procedures, scope rulings under 19 CFR 351.225 are a type of “class or kind determination,” a term that also encompasses circumvention determinations

⁷ See, e.g., 62 FR 27296 (May 19, 1997); 73 FR 3627 (Jan. 22, 2008); 76 FR 39275 (July 6, 2011); 80 FR 36473 (June 25, 2015); and 85 FR 17007 (March 26, 2020).

⁸ This language originated in the 1988 interim final rule for the United States-Canada Free Trade Agreement. See *Panel Review Under Article 1904 of the U.S.-Canada Free-Trade Agreement*, 53 FR 53232, 53233 (Dec. 30, 1988) (interim final rule).

under section 781 of the Act. In some instances, a class or kind determination may be published in the *Federal Register*. Otherwise, interested parties will be notified of a determination through other means, including through mailing or electronic means. Section 516A(g)(10) of the Act, as amended by the USMCA Implementation Act, provides that Commerce, upon request, shall inform any interested person of the date on which the Government of the relevant FTA country received notice of the determination. However, the statute is silent as to the method of notice to the government of an FTA country, and, therefore, it is left to the discretion of Commerce.⁹

Accordingly, Commerce revised § 356.6 to state that notice shall be deemed received either on the date on which the class or kind determination is published in the *Federal Register*, or, if the determination is not published, on the date on which Commerce conveys a copy of the determination by electronic notification to the government. Further, in instances in which Commerce does not publish the determination, these changes will require that Commerce: (1) confirm the appropriate Embassy electronic mail address, and (2) directly convey to the Embassy an electronic copy of the determination during the Embassy's normal business hours. Commerce also adopted changes to reflect that "class or kind determination" is a more accurate term than "scope determination" for these types of determinations. Similar edits are reflected in § 356.7. In addition, for ease of reference, the definition for scope determination in § 356.2(ee) has been expanded to include reference to class or kind of merchandise determination.

Commerce also amended §§ 356.10 and 356.11 regarding the procedures for access to proprietary and privileged information during a USMCA binational panel dispute. Current § 356.10 requires a party seeking access to proprietary information to do so by submitting an

⁹ Similarly, the relevant language in USMCA Article 10.12.4 does not specify the method by which the importing Party must notify the other involved Party of determinations not published in the official journal: "In the case of final determinations that are not published in the official journal of the importing Party, the importing Party shall immediately notify the other involved Party of such final determination where it involves goods from the other involved Party, and the other involved Party may request a panel within 30 days of receipt of such notice." Nor do the Article 10.12 Binational Panel Rules, which state at Article 39(2)(c) that a Request for Panel Review must contain "the date on which the notice of the final determination was received by the other Party if the final determination was not published in an official publication." There are no specific requirements on the method of notification.

application for a protective order. Such applications are to be filed with the U.S. section of the USMCA Secretariat, which in turn provides the applications to Commerce. Upon approving the application, Commerce will then issue the protective order to the Secretariat, which in turn will issue the protective order to the original applicant along with other participating parties to the dispute. The procedures in § 356.10(b)(3) have been updated to remove the requirement for manual filing.

Additionally, current § 356.10(b)(4)(ii) provides the method of service by which a protective order may be served. Because this provision does not currently account for service by electronic means, which is now permitted by the U.S. section of the Secretariat under the Article 10.12 Binational Panel Rules, Commerce added language to § 356.10(b)(4)(ii)(B) to allow for electronic means as a method of service for protective orders. Further, Commerce added an additional provision (§ 356.10(b)(4)(ii)(D)) to reflect that the U.S. section of the Secretariat allows for the filing of documents using an electronic filing platform to satisfy service requirements under the Article 10.12 Binational Panel Rules. Commerce is also adding corresponding language to § 356.10(b)(4)(iii) regarding the date of service if a document is served by electronic means or filed using the electronic filing platform.

Commerce is also revising §§ 356.7(b); 356.8(d)(1); 356.10(b)(3) through (5), (c)(1)(i), (c)(2)(i) and (v), (c)(3), (c)(4)(i), and (d)(2), 356.11(a)(2) and (3), (a)(5)(i) and (ii), (c)(1)(i), (c)(2) and (3), and (d)(2) to remove language requiring originals and multiple copies, as such a requirement has been made obsolete. Moreover, Commerce is also revising §§ 356.10(b)(1)(ii)(C), 356.11(b)(2)(iii), 356.12(a)(5), 356.14(d)(2) and (4), and 356.18(c)(4) to remove language requiring parties to return documents released under protective order and to log the use of proprietary documents, as such requirements have become obsolete, and to instead require parties to destroy and certify to the destruction of documents released under protective order.

4. Other Minor Corrections and Updates

Commerce also adopted minor corrections and updates to part 356 in §§ 356.10(b)(1)(i) and 356.11(b)(1) (updating the address and the room number of the Central Records Unit); §§ 356.7(b) and 356.8(d)(1) (updating the address and the room number of the APO/Dockets Unit); §§ 356.2(ee) and 356.27(d) (correcting punctuation); § 356.2(kk) (correcting the address of the Commerce Department); § 356.2(bb)(2) (updating the name of Mexico’s Secretaria de Comercio y Fomento Industrial to the Secretariat of Economy); and § 356.11(c)(3) (adding a missing word in the title of the paragraph). In addition, Commerce updated the definition of the term “director” as specified in § 356.2(n) to correspond with the current definition in 19 CFR part 354, revised by Commerce in 1998.¹⁰ Finally, we are making a minor addition to the interim final rule to revise § 356.9 (g) to reflect modern practices and procedures in USCMA hearings and meetings. Commerce added individuals employed to provide audiovisual services at hearings, meetings or other events as needed to the list of persons authorized to receive proprietary information to that provision, as such persons were not included in the past regulation, but normally require access to such information to provide their services.

Responses to Comments on the Interim Final Rule

On January 10, 2022, Commerce received comments from the government of Canada (Canada) on the interim final rule. We have made some clarifying edits to the interim final rule in response to those comments.

Suspension of Liquidation Pending Binational Panel Review

Canada requests that Commerce amend 19 CFR 356.8 to clarify that Commerce will order continued suspension of liquidation pending binational panel review upon request by a foreign government interested party that satisfies the criteria set out in 19 U.S.C 1516a(g)(5)(C)(i). Canada argues that in 19 U.S.C 1516a(g)(5)(C)(i) (which generally covers

¹⁰ See *Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 85 FR 24391, 24400, 24403 (May 4, 1998) (final rule) (revising the definition of the term “director” in 19 CFR 354.2 to include “Senior APO Specialist” and to conform with changes in office director positions following an internal reorganization).

parties to a proceeding), Congress did not intend to further limit the scope of suspension requests by foreign government interested parties. Canada further argues that 19 U.S.C. 1516a(g)(5)(C)(iii) (which lists the parties who can request continued suspension of liquidation) “does not, in any way, limit the types of interested parties that may request continued suspension of liquidation ... the eligibility criteria for suspension requests are instead set out in {19 U.S.C. 1516a(g)(5)(C)(i)}, which requires that Commerce order continued suspension of liquidation upon the request of an interested party, including a foreign government interested party, that satisfies those criteria.” Canada then argues that, because “liquidation moots a party’s claim pertaining to liquidated entries,”¹¹ a foreign government interested party’s right to review would be hollow in situations where parties have not requested suspension. Therefore, Canada requests that Commerce amend 19 CFR 356.8 to conform with its interpretation of the statute, and to list foreign government interested parties as parties that may request suspension.

Canada argues that amending the *Interim Rules* would eliminate confusion caused by inconsistencies in the wording of the statute and the regulation. Canada identified the 2005 Administrative Review of Certain Softwood Lumber Products from Canada, where Commerce granted Canada’s request for continued suspension of liquidation pending binational review,¹² and the 2021 Administrative Review of Certain Softwood Lumber Products from Canada, where Commerce did not grant Canada’s request, as inconsistent in this respect.¹³ Canada argues that the inconsistent treatment amplifies confusion caused by the wording of 19 CFR 356.8, which does not directly address whether foreign government interested parties can request suspension of liquidation.

Canada also argues that amending the *Interim Rules* would spare Commerce from the burden of addressing hundreds of unnecessary individual requests.

¹¹ *Agro Dutch Indus. v. United States*, 589 F.3d 1187, 1190 (Fed. Cir. 2009) (discussing *Zenith Radio Corp. v. United States*, 710 F.2d 806 (Fed. Cir. 1983)).

¹² See *Certain Softwood Lumber Products from Canada*, 69 FR 75917 (Dec. 20, 2004); see also GOC’s Comments at Attachment A.

¹³ See *Certain Softwood Lumber Products from Canada*, 85 FR 77163 (Dec. 1, 2020) (*Canadian Lumber 2021*); see also GOC’s Comments at Attachment B (ACCESS barcode: 4075213-01) (*Canadian Lumber 2021 Memo*).

Response:

We disagree with Canada's interpretation of the statute. Section 19 U.S.C. 1516a(g)(5)(C)(iii) does not provide for suspension of liquidation requests by foreign government interested parties. Commerce most recently expressed this view in the context of *Canadian Lumber 2021*, in which Commerce found that there was "no basis in U.S. law" for Canada to request suspension of liquidation.¹⁴ Specifically, because 19 U.S.C. 1516a(g)(5)(C)(iii) does not include foreign government interested parties (as defined in 19 U.S.C. 1677(9)(B)) as parties to whom suspension of liquidation may apply, the statute does not allow for foreign government interested parties to request the suspension of liquidation.

We do agree, however, with Canada that an amendment to the *Interim Rules* would resolve confusion regarding this issue. Therefore, we have amended 19 CFR 356.8(b)(2) to provide that "{f}oreign governments are not listed as interested parties who may request the continuation of suspension under 19 U.S.C. 1516a(g)(5)(C)(iii)."

Finally, we find that Canada's comments regarding the administrative burden of addressing suspension requests from interested parties do not supersede the correct interpretation of the statute. Even if the language proposed by Canada were to relieve Commerce of an administrative burden, that proposed language would conflict with the statute, and therefore the change proposed by Canada should not be adopted by Commerce's regulations.

Definition of "Class or Kind Determinations"

Canada requests that Commerce amend 19 CFR 356.2(ee) to clarify that the definition of "scope determination or class or kind of merchandise determination" is inclusive of circumvention inquiries and covered merchandise referral determinations, in addition to scope rulings.¹⁵ Canada argues that retaining "scope determination" as part of the term defined would

¹⁴ See *Canadian Lumber 2021 Memo* at 1.

¹⁵ The *Interim Rule* also revised 19 CFR 356.6 and 356.7 to use the term "class or kind determination" instead of "scope determination." *Procedures and Rules for Article 10.12 of the United States-Mexico-Canada Agreement*, 86 FR 70045, 70047 (Dec. 9, 2021) (*Interim Rule*).

be inconsistent with Commerce’s stated objective and the language of the Tariff Act, in a way that risks unnecessary confusion. Therefore, Canada requests that Commerce excise the words “scope determination or” from 19 CFR 356.2(ee), and specify in 19 CFR 356.2(ee) that all determinations issued under § 351.225 (scope determinations), § 351.226 (circumvention determinations), or § 351.227 (covered merchandise determinations) fall within the definition of “class or kind of merchandise determination.”

Response:

We agree with Canada. Commerce has previously found that circumvention inquiries constitute “class or kind determinations.”¹⁶ Moreover, we agree that it is appropriate to construe covered merchandise determinations as class or kind determinations as defined by 19 U.S.C. 1516a(a)(2)(B)(vi). Finally, we agree that the inclusion of the words “scope determination or” in 19 CFR 356.2(ee) is confusing and inappropriate, because circumvention and covered merchandise determinations are distinct from scope determinations, but are nonetheless considered class or kind determinations. Therefore, we adopt the amendments proposed by Canada with respect to 19 CFR 356.2(ee).

APO Application Deadlines

Canada requests that Commerce amend 19 CFR 356.10(c)(2)(i) to conform deadlines for considering administrative protective order (APO) applications to those deadlines not covered by the USMCA. Canada argues that that § 356.10(c) of the *interim rules* provides too long a period for parties to object to APO applications and is inconsistent with Commerce’s procedures for APO applications outside of binational panel reviews. Specifically, interim rule § 356.10(c)(2) precludes Commerce from ruling on the person described in 19 CFR 356.9(b) “until at least ten days after the request is filed, unless there is compelling need to rule more expeditiously.” This

¹⁶ *Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52302 (Sep. 20, 2021).

section further provides that any person may file an objection to an application within seven days of its filing.

Canada urges Commerce to shorten the period for parties to object, noting that there is no comparable provision in Commerce's non-USMCA regulations. Canada notes that 19 CFR 351.305(c) works well in general and would also work well in USMCA proceedings. Moreover, there is nothing in either the Rules of Procedure for Article 10.12, or the Court of International Trade procedures that would require this disparate treatment.

Response:

Commerce disagrees with Canada and is making no changes to its interim rule in this regard. Canada acknowledges that Commerce did not make substantive changes to 19 CFR 356.10(c)(2), and Commerce only updated its APO rules in 19 CFR 351.310(c) to remove the need for manual filing of APO applications. A change in the deadline for parties to object to APO applications was not included in Article 10.12 of the USMCA and was not contemplated by Commerce in the *Interim Rule*. Moreover, Canada does not provide a compelling reason for its proposed change. We disagree with Canada that we should conform our APO deadlines to the comparable provision in regulations outside of those governing binational panel reviews. The regulations and procedures for binational panel reviews, housed in 19 CFR part 356, are distinct from regulations governing Commerce's standard antidumping and countervailing duty proceedings, and therefore do not necessarily need to be conformed with those regulations. It has been Commerce's practice since the promulgation of the original 19 CFR 356.10(c)(2) to allow ten days before ruling on an APO application in a binational panel review. Therefore, the change proposed by Canada, pertaining to the length of time parties have to object to APO applications, is not necessary or appropriate here.

Classifications

Administrative Procedure Act

Under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the *Federal Register* that solicits public comment on the proposed regulatory amendments, consider public comments in deciding on the content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. The APA (5 U.S.C. 553(b)) provides a statutory exemption to notice-and-comment rulemaking for rules of agency organization, procedure, or practice and when the agency finds for good cause that such procedures are impracticable, unnecessary, or contrary to the public interest. Commerce's amendments to the regulation, 19 CFR part 356, fall within this exemption. Nevertheless, on December 9, 2021, Commerce published an interim final rule implementing the above changes and soliciting comments on those revisions. On January 10, 2022, Commerce received comments from the government of Canada. The changes made in this final rule pursuant to Canada's comments will be effective 30 days after the publication of this rule in the Federal Register, pursuant to 5 U.S.C. 553(d).

Executive Order 12866

OMB has not found this rule to be a significant rulemaking under Executive Order 12866, as amended by Executive Order 14094..

Executive Order 13132

This proposed rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Paperwork Reduction Act

This rule does not contain a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 (PRA).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes whether a

rule will have a significant effect on a substantial number of small entities when the agency is required to publish a general notice of proposed rulemaking. Because a notice of proposed rulemaking is not necessary for this rule, Commerce is not required to prepare a regulatory flexibility analysis for this rule, and none has been prepared.

List of Subjects in 19 CFR part 356

Administrative practice and procedure, Antidumping, Business and industry, Confidential business information, Countervailing duties, Imports

Dated: January 22, 2024

Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

For the reasons stated in the preamble, the Department of Commerce is adopting the interim rule amending 19 CFR part 356 published December 9, 2021, at 86 FR 70045, as final with the following changes:

PART 356—PROCEDURES AND RULES FOR ARTICLE 10.12 OF THE UNITED STATES-MEXICO-CANADA AGREEMENT

1. The authority citation for part 356 continues to read as follows:

Authority: 19 U.S.C. 1516a and 1677f(f), unless otherwise noted.

2. In § 356.2, revise paragraph (ee) to read as follows:

§ 356.2 Definitions.

* * * * *

(ee) *Class or kind of merchandise determination* means a determination by the Department, reviewable under section 516A(a)(2)(B)(vi) of the Act (19 U.S.C. 1516a(a)(2)(B)(vi)), as to whether a particular type of merchandise is within the class or kind of

merchandise described in an existing finding of dumping or an antidumping or countervailing duty order covering free trade area country merchandise. This includes Department rulings and determinations issued under §§ 351.225, 351.226, and 351.227.

* * * * *

3. In § 356.8, revise paragraph (b)(2) to read as follows:

§ 356.8 Continued suspension of liquidation.

* * * * *

(b) * * *

(2) A participant in a binational panel review that was a domestic party to the proceeding, as described in section 771(9)(C), (D), (E), (F), or (G) of the Act (19 U.S.C. 1677(9)(C), (D), (E), (F) and (G)), may request continued suspension of liquidation of entries of merchandise covered by the administrative determination under review by the panel and that would be affected by the panel review. Foreign governments are not listed as interested parties who may request the continuation of suspension under 19 U.S.C. 1516a(g)(5)(C)(iii).

* * * * *

4. In § 356.9, revise paragraph (g) to read as follows:

§ 356.9 Persons authorized to receive proprietary information

* * * * *

(g) Every court report, interpreter, and translator employed in a panel or extraordinary challenge committee review, as well as individuals employed to provide audiovisual services at hearings, meetings, or other events as needed.