

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 159

RIN 1515-AC84

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations, to implement the Continued Dumping and Subsidy Offset Act of 2000, by prescribing the administrative procedures, including the time and manner, under which antidumping and countervailing duties assessed on imported products would be distributed to affected domestic producers as an offset for certain qualifying expenditures. This distribution to the affected producers is known as the continued dumping and subsidy offset.

DATES: Comments must be received on or before July 26, 2001.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Laxague, Office of Regulations and Rulings, (202-927-0505).

SUPPLEMENTARY INFORMATION:

Background

Antidumping duties are imposed upon imported merchandise that the U.S. Department of Commerce has found is, or is likely to be, sold in the United States at less than its fair value. Countervailing duties are imposed upon imported merchandise that the Department of Commerce determines benefit from subsidies bestowed by a foreign government. In all antidumping cases, and in most countervailing duty cases, these duties are only assessed if

the U.S. International Trade Commission determines that the imported goods cause material injury or the threat of material injury to a domestic industry. The rules and procedures concerning proceedings leading to orders or findings under which antidumping and countervailing duties are assessed are found in 19 U.S.C. 1671 *et seq.*, in part 207 of the regulations of the U.S. International Trade Commission (19 CFR chapter II, part 207), and in part 351 of the regulations of the International Trade Administration, U.S. Department of Commerce (19 CFR chapter III, part 351).

The Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") was enacted on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 ("Act") (Pub. L. 106-387; 114 Stat. 1549). The provisions of the CDSOA are contained in Title X (sections 1001-1003) of the Act.

The CDSOA, in section 1003 of the Act, amended Title VII of the Tariff Act of 1930, by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or an antidumping duty finding under the Antidumping Act of 1921, would be distributed by Customs to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an antidumping duty order or finding, or countervailing duty order. This distribution is called the continued dumping and subsidy offset.

Affected Domestic Producers

An affected domestic producer eligible for a distribution of countervailing or antidumping duties assessed under an order or finding would include any manufacturer, producer, farmer, rancher or worker representative (including any association of such persons) that remained in operation, and that was a petitioner or an interested party that supported a petition for the issuance of an antidumping duty order, a finding under the Antidumping Act of 1921, or a countervailing duty order.

However, a company, business or person that had ceased production of the product covered by an order or

finding could not be an affected domestic producer eligible to receive a distribution.

Also, a company, business or person would not be an affected domestic producer entitled to a distribution of assessed antidumping and countervailing duties if that company, business or person had been acquired by a company or business that was related to a company that had opposed the antidumping or countervailing duty investigation that led to the order or finding.

In this regard, as defined in section 754(b)(5) of the Tariff Act of 1930 (19 U.S.C. 1675c(b)(5)), a company, business or person would be considered to be related to another company, business or person if: (1) the company, business or person directly or indirectly controlled or was controlled by the other company, business or person; (2) a third party directly or indirectly controlled both companies, businesses or persons; or (3) both companies, businesses or persons directly or indirectly controlled a third party and there was reason to believe that the relationship caused the first company, business or person to act differently than a nonrelated party. As concerns items 1-3, one party would be considered to directly or indirectly control another party if the party was legally or operationally in a position to exercise restraint or direction over the other party.

List of Affected Domestic Producers

The U.S. International Trade Commission (USITC) is responsible for ascertaining and timely forwarding to Customs a list of the affected domestic producers in connection with each order or finding that would potentially be eligible to receive an offset. This list would consist of those petitioners for each order or finding as well as those parties that indicated support of a petition for the order or finding. The resolution of any dispute regarding a particular list of affected domestic producers in any given case would be the province of the USITC, and not Customs.

It is noted that the USITC has supplied Customs with an initial list of affected domestic producers for the approximately 400 individual antidumping and countervailing duty cases currently ongoing, comprising over 2,000 affected domestic parties

potentially eligible to receive an offset. This list has been posted on the Customs website (<http://www.customs.gov/news/fed-reg/notices/dumping.pdf>). Continued updates to this list will be processed as necessary.

Qualifying Expenditures for Which Distribution May Be Made

A qualifying expenditure by an affected domestic producer against which a distribution of assessed antidumping and countervailing duties could be made would encompass those expenditures that were incurred after the issuance of an antidumping duty order or finding or a countervailing duty order, provided that such expenditures fell within any of the following categories: manufacturing facilities; equipment; research and development; personnel training; acquisition of technology; health care benefits for employees paid for by the employer; pension benefits for employees paid for by the employer; environmental equipment, training, or technology; acquisition of raw materials and other inputs; and working capital or other funds needed to maintain production.

Customs Rulemaking

By this document, Customs proposes to amend the Customs Regulations to add a new subpart F to part 159 (19 CFR part 159, subpart F; §§ 159.61–159.64) that would principally prescribe the procedures, including the time and manner, and the required information necessary for the distribution of antidumping and countervailing duties assessed under an appropriate order or finding, that would be payable as a continued dumping and subsidy offset to those affected domestic producers for their qualifying expenditures, in accordance with section 754 of the Tariff Act of 1930, as amended (19 U.S.C. 1675c).

It is noted that 19 U.S.C. 1675c covers all antidumping and countervailing duty assessments made on or after October 1, 2000, in connection with all antidumping duty orders or findings, or countervailing duty orders, in effect as of January 1, 1999, or issued thereafter.

Notice of Intent To Distribute Offset

As a first step in the distribution process, at least 60 days prior to the end of a fiscal year, Customs would be responsible for publishing in the **Federal Register** a notice of intention to distribute the offset for that fiscal year, and including in the notice the list of affected domestic producers, based upon the list supplied by the USITC,

that would be potentially eligible to receive the distribution.

The notice of intention to distribute the offset will also refer to: the case name and number of the particular order or finding concerned; and the instructions for filing a certification to claim a distribution.

Certifications

To obtain a distribution of the offset, each affected domestic producer would have to submit a certification under oath, in triplicate, or electronically as authorized by Customs, to the Assistant Commissioner, Office of Regulations and Rulings, Headquarters, or designee, that must be received within 60 days after the date of publication of the notice in the **Federal Register**, indicating that the producer desires to receive a distribution. The certification must demonstrate that the producer is eligible to receive a distribution as an affected domestic producer, and it must enumerate the qualifying expenditures incurred by the producer since the issuance of an order or finding for which a distribution has not previously been made.

More specifically, while there is no established format for a certification, the certification must identify the date of the **Federal Register** notice under which it is submitted, and the case name and the number of the particular order or finding cited in the **Federal Register** notice.

The certification must be executed and dated by a party legally authorized to bind the producer, and it must include the following identifying information: the name of the producer and any name qualifier, if applicable (for example, any other name under which the producer does business or is also known); the address of the producer (if a post office box, the secondary street address must also be included); the Internal Revenue Service (IRS) number (with suffix) of the producer, employer identification number, or social security number, as applicable; the specific business organization of the producer (corporation, partnership, sole proprietorship); and the name(s) of any individual(s) designated by the producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s). Parties wishing to receive their disbursement via electronic payment must also include their financial institution's Transit Routing Identification Number and applicable Bank Account Number.

In addition, the certification must enumerate: the total amount of qualifying expenditures currently and previously certified by the producer, and the amount certified by category; the total amount of those expenditures for which there has been a prior distribution; and the net amount of the current claim (the total amount currently and previously certified minus the total amount for which there has been a previous distribution).

Furthermore, the certification must contain a statement that the producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer. Also, the producer must affirm that the amount claimed as an offset does not involve any qualifying expenditures for which distribution has previously been made. Moreover, the statement must include information as to whether or not the producer has ceased to operate or has ceased production of the product covered by the particular order or finding under which the distribution is sought. Additionally, the producer must state whether or not it has been acquired by a company or business that is related to a company, as defined in section 754(b)(5), Tariff Act of 1930 (19 U.S.C. 1675c(b)(5)), that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought. If any of the foregoing conditions are not met, the producer would not qualify as an affected domestic producer.

Customs is especially interested in receiving public comment as to whether it should adopt the position that the name of the certifying producer and the total amount being certified will be considered information available for disclosure to the public.

A certification that is submitted and timely received in response to a notice of distribution may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for current and prior qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be incorrect or incomplete will be returned to the producer and the deficiencies will be identified. It is the sole responsibility of the producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the producer to the distribution requested. Failure to ensure that a correct, complete and satisfactory certification is filed within 60 days after the date of publication of the notice in the **Federal**

Register will result in the producer not receiving a distribution.

Verification

Customs reserves the right to determine whether certifications will be verified through audit or otherwise. Because certifications may be subject to verification, parties are required to maintain records supporting their claims for a period of three years after the filing of the certification.

Special Accounts, Clearing Accounts

As directed in the legislation (19 U.S.C. 1675c(e)), Customs will establish a Special Account for each antidumping duty order or finding or countervailing duty order, into which antidumping or countervailing duties liquidated pursuant to the order or finding will be deposited.

To facilitate this process, Customs is also establishing a Clearing Account into which all estimated antidumping or countervailing duties will initially be deposited, that are collected under an entry, but that are not yet available for distribution because their liquidation has not been achieved. However, once antidumping or countervailing duties are liquidated, these duties will be transferred from the Clearing Account to the Special Account established for that order or finding. When transferred to the appropriate Special Account, the antidumping or countervailing duties will be considered to be received by Customs and distributions will be made from that Special Account.

Interest on Special Accounts, Clearing Accounts

In accordance with Federal appropriations law, and Treasury guidelines on Special Accounts governed by this law, funds in such accounts are not interest-bearing unless specified by Congress. Likewise, funds being held in Clearing Accounts are not interest-bearing unless specified by Congress. Therefore, no interest will accrue in these accounts. However, if there is interest paid by the importer on any antidumping or countervailing duties billed in the liquidation process for the import entries, that interest will be transferred to the Clearing Account or Special Account, as appropriate.

Distribution of Assessed Duties Received as Continued Dumping and Subsidy Offset

Under 19 U.S.C. 1675c(c), the Commissioner of Customs is authorized to prescribe procedures for distributing the continued dumping and subsidy offset. Section 1675c(c) also requires that this distribution be made, not later

than 60 days after the first day of a fiscal year, from those antidumping or countervailing duties assessed and received during the preceding fiscal year. In the same vein, 19 U.S.C. 1675c(d)(3) authorizes the Commissioner to distribute all funds from assessed duties received in the preceding fiscal year.

Antidumping and countervailing duties are assessed on imported merchandise as instructed by the U.S. Department of Commerce (Commerce), 19 U.S.C. 1671e(a)(1) and 1673e(a)(1), such assessment to occur within six months after Customs receives notice from Commerce of the removal of a suspension of liquidation required by statute or court order under 19 U.S.C. 1504(d). These statutory provisions distinguish assessments of antidumping or countervailing duties from the mere deposit of estimated duties which occurs at entry. *See, e.g.,* 19 U.S.C. 1671e(a)(3) and 1673e(a)(3)).

When instructed by Commerce, Customs assesses the final amount of antidumping or countervailing duties accruing on an entry for imported merchandise, which is accomplished by liquidating the subject entry. 19 U.S.C. 1500. The term "liquidation" is defined in this context as the final computation or ascertainment of the duties accruing on an entry. 19 CFR 159.1.

In brief, antidumping or countervailing duties accruing on imported merchandise are not assessed until each entry covering the merchandise is liquidated. Prior to liquidation, any estimated antidumping or countervailing duties that may have been deposited on an entry are first placed into the Clearing Account and are not available for distribution. Once an entry has been liquidated, the estimated antidumping or countervailing duties in the Clearing Account for that entry are assessed and then received by Customs into the appropriate Special Account.

Once assessed and received into a Special Account, duties will become available for distribution as part of the continued dumping and subsidy offset and will be distributed within 60 days of the beginning of the following fiscal year. In the case of entries that are reliquidated at lower antidumping or countervailing rates than originally liquidated, the difference will be refunded to importers from funds in the corresponding Clearing Account and/or Special Account during subsequent fiscal years. If Customs determines that funds in the Clearing Account or Special Account are insufficient to support a refund, affected domestic producers who previously received

distributions under the Special Account will be billed. The amount of each affected domestic producer's bill will be directly proportional to the total offset amount previously received. Customs will use all available collection methods to collect outstanding bills, including, but not limited to, administrative offset. Interest will begin to accrue on unpaid bills beginning 30 days from the bill date.

When entries are reliquidated at higher rates than originally liquidated, importers will be billed for the difference. These duties will be distributed within 60 days of the beginning of the following fiscal year in which they were received into the Special Account.

If the total amount of the net claims contained in certifications filed under a given notice of distribution does not exceed the amount of the offset available for distribution in a given fiscal year, the certified net claim for each affected producer will be paid, and the balance remaining will be returned to the Clearing Account, where it will be retained for the sole purpose of future importer refunds. In the alternative, if the net claims exceed the available offset for a fiscal year, such offset will be subject to a pro rata allocation to each of the affected domestic producers based upon the total of the net claims certified.

Finally, before the last distribution may be made under an order or finding that has terminated, all remaining entries covered by the order or finding must have been finally liquidated, no longer subject to reliquidation, and all duties assessed under the entries must have been fully collected (19 U.S.C. 1675c(e)(4)(B)). Any funds remaining in the Special Account following the final distribution will be transferred to the General Fund.

Illustrations of the Process for Distributing the Offset

To demonstrate the process of distributing the continued dumping and subsidy offset, the following illustrations are provided:

I. For entries of merchandise, subject to antidumping and countervailing duty (AD/CVD) orders, that are imported prior to the October 1, 2000, effective date for CDSOA:

A. If the entries are liquidated prior to 10-1-2000, there is no offset disbursement of the AD/CV duties.

Example: Merchandise was entered in July 1999, and was liquidated in September 2000.

B. If the entries are liquidated after 10-1-2000, the liquidated AD/CV duties will be disbursed.

1. For no change liquidation and partial refund liquidations: the liquidated AD/CV duties will be disbursed, based on the fiscal year of the date of liquidation.

Example: Merchandise was entered in August 1999, and was liquidated in November 2000. The AD/CVD duties will be disbursed no later than November 2001.

2. For liquidations that bill additional duty and interest: The total amount of liquidated AD/CV duties and the interest paid will be disbursed. The amount of AD/CV duty already collected by Customs at the time of liquidation will be disbursed based on the fiscal year of the date of liquidation. The additional AD/CV duty and interest paid will be disbursed based on the fiscal year of the date of payment.

Example: Merchandise was entered in September 2000, and was liquidated in September 2001. The AD/CV duties already collected at the time of liquidation will be disbursed no later than November 2001. If the bill for additional duties and interest is paid in December 2001, those funds will be disbursed no later than November 2002.

II. For entries of merchandise, subject to AD/CVD orders, that are imported after 10-1-2000:

A. For no change liquidations and partial refund liquidations: the liquidated AD/CV duties will be disbursed, based on the fiscal year of the date of liquidation.

Example: Merchandise was entered in December 2000, and was liquidated in January 2002. The liquidated AD/CV duties will be disbursed no later than November 2002.

1. For liquidations that bill additional AD/CV duties and interest: the total liquidated AD/CV duties and interest paid will be disbursed. The amount of AD/CV duties already collected by Customs at the time of liquidation will be disbursed based on the fiscal year of the date of liquidation. The additional AD/CV duty and interest paid will be disbursed based on the fiscal year of the date of payment.

Example: Merchandise was entered in May 2001, and was liquidated in August 2002. The AD/CV duties already collected at the time of liquidation will be disbursed no later than November 2002. If the additional AD/CV duty and interest is paid in November 2002, those funds will be disbursed no later than November 2003.

III. For entries of merchandise, imported after 10-1-2000, that are subject to terminated AD/CVD orders: All AD/CV duties and interest collected pursuant to the final liquidation instructions for a terminated case will be disbursed, but only after all liquidations are final and all claims

have been settled; this will not occur in the fiscal year of liquidation, but in a subsequent fiscal year.

Example: Merchandise imported in May 2002, the case is terminated in July 2003, and the entry is liquidated in August 2003. Final AD/CV duties will be disbursed no sooner than August 2004, assuming no claims are pending on that entry or that case.

Refunds Due Importers Based on Reliquidations

Until the liquidation of an entry becomes final, the duties assessed on the entry may be subject to reliquidation as the result of 19 U.S.C. 1501, 1514, 1520, or court order. Such a reliquidation would operate as a new liquidation and an abandonment of any prior liquidation of the amount of the duties due.

Consequently, should liquidated duties that have been distributed to affected domestic producers thereafter be subject to a reliquidation that results in a refund of duties being due to an importer, such refund will be made to the importer from duties that are deposited in the Clearing Account and/or the Special Account established for that order or finding, as described below, during the next fiscal year immediately following the fiscal year in which the distributed duties were liquidated. However, for the last fiscal year during which a Special Account is established under an order or finding, and prior to the termination of the Special Account, no final distribution may be made from this Account until all remaining entries covered by the order or finding have been finally liquidated, and are no longer subject to reliquidation, and all duties assessed under the entries have been fully collected or properly accounted for by Customs (19 U.S.C. 1675c(e)(4)(B)).

Overpayment of Distribution to Affected Domestic Producer

Any overpayment of a distribution made by Customs to an affected domestic producer will be subject to billing and other collection methods, including, but not limited to, administrative offsets resulting from a reliquidation.

Distribution Final and Conclusive on All Parties

Except in the case of an overpayment made by Customs to an affected domestic producer, any distribution from a Special Account established under section 1675c(e)(1) for an antidumping duty order or finding, or a countervailing duty order, that is made by Customs in accordance with section 1675c(d)(3) to an affected domestic

producer, based upon the certification that this producer has filed, will be final and conclusive on the affected domestic producer.

Annual Report

Although it is not mandated in the legislation (19 U.S.C. 1675c), Customs intends to issue an annual report on the disbursements. This report will be available to the public via the Customs website.

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. In addition, as already stated above, Customs is especially interested in receiving public comment as to whether it should adopt the position that the name of the certifying producer and the total amount being certified will be considered information available for disclosure to the public. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

The proposed amendments would implement the terms and conditions of the Continued Dumping and Subsidy Offset Act of 2000, which applies to antidumping and countervailing duties assessed on or after October 1, 2000. Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Nor do the proposed amendments meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This collection of information is contained in § 159.63. This information

is necessary in order to enable, and to expedite, the distribution of the continued dumping and subsidy offset to the affected domestic producers. The likely respondents and/or recordkeepers are domestic business organizations, such as manufacturers, producers, ranchers, farmers and worker representatives (including associations of such persons).

Estimated total annual reporting and/or recordkeeping burden: One hour.

Estimated average annual burden per respondent/recordkeeper: One hour.

Estimated number of respondents and/or recordkeepers: One.

Estimated annual frequency of responses: One.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Comments should be submitted within the same time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, would be appropriately revised upon adoption of the proposal as a final rule.

List of Subjects in 19 CFR Part 159

Antidumping (Liquidation of duties), Countervailing duties (Liquidation of duties), Customs duties and inspection, Liquidation of entries for merchandise.

Proposed Amendments to the Regulations

It is proposed to amend part 159, Customs Regulations (19 CFR part 159), as set forth below.

PART 159—LIQUIDATION OF DUTIES

1. The general authority citation for part 159 continues to read as follows, and it is proposed to add an authority citation for Subpart F to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624.
* * * Subpart F also issued under 19 U.S.C. 1675c.

* * * * *

2. It is proposed to amend part 159 by adding a new subpart F to read as follows:

Subpart F—Continued Dumping and Subsidy Offset

§ 159.61 General.
§ 159.62 Notice of Distribution.
§ 159.63 Certifications.
§ 159.64 Distribution of offset.

Subpart F—Continued Dumping and Subsidy Offset

§ 159.61 General.

(a) *Continued dumping and subsidy offset.* Under section 754 of the Tariff Act of 1930, as amended by Pub. L. 106-387, 114 Stat. 1549 (19 U.S.C. 1675c), known as the Continued Dumping and Subsidy Offset Act of 2000, assessed duties received on or after October 1, 2000 under a countervailing duty order, an antidumping duty order, or a finding under the Antidumping Act of 1921, will be distributed, as provided under this subpart, to affected domestic producers for certain qualifying expenditures that these affected domestic producers incur after the issuance of such an antidumping duty order or finding, or countervailing duty order. This distribution is called the continued dumping and subsidy offset.

(b) *Affected domestic producer defined.* Except as otherwise provided in paragraphs (b)(1) and (b)(2) of this section, an "affected domestic producer" under paragraph (a) of this section means any manufacturer, producer, farmer, rancher or worker representative (including any association of such persons) that remains in operation, and that was a petitioner or an interested party that supported a petition concerning an antidumping duty order, a finding under the Antidumping Act of 1921, or a countervailing duty order that was entered. It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to Customs a list of the domestic producers potentially eligible to receive a distribution in connection with each order or finding.

(1) *Product no longer produced.* A company, business or person that has ceased production of the product

covered by the antidumping duty order or finding, or countervailing duty order, is not an affected domestic producer under this section.

(2) *Acquisition by related company.*

(i) *Related company defined.* A company, business or person is not an affected domestic producer if that company, business, or person has been acquired by another company or business that is related to a company that opposed the antidumping or countervailing duty investigation that led to the order or finding. For purposes of this paragraph, a company, business or person is related to another company, business or person if:

(A) The company, business or person directly or indirectly controls or is controlled by the other company, business or person;

(B) A third party directly or indirectly controls both companies, businesses or persons; or

(C) Both companies, businesses or persons directly or indirectly control a third party and there is reason to believe that the relationship causes the first company, business or person to act differently than a nonrelated party.

(ii) *Control of one party by another.* For purposes of paragraphs (b)(2)(i)(A) through (b)(2)(i)(C) of this section, one party would be considered to directly or indirectly control another party if the party was legally or operationally in a position to exercise restraint or direction over the other party.

(c) *Qualifying expenditures.* A qualifying expenditure which may be offset by a distribution of assessed antidumping and countervailing duties encompasses those expenditures that are incurred after the issuance of an antidumping duty order or finding or a countervailing duty order, provided that such expenditures fall within any of the following categories:

- (1) Manufacturing facilities;
- (2) Equipment;
- (3) Research and development;
- (4) Personnel training;
- (5) Acquisition of technology;
- (6) Health care benefits for employees paid for by the employer;
- (7) Pension benefits for employees paid for by the employer;
- (8) Environmental equipment, training, or technology;
- (9) Acquisition of raw materials and other inputs; and
- (10) Working capital or other funds needed to maintain production.

§ 159.62 Notice of distribution.

(a) *Publication of notice.* At least 60 days before the end of a fiscal year, Customs will publish in the **Federal Register** a notice of intention to

distribute assessed duties received as the continued dumping and subsidy offset for that fiscal year. The notice will include the list of domestic producers, based upon the list supplied by the USITC (see § 159.61(b)), that would be potentially eligible to receive the distribution.

(b) *Content of notice.* The notice of intention to distribute the offset will also contain the following:

(1) The case name and number of the particular order or finding concerned; and

(2) The instructions for filing the certification under § 159.63 in order to claim a distribution.

§ 159.63 Certifications.

(a) *Requirement and purpose for certification.* In order to obtain a distribution of the offset, each affected domestic producer must submit a certification, in triplicate, or electronically as authorized by Customs, to the Assistant Commissioner, Office of Regulations and Rulings, Headquarters, or designee, that must be received within 60 days after the date of publication of the notice in the **Federal Register**, indicating that the affected domestic producer desires to receive a distribution. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding for which a distribution has not previously been made, and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer.

(b) *Content of certification.* While there is no established format for a certification, the certification must identify the date of the **Federal Register** notice under which it is submitted, and the case name and the number of the particular order or finding cited in the **Federal Register** notice. The certification must be executed and dated by a party legally authorized to bind the domestic producer and state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief.

(1) *Identifying information for domestic producer.* The certification must include the following identifying information related to the domestic producer:

(i) The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);

(ii) The address of the domestic producer (if a post office box, the

secondary street address must also be included);

(iii) The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;

(iv) The specific business organization of the domestic producer (corporation, partnership, sole proprietorship);

(v) The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s); and

(vi) The Transit Routing Identification Number of the financial institution and applicable Bank Account Number for the domestic producer (if disbursement is sought via electronic payment).

(2) *Amount of claim.* In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the following:

(i) The total amount of qualifying expenditures currently and previously certified by the domestic producer, and the amount certified by category (see § 159.61(c)(1)–(10));

(ii) The total amount of those expenditures which have been the subject of any prior distribution under section 754, Tariff Act of 1930, as amended (19 U.S.C. 1675c); and

(iii) The net amount for new and remaining qualifying expenditures being claimed in the current certification (the total amount currently and previously certified as noted in paragraph (b)(2)(i) of this section minus the total amount the subject of any prior distribution as noted in paragraph (b)(2)(ii) of this section).

(3) *Statement of eligibility to receive distribution.* The certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer. The domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made (see paragraphs (b)(2)(ii) and (b)(2)(iii) of this section). Further, the statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought (see § 159.61(b)(1)). In addition, the domestic producer must state whether it has been acquired by a company or business that is related to a company, within the meaning of § 159.61(b)(2)(i)(A)–(C), that opposed

the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought.

(c) *Review and correction of certification.* A certification that is submitted in response to a notice of distribution and received within 60 days after the date of publication of the notice in the **Federal Register** may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for current and prior qualifying expenditures, including the amount claimed for distribution, appear to be correct (see paragraph (b)(2) of this section). A certification that is found to be incorrect or incomplete will be returned to the domestic producer. It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that certification is correct, complete and satisfactory within 60 days after the date of publication of the notice of distribution in the **Federal Register** will result in the domestic producer not receiving a distribution.

(d) *Verification of certification; supporting records.* Customs reserves the right to determine whether certifications will be verified through audit or otherwise. Because certifications may be subject to verification, parties are required to maintain records supporting their claims for a period of three years after the filing of the certification.

§ 159.64 Distribution of offset.

(a) *The creation of Special Accounts and Clearing Accounts.*

(1) *Special Accounts.* As directed in the legislation (19 U.S.C. 1675c(e)), Customs will establish Special Accounts for each antidumping duty order or finding or countervailing duty order, into which funds will be transferred as set out in paragraph (b) of this section. All distributions to affected domestic producers will be made from the Special Accounts.

(2) *Clearing Accounts.* In order to properly manage and account for dumping and subsidy offsets, as well as any requisite refunds to importers, Customs will also establish Clearing Accounts. All estimated antidumping and countervailing duties received pursuant to an antidumping or countervailing order or finding in effect on January 1, 1999, or thereafter, will be deposited into a Clearing Account.

(b) *Distribution of assessed duties received from the Special Accounts; refunds resulting from reliquidation or court action; and overpayments to affected domestic producers.*

(1) *Distribution of assessed duties received from the Special Accounts.*

(i) No later than 60 days after the end of a fiscal year, Customs will distribute the assessed duties transferred from the Clearing Accounts and received into the Special Accounts for purposes of distribution. The amount distributed shall be referred to as the dumping and subsidy offset;

(ii) Transfers from the Clearing Accounts to the Special Accounts will be made by Customs throughout the fiscal year. Transfers will occur between a Clearing Account and a Special Fund Account when an entry upon which antidumping or countervailing duties are owed is properly liquidated pursuant to an order, finding or receipt of liquidation instructions;

(iii) The amount transferred at liquidation to the Special Account will be dependent upon the amount actually collected on the entry and in the Clearing Account. Following liquidation, additional transfers will be made on the liquidated entry to the corresponding Special Account, as additional antidumping or countervailing duties owing are collected.

(2) *Refunds resulting from reliquidation or court action.* If any of the underlying entries composing a prior distribution should reliquidate for a refund, such refund will be recovered, to the extent possible, from the corresponding Clearing Account and/or Special Account balances available for refund or distribution. Similarly, refunds to importers resulting from any court action involving those entries will also be recovered, to the extent possible, from corresponding Clearing Account and/or Special Account balances available for refund or distribution.

(3) *Overpayments to affected domestic producers.* Overpayments to affected domestic producers resulting from subsequent reliquidations and/or court actions and determined by Customs to be not otherwise recoverable from the corresponding Clearing Account or Special Account as set out in paragraph (b)(2) of this section will be collected from the affected domestic producers. The amount of each affected domestic producer's bill will be directly proportional to the total dumping and subsidy offset amounts that that affected domestic producer previously received under the related Special Account. All available collection methods will be used by Customs to collect outstanding

bills, including but not limited to, administrative offset. Interest will begin to accrue on unpaid bills 30 days from the bill date.

(c) *Payment of certified claims.*

(1) If the total amount of the certified net claims filed by affected domestic producers does not exceed the amount of the offset available for distribution in the corresponding Special Account, the certified net claim for each affected domestic producer will be paid in full. Any balance that remains in a Special Account after an annual distribution has occurred will be transferred back into the appropriate Clearing Account. Funds transferred back to the appropriate Clearing Account will not be available for future distributions to affected domestic producers. Rather, those amounts will be available to Customs to pay refunds owed to importers due to reliquidations and/or court action. Funds transferred back to the Clearing Account and not paid out to importers will be transferred to the General Fund when the corresponding Special Account is terminated in accordance with paragraph (d) of this section.

(2) If the certified net claims exceed the dumping and subsidy offset amount available in the corresponding Special Account, such offset will be made on a pro rata basis based on each affected domestic producer's total certified claim.

(3) In any case where the distribution is not for the entire certified qualifying expenditure submitted by an affected domestic producer, the Customs Service will, at the time of payment, provide a written notification explaining the reason for the entire amount not being paid. If the affected domestic producer believes that the reduction was the result of clerical error or mistake by Customs, it must file a request for reconsideration within 10 business days to the address given in the notification. After considering the matter, the Customs Service will notify the party requesting reconsideration of its decision. However, any adjustments will be made only from funds remaining in the account for that case in the current or future fiscal years, but will be paid prior to any future distributions.

(d) *Final distribution and termination of the Special Account.*

(1) A Special Account will be terminated and a final distribution will occur when:

(i) The order or finding with respect to which the account was established has terminated; and

(ii) All entries relating to the order or finding are liquidated, all outstanding amounts collected or properly

accounted for by Customs, all related protests, petitions, and court actions fully concluded, and all refunds due to importers on the underlying entries are paid in full.

(2) Once the requisite requirements set out in paragraph (d)(1) of this section have been met, notice of a final distribution will be issued pursuant to § 159.62.

(3) Amounts not timely claimed under the notice of final distribution will be permanently deposited into the General Fund of the Treasury.

(e) *Interest on Special Accounts and Clearing Accounts.* In accordance with Federal appropriations law, and Treasury guidelines on Special Accounts, funds in such accounts are not interest-bearing unless specified by Congress. Likewise, funds being held in Clearing Accounts are not interest-bearing unless specified by Congress. Therefore, no interest will accrue in these accounts. However, statutory interest charged on antidumping and countervailing duties at liquidation, will be transferred to the Clearing Account or Special Account, as appropriate, when collected from the importer.

(f) *Distribution final and conclusive.* Except as provided in paragraphs (b)(3) and (c)(3) of this section, any distribution made to an affected domestic producer under this section shall be final and conclusive on the affected domestic producer.

(g) *Annual report.* Although it is not mandated in the law (19 U.S.C. 1675c), Customs will issue an annual report on the disbursements. This report will be available to the public via the Customs website.

Approved: June 21, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

Charles W. Winwood,

Acting Commissioner of Customs.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-01-055]

RIN 2115-AA97

Safety Zone: Sister Bay Marinafest 2001, Sister Bay, WI.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.