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BY THE U.S. GENERAL ACCOUNTING OFFICE

**Report To The Chairman,
Subcommittee On Trade,
Committee On Ways And Means,
House Of Representatives**

**Administration Of Suspension Agreements
By The Department Of Commerce**

The Trade Agreements Act of 1979 allows Commerce to suspend an antidumping or countervailing investigation before a final duty order is imposed if a foreign government or exporter agrees to correct or neutralize the unfair trade practice

Generally, suspension agreements have been more advantageous to the foreign governments, exporters, and U S importers than the imposition of duties. Although suspension agreements were expected to result in significant time savings to the parties involved, this has rarely been the case. Commerce has encountered difficulties in monitoring, reviewing, and enforcing suspension agreements and has reduced the use of such agreements



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WASHINGTON, D.C. 20548

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

B-214271

The Honorable Sam Gibbons
Chairman, Subcommittee on Trade
Committee on Ways and Means
House of Representatives

Dear Mr. Chairman:

In response to your letter of February 28, 1983, and subsequent discussions with your office concerning trade remedy laws, we reviewed certain changes to the antidumping and countervailing duty laws which were made by the Trade Agreements Act of 1979. Specifically, we reviewed the new provisions for judicial review of decisions made by the Department of Commerce and the suspension of Commerce investigations through agreements reached with foreign governments and/or exporters. This report discusses the results of our work concerning suspension agreements; judicial review will be addressed in a separate report.

The U.S. government may suspend an antidumping or countervailing duty investigation if the foreign government or exporter(s) agrees to correct or neutralize the unfair trade practice. Such an agreement is known as a suspension agreement.

Suspension agreements are usually more advantageous to the foreign governments, exporters, or U.S. importers than the imposition of duties because of differences in the remedial action's timing and impact on trade. Antidumping and countervailing duties are imposed from the effective date of a preliminary determination. Suspension agreements are signed at a later date, usually near the projected date for a final determination, and implementation of the remedy may take up to 6 months after the agreement's effective date. For example, in the Carbon Steel Pipes and Tubes from Brazil agreement (see app. II, p. 24) the projected date of Commerce's final determination would have been December 18, 1982; the suspension agreement which was signed two days later provided an export tax to offset the subsidy, effective no later than February 16, 1983. Duty orders may also have

a more inhibiting impact on trade than suspension agreements because the remedies are imposed in the United States and directly involve importers in the process. Under duty orders, the determination of final duties is postponed but the importer is required to deposit cash or a bond in the amount of the estimated duties. Since the amount of final duties is uncertain, the importer may have difficulty in adequately adjusting prices. (See app. I, pp. 6 and 7.)

It was anticipated that the suspension of investigations necessary to impose antidumping and countervailing duties would result in significant time savings to the parties involved; in practice, this has rarely occurred. In many cases, the investigation is continued after the suspension agreement is signed, and the time used exceeds that allowed for the original investigation. (See app. I, pp. 6 to 10.)

Commerce has encountered difficulties in monitoring, reviewing and enforcing suspension agreements. For example, difficulties exist in determining whether or not countries collect export taxes to offset the existing subsidies and in obtaining assurances that the collection is done in a timely manner.

During our review, we examined the negotiation and administration of suspension agreements, with emphasis on monitoring and administrative review. We interviewed Commerce, Justice, and International Trade Commission officials, industry representatives, and trade lawyers. We also attended trade conferences at which both government officials and private trade lawyers discussed the suspension agreement process. We conducted this review during May 1983 through April 1984.

At the request of your office, we did not obtain official comments on this report from Commerce or other U.S. agencies. However, we went over a draft of the report with Commerce officials and their comments were considered in preparing the final report. Except as noted above, our review was performed in accordance with generally accepted government auditing standards.

Copies of this report are being sent to the House Ways and Means Committee and the Senate Committee on Finance, and we will make copies available to others upon request.

Sincerely yours,



Frank C. Conahan
Director

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ABBREVIATIONS

| | |
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| GAO | General Accounting Office |
| GATT | General Agreement on Tariffs and Trade |
| ITC | International Trade Commission |



THE ADMINISTRATION OF SUSPENSION AGREEMENTSINTRODUCTION

The most recent series of multilateral trade negotiations--the Tokyo Round--held under the auspices of the General Agreement on Tariffs and Trade (GATT) resulted in a number of international agreements or "codes" on the use of non-tariff barriers to trade. The Trade Agreements Act of 1979 approved U.S. acceptance of the Antidumping and Subsidies Codes¹ and amended the U.S. Tariff Act of 1930 to make U.S. law consistent with the codes.² The Trade Agreements Act also made other changes governing the imposition of antidumping and countervailing duties. These special customs duties, imposed at the border by importing countries, are intended to neutralize "unfair" prices and subsidy practices. The statute authorizes duties only after certain conditions are met.

Antidumping duties are authorized after the

- Department of Commerce conducts an investigation and determines that a foreign exporter is selling goods in the United States at prices below those charged in the exporter's home market³ and the
- International Trade Commission (ITC) concurrently conducts an investigation and determines that this practice materially injures or threatens to materially injure a domestic industry or retards the establishment of such an industry.

Antidumping duties are assessed in the amount of the price differential (the dumping margin).

¹The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures) and the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures).

²We previously reviewed the U.S. government's efforts to persuade other countries to reduce the use of trade-related subsidies under the Agreement on Subsidies and Countervailing Measures. See Benefits of International Agreement on Trade-Distorting Subsidies not Yet Realized. (GAO/NSIAD-83-10, Aug. 15, 1983.)

³In certain circumstances, Commerce uses a price based on sales to a third country or a "constructed value" of the home market price.

Similarly, if Commerce finds that the foreign country is subsidizing the production, manufacture, or exportation of goods or services and the ITC makes an affirmative determination on injury when required,⁴ Commerce assesses a countervailing duty in the amount of the subsidy.

The Trade Agreements Act of 1979 provides that antidumping and countervailing duty investigations may be suspended without the imposition of duties if agreement can be satisfactorily negotiated between the Department of Commerce and either the foreign governments or the exporters. The provisions on suspension agreements in sections 704, 734, and 751 of the Tariff Act of 1930, as amended,⁵ implement Article 7 of the Antidumping Code and part of Article 4 of the Subsidies Code. Both Codes allow signatories the option to suspend investigations.

Commerce may suspend antidumping and countervailing duty investigations any time between the scheduled dates for its preliminary and final determinations if certain conditions are met. If this occurs, any ongoing ITC investigation is also suspended. In an antidumping case, the foreign exporters involved in substantially all of the imports under investigation must sign an agreement to eliminate the price differential completely or to cease export of the product to the United States. In a countervailing duty case, such exporters or the foreign government must agree to either eliminate or offset the subsidy completely or to cease exports to the United States. Both types of suspension agreements will terminate any "suspension of liquidation" initiated at the time of preliminary determinations. Suspension of liquidation under the antidumping and countervailing laws requires the importer to post a cash deposit or bond in the amount of the estimated duties in order to enter or withdraw products from the warehouse for consumption in the United States. The estimated duties may later be adjusted and become final.

⁴U.S. law requires a prior test of material injury to a domestic industry only in the case of (a) imports from other countries which adhere to the Subsidies Code or enter into substantially equivalent agreements, (b) duty-free imports from countries which are contracting parties to the GATT, and (c) imports originating in Venezuela, Honduras, Nepal, North Yemen, El Salvador, Paraguay, and Liberia.

⁵The provisions pertaining to suspension agreements appear in Commerce regulations (19 C.F.R 353.42, 353.43, 353.53, 353.54, 355.31, 355.32, 355.41, 355.42).

Alternatively, in "extraordinary circumstances," Commerce may accept an agreement which does not completely neutralize the unfair practice. The statute states that "extraordinary circumstances" occur if the suspension of investigation will be more beneficial to the domestic industry than the conclusion of the investigation and if the investigation is complex. Since none of the suspension agreements signed to date involve such circumstances, however, our review addresses only those agreements which either eliminate or offset completely the unfair trade practice or provide for the cessation of exports.

Since the Trade Agreements Act of 1979 was enacted, Commerce has signed 27 suspension agreements--22 involving countervailing duty cases and 5 involving antidumping cases; 23 of these 27 agreements are still in effect. However, Commerce has published notices of its intent to terminate two of the remaining agreements. Since June 1983, Commerce has signed only two new suspension agreements, reflecting a more restricted use of such agreements.

The legislative history indicates two primary considerations regarding suspension agreement provisions. The House Ways and Means Committee Report (House Report 317, 96th Congress) states that:

"The Committee recognizes the importance of this provision to both importers and domestic industry as a means of achieving the remedial purposes of the law in as short a time as possible and with a minimum expenditure of resources by all parties involved. However, the Committee is equally concerned that the authority to suspend investigations be exercised within the carefully circumscribed limits set forth in the bill."

The Senate Finance Committee Report (Senate Report 249, 96th Congress) states that the suspension provision is intended to permit rapid and pragmatic resolutions of both countervailing and antidumping cases and that a suspension is an unusual action which should not become the normal means for disposing of cases. It further states that the Committee intends that investigations be suspended only when the action serves the interest of the public and the affected domestic industry.

OBJECTIVES, SCOPE, AND METHODOLOGY

In response to a request from the Chairman of the Subcommittee on Trade, House Ways and Means Committee, we examined the U.S. government administration of certain aspects of countervailing and antidumping duty laws incorporated into law by the Trade

Agreements Act of 1979. Specifically, our review examined the suspension agreement process--i.e., the negotiation and administration of suspension agreements.

We examined relevant documents, including the statute, legislative history, Department of Commerce regulations, and all 27 suspension agreements, and interviewed government officials and representatives from affected domestic industries. We obtained information from the Offices of Policy, Investigation, and Compliance in Commerce's Import Administration and from the International Trade Commission. Our interviews with private industry included representatives from domestic industries involved in 7 of 27 suspension agreements. We attended conferences in which both government officials and private trade lawyers discussed suspension agreements.

With the information obtained from all sources, we reviewed each suspension agreement to ascertain whether the agreement helped interested parties or the government to save time and resources. Using information gathered from both government and industry representatives, we explored the advantages and disadvantages of suspension agreements vis-a-vis duty orders. A brief description of each suspension agreement is in appendix II.

ADMINISTRATION OF SUSPENSION AGREEMENTS

The statute permits the acceptance of bilateral suspension agreements in lieu of duties when such agreements eliminate or offset unfair trade practices or cease exports to the United States. We analyzed the timing of suspension agreements relative to the important decision points of the duty order process in order to determine the timeliness of remedy. Our analysis of suspension agreements also considered general foreign and trade relations. We also compared the expectations and broad realities for both suspension agreements and duties.

Suspension agreement timetable

The statute imposes certain deadlines and requirements for signing and administering suspension agreements. Because a suspension agreement is an alternative to pursuing the duty process to its conclusion, we compared the suspension agreement timetable with the statutory timetable used for the completion of antidumping and countervailing duty investigations. (See app. III.)

The most important milestones in the duty order process which affect suspension agreements are Commerce's preliminary determination and Commerce's and ITC's final determinations. After initiating an investigation, Commerce must make a preliminary determination regarding dumping or subsidy practices within

the required statutory deadlines and, under normal circumstances, a final determination within 75 days of the preliminary determination. If the preliminary determination is affirmative, the ITC must make its final determination before the (1) 120th day after the preliminary determination or (2) 45th day after Commerce's positive final determination, whichever is later. If Commerce's preliminary determination is negative and the final determination affirmative, the ITC must make its final determination within 75 days after Commerce's final determination.

The timetable for suspension agreements must be put in the context of this duty order process. Instead of pursuing the duty order process to its end, Commerce may finalize an agreement with the respondent (i.e., the foreign exporter(s) or government) and suspend the investigation sometime between the scheduled dates for its preliminary and final determinations. At least 30 days before the final signing of an agreement, Commerce must notify and consult with the petitioner and notify other parties to the investigation and the ITC concerning its intention to suspend the investigation. At this time, Commerce must provide, among other things, a copy of the proposed agreement and an explanation of how it will be carried out and enforced, how it will be in the public interest, and how effective monitoring of the agreement is practicable. Between the initialing of the proposed agreement and the signing of the final agreement (usually 30 days), Commerce considers comments from all interested parties but has discretion in incorporating suggested changes into the final agreement. The final suspension agreement becomes effective on the date it is published in the Federal Register. In antidumping cases, the statute grants the respondent a maximum of 6 months from this date to cease exports, if that is the option chosen. No 6-month grace period is allowed for antidumping agreements that eliminate the dumping margin. In countervailing duty cases, the respondent has up to 6 months to eliminate or offset the subsidy or to cease exports.

After the suspension agreement takes effect, the investigation may be continued. Within 20 days after the effective date of the agreement, the petitioners, respondents, or other interested parties may request a continuation of investigation. If either Commerce's or ITC's final determination (if one is necessary) is negative, all investigative proceedings and the suspension agreement are terminated and no duty order is imposed; if both determinations are affirmative, the investigation remains suspended without a duty order (i.e., the final determination has no effect on the suspension agreement). Under a continuation there is no statutory deadline and the investigative process, in practice, has been lengthened beyond the originally scheduled dates.

At least once during each 12-month period, beginning on the anniversary of the effective date of the suspension agreement, Commerce must complete an administrative review to determine whether the respondent has complied with the terms of the agreement. The review is conducted using various information, including data obtained while monitoring the agreement. Although the statute does not specify how often to monitor, in most agreements Commerce has undertaken monitoring on a quarterly basis. If Commerce, during its administrative review, determines that the agreement has been violated or no longer meets the statutory requirements, it must terminate the agreement, suspend liquidation,⁶ and continue the investigation, or, if the investigation has already been completed, impose a duty order.

Realities of suspension agreements

Experience with negotiating and administering suspension agreements has raised certain concerns. Although suspension agreements may give Commerce the opportunity to reach settlements in cases involving general foreign relations considerations and may disrupt trade to a lesser extent than duty orders, the remedy is not as timely for the domestic industry as duty orders are. In addition, most suspension agreements did not save significant time and resources for interested parties or the government. Many cases involving suspension agreements required a greater expenditure of resources than cases involving duty orders.

Suspension agreements give Commerce the flexibility to settle cases involving foreign relations considerations. A suspension agreement may not be signed unless it is in the "public interest." The statute does not define this term. The criteria used by Commerce to determine the public interest is the effect of a particular agreement on the economy as a whole, with specific consideration given to U.S. consumer, industry, and government interests, which may include foreign relations concerns.

Suspension agreements may also inhibit trade to a lesser extent than pursuing relief through the regular duty order process. The duty order process requires the importer to post an estimated duty (usually a cash deposit or bond) until the amount of the actual duty is finalized. Therefore, the importer is not

⁶Under the suspension of liquidation procedure, the determination of duties payable on imported merchandise is postponed. To withdraw merchandise for consumption, the importer deposits cash or a bond in the amount of the estimated duty.

only brought into the process but also faces uncertainty concerning the amount of the final duty. As a result, the importer may have difficulty setting prices to ensure that the price level recovers the amount of duty and may be unsure of profits on the transaction. In contrast, when a suspension agreement is signed, the exporter agrees to take action to neutralize the unfair practice without involving the importer in the collection of anti-dumping and countervailing duties.

The remedy accompanying a suspension agreement is less timely than that accompanying a duty order. A duty order takes effect from the time of preliminary determination forward, while in most cases the remedy accompanying a suspension agreement occurs at a later date. Under normal circumstances, Commerce assesses estimated duties on the date of its preliminary determination. As mentioned previously, if Commerce pursues the duty order process to completion, these duties are later finalized. If, instead, Commerce signs a suspension agreement after potential duties have been assessed, all such sums are returned and no duties are collected. Furthermore, the remedy accompanying a suspension agreement does not become effective until on or after the date the agreement takes effect. (See app. III.) In an antidumping suspension agreement in which the respondent agrees to eliminate the dumping margin, the price adjustment must be made at the time the agreement becomes effective. In an antidumping suspension agreement in which the respondent agrees to cease exports of the product and in all countervailing duty suspension agreements, the statute gives the respondent a maximum of 6 months after the effective date of the agreement to eliminate the unfair practice. In practice, Commerce has shortened this period when possible.

In addition, Commerce requires a long period of time to discover violations of suspension agreements, and it can only assess duties with limited retroactivity when violations are found. Commerce confirms and takes action on violations late in the annual administrative review process. Even when it determines a violation at this time and publishes a notice of suspension of liquidation, duties can be imposed starting no earlier than 90 days prior to the date of publication. In contrast, duty orders are imposed and collected in the United States and, as noted above, are in effect from the date of preliminary determination forward.

Although Congress anticipated that suspension agreements would save the parties involved time and resources in the investigative process, our analysis showed that in most cases significant savings were not realized (as approximated by days saved in investigation). Of 27 suspension agreements, 24 were signed on

or around the projected date of Commerce's final determinations.⁷ (See app. II, columns 6 and 7.) As a result, the agreements were not used to provide quicker relief. Moreover, in examining the overall effects of suspension agreements on both ITC and Commerce proceedings, we found that in most cases the parties involved saved few resources and that in half of the cases they expended an even greater amount of time. Significant time savings were realized only in those investigations which were not continued after the agreements were signed and which required ITC determinations, as shown below.

| | <u>Cases not requiring ITC determination</u> | <u>Cases requiring ITC determination</u> |
|---|---|--|
| Cases with continuation of investigation | No. cases: 6 ^a avg. days saved: -83 | No. cases: 7 avg. days saved: -92 |
| Cases without continuation of investigation | No. cases: 6 avg. days saved: +0.7 | No. cases: 7 avg. days saved: +50 |

^aExcludes suspension agreement on Unprocessed Float Glass from Mexico because, as of April 15, 1984, no final determination had yet been reached. Thus, the table covers 26 of the 27 suspension agreements.

In cases where suspension agreements were signed and the investigations continued, interested parties actually expended more time than would have been necessary in following the duty process to its end. Most continuations were requested by the domestic industry. Regardless of whether an ITC determination was required in the case, a continuation caused the conclusion of the investigation to be delayed until after the originally scheduled completion date (whether this was the date of the ITC final determination, or, in the absence of a requirement for such a determination, 45 days earlier on the date of Commerce's final

⁷The administration has proposed amendments to provide that foreign governments or exporters desiring suspension of investigation must submit draft suspension agreements to the Department no later than 45 days prior to the statutory due dates for the final determinations. According to Commerce, this change would ensure that the Department had adequate time to analyze proposals and prevent the all too frequent occurrence of drafts not being submitted until one or 2 days before the start of the 30-day comment period.

determination). (See app. III.) Of the 26 cases involving suspension agreements, 13 had investigations that were continued (see app. II); 6 of these did not require ITC determinations while the other 7 did. In the 6 cases not requiring ITC determinations, investigations averaged 83 additional days; in the 7 cases requiring ITC determinations 92 additional days was the average.

In the 13 cases in which suspension agreements were signed and the investigations were not continued, interested parties saved significant time in some instances but not in others. If a case did not require an ITC determination and the suspension agreement was signed on or around the date of Commerce's final determination--i.e., the scheduled completion date for the investigation--time saved was negligible. In the 6 cases which had no continuations and no ITC determinations, suspension agreements saved an average 0.7 days. On the other hand, if the case required an ITC determination after Commerce's final determination, a suspension agreement on or near the date of Commerce's final determination saved at minimum the 45 days between the two determinations. The savings resulted primarily from obviating the need for a final ITC determination. Seven cases fell into this category, with an average saving of 50 days; of 26 cases involving suspension agreements summarized in the table, only these 7 represented significant time savings.

Similarly, in most cases, the government did not realize significant savings from the use of suspension agreements and in some cases experienced an added administrative burden. At Commerce, both the Office of Investigations and the Office of Compliance reported that suspension agreements are more work than normal investigations. In addition to the time and effort expended in negotiating a suspension agreement, the Office of Investigations must prepare two sets of documents after initialing a proposed agreement--one set for finalizing the suspension agreement and another set for making a final determination in the event the final agreement is not signed for any reason. A further duplication of effort results if an investigation is continued after a final agreement is signed. The Office of Investigations saves time only when a suspension agreement occurs early in the process and the investigation is not continued. This occurred in only one of the 27 cases involving suspension agreements. Also, the Office of Compliance conducts periodic monitoring of suspension agreements in addition to its regular administrative reviews of these agreements. Finally, such agreements cause administrative difficulties at the ITC and result in little resource savings. In particular, when an investigation is continued after a suspension agreement is in place, ITC may have to reschedule activities and personnel, thus interfering with continuity of other investigations. Even when the investigation

is not continued, most of the data gathering has been done at the time of the suspension agreement. ITC saves significant resources only when the suspension agreement is prompt and no continuation is requested.

Commerce's orientation toward
suspension agreements has changed

As a result of experience, Commerce is now taking a more cautious approach in signing suspension agreements. Since taking office in June 1983, the new Deputy Assistant Secretary for Import Administration has signed only two agreements--countervailing duty cases involving refrigeration compressors from Singapore and unprocessed float glass from Mexico. The use of antidumping suspension agreements has been limited because they are difficult to administer. To illustrate such difficulties, Commerce officials stated that the use of complex formulas for determining home market prices in antidumping cases and the variability of these prices make it difficult for respondents to promise and Commerce to monitor compliance. For example, Commerce rejected a proposed Brazilian antidumping agreement on the grounds that frequent changes in the home market price, caused by high Brazilian inflation, would have created burdensome monitoring requirements. Because of difficulties in administration, the use of countervailing duty suspension agreements containing offset taxes is also being reduced; Commerce has recently denied requests for such agreements by Mexico and Brazil.

DIFFICULTIES WITH SUSPENSION AGREEMENT PROCESS

Difficulties have been encountered in the monitoring, administrative review, and enforcement processes. Commerce has no criteria in its regulations for determining whether effective monitoring of prospective suspension agreements is practicable. Commerce, in the administrative reviews reaching determinations related to compliance with agreements, has found four to be in compliance while identifying problems with five others. In two of the latter cases, Commerce allowed the respondents the opportunity to renegotiate the agreements; however, these agreements were eventually terminated.

Monitoring

The statute requires that Commerce not accept a suspension agreement unless effective monitoring of the agreement is practicable. The statute does not, however, list any criteria for effective monitoring or relate it to the administrative review process. Commerce regulations mirror the statute in not stating such criteria. The statute also requires that not less than 30

days before a final suspension agreement is signed, Commerce must give the petitioner a copy of the proposed agreement together with certain information, including an explanation of how effective monitoring is practicable. Commerce regulations state that the agreement shall contain the procedures to be followed in monitoring compliance and a statement of compatibility with the requirement that effective monitoring of the agreement be practicable.

In practice, Commerce's monitoring is usually based on an examination of quarterly information submitted by the foreign exporters or governments. The monitoring provisions of each agreement specify the kinds of information to be submitted. In antidumping agreements, this often consists of information on prices and quantities of merchandise exported to the United States. In countervailing duty cases, the respondent is often required to provide, among other things, quarterly certifications of its compliance with the agreements. However, Commerce determines compliance with the agreement late during the administrative review process, using both the monitoring data and other data collected during the period of the review.

Suspension agreements must be effectively monitored if their effect is to be similar to duty orders. The agreements list, in varying detail, specific information to be furnished for monitoring purposes and usually provide for Commerce to request additional information it deems necessary. However, the agreements and accompanying statements do not clearly explain how the information to be furnished will permit effective monitoring or how Commerce plans to monitor compliance. U.S. industry has an interest in knowing how agreements will be monitored. Commerce might satisfy industry interest by explaining in the Federal Register notice required for every suspension agreement how the provisions of each agreement ensure that effective monitoring is practicable.

Another difficulty is the relationship between the monitoring process and the annual administrative review process. The statute does not define this relationship. In the case of suspension agreements based on offset taxes, Commerce's Office of Compliance is reluctant to release to foreign requesters the value of subsidies determined on the basis of quarterly monitoring data. For example, Brazil requested that Commerce determine a quarterly subsidy value in order to set its export tax at a level that would offset the subsidy. In such instances, the Office of Compliance believes that quarterly monitoring data is inadequate to finalize the value of the subsidy. This value may be revised when determining the results of the administrative review based on data from the entire period of review. Commerce,

therefore, is reluctant to release these preliminary values because of possible court challenges by the respondent if changes in the values are required when the administrative review is completed.

Administrative review

At least once during each 12-month period, beginning on the anniversary of the date that the suspension agreement becomes effective, Commerce must complete an administrative review of the agreement. In doing this, Commerce uses questionnaire responses and quarterly monitoring data to determine if the respondent has complied with the terms of the agreement.

Questionnaires in countervailing duty cases ask for foreign government information on all known subsidy programs, additional programs of possible subsidization not definitively addressed during the investigation, and any newly alleged subsidy or the existence of any additional subsidy program known to Commerce. After Commerce analyzes all information gathered and publishes the preliminary results of its review in the Federal Register, a comment period starts followed by a notice of final results.

Commerce reports that it has experienced great difficulty in getting timely responses to the questionnaires and that foreign countries exhibit varying degrees of willingness to cooperate. Data collected from respondents in questionnaires and during the monitoring process and used in an administrative review to determine compliance may or may not be verified in-country. In the past, Commerce did not verify data on all suspension agreements because of resource constraints. Commerce used industry complaints as a criterion to guide the allocation of verification resources.⁸ Commerce verified data in 4 of the 11 administrative reviews we examined. However, the data on two of the unverified cases--Argentine and Uruguayan leather wearing apparel--were not verified because Commerce was moving toward termination of the agreements and imposition of duty orders.

According to a Commerce official, a recent Court of International Trade decision (*Al-Tech Specialty Steel Corporation vs. U.S.*) would require Commerce to verify data in all administrative reviews. The official said that this would create an onerous administrative burden.

⁸Commerce has developed guidelines in deciding whether to verify information during a particular review of a case. These include whether (1) there has ever been verification in the case, (2) verification was recent, and (3) there is any pending or anticipated court challenge.

The information requirements for antidumping verifications, according to the same Commerce official, are virtually standardized, whereas the information requirements for countervailing duty verification are not. It is more difficult to establish uniform requirements in subsidy cases because subsidy programs vary widely. However, Commerce officials stated that the uniformity of verification requirements has little to do with the ease of completing the verification. Compliance with antidumping agreements is harder to verify than compliance with countervailing duty agreements because of the extensive analysis of individual company data.

Based on their interpretation of the requirements of the Subsidies Code requirements, countries take different positions regarding the information they must submit. As a result of these varying interpretations, a Commerce official stated that Commerce's ability to verify data in foreign countries is hampered. Commerce has had difficulty in obtaining the cooperation of countries involved in some verifications.

Results of administrative review

We examined Commerce's administrative reviews on suspension agreements with a statutory deadline for completion on or before April 15, 1984, whether completed or pending. We also examined reviews with later deadlines if completed by this date.

We reviewed 11 administrative reviews, covering 10 suspension agreements (one agreement was reviewed twice). In its reviews, Commerce determined four agreements to be in compliance, identified compliance problems with five others, and reached no conclusion on one. Of the five agreements with compliance problems, Commerce terminated two and issued notices of its intent to terminate two others; the final results of the fifth are pending.

The 10 suspension agreements and the results of Commerce's administrative reviews are summarized below.

Small motors from Japan

An antidumping case involving small motors from Japan was the first investigation to be suspended under the new provisions enacted through the Trade Agreements Act of 1979. The suspension agreement stipulated that the Japanese exporter cease exports to the United States of all small motors except oil well pump and explosion-proof motors. The exporter agreed to eliminate the dumping margins on these two categories of motors. The exporter also agreed to supply Commerce with monthly data on the export of such products to the United States.

Commerce determined in preliminary results of the administrative review that the exporter had complied with the cessation portion of the agreement and had effectively eliminated the margins on explosion-proof motors. Commerce, however, found a dumping margin on oil well pump motors and notified the exporter of a possible breach.

Despite the passing of the statutory deadline, as of April 15, 1984, Commerce had not finalized the results of the administrative review. According to Commerce officials, this has not been done for several reasons.

- Internal inconsistencies in the small motors suspension agreement created difficulties in calculating margins.
- Interest in the agreement has waned. Presently, few small motors are imported from Japan because the exporter built small motor production facilities in the United States.
- There is a systemic problem hindering Commerce's finalization of the results.

A systemic problem may arise if Commerce determines during its annual administrative review that a violation has occurred or the agreement no longer meets statutory requirements. The statute requires that the particular agreement be terminated and the original investigation, if not previously completed, be resumed. The investigation in the small motors case was not continued. In practice, however, Commerce would have difficulty resuming the investigation because the data necessary to complete the investigation were outdated at the time of the administrative review. Commerce is unsure how to proceed in the small motors case using such data, but has proposed a legislative change to resolve the problem.

Truck trailer axles and brake assemblies from Hungary

Commerce has not completed an administrative review of this case despite the passage of the statutory deadline (Jan. 4, 1984) for such a review.

Carbon steel plate from Romania

Under this antidumping suspension agreement, the Romanian exporter agreed to eliminate the margin on carbon steel plate exports to the United States. Because Romania has a state-controlled economy, Commerce agreed to provide the semiannual information required by Romania to adjust its price. The exporter

also agreed to submit a quarterly report itemizing its sales to the United States and the prices of such sales.

In its administrative review, Commerce determined the exporter to be in compliance with the agreement. Commerce found that no shipments of carbon steel plate to the United States occurred during the period covered by the review and that all other terms of the agreement had been met.

Leather wearing apparel from Argentina

The suspension agreement states that the government of Argentina will not provide preferential pre-export financing on exports of leather wearing apparel to the United States and that the product will not receive any "reembolso" export payments that constitute subsidies. The reembolso program offers rebates upon export of indirect and direct taxes on merchandise.

In the preliminary results of the administrative review, Commerce discovered possible breaches of the agreement. Commerce found an over-rebate of indirect taxes under the reembolso program and loans made with preferential interest rates. According to Commerce, the breaches did not constitute intentional violations. As a result, Commerce negotiated and signed a proposed amended agreement in which the Argentine government agreed to notify the United States of changes in either the reembolso or indirect tax rates and to provide documentation that the Central Bank had ended preferential loans. Also, Commerce required the Argentine government to submit a written notification of its compliance with the agreement on a quarterly basis.

Interested parties requested a public hearing and submitted comments on the preliminary results of the administrative review and proposed amendment. The government of Argentina eventually withdrew from the agreement. Commerce then terminated the agreement and imposed a countervailing duty.

Leather wearing apparel from Uruguay

The government of Uruguay signed a suspension agreement to eliminate subsidies conferred by three programs. By imposing an export tax on leather wearing apparel exported to the United States, Uruguay attempted to neutralize subsidies provided by rebates of direct and indirect taxes (the "Reintegro" program), an income tax forgiveness program, and the non-collection of social security taxes from the leather wearing apparel industry.

According to Commerce's review of the agreement, Uruguay could only eliminate approximately 95 percent of the subsidy value because of difficulties, including the bankruptcies of

some firms, in collecting the export tax that would have neutralized the subsidies completely.

Uruguay requested and was allowed to renegotiate the agreement but still found it impossible to fulfill the statutory requirement of eliminating the subsidy completely. Commerce determined that the existing agreement no longer met the statutory requirements, terminated the arrangements, and issued a countervailing duty order.

Leather wearing apparel from Columbia

Under the suspension agreement, a Colombian exporter of wearing apparel renounced all subsidies under the Colombian Tax Reimbursement Program on products exported to the United States and agreed not to accept any substitute benefits. Under the program, exporters receive compensation equal to a percentage of the domestic value-added content of each export shipment.

Commerce completed two administrative reviews of the agreement, finding in both cases that the exporter was in compliance.

Sodium gluconate from the European Community

The suspension agreement provides for the renunciation of production refunds and export restitution payments on maize used in the production of sodium gluconate for export to the United States. The subsidy programs were provided to a West German exporter under the European Community's Common Agricultural Policy.

Commerce's administrative review determined that the exporter had complied with the agreement but no longer accounted for the statutorily required 85 percent of the Community's exports of sodium gluconate to the United States. The addition of a Dutch exporter in a supplement to the agreement again brought the agreement into conformance with the 85 percent minimum-coverage requirement.

Carbon steel plate from Brazil

The government of Brazil signed a suspension agreement to offset with an export tax the subsidies conferred on carbon steel plate. The tax is designed to neutralize benefits to the Brazilian industry obtained from rebates of capital investment, an export credit premium, preferential working capital financing for exports, an income tax exemption for export earnings, and a partial exemption from certain duties and taxes for imported machinery or any other countervailable benefit.

During its administrative review, Commerce found evidence that the government of Brazil did not comply with the terms of the agreement. Commerce found that the collection of export taxes was delayed without inflation adjustments, interest, or penalties, and preliminarily determined that this violated the agreement. Also, Commerce noted that on certain occasions the Brazilian government was late in submitting the required quarterly letters certifying its compliance with the agreement.

On March 28, 1984, Commerce issued a notice of intention to terminate the suspension agreement and will make a final decision on termination after comments are submitted and a hearing is held.

Carbon steel wire rod from Brazil

The government of Brazil signed a suspension agreement to offset with an export tax the benefits given by numerous subsidy programs on carbon steel wire rod.

During its administrative review, Commerce found evidence that Brazil did not comply with the terms of the agreement. Commerce preliminarily determined that the late payment of export taxes by exporters without inflation adjustments, imposing interest, or other penalties, violated the agreement. In some instances, the Brazilian government was late in submitting the required quarterly letters certifying its compliance with the agreement.

On March 28, 1984, Commerce issued a notice of intention to terminate the agreement, and it will make a final decision on termination after comments are taken and a hearing is held.

Steel wire rope from South Africa

The agreement stipulates that on exports to the United States, South Africa will renounce preferential railroad freight rates and benefits from the South African Export Incentive Programs and Iron/Steel Export Promotion Schemes. The agreement also requires the exporter to report quarterly on the volume of steel wire rope it exports to the United States.

In its administrative review, Commerce found compliance with the agreement. Commerce determined that the exporter renounced all benefits and met all reporting requirements.

Enforcement

The major issue in enforcement concerns Commerce's renegotiation of the agreements. Sections 704(i) and 734(i) of the

Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, essentially state that should Commerce determine that an agreement is violated or no longer meets the statutory requirements, it shall terminate the agreement and resume the investigation or impose a duty order. Commerce's implementing regulations provide for a notice of possible breach of suspension agreements. This procedure permits consideration of alternative or amended agreements before a determination is made that an agreement has been "unintentionally" violated or no longer meets the statutory requirements. Notice is provided to each party if there is reason to believe that an agreement no longer meets the statutory requirements or is being breached and the breach involves an unintentional violation. The reports of the House and Senate Committees which considered the 1979 Act did not mention possible breaches of suspension agreements or their renegotiation.⁹

In the Argentine and Uruguayan leather wearing apparel cases, Commerce gave the respondents an opportunity to renegotiate the suspension agreements. When problems were found in the Uruguayan case, a new agreement to completely offset the net subsidy could not be reached. In the Argentine case, the Argentine government withdrew from the suspension agreement. Thus, in both cases, the suspension agreements were terminated.¹⁰

Renegotiation may provide some benefits and also raise some concerns. According to Commerce officials, the intended purpose of renegotiation is to accommodate contingencies which cannot be anticipated at the time of drafting and when it is more beneficial to all concerned to revise the agreement based on changed circumstances rather than to declare a violation. For example, the agreement may have technical discrepancies which might affect the country's ability to comply.

⁹The administration has proposed amendments to specifically authorize renegotiation of suspension agreements when the breach is technical (e.g., a new exporter must be added to restore coverage of at least 85% of exports) or is minor and unintentional.

¹⁰In the Argentine case, the Amalgamated Clothing and Textile Workers Union questioned Commerce's authority to renegotiate the agreement. Commerce responded that because of Argentina's withdrawal from and the eventual termination of the agreement, the question of Commerce's authority to renegotiate was moot.

On the other hand, in certain instances renegotiation may become a convenient substitute for determining a violation. Commerce may be particularly reluctant to determine a violation when the original investigation was never completed, since in such instances Commerce must resume the investigation. Since a violation and resumed investigation might occur years after the suspension agreement, much of the data used in the original investigation would likely be outdated at the time of resumption. Commerce has two options. It can use this data to complete the investigation or it can develop new data. There is uncertainty concerning the proper way to proceed in such cases. To resolve this problem, the administration has proposed amendments to clarify that when a suspension agreement is violated and an investigation resumed, the investigation will be based on current data. Clarification is important because investigations were not continued and thus not completed in 13 of 27 cases involving suspension agreements.

INDUSTRY VIEWS ON SUSPENSION AGREEMENTS

Domestic industry has objected to many of the suspension agreements accepted by Commerce. Industry concerns center on respondents' compliance with the agreements, Commerce's ability to monitor such compliance, and Commerce's consideration of industry's input into the suspension agreement process.

Theoretically, duty orders and suspension agreements should attain similar results (i.e., the neutralization of the unfair practice), but representatives from industry prefer duty orders because they believe compliance with suspension agreements is uncertain. In particular, industry criticism has focused on countervailing duty suspension agreements that offset subsidies with export taxes imposed by foreign governments. Nine of 26 suspension agreements, most of which were signed with the government of Brazil, incorporated such taxes (see app. II, columns 2 and 4). Industry has complained that foreign governments have not collected the full amount of export taxes or have methods of returning it to the companies, thus leaving subsidies intact. According to industry representatives, the latter form of noncompliance is especially prevalent in government-owned foreign companies.

A Commerce official, however, did not perceive offset tax agreements as causing special compliance problems. In his opinion, a country can circumvent by creating new subsidies to replace the ones it eliminated just as easily as it can circumvent the collection of the offset tax. He also stated that offsets give the foreign government flexibility in neutralizing a subsidy on merchandise exported to the United States. Instead of

eliminating the entire subsidy program, the foreign government can retain the subsidy on merchandise shipped to other countries while offsetting the subsidy on merchandise shipped to the United States. In a recent administrative review, however, Commerce determined that an exporter is only asked to give up benefits on shipments to the United States. Commerce disagreed with the argument that the benefits on exports to third countries would also extend to exports to the United States.

Another industry criticism involved Commerce's consultation procedures. In the past Commerce consulted with domestic industry concerning a possible suspension agreement only at the beginning of the 30-day comment period after the proposed agreement was initialed (see app. III). One industry representative stated that consultations should occur much earlier because once a document is drawn up and published in the Federal Register, it is difficult to alter. In the last two suspension agreements, Commerce did take industry comments earlier in the process. While Commerce has not changed its policy regarding the time of industry consultation, early consultations may meet the aforementioned industry concerns.

The administration has proposed amendments that would formalize suspension agreement procedures to provide more formal rights for interested domestic parties to comment on proposed suspension agreements.

SUSPENSION AGREEMENTS

| I. <u>ANTIDUMPING CASES</u> | | | | | | | | | | |
|--|-----------|--|--|------------------------------|------------------------|---|-----------------------------|---------------|----------|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
| Product | Country | Party to agreement | Type of commitment | Effective date of suspension | Date suspension signed | Statutory deadline for determination ^a | Investigation continued (C) | Admin. Review | | Comments |
| | | | | | | | | Preliminary | Final | |
| Small Electric Motors | Japan | Toshiba | 1) Cease exports--poly-phase motors 2) Eliminate margin--other motors | 11-06-80 | 10-29-80 | 11-02-80 | | 06-18-82 | | Possible breach; final admin. review pending despite passage of statutory deadline. |
| Truck Trailer Axles & Brake Assemblies | Hungary | Hungarian Railway Carriage & Machine Works | Elim. margin | 01-04-82 | 12-16-81 | 01-23-82 | | | | No admin. review completed despite passage of statutory deadline |
| Sheet Piling | Canada | Acier Casteel, Inc. | Elim. margin | 09-15-82 | 09-07-82 | 09-05-82 | | | | |
| Carbon Sheet Steel | Venezuela | Sidor | Cease exports | 10-07-82 | 10-01-82 | 10-02-82 | C | | | Investigative process terminated by ITC (2/24/83). |
| Carbon Steel Plate | Romania | Metal-Import-export | Elim. margin | 01-04-83 | 12-27-82 | 12-22-82 | | 01-19-84 | 03-24-84 | Admin. review showed compliance |

Source: Prepared by GAO from Department of Commerce Information and Federal Register notices.
(Information current through April 15, 1984)

^aRefers to projected date of Commerce's final determination.

SUSPENSION AGREEMENTS

II. COUNTERVAILING DUTY CASES

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
|-------------------------|----------------|-------------------------------|-----------------------------|-------------------------------------|-------------------------------|---|------------------------------------|----------------------------------|----------------------|--|
| <u>Product</u> | <u>Country</u> | <u>Party to agreement</u> | <u>Type of commitment</u> | <u>Effective date of suspension</u> | <u>Date suspension signed</u> | <u>Statutory deadline for determination</u> | <u>Investigation continued (C)</u> | <u>Admin. Review</u> | | <u>Comments</u> |
| | | | | | | | | <u>Preliminary</u> | <u>Final</u> | |
| Leather Wearing Apparel | Argentina | Gov't. of Argentina | Elim. subsidy | 03-13-81 | 01-28-81 | 03-25-81 | C | 12-30-82 | | Proposed amendment because of possible breach; Argentina then withdrew from agreement. Suspension agreement terminated. Duty order (3-18-83). |
| Leather Wearing Apparel | Uruguay | Gov't. of Uruguay | Offset subsidy (export tax) | 03-16-81 | 02-27-81 | 02-25-81 | C | | | Agreement no longer met statutory requirements; Commerce gave Uruguay opportunity to re-negotiate; Commerce eventually terminated suspension agreement and imposed duty order (7/16/82). |
| Leather Wearing Apparel | Columbia | Confecciones Amazonas Orinoco | Elim. subsidy | 04-02-81 | 03-24-81 | 03-25-81 | | 06-04-82 04-20-83 01-26-84 | 09-15-82 06-09-83 | Two admin. reviews completed. Both showed compliance. Preliminary results of third admin. review also showed compliance. |

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APPENDIX II

APPENDIX II

SUSPENSION AGREEMENTS

II. COUNTERVAILING DUTY CASES (cont'd)

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
|--|-----------|-------------------------|-----------------------------|------------------------------|------------------------|--------------------------------------|-----------------------------|---------------|----------|---|
| Product | Country | Party to agreement | Type of commitment | Effective date of suspension | Date suspension signed | Statutory deadline for determination | Investigation continued (C) | Admin. Review | | Comments |
| | | | | | | | | Preliminary | Final | |
| Sodium Gluconate | E.C. | Joh. A. Benckiser GmbH. | Elim. subsidy | 11-30-81 | 11-18-81 | 11-23-81 | | 02-22-82 | 06-01-83 | Admin. review showed compliance. |
| | | | | | | | | 01-20-84 | | Preliminary results of second admin. review also showed compliance. |
| Prestressed Concrete Steel Wire Strand | S. Africa | Haggie, Ltd. | Elim. subsidy | 05-21-82 | 05-17-82 | 06-22-82 | C | 12-07-83 | | Preliminary results of admin. review showed compliance. |
| Carbon Steel Plate | Brazil | Gov't. of Brazil | Offset subsidy (export tax) | 09-07-82 | 08-24-82 | 08-24-82 | C | | | Commerce published notice of intent to terminate agreement (3-28-84). |
| Carbon Steel Wire Rod | Brazil | Gov't. of Brazil | Offset subsidy (export tax) | 09-27-82 | 09-21-82 | 09-21-82 | | | | Commerce published notice of intent to terminate agreement (3-28-84). |

SUSPENSION AGREEMENTS

II. COUNTERVAILING DUTY CASES (cont'd)

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
|---|----------------|---------------------------|-----------------------------|-------------------------------------|-------------------------------|---|------------------------------------|----------------------|--------------|---|
| <u>Product</u> | <u>Country</u> | <u>Party to agreement</u> | <u>Type of commitment</u> | <u>Effective date of suspension</u> | <u>Date suspension signed</u> | <u>Statutory deadline for determination</u> | <u>Investigation continued (C)</u> | <u>Admin. Review</u> | | <u>Comments</u> |
| | | | | | | | | <u>Preliminary</u> | <u>Final</u> | |
| Carbon Steel Wire Rod | Argentina | Gov't. of Argentina | Elim. subsidy | 09-27-82 | 09-21-82 | 09-21-82 | | | | |
| Pre-stressed Concrete Steel Wire Strand | Brazil | Gov't. of Brazil | Offset subsidy (export tax) | 10-22-82 | 10-15-82 | 10-16-82 | C | | | Investigation terminated by ITC (3-23-83). |
| Steel Wire Rope | S. Africa | Haggie, Ltd. | Elim. subsidy | 12-01-82 | 11-22-82 | 11-17-82 | | 01-26-84 | 04-13-84 | Admin. review showed compliance. |
| Pectin | Mexico | Pectina de Mexico | Elim. subsidy | 12-07-82 | 12-01-82 | 12-01-82 | C | 02-28-84 | | Preliminary results of admin. review showed compliance. |
| Polypropylene Film | Mexico | Celulosa y Derivados | Elim. Subsidy | 12-07-82 | 12-01-82 | 12-01-82 | C | | | |
| Carbon Steel Pipes & Tubes | Brazil | Gov't. of Brazil | Offset subsidy (export tax) | 12-27-82 | 12-20-82 | 12-18-82 | | | | |

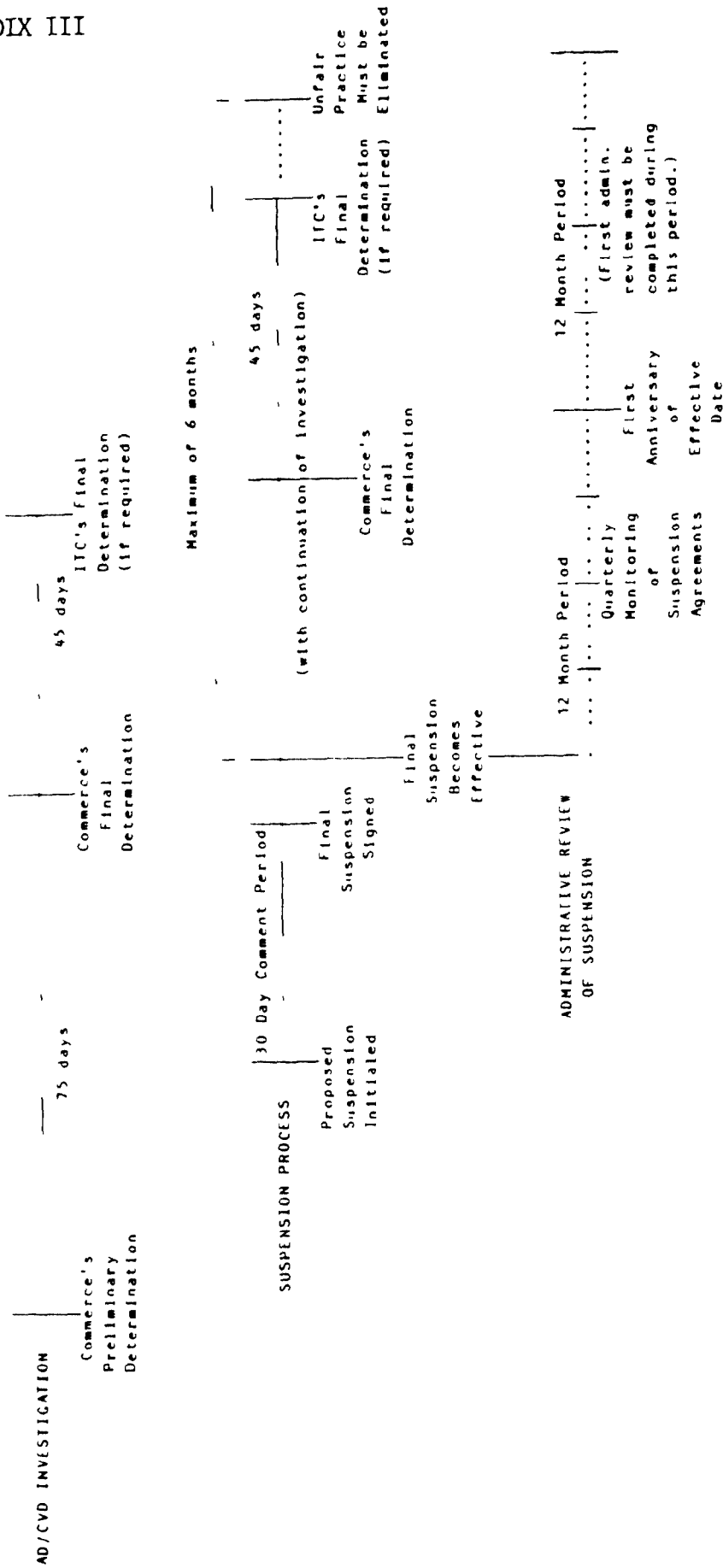
II. COUNTERVAILING DUTY CASES (cont'd)

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
|-------------------------------|-----------|--|--|------------------------------|------------------------|--------------------------------------|-----------------------------|---------------|-------|---|
| Product | Country | Party to agreement | Type of commitment | Effective date of suspension | Date suspension signed | Statutory deadline for determination | Investigation continued (C) | Admin. Review | | Comments |
| | | | | | | | | Preliminary | Final | |
| Roses & Other Cut Flowers | Columbia | 93 Columbian Exporters | Elim. subsidy | 01-18-83 | 01-12-83 | 01-15-83 | | | | |
| Stainless Steel Products | Brazil | Gov't. of Brazil | Offset subsidy (export tax) | 02-02-83 | 01-27-83 | 01-29-83 | C | | | |
| Yarns of Polypropylene Fibers | Mexico | Industrias Polifil | Elim. Subsidy | 02-07-83 | 02-01-83 | 02-02-83 | C | | | |
| Orange Juice | Brazil | Gov't. of Brazil | Offset subsidy (export tax) | 03-02-83 | 02-24-83 | 02-26-83 | C | | | |
| Tool Steel | Brazil | Gov't. of Brazil | Offset subsidy (export tax) | 03-21-83 | 03-14-83 | 03-12-83 | C | | | |
| Galvanized Steel Wire Strand | S. Africa | Haggle, Ltd. | Elim. subsidy | 04-29-83 | 04-22-83 | 04-25-83 | | 04-13-84 | | Preliminary results of admin. review showed compliance. |
| Steel Pipe & Tube Products | S. Africa | Tubemakers of S. Africa, Ltd. & Brollo (Africa) Ltd. | Elim. subsidy | 06-01-83 | 05-20-83 | 05-18-83 | C | | | |
| Refrigeration Compressors | Singapore | Gov't of Singapore & two companies | Offset one subsidy with export tax & eliminate another | 11-07-83 | 10-31-83 | 11-02-83 | | | | |
| Unprocessed Float Glass | Mexico | Vitro Flotado, S.A. Vidrio Plano de Mexico, S.A. | Elim. subsidy | 02-28-84 | 02-22-84 | | C | | | |

APPENDIX I I

APPENDIX II

SUSPENSION AGREEMENT MILESTONES







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