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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 130930854-3854-01]

RIN 0625-AA95

Modification of Regulations Regarding Time Limits for Submission of Information Pertaining to Requests for Sampling in Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Commerce (the Department) proposes to modify its regulations to establish time limits for the submission of requests for sampling, and comments on sampling in antidumping (AD) administrative reviews. The modifications to the time limits, if adopted, will more clearly prescribe the time for filing requests for sampling in AD administrative reviews, and the time for filing comments and rebuttal comments with respect to such requests. The modifications will provide sufficient opportunity for the Department to determine whether it will employ sampling in selecting respondents for individual examination when conducting administrative reviews in which a request for sampling is timely submitted.

DATES: To be assured of consideration, comments must be received no later than [INSERT DATE 42 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>, Docket No. ITA-2013-0001, unless the commenter does not have access to the internet. Commenters who do not have access to the internet may submit the original and two copies of each set of comments by mail or hand delivery/courier. All comments

should be addressed to Paul Piquado, Assistant Secretary for Enforcement and Compliance, formerly Import Administration, Room 1870, Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230. The comments should also be identified by Regulation Identifier Number (RIN) 0625-AA95.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Enforcement and Compliance's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and online at <http://www.regulations.gov> and on the Department's Web site at <http://trade.gov/enforcement/>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to IA ACCESS Helpdesk, at (202) 482-3150, email address: iaaccess@trade.gov.

FOR FURTHER INFORMATION CONTACT: Sapna Sharma at (202) 482-5285 or Shauna Biby at (202) 482-4267.

SUPPLEMENTARY INFORMATION: Under section 777A of the Tariff Act of 1930, as amended, the Department is directed to determine the individual weighted average dumping margin for each known exporter and producer of subject merchandise. For administrative reviews, the requirement pertains to all exporters and producers that have been requested for review. However, when the number of producers/exporters (“companies”) involved in an antidumping (AD) review is so large that the Department finds it impracticable to examine each company individually, section 777A(c)(2) allows the Department to limit its examination to: (A)

a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or (B) exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can reasonably be examined. The Department has, to date, generally used option (B) in proceedings in which limited examination has been necessary. One consequence of this is that companies under investigation or review with relatively small import volumes have generally been effectively excluded from individual examination. Over time, this creates a potential enforcement concern in AD administrative reviews because, as exporters accounting for smaller volumes of subject merchandise become aware that they are effectively excluded from individual examination by the Department's respondent selection methodology, they may decide to lower their prices as they recognize that their pricing behavior will not impact the AD rates assigned to them. Sampling such companies under section 777A(c)(2)(A) of the Tariff Act of 1930, as amended (the "Act"), is one way to address this enforcement concern. Accordingly, the Department is refining its practice with respect to the methodology for respondent selection in certain AD proceedings, which the Department is publishing elsewhere in this issue of the *Federal Register*.

To facilitate sampling in administrative reviews generally, the Department is proposing to amend section 351.301 of its regulations to establish time limits for filing requests for sampling in administrative reviews, and time limits for comments and rebuttal comments to be filed by interested parties with respect to any such requests for sampling. Currently, 19 CFR 351.301 sets forth the time limits for submission of factual information, including, more recently, specific time limits, time limits for certain submissions such as responses to questionnaires, and time limits for certain allegations. The Department proposes to modify 19 CFR 351.301 so that it also

includes a specific time limit for interested parties to submit a request that the Department use sampling in selecting exporters or producers for individual examination. These time limits should ensure that parties may request the Department to sample, while allowing the agency to complete its proceedings in accordance with statutory deadlines.

In particular, the proposed rule will require a domestic interested party under 19 U.S.C. section 1677(9)(C), (D), (E), or (F), or an interested party under 19 U.S.C. section 1677(9)(A) that is subject to the administrative review, to file its request for the Department to conduct sampling under 19 U.S.C. section 1677f-1(c)(2)(A), along with its comments on data from Customs and Border Protection (CBP), within seven (7) days after the Department releases the CBP data to interested parties, unless otherwise specified. The rule proposes that the submission include: (1) a request that the Department conduct sampling; and (2) factual information and comments on whether this factual information provides a reasonable basis to believe or suspect that the average export prices and/or dumping margins for the largest exporters differ from such information that would be associated with the remaining exporters. Under the proposed rule, if an interested party were to submit a request for the Department to conduct sampling, all other interested parties will then have a ten-day comment period and a five-day rebuttal period to comment on the sampling request.

The proposed rule is intended to establish a time limit for sampling requests in administrative reviews which would provide the Department with sufficient time to conduct the sampling and complete the administrative review under its statutory deadlines. In addition, the rule is intended to provide parties with sufficient time to examine the information related to sampling and provide comment to the Department that would in turn allow the Department to make an informed decision on whether to use sampling in any particular administrative review.

Classification

Executive Order 12866

This proposed rule has been determined to be not significant for purposes Executive Order 12866.

Initial Regulatory Flexibility Analysis (IRFA)

Pursuant to Section 603 of the Regulatory Flexibility Act, the Department has prepared the following IRFA to analyze the potential impact that this proposed rule, if adopted, would have on small entities.

Description of the Reasons Why Action Is Being Considered

The policy reasons for issuing this proposed rule are discussed in the preamble of this document, and not repeated here.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule; Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

This proposed rule is intended to alter the Enforcement and Compliance's regulations for AD proceedings; specifically, to set forth deadlines for submitting requests for sampling in AD administrative reviews pursuant to 19 U.S.C. section 1677f-1(c)(2)(A), and comments and rebuttal comments pertaining to such requests for sampling.

The legal basis for this rule is 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538. No other Federal rules duplicate, overlap, or conflict with this proposed rule.

Number and Description of Small Entities Regulated by the Proposed Action

The proposed rules will apply to all persons submitting a request for sampling to the Department in AD administrative reviews. This could include exporters and producers of

merchandise subject to AD proceedings and their affiliates, importers of such merchandise, and domestic producers of like products.

Exporters and producers of subject merchandise are rarely U.S. companies. Some producers and exporters of subject merchandise do have U.S. affiliates, some of which may be considered small entities under the appropriate Small Business Administration (SBA) small business size standard. The Department is not able to estimate the number of exporters and producer domestic affiliates that may be considered small entities, but anticipates, based on its experience in these proceedings, that the number will not be substantial.

Importers may be U.S. or foreign companies, and some of these entities may be considered small entities under the appropriate SBA small business size standard. The Department does not anticipate that the proposed rules will impact a substantial number of small importers because importers of subject merchandise who are not also producers and exporters (or their affiliates) rarely submit requests for administrative review and rarely submit factual information in the course of the Department's AD proceedings, and those that do tend to be larger entities.

Some domestic producers of like products may be considered small entities under the appropriate SBA small business size standard. Although it is unable to estimate the number of producers that may be considered small entities, the Department does not anticipate that the number affected by the proposed rule will be substantial. Frequently, domestic producers that bring a petition account for a large amount of the domestic production within an industry, so it is unlikely that these domestic producers will be small entities.

In sum, while recognizing that exporter and producer affiliates, importers, and domestic producers that submit information in AD proceedings will likely include some small entities, the

Department, based on its experience with these proceedings and the participating parties, does not anticipate that the proposed rule would impact a substantial number of small entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The proposed rule will establish a time limit for interested parties to request that the Department conduct sampling in AD administrative reviews pursuant to 19 U.S.C. section 1677f-1(c)(2)(A). In particular, the proposed rule will require a domestic interested party under 19 U.S.C. section 1677(9)(C), (D), (E), or (F), or an interested party under 19 U.S.C. section 1677(9)(A) that is subject to the administrative review, to file its request for the Department to conduct sampling under 19 U.S.C. section 1677f-1(c)(2)(A), along with its comments on data from Customs and Border Protection (CBP), within seven (7) days after the Department releases the CBP data to interested parties. This will not amount to a significant burden as the submitter will have to make a submission requesting that the Department conduct a review based upon sampling whenever it wishes that the Department conduct sampling in the context of its AD administrative reviews.

Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The Department analyzed two alternatives to this proposed action. The first alternative, the preferred alternative, would establish time limits for the submission of requests for sampling. Under this preferred alternative, parties would incur no economic impact because the proposed provisions are purely administrative in nature. This proposed rule provides parties with guidance on the timing and process by which to request sampling in the agency's proceedings.

The second alternative, the "no action" alternative, would set forth a proposed methodology for sampling in AD and CVD proceedings, without providing regulated parties

with any guidance on the timing and process by which to request sampling in the agency's proceedings. This alternative would either create no economic impact, or slightly negative impacts to the regulated community due to the increased confusion generated as a result of the lack of guidance and process for requesting sampling. Although this alternative was considered, it was not selected because it does not serve the Department's objectives of creating certainty and clarity for participants in AD and CVD proceedings.

Paperwork Reduction Act

This rule does not require a collection of information for purposes of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Paul Piquado,
Assistant Secretary
for Enforcement and Compliance.

November 6, 2013
Date

For the reasons stated, 19 CFR part 351 is proposed to be amended as follows:

PART 351--ANTIDUMPING AND COUNTERVAILING DUTIES

1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

2. In § 351.301, add new paragraph (d) to read as follows:

§ 351.301 Time limits for submission of factual information.

* * * * *

(d) Time limits for filing request for sampling in antidumping duty administrative reviews.

(1) For antidumping duty administrative reviews, all submissions from parties to the proceeding wishing to request that the Department conduct sampling in selecting respondents for individual examination under section 777A(c)(2)(A) of the Act are normally due no later than 7 days after the Department releases to interested parties data from Customs and Border Protection pertaining to entries of merchandise subject to the review. The request for the Department to use sampling in the review must include the following information:

- (i) A request that the Department conduct sampling with respect to the exporters subject to the review; and
- (ii) Factual information and comment upon whether the factual information presented provides a reasonable basis to believe or suspect that the average export prices and/or dumping margins for the largest exporters differ from such information that would be associated with the remaining exporters subject to the review.

(2) Interested parties wishing to comment on the request for sampling must submit comments within 10 days from the date of receipt of the request for sampling.

(3) Interested parties wishing to submit rebuttal comments addressing comments submitted under paragraph (d)(2) of this section must submit such comments within 5 days from the due date for submitting comments in paragraph (d)(2).

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