



DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 250522-0090]

RIN 0625-AB27

Determining and Applying Unaffiliated Reseller Assessment Rates; Modification or Removal of Countervailing Duty Expedited Reviews

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

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: Enforcement and Compliance (E&C), part of the International Trade Administration of the U.S. Department of Commerce (Commerce), administers the antidumping duty (AD) and countervailing duty (CVD) trade remedy laws of the Tariff Act of 1930, as amended (the Act). Commerce is seeking public comment as it considers revising, and potentially codifying in its regulations, its current policy of assessing entries of subject merchandise exported by unaffiliated resellers at the all-others rate determined in a less-than-fair-value (LTFV) investigation rather than at the rate calculated for an examined producer of that merchandise in an administrative review. In addition, Commerce is considering modifying or removing regulations providing for the conduct of an expedited administrative review following the conclusion of a CVD investigation.

DATES: Comments must be received no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit electronic comments only through the Federal eRulemaking Portal at <https://www.Regulations.gov>, Docket No. ITA- ITA-2025-0003. Comments may also be submitted by mail, hand delivery or courier, addressed to Scot Fullerton, Acting Deputy Assistant Secretary for AD/CVD Operations, Room 18022, Department of Commerce, 1401

Constitution Ave., NW, Washington, DC 20230. An appointment must be made in advance with the APO/Dockets Unit at (202) 482-4920 to submit comments in person by hand delivery or courier. All comments submitted during the comment period permitted by this document will be a matter of public record and will generally be available on the Federal eRulemaking Portal at <https://www.Regulations.gov>. Commerce 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. Therefore, do not submit confidential business information or otherwise sensitive or protected information.

Any questions concerning the process for submitting comments should be submitted to E&C Communications office at (202) 482-0063 or ECCommunications@trade.gov.

FOR FURTHER INFORMATION CONTACT: Rebecca Cantu, Deputy Chief Counsel for Trade Enforcement and Compliance, at (202) 482-4618, or Jesus Saenz, Senior Attorney, at (202) 482-1823.

SUPPLEMENTARY INFORMATION:

Commerce's Unaffiliated Reseller Policy (19 CFR 351.212)

On May 6, 2003, Commerce issued a clarification to its regulations covering the automatic assessment of duties in market economy AD proceedings, § 351.212(c).¹ Commerce explained in that clarification notice that if the agency conducted an administrative review of a producer of subject merchandise pursuant to section 751(a) of the Act and § 351.213, there was an unaffiliated reseller that exported subject merchandise to the United States during the period of review, and the producer was unaware that the reseller's exports of subject merchandise were destined for the United States during that period, then the merchandise being exported by the reseller would not be liquidated at the assessment rate Commerce determined for the producer in the administrative review or automatically at the rate required as a deposit at the time of entry.²

¹ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (2003 Clarification Notice).

² *Id.*

Instead, Commerce explained that the entries of subject merchandise exported by the reseller during the period of review would be liquidated at the all-others rate determined in the underlying investigation if there was no company-specific review of the reseller for that review period.³ Commerce explained that it was implementing this policy because without it, “there may be little incentive for resellers to request a review to obtain their own specific rates,” perpetuating the possible application of inaccurate rates based on the producer’s selling experience instead of the reseller’s selling experience.⁴ In addition, Commerce explained that it had witnessed that “resellers ‘shop’ for margins by waiting until the completion of [a] review to determine whether the producer’s rate determined in the review or the all-others rate is more favorable.”⁵

Commerce is now seeking public comments on whether it should consider further modifications to its unaffiliated reseller practice. Specifically, if Commerce conducts an administrative review of a producer and the rate determined for the producer during the period of review is higher than the all-others rate, Commerce is requesting public comments on whether the all-others rate should continue to be applied to the merchandise produced by the examined entity and exported by an unexamined unaffiliated reseller to the United States or whether the higher rate calculated for the producer should instead be applied to the unaffiliated reseller. In other words, should Commerce implement a policy in which it applies the higher of either the examined producer’s rate or the all-others rate?

As explained in the *2003 Clarification Notice*, Commerce would prefer that exporters of subject merchandise request an administrative review to increase the agency’s confidence that the rate applied to those exporters is reasonable.⁶ Pursuant to § 351.109(g), when resellers request an administrative review and are not selected for individual examination, Commerce will

³ *Id.*

⁴ *Id.* at 23955.

⁵ *Id.*

⁶ *Id.*

apply a rate derived from the examined respondents to those entries of subject merchandise which is period-specific, unlike the all-others rate, which was determined in the earlier underlying investigation. If an unaffiliated reseller decides not to request an administrative review of its merchandise, that suggests that the reseller may believe that an administrative review of its merchandise would not result in a rate lower than the all-others rate. Applying the higher of the examined producer's rate or the all-others rate to an unaffiliated reseller for which an administrative review was not requested could incentivize unaffiliated resellers to request an administrative review of their own merchandise rather than presume that their merchandise would always benefit from a potentially low all-others rate.

Commerce is therefore requesting comments from the public on whether it should continue to apply only the all-others rate to unaffiliated resellers of subject merchandise in market economy AD reviews or if it should modify its unaffiliated reseller practice to instead direct Customs and Border Protection to liquidate those entries at the higher of the examined producer's rate or the all-others rate.

Whether Commerce continues to apply its current unaffiliated reseller policy for market economy AD reviews or modifies that practice, despite the publication of the *2003 Clarification Notice* over 20 years ago, many unaffiliated resellers continue to argue in Commerce's proceedings that Commerce should apply the rate calculated for an examined unaffiliated producer to their merchandise when that rate is lower than the all-others rate. Commerce is therefore considering revising its assessment regulation, § 351.212, to incorporate an unaffiliated reseller policy, modified or unmodified, into its regulations. The policy concerns that supported the implementation of the 2003 unaffiliated reseller practice continue to be relevant today, and including that practice in regulations would help improve and enhance the enforcement of AD determinations by giving notice to the general public and further preventing the "gaming" of the trade remedy laws by unaffiliated resellers seeking the lowest AD assessment rate. In short, such a modification to Commerce's regulations could help prevent the evasion of the AD laws.

Commerce therefore also invites the public to propose suggested language to add to § 351.212 to reflect its unaffiliated reseller policy, either unmodified or revised as suggested herein.

Expedited Countervailing Duty Reviews (19 CFR 351.214(l))

Section 351.214(l) of Commerce’s regulations provide for an expedited review immediately following a CVD investigation if, in the investigation, Commerce limited the number of exporters or producers to be individually examined under section 777A(e)(2)(A) of the Act and did not accept voluntary respondents under section 782(a) of the Act and § 351.109(h).⁷ The CVD expedited review regulation was not issued pursuant to any specific CVD statutory provision but was promulgated to bring the CVD regulations into conformity with Article 19.3 of the World Trade Organization Agreement on Subsidies and Countervailing Measures.⁸ In 2023, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that the “individualized-determination provisions” of section 777A(e) of the Act, along with the “regulatory-implementation authority” of section 103(a) of the Uruguay Round Agreements Act, provided Commerce with the authority to promulgate the expedited review regulation at § 351.214(l).⁹ However, the Federal Circuit also held that the expedited review provision was not the only means by which Commerce could bring United States obligations into accordance with the SCM Agreement and that it provided “one procedure for giving effect to the primary policy of providing individual-company rate determinations.”¹⁰

⁷ The CVD expedited review regulation was initially promulgated as § 351.214(k). *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27321–22, 27396 (May 19, 1997) (*1997 Regulations*). Section 351.214(k) was later revised to § 351.214(l). *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52373 (September 20, 2021).

⁸ *See Agreement on Subsidies and Countervailing Measures* (SCM Agreement), April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14, at Art. 19.3.

⁹ *See Comm. Overseeing Action for Lumber Int’l Trade Investigations or Negots. v. United States*, 66 F.4th 968, 977 (Fed. Cir. 2023) (*COALITION v. U.S.*); *see also* Uruguay Round Agreements Act (URAA), Pub. L. 103-465, 108 Stat. 4809 (1994).

¹⁰ *See COALITION v. U.S.*, 66 F.4th at 978 (explaining that section 777A(e) of the Act provides options for Commerce to consider “if making individual determinations for all producers and exporters is not practicable . . . The permissive ‘may’ by itself does not exclude other options, and nothing else makes the list that follows one that defines all permissible options,” and finding that expedited reviews is one possible option.).

Since the CVD expedited review regulation was originally promulgated in 1997, Commerce has conducted only a limited number of CVD expedited reviews.¹¹ Because each review is conducted on a truncated timeline and may cover numerous exporters and producers, Commerce has discovered that such proceedings require an inordinate amount of agency time and resources.¹² Furthermore, Commerce is currently conducting proceedings for a historically large number of AD and CVD proceedings.¹³

Accordingly, in light of the time and resource burdens of CVD expedited reviews, Commerce's current resource constraints, the fact that only a small number of CVD expedited reviews have been conducted to date, and the fact that the current regulation is not mandated by the Act, Commerce is reconsidering the necessity or wisdom of retaining the current CVD expedited review provision, § 351.214(l), especially since other avenues already exist to provide exporters and producers alternative opportunities to request an individual-company subsidy rate, such as participating as a voluntary respondent in investigations,¹⁴ requesting a "new shipper review,"¹⁵ requesting an administrative review,¹⁶ or participating as a voluntary respondent in administrative reviews.

As part of its reconsideration of the CVD expedited review regulation at § 351.214(l), Commerce is seeking public comment on whether it should remove, retain, or modify the regulation. Specifically, if members of the public support either the withdrawal or the retention of the regulation in its current form, Commerce invites those parties to identify the factual, legal,

¹¹ See, e.g., *Certain Carbon and Alloy Steel Cut-to-Length Plate From the People's Republic of China: Final Results of Countervailing Duty Expedited Review*, 83 FR 34115 (July 19, 2018), and *Supercalendered Paper From Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017).

¹² See e.g., *Certain Softwood Lumber Products from Canada: Final Results of Countervailing Duty Expedited Review*, 84 FR 32121, 32122 (July 5, 2019).

¹³ See *ADCVD Proceedings*, found at <https://www.trade.gov/data-visualization/adcvd-proceedings>.

¹⁴ Section 782(a) of the Act provides Commerce the authority to establish an individual countervailable subsidy rate for any exporter or producer not initially selected for individual examination if statutory requirements are met. See also § 351.109(h).

¹⁵ Section 751(a)(2)(B) of the Act provides Commerce the authority to determine CVD rates for exporters and producers that did not export subject merchandise to the United States during the period of investigation.

¹⁶ Section 751(a)(1)(A) of the Act provides Commerce with the authority to review and determine the amount of any countervailable subsidies.

and policy reasons the burden and resources required to administer and enforce the current regulation are or are not justified by the benefit of the existing regulatory language.

On the other hand, if members of the public support a modification to the CVD expedited review regulation, Commerce seeks comments on desired changes to § 351.214(l), including methods to reduce the resources required to implement it, such as by making the conduct of a CVD expedited review discretionary, rather than mandatory or requiring that all requests for a CVD expedited review include complete initial questionnaire responses. In short, if Commerce were to retain but modify § 351.214(l), Commerce invites parties to propose modifications that would relieve Commerce of the many burdens that accompany the application of the current regulation, along with the factual, legal, and policy reasons in support of those proposals and any proposed regulatory language.

Request for Comments

We are issuing this advanced notice of proposed rulemaking to inform the public that Commerce is considering revising and codifying two of its policies and regulations. One revision involves Commerce's unaffiliated reseller policy in market economy AD administrative reviews, with a possible addition to § 351.212, and the second either removes or substantially revises Commerce's procedures in conducting an expedited CVD review pursuant to § 351.214(l). Specifically, Commerce is inviting parties to provide the following comments, including the factual, legal, and policy reasons in support of their views and any proposed regulatory language.:

- (1) If Commerce conducts an AD administrative review of a producer of subject merchandise in a market economy, should the AD rate applied to subject merchandise produced by the examined producer and exported by an unexamined unaffiliated reseller to the United States be the all-others rate, or the higher of the producer's AD rate and the all-others rate?

(2) In light of the resources required to administer the current CVD expedited review regulation, § 351.214(l), and the fact that the Act does not require that Commerce conduct CVD expedited reviews, should Commerce remove, retain, or modify that regulation? Further, if Commerce were to retain, but modify § 351.214(l), Commerce also invites parties to propose suggestions for modifications to the regulation that would relieve Commerce of many of the administrative burdens that accompany the application of the current regulation.

Dated: May 29, 2025.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

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