

Department determines a weighted-average margin of dumping or antidumping duty assessment rate include foreign exporters and manufacturers, some of whom are affiliated with U.S. companies and U.S. importers. Some of these entities affected by the rule may be considered small entities under the SBA standard. The Department has determined that this action will not have a substantial economic impact on a significant number of small entities because the costs associated with antidumping duty liability generally will not increase as a result of the proposed rule. No comments were received regarding the economic impact of this rule. As a result, a final regulatory flexibility analysis is not required and one was not prepared.

#### Paperwork Reduction Act

This action does not contain 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.

Dated: February 7, 2012.

#### Paul Piquado,

Assistant Secretary for Import Administration.

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

### PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for 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.

#### Subpart B—Antidumping and Countervailing Duty Procedures

■ 2. Section 351.414 is revised to read as follows:

##### § 351.414 Comparison of normal value with export price (constructed export price).

(a) *Introduction.* This section explains when and how the Secretary will average prices in making comparisons of export price or constructed export price with normal value. (See section 777A(d) of the Act.)

(b) *Description of methods of comparison—(1) Average-to-average method.* The “average-to-average”

method involves a comparison of the weighted average of the normal values with the weighted average of the export prices (and constructed export prices) for comparable merchandise.

(2) *Transaction-to-transaction method.* The “transaction-to-transaction” method involves a comparison of the normal values of individual transactions with the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(3) *Average-to-transaction method.* The “average-to-transaction” method involves a comparison of the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(c) *Choice of method.* (1) In an investigation or review, the Secretary will use the average-to-average method unless the Secretary determines another method is appropriate in a particular case.

(2) The Secretary will use the transaction-to-transaction method only in unusual situations, such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made.

(d) *Application of the average-to-average method—(1) In general.* In applying the average-to-average method, the Secretary will identify those sales of the subject merchandise to the United States that are comparable, and will include such sales in an “averaging group.” The Secretary will calculate a weighted average of the export prices and the constructed export prices of the sales included in the averaging group, and will compare this weighted average to the weighted average of the normal values of such sales.

(2) *Identification of the averaging group.* An averaging group will consist of subject merchandise that is identical or virtually identical in all physical characteristics and that is sold to the United States at the same level of trade. In identifying sales to be included in an averaging group, the Secretary also will take into account, where appropriate, the region of the United States in which the merchandise is sold, and such other factors as the Secretary considers relevant.

(3) *Time period over which weighted average is calculated.* When applying the average-to-average method in an investigation, the Secretary normally will calculate weighted averages for the entire period of investigation. However, when normal values, export prices, or constructed export prices differ significantly over the course of the

period of investigation, the Secretary may calculate weighted averages for such shorter period as the Secretary deems appropriate. When applying the average-to-average method in a review, the Secretary normally will calculate weighted averages on a monthly basis and compare the weighted-average monthly export price or constructed export price to the weighted-average normal value for the contemporaneous month.

(e) *Application of the average-to-transaction method—*In applying the average-to-transaction method in a review, when normal value is based on the weighted average of sales of the foreign like product, the Secretary will limit the averaging of such prices to sales incurred during the contemporaneous month.

(f) *Contemporaneous Month.* Normally, the Secretary will select as the contemporaneous month the first of the following months which applies:

(1) The month during which the particular U.S. sales under consideration were made;

(2) If there are no sales of the foreign like product during this month, the most recent of the three months prior to the month of the U.S. sales in which there was a sale of the foreign like product.

(3) If there are no sales of the foreign like product during any of these months, the earlier of the two months following the month of the U.S. sales in which there was a sale of the foreign like product.

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## INTERNATIONAL TRADE COMMISSION

### 19 CFR Chapter II

#### Plan for Retrospective Analysis of Existing Rules

**AGENCY:** International Trade Commission.

**ACTION:** Policy statement.

**SUMMARY:** The United States International Trade Commission (Commission) gives notice of the adoption of a plan for the retrospective analysis of its existing regulations.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Sultan, Office of the General Counsel, United States International Trade Commission, telephone 202–205–3094. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal at 202–

205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

**SUPPLEMENTARY INFORMATION:** Executive Order 13579 of July 11, 2011, calls on each independent regulatory agency to develop and release to the public, within 120 days of the date of the Executive Order, a plan under which the agency will periodically review its significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives.

The Commission sought public comments on its Preliminary Plan for Retrospective Analysis of Existing Rules. 76 FR 66004 (Oct. 25, 2011). It received one comment on the preliminary plan from the law firm of Hughes Hubbard & Reed. Hughes Hubbard & Reed endorsed the preliminary plan and urged the Commission in particular to review 19 CFR Part 201. It stated its belief that certain modifications should be made to this regulation to render the Commission's investigations more effective. For example, Hughes Hubbard & Reed advocated broadening the language of 19 CFR 201.12 to clarify that the Commission will accept requests from parties to take action between an investigation's enumerated briefing periods. The Commission will take these comments into account when conducting its retrospective review of its rules.

The Commission has decided to adopt the Plan for Retrospective Analysis of Existing Rules without significant changes from the version that was preliminarily proposed. Accordingly, the Commission adopts the following Plan for Retrospective Analysis of Existing Rules.

#### **United States International Trade Commission**

##### *Plan for Retrospective Analysis of Existing Rules*

February 2012

#### **I. Executive Summary of Plan**

Executive Orders 13579 and 13563 recognize the importance of maintaining a consistent culture of retrospective review and analysis throughout the federal government. Executive Order 13579 calls on each independent regulatory agency to develop and release to the public a plan, consistent with law and reflecting the agency's resources and regulatory priorities and processes,

under which the agency will periodically review its significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Pursuant to Executive Order 13579, the U.S. International Trade Commission developed this plan for retrospective analysis of its regulations. The plan is designed to create a defined method and schedule for identifying and reconsidering certain significant rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. Its review processes are intended to facilitate the identification of rules that warrant repeal or modification, or the strengthening, complementing, or modernizing of rules where necessary or appropriate.

#### **II. Background**

The Commission is an independent, quasi-judicial federal agency with broad investigative responsibilities on matters of trade. It investigates the effects of dumped and subsidized imports on domestic industries, conducts global safeguard investigations, and adjudicates cases involving imports that allegedly infringe intellectual property rights. The Commission also serves as a federal resource where trade data and other trade policy-related information are gathered and analyzed. The information and analysis are provided to the President, the Office of the United States Trade Representative (USTR), and Congress to facilitate the development of sound and informed U.S. trade policy. The Commission makes most of its information and analysis available to the public to promote understanding of international trade issues. The Commission also maintains the Harmonized Tariff Schedule of the United States (HTS).

Thus, the Commission is not primarily a regulatory agency, and its regulations generally serve to govern the process of its statutory investigative responsibilities. In carrying out its mission, the Commission issues rules of practice and procedure relating to the conduct of its investigations. The Commission's rules are codified in Title 19 of the Code of Federal Regulations.

- Part 201 of the Commission's rules are rules of general application relating to the functions and activities of the Commission.

- Part 202 sets out rules pertaining to investigations of costs of production

under section 336 of the Tariff Act of 1930, as amended (19 U.S.C. 1336).

- Part 204 contains rules pertaining to investigations of effects of imports on agricultural programs under section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624).

- Part 205 covers rules pertaining to investigations to determine the probable economic effect on the economy of the United States of proposed modifications of duties or any other barrier to (or other distortion of) international trade or of taking retaliatory actions to obtain the elimination of unjustifiable or unreasonable foreign acts or policies which restrict U.S. commerce.

- Part 206 pertains to investigations relating to global and bilateral safeguard actions, market disruption, trade diversion, and review of relief actions.

- Part 207 sets out rules for the conduct of antidumping and countervailing duty investigations conducted under title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1671 et seq.).

- Part 208 contains rules pertaining to investigations with respect to the commercial availability of textile fabric and yarn in Sub-Saharan African countries.

- Part 210 sets out rules for the conduct of investigations of unfair practices in import trade under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 337).

- Part 212 establishes rules for the implementation of the Equal Access to Justice Act (5 U.S.C. 504).

In the course of its investigations, the Commission generally issues questionnaires seeking business and financial information from domestic and foreign firms. These questionnaires are frequently revised and adapted, with the input of affected parties wherever possible.

The Commission also maintains several documents that provide guidance to parties involved in its investigations, including its "Antidumping and Countervailing Duty Handbook," "An Introduction to Administrative Protective Order Practice in Import Injury Investigations," and the "Handbook on Electronic Filing Procedures." These documents are maintained in electronic form on the Commission's Web site and are reviewed and updated periodically.

#### **III. Scope of Plan**

This plan covers existing regulations, existing information collections, and significant guidance documents.

#### IV. Elements of the Plan

*Fostering a Culture of Retrospective Analysis.* The Commission intends to strengthen its culture of retrospective analysis by informing all of its employees of the plan and periodically seeking input from them.

*Prioritization.* The Commission has identified selection criteria for the rules it will review retrospectively. It will endeavor to review rules that:

- Have been affected by subsequent legal developments;
- Overlap, duplicate, or conflict with other federal rules;
- Are the subject of public comments, from individuals and entities that appear before the Commission, and from Congressional and Executive Branch sources;
- Require outdated reporting practices; or
- Have been in place for a long time, so that updating may be appropriate.

*Structure and Staffing.* The following Commission official will be responsible for overseeing the retrospective review of existing rules: James R. Holbein, Secretary, email: [secretary@usitc.gov](mailto:secretary@usitc.gov).

*Process for Retrospective Review.* Every two years, the Commission's General Counsel will send a memorandum to the Commission's Secretary, office directors, and administrative law judges asking them for input on rules suitable for modification or elimination. The Commission will also seek input from the public at that time. Based on responses to this memorandum and comments from the public, and in consultation with Commissioners, the General Counsel's office will make recommendations to the Commission regarding the possible modification or elimination of existing regulations. Once an appropriate rule change has been identified, the Commission will publish a notice of proposed rulemaking and solicit public comment on the proposed change.

#### IV. Public Access and Participation

On October 25, 2011, the Commission published a notice in the **Federal Register** and posted it on the homepage of its Web site seeking public comment on the design of this plan and the identification of specific rules to be included in the plan. 76 FR 66004 (Oct. 25, 2011) and [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/eRuling\\_notice10182011sgl.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/eRuling_notice10182011sgl.pdf).

The Commission received one comment on the preliminary plan from a law firm. This firm endorsed the preliminary plan and urged the Commission to review 19 CFR part 201,

and in particular 19 CFR 201.12, to clarify that the Commission will accept requests from parties to take action between an investigation's enumerated briefing periods. The Commission will take these comments into account when conducting its retrospective review of its rules.

#### VI. Current Agency Efforts Already Underway Independent of Executive Order 13579

Even before the issuance of Executive Order 13579, Commission staff periodically reviewed existing regulations with a view to updating and improving them, and eliminating redundant or unnecessary regulations. For example, in October 2011, after notice and comment, the Commission amended its rules to provide that most documents filed with the agency will be filed by electronic means. *See* 76 FR 61937 (Oct. 6, 2011). The Commission also amended its rules to gather more information on public interest issues arising out of section 337 complaints. *See* 76 FR 64803 (Oct. 19, 2011). The Commission's 337 practice has an active and independent bar association that promotes an ongoing exchange of ideas on rules updates and improvements. In addition, the Commission staff constantly adapts the questionnaires that it issues in Title VII investigations to reflect the specific circumstances of each investigation. Wherever possible, the staff seek preliminary input from firms that will be asked to complete these questionnaires. In light of these efforts, the Commission is well-positioned to implement a more systematic plan for retrospective review of its regulations.

#### VII. Examples of Rules for Retrospective Review

The Commission has preliminarily identified the following aspects of its existing rules for review over the next two years:

1. General review of existing regulations in 19 CFR parts 201, 207, and 210. The Commission will seek to determine whether any such regulations shall be modified, streamlined, expanded or repealed so as to make the agency's regulations more effective or less burdensome.

2. Employee Responsibilities and Conduct, 19 CFR part 200. The Commission intends to review its regulations addressing employee responsibilities and conduct, to assess whether these regulations can be modified or repealed, in light of the issuance of similar regulations by the Office of Government Ethics.

3. National Security Information, 19 CFR part 201, Subpart F. The Commission intends to review its regulations addressing national security information, to assess whether these regulations should be modified, in light of Executive Order 13526 (Dec. 29, 2009).

4. Investigations With Respect to Commercial Availability of Textile Fabric and Yarn in Sub-Saharan African Countries, 19 CFR part 208. The Commission intends to review its regulations addressing investigations with respect to the commercial availability of textile fabric and yarn in Sub-Saharan African countries, to assess whether these regulations can be repealed, in light of the repeal of section 112(c)(2) of the African Growth and Opportunity Act (AGOA), which required the Commission to make determinations with respect to the commercial availability and use of regional textile fabric or yarn in lesser developed beneficiary sub-Saharan African countries in the production of apparel articles receiving U.S. preferential treatment under AGOA (see section 3(a)(2)(B) of Pub. L. 110-436, October 16, 2008, 122 Stat. 4980).

This list is non-exhaustive and the Commission will consider whether other parts of its regulations should also be subject to review within the next two years.

#### VIII. Publishing the Plan Online

The Commission will publish this plan in the **Federal Register** and on the agency's Web site, at [www.usitc.gov](http://www.usitc.gov). The Web site includes a page on the Commission's Rules of Practice and Procedure, at [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/](http://www.usitc.gov/secretary/fed_reg_notices/rules/). This Rules page will include a link to the plan. Members of the public will be able to post comments about the plan via a link on the page. Commenters may also choose to file comments in paper form to the Secretary to the Commission, Room 112, 500 E Street SW., Washington, DC 20436.

By Order of the Commission.

Issued: February 8, 2012.

**James Holbein,**

*Secretary to the Commission.*

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