

may suspend the time limit in paragraph (h) of this section while taking action under § 351.209.

(j) *Absorption of antidumping duties.* (1) During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under § 351.211, or a determination under § 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

(2) For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998.

(3) In determining under paragraph (j)(1) of this section whether antidumping duties have been absorbed, the Secretary will examine the antidumping duties calculated in the administrative review in which the absorption inquiry is requested.

(4) The Secretary will notify the Commission of the Secretary's determination if:

(i) In the case of an administrative review other than one to which paragraph (j)(2) of this section applies, the administrative review covers all or part of a time period falling between the third and fourth anniversary month of an order; or

(ii) In the case of an administrative review to which paragraph (j)(2) of this section applies, the Secretary initiated the administrative review in 1998.

(k) *Administrative reviews of countervailing duty orders conducted on an aggregate basis—(1) Request for zero rate.* Where the Secretary conducts an administrative review of a countervailing duty on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and review requests for individual assessment and

cash deposit rates of zero to the extent practicable. An exporter or producer that desires a zero rate must submit:

(i) A certification by the exporter or producer that it received zero or *de minimis* net countervailable subsidies during the period of review;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was *de minimis* during the period of review;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or *de minimis* net countervailable subsidies during the period of the review; and

(iv) A certification from the government of the affected country that the government did not provide the exporter (or the exporter's supplier) or producer with more than *de minimis* net countervailable subsidies during the period of review.

(2) *Application of country-wide subsidy rate.* With the exception of assessment and cash deposit rates of zero determined under paragraph (k)(1) of this section, if, in the final results of an administrative review under this section of a countervailing duty order, the Secretary calculates a single country-wide subsidy rate under section 777A(e)(2)(B) of the Act, that rate will supersede, for cash deposit purposes, all rates previously determined in the countervailing duty proceeding in question.

(1) *Exception from assessment in regional industry cases.* For procedures relating to a request for the exception from the assessment of antidumping or countervailing duties in a regional industry case, see § 351.212(f).

**§ 351.214 New shipper reviews under section 751(a)(2)(B) of the Act.**

(a) *Introduction.* Section 751(a)(2)(B) of the Act provides a procedure by which so-called “new shippers” can obtain their own individual dumping margin or countervailable subsidy rate on an expedited basis. In general, a new shipper is an exporter or producer that did not export, and is not affiliated with an exporter or producer that did export, to the United States during the

period of investigation. Furthermore, section 751(a)(2)(B)(iv) requires that the Secretary make a determination of whether the sales under review are bona fide. This section contains rules regarding requests for new shipper reviews and procedures for conducting such reviews, as well as requirements for determining whether sales are bona fide under section 751(a)(2)(B)(iv) of the Act. In addition, this section contains rules regarding requests for expedited reviews by non-investigated exporters in certain countervailing duty proceedings and procedures for conducting such reviews.

(b) *Request for new shipper review*—(1) *Requirement of sale or export.* Subject to the requirements of section 751(a)(2)(B) of the Act and this section, an exporter or producer may request a new shipper review if it has exported, or sold for export, subject merchandise to the United States and can demonstrate the existence of a bona fide sale.

(2) *Contents of request.* A request for a new shipper review must contain the following:

(i) If the person requesting the review is both the exporter and producer of the merchandise, a certification that the person requesting the review did not export subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(ii) If the person requesting the review is the exporter, but not the producer, of the subject merchandise:

(A) The certification described in paragraph (b)(2)(i) of this section; and

(B) A certification from the person that produced or supplied the subject merchandise to the person requesting the review that that producer or supplier did not export the subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(iii)(A) A certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States (or in the case of

a regional industry, who exported the subject merchandise for sale in the region concerned) during the period of investigation, including those not individually examined during the investigation; and

(B) In an antidumping proceeding involving imports from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government;

(iv) Certain information regarding the unaffiliated customer:

(A) A certification from the exporter or producer that it will provide, to the fullest extent possible, necessary information related to the unaffiliated customer in the United States during the new shipper review; and

(B) A certification by the unaffiliated customer of its willingness to participate in the new shipper review and provide information relevant to the new shipper review, if such information is requested by the Secretary, or an explanation by the producer/exporter of why such certification from the unaffiliated customer cannot be provided.

(v) Documentation establishing:

(A) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(B) The volume of that shipment and any subsequent shipments, including whether such shipments were made in commercial quantities;

(C) The date of the first sale, and any subsequent sales, to an unaffiliated customer in the United States;

(D) The circumstances surrounding such sale(s), including but not limited to:

(1) The price of such sales;

(2) Any expenses arising from such sales;

(3) Whether the subject merchandise involved in such sales was resold in the United States at a profit;

(4) Whether such sales were made on an arms-length basis; and

(E) Additional documentation regarding the business activities of the producer or exporter, including but not limited to:

(1) The producer or exporter's offers to sell merchandise in the United States;

(2) An identification of the complete circumstance surrounding the producer or exporter's sales to the United States, as well as any home market or third country sales;

(3) In the case of a non-producing exporter, an explanation of the exporter's relationship with its producer/supplier; and

(4) An identification of the producer's or exporter's relationship to the first unaffiliated U.S. purchaser;

(vi) In the case of a review of a countervailing duty order, a certification that the exporter or producer has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(c) *Deadline for requesting review.* An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(2)(v)(A) of this section.

(d) *Initiation of new shipper review—(1) In general.* If the requirements for a request for new shipper review under paragraph (b) of this section are satisfied, the Secretary will initiate a new shipper review under this section in the calendar month immediately following the anniversary month or the semi-annual anniversary month if the request for the review is made during the 6-month period ending with the end of the anniversary month or the semi-annual anniversary month (whichever is applicable).

(2) *Semiannual anniversary month.* The semiannual anniversary month is the calendar month that is 6 months after the anniversary month.

(3) *Example.* An order is published in January. The anniversary month would be January, and the semiannual anniversary month would be July. If the Secretary received a request for a new shipper review at any time during the period February–July, the Secretary would initiate a new shipper review in August. If the Secretary received a request for a new shipper review at any

time during the period August–January, the Secretary would initiate a new shipper review in February.

(4) *Exception.* If the Secretary determines that the requirements for a request for new shipper review under paragraph (b) of this section have not been satisfied, the Secretary will reject the request and provide a written explanation of the reasons for the rejection.

(e) *Suspension of liquidation.* When the Secretary initiates a new shipper review under this section, the Secretary will direct the Customs Service to suspend or continue to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer at the applicable cash deposit rate.

(f) *Rescission of new shipper review—(1) Withdrawal of request for review.* The Secretary may rescind a new shipper review under this section, in whole or in part, if a producer or exporter that requested a review withdraws its request not later than 60 days after the date of publication of notice of initiation of the requested review.

(2) *Absence of entry and sale to an unaffiliated customer.* The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:

(i) As of the end of the normal period of review referred to in paragraph (g) of this section, there has not been an entry and sale to an unaffiliated customer in the United States of subject merchandise; and

(ii) An expansion of the normal period of review to include an entry and sale to an unaffiliated customer in the United States of subject merchandise would be likely to prevent the completion of the review within the time limits set forth in paragraph (i) of this section;

(3) *Absence of bona fide sale to an unaffiliated customer.* The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:

(i) Information that the Secretary considers necessary to conduct a bona fide sale analysis is not on the record; or

(ii) The producer or exporter seeking a new shipper review has failed to demonstrate to the satisfaction of the Secretary the existence of a bona fide sale to an unaffiliated customer.

(4) *Notice of rescission.* If the Secretary rescinds a new shipper review (in whole or in part), the Secretary will publish in the FEDERAL REGISTER notice of “Rescission of Antidumping (Countervailing Duty) New Shipper Review” or, if appropriate, “Partial Rescission of Antidumping (Countervailing Duty) New Shipper Review.”

(g) *Period of review*—(1) *Antidumping proceeding*—(i) *In general.* Except as provided in paragraph (g)(1)(ii) of this section, in an antidumping proceeding, a new shipper review under this section normally will cover, as appropriate, entries, exports, or sales during the following time periods:

(A) If the new shipper review was initiated in the month immediately following the anniversary month, the twelve-month period immediately preceding the anniversary month; or

(B) If the new shipper review was initiated in the month immediately following the semiannual anniversary month, the period of review will be the six-month period immediately preceding the semiannual anniversary month.

(ii) *Exceptions.* (A) If the Secretary initiates a new shipper review under this section in the month immediately following the first anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first anniversary month.

(B) If the Secretary initiates a new shipper review under this section in the month immediately following the first semiannual anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first semiannual anniversary month.

(2) *Countervailing duty proceeding.* In a countervailing duty proceeding, the period of review for a new shipper review under this section will be the same pe-

riod as that specified in § 351.213(e)(2) for an administrative review.

(h) *Procedures.* The Secretary will conduct a new shipper review under this section in accordance with § 351.221.

(i) *Time limits*—(1) *In general.* Unless the time limit is waived under paragraph (j)(3) of this section, the Secretary will issue preliminary results of review (see § 351.221(b)(4)) within 180 days after the date on which the new shipper review was initiated, and final results of review (see § 351.221(b)(5)) within 90 days after the date on which the preliminary results were issued.

(2) *Exception.* If the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(j) *Multiple reviews.* Notwithstanding any other provision of this subpart, if a review (or a request for a review) under § 351.213 (administrative review), § 351.214 (new shipper review), § 351.215 (expedited antidumping review), or § 351.216 (changed circumstances review) covers merchandise of an exporter or producer subject to a review (or to a request for a review) under this section, the Secretary may, after consulting with the exporter or producer:

(1) Rescind, in whole or in part, a review in progress under this subpart;

(2) Decline to initiate, in whole or in part, a review under this subpart; or

(3) Where the requesting producer or exporter agrees in writing to waive the time limits of paragraph (i) of this section, conduct concurrent reviews, in which case all other provisions of this section will continue to apply with respect to the exporter or producer.

(k) *Determinations based on bona fide sales.* In determining whether the U.S. sales of an exporter or producer made during the period covered by the review are bona fide, the Secretary shall consider the factors identified at section 751(a)(2)(B)(iv) of the Act. In accordance with section 751(a)(2)(B)(iv)(VII) of the Act, the Secretary shall consider the following factors:

(1) Whether the producer, exporter, or customer was established for purposes of the sale(s) in question after

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the imposition of the relevant anti-dumping or countervailing duty order;

(2) Whether the producer, exporter, or customer has lines of business unrelated to the subject merchandise;

(3) The quantity of sales; and

(4) Any other factor that the Secretary determines to be relevant with respect to the future selling behavior of the producer or exporter, including any other indicia that the sale was not commercially viable.

(1) *Expedited reviews in countervailing duty proceedings for noninvestigated exporters—(1) Request for review.* If, in a countervailing duty investigation, the Secretary limited the number of exporters or producers to be individually examined under section 777A(e)(2)(A) of the Act, an exporter that the Secretary did not select for individual examination or that the Secretary did not accept as a voluntary respondent (see § 351.204(d)) may request a review under this paragraph (1). An exporter must submit a request for review within 30 days of the date of publication in the FEDERAL REGISTER of the countervailing duty order. A request must be accompanied by a certification that:

(i) The requester exported the subject merchandise to the United States during the period of investigation;

(ii) The requester is not affiliated with an exporter or producer that the Secretary individually examined in the investigation; and

(iii) The requester has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(2) *Initiation of review—(i) In general.* The Secretary will initiate a review in the month following the month in which a request for review is due under paragraph (1)(1) of this section.

(ii) *Example.* The Secretary publishes a countervailing duty order on January 15. An exporter would have to submit a request for a review by February 14. The Secretary would initiate a review in March.

(3) *Conduct of review.* The Secretary will conduct a review under this paragraph (1) in accordance with the provisions of this section applicable to new shipper reviews, subject to the following exceptions:

(i) The period of review will be the period of investigation used by the Secretary in the investigation that resulted in the publication of the countervailing duty order (see § 351.204(b)(2));

(ii) The final results of a review under this paragraph (1) will not be the basis for the assessment of countervailing duties; and

(iii) The Secretary may exclude from the countervailing duty order in question any exporter for which the Secretary determines an individual net countervailable subsidy rate of zero or de minimis (see § 351.204(e)(1)), provided that the Secretary has verified the information on which the exclusion is based.

(m) *Exception from assessment in regional industry cases.* For procedures relating to a request for the exception from the assessment of antidumping or countervailing duties in a regional industry case, see § 351.212(f).

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### § 351.215 Expedited antidumping review and security in lieu of estimated duty under section 736(c) of the Act.

(a) *Introduction.* Exporters and producers individually examined in an investigation normally cannot obtain a review of entries until an administrative review is requested. In addition, when an antidumping order is published, importers normally must begin to make a cash deposit of estimated antidumping duties upon the entry of subject merchandise. Section 736(c), however, establishes a special procedure under which exporters or producers may request an expedited review, and bonds, rather than cash deposits, may continue to be posted for a limited period of time if several criteria are satisfied. This section contains rules regarding requests for expedited antidumping reviews and the procedures applicable to such reviews.

(b) *In general.* If the Secretary determines that the criteria of section 736(c)(1) of the Act are satisfied, the Secretary:

(1) May permit, for not more than 90 days after the date of publication of an antidumping order, the posting of a bond or other security instead of the