

CHAPTER 21
ADMINISTRATIVE REVIEWS AND
OTHER POST-ANTIDUMPING DUTY ORDER ACTIVITIES

Table of Contents

I.	Introduction.....	1
II.	Requesting Reviews; Parties Entitled to Request Reviews; Deadlines for Review Requests	2
III.	Parties Subject to Review; Parties Entitled to Participate in a Review	3
IV.	The Period of Review; Transactions Reviewed.....	5
V.	Deadlines for Completion of Reviews; Expedited Reviews.....	6
VI.	Other Deadlines	7
VII.	Duty Absorption.....	7
VIII.	No Shipment Responses in Administrative Reviews.....	8
IX.	Rescissions.....	9

Statute and Regulations:

The Tariff Act of 1930, as amended (the Tariff Act)

section 736 (c) - posting of bond or other security in lieu of the deposit of estimated antidumping duties

section 751 - administrative review of determinations

section 751(a) - periodic review of amount of duty

section 751(a)(2) - determination of antidumping duties

section 751(a)(3) - time limits in administrative reviews

section 751(a)(4) - absorption of antidumping duties

section 777A(c) - determination of dumping margin

sections 777A (a) and 777A (b) - use of sampling and averaging;

section 782(a) - treatment of voluntary respondents

Department of Commerce (DOC) Regulations

section 351.102 - definitions

section 351.213 - administrative review of orders and suspension agreements

section 351.213(e) - period of review

section 351.213(e)(1) - withdrawal of request for review

section 351.213(j) - absorption of antidumping duties

section 351.215 - expedited antidumping review and security in lieu of estimated duty

section 351.301(b) - time limits for submission of factual information

section 351.303 - filing, format, translation, service, and certification of documents

I. Introduction

After the Department issues an antidumping order and the ITC makes an affirmative injury determination, importers are required to pay antidumping duties on subject merchandise that entered the United States on or after the publication date of the preliminary determination (this date could change if critical circumstances are found or if the ITC finds only a threat of material injury). See Chapter 19. Given that the cash deposit rate established in an investigation is

only an estimate of the duties owed on the entries,¹ interested parties may request that the Department determine the actual amount of antidumping duties to be paid on the entries. The Department makes such a determination in an annual administrative review.² Administrative reviews also establish new cash deposit rates for each of the companies reviewed. Cash deposit rates calculated in administrative reviews apply to subject merchandise entered on or after the final results of review are published in the Federal Register. In some administrative reviews, the Department also determines whether the order or finding should be revoked with respect to a particular company. See Chapter 27. The Department may also conduct administrative reviews to determine whether a suspension agreement has been violated or should be terminated. See id. Administrative review procedures and practices for AD orders, AD findings, and suspension agreements are generally the same as those employed for investigations. See Chapter 22 for a description of the major differences between an investigation and an administrative review.

II. Requesting Reviews; Parties Entitled to Request Reviews; Deadlines for Review Requests

Each year, during the anniversary month of the publication of an AD or CVD order, an interested party may request that the Department conduct an administrative review of the order. As a courtesy, each month the Department publishes an “Opportunity Notice” in the Federal Register identifying the orders (or findings) and suspended investigations for which parties may request an administrative review. Requests for administrative reviews must be received by the Department by the last day of the anniversary month of the publication of the AD or CVD order. See 19 CFR 351.213(b). If the last day of the anniversary month falls on a weekend, federal holiday, or any other day when the Department is closed, then the request must be received on the following business day. See [Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review](#), 70 FR 57558 (October 3, 2005). Once the Department receives a request for an administrative review (the Department does not automatically conduct administrative reviews each year), it will generally initiate the review in the month after the anniversary month).³ The Department publishes a “Notice of Initiation” in the Federal Register in which it lists the companies that will be subject to the administrative review.

Parties that may request administrative reviews include domestic interested parties; certain foreign governments that are defined by the Act as interested parties; most exporters and producers of merchandise covered by an order; and importers of merchandise from covered by an order. Additionally, in cases where the Department has suspended an investigation under a

¹ This is the case because the dumping margin calculated in an investigation is based on U.S. sales during the POI, not transactions related to the entries on which duties are to be assessed.

² See section 751(a)(2)(c) of the Act.

³ Administrative reviews, however, may be deferred, in whole or in part, for one year under 19 CFR 351.213(c) if a deferral is requested in the request for review and there are no objections from the exporter or producer, an importer of subject merchandise from that exporter or producer, or a domestic interested party.

suspension agreement, any interested party, as defined by section 771(9) of the Act, may request an administrative review of the producers or exporters subject to the agreement. See 19 CFR 351.213 for further information regarding parties entitled to request administrative reviews. Finally, the Department may itself initiate a review of an order or a suspension agreement.

If an annual administrative review is not requested for a particular company, entries of that company's subject merchandise are generally assessed duties at the rate of deposit at the time of entry (however, subject merchandise that was assigned the producer's cash deposit rate but that was sold to the United States by a reseller without its own deposit rate, may be assessed duties at the "All Others" rate, rather than the rate of deposit at the time of entry. See 19 CFR 351.212 and [Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties](#), 68 FR 23954 (May 6, 2003)).

III. Parties Subject to Review; Parties Entitled to Participate in a Review

An administrative review affords interested parties an opportunity to have the Department review a particular company's entries, exports, or sales made during the period of review (POR) (see "The Period of Review; Transactions Reviewed" section of this Chapter). The outcome of this review determines the actual weighted-average margin and duty assessments for that period and the future cash deposit rate. Parties requesting an administrative review must specify the individual exporters or producers to be reviewed and state why they have requested a review of those particular exporters or producers. See 19 CFR 351.213. General descriptions of the parties to be reviewed are not acceptable (e.g., a request to review all exporters of subject merchandise during the POR). Moreover, a request to review one company does not automatically cover that company's affiliates (see [Stainless Steel Plate in Coils From Taiwan: Final Rescission of Antidumping Duty Administrative Review](#), 69 FR 20859 (April 19, 2004) and accompanying [Issues and Decision Memorandum](#) at Comment 2), however, it would cover any entities "collapsed" with that company (see [China First Pencil Co. Ltd. v. United States](#), Slip Op. 06-34, (CIT March 7, 2006)). A requesting interested party "must bear the relatively small burden imposed on it by the regulation to name names" of the entities to be reviewed." See [Floral Trade Council of Davis, California v. United States, et al.](#), 17 CIT 1417 (1993). Also, the Department is not required to accept clarifications of unclear, ambiguous, or inadequate requests for an administrative review when those clarifications are submitted after the deadline for submitting requests for review. See [Floral Trade Council of Davis, California v. United States, et al.](#), 888 F.2d 1366 (Fed. Cir. 1989). Analysts should examine review requests and discuss any needed clarifications with their Program Manager (e.g., was a producer/exporter who was excluded from an order named in a request to review that order; was a non-exporting producer named in a request to review an order covering a non-market economy country; or were similar names listed in the request that may represent the same entity). See the Operations Handbook for additional requirements for review requests.

Additionally, a party requesting an administrative review must serve a copy of the request by personal service or first class mail on each exporter or producer specified in the request and on

the petitioner by the end of the anniversary month or within ten days of filing the request for review, whichever is later. If a party that files the request is unable to locate a particular exporter or producer, or the petitioner, the Department may still accept the request if it is satisfied that the party made a reasonable attempt to serve a copy of the request on such person. See 19 CFR 351.303(f)(3)(ii); see also [Guangdong Chems. Imp. & Exp. Corp. v. United States](#), 414 F. Supp. 2d 1300 (Ct. Int'l Trade 2006); [PAM, S.p.A. & JCM, Ltd. v. United States](#), 395 F. Supp. 2d 1337 (Ct. Int'l Trade 2005), [PAM, S.p.A. & JCM, Ltd. v. United States](#) 463 F. 3d 1345 (Fed. Cir. 2006); [NSK Ltd. v. United States](#), 346 F. Supp. 2d 1312 (Ct. Int'l Trade 2004). See the Operations Handbook for additional information.

In some instances, the Department may not have the administrative resources needed to conduct a review of each company named in a request. See section 777A(c)(2) of the Act. When this occurs, the Department may choose to limit its review to: 1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection, or 2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined. In [Certain Fresh Cut Flowers from Columbia](#), for example, the Department found it necessary to restrict the number of respondents examined in order to conduct thorough and accurate analyses of responses to its questionnaires and other relevant issues within the statutory deadlines. See [Certain Fresh Cut Flowers from Columbia: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review](#), 62 FR 16772, (April 8, 1997); see also [Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission: Certain Softwood Lumber Products From Canada](#), 70 FR 33063 (June 7, 2005); [Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Wooden Bedroom Furniture From the People's Republic of China](#), 69 FR 35312 (June 24, 2004). See the Operations Handbook for further information.

Voluntary Respondents:

When the Department limits the number of exporters or producers to be reviewed, it may determine, as soon as practicable, whether to examine voluntary respondents. Voluntary respondents are those exporters or producers that participate in a review although they were not selected as mandatory respondents. See section 19 CFR 351.204(d) and 782(a) of the Act. Often, the Department only examines voluntary respondents if one of the mandatory respondents ceases to participate in the review. A voluntary respondent who is selected for review will be subject to the same requirements to which an exporter or a producer, initially selected for review, is subject. See 19 CFR 351.204 (d) as well as section 777A(c)(2) of the Act. The Department may calculate an individual weighted-average dumping margin for any exporter or producer not initially selected for a review who submits to the Department the information requested from exporters or producers, provided that: (a) such information is submitted by the date specified for the exporters and producers who were initially selected for review; and (b) the number of exporters or producers who have submitted such information is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely

completion of the review. See 19 CFR 351.204(d)(2), and section 782(a) of the Act. If the limitations on the Department's resources necessitate limiting the number of exporters or producers examined, the Department may not be able to calculate individual weighted-average dumping margins for voluntary respondents.

Participation by Other Interested Parties:

In addition to respondents and petitioners, other interested parties such as importers and producers may participate in an administrative review by submitting comments. Representatives of interested parties who are also parties to a proceeding may receive business proprietary information under an administrative protective order. See section 777(c)(1)(a) and 19 CFR 351.102, and Chapter 3.

IV. The Period of Review; Transactions Reviewed

With the exception of the first administrative review after the publication of an order or suspension of an investigation, annual administrative reviews cover the 12 months immediately preceding the anniversary month in which the review was requested. See section 751(a)(1) of the Act. The first administrative review usually covers approximately an 18-month period from the date of suspension of liquidation (generally the date the preliminary determination in the investigation was published) to the end of the month immediately preceding the anniversary month in which the review was requested. See 19 CFR 351.213(e) for more information regarding PORs.

Although the assessment rates calculated in antidumping duty administrative reviews are applied to U.S. entries of subject merchandise during the POR, the Department's regulations allow it to calculate these rates using data related to either entries into the United States, exports (shipments) to the United States, or U.S. sales, during the POR. See 19 CFR 351.213(e). A case may arise where a respondent is unable to link its sales to particular entries of merchandise into the United States and thus is unable to report sales information for U.S. entries during the POR. This is particularly true with respect to CEP sales made after importation (e.g., subject merchandise sold from the inventory of a U.S. reseller affiliated to the respondent). Nevertheless, where respondents can link sales to entries of subject merchandise into the United States, they generally should report the sales associated with the U.S. entries during the POR. Thus, section C of the Department's questionnaire instructs respondents to report each U.S. sale of subject merchandise that was entered into the United States for consumption during the POR. For EP sales, respondents who do not know the dates their subject merchandise entered the United States are asked to report each sale of subject merchandise shipped to the United States during the POR (based on the assumption that, in general, the shipment and entry dates will not differ significantly). For CEP sales made after the date of importation, respondents are asked to report each sale dated within the POR. In selecting a reporting methodology for U.S. sales, it is important to consider whether the proposed methodology is different from that used in prior segments of the proceeding. Switching reporting methodologies from one review period to the

next may result in distortions because sales may be reviewed twice or not at all. Because the Department assesses duties on POR entries, regardless of the sales reporting methodology employed, at least one entry of subject merchandise must have occurred during the POR for the Department to conduct a review. See *Allegheny Ludlum Corp. v. United States*, 346 F.3d 1368 (Fed. Cir. 2003); *Certain Corrosion-Resistant Carbon Steel Flat Products from France: Notice of Rescission of Antidumping Duty Administrative Review*, 71 FR 16553 (April 3, 2006); *See Granular Polytetrafluoroethylene Resin from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 70 FR 44088 (August 1, 2005).

Respondents also must report foreign like product sales that are contemporaneous with the reported U.S. sales. These sales are generally made in the exporting country (EC) of the respondent, but may be sales to third-country markets if a respondent does not have sales of foreign like product in the EC market. The reporting period for foreign like product sales includes the months in which U.S. sales were made, as well as three months before and two months after the first and last of those months (the so-called 90/60 day window period). However, this reporting can change if the basis of U.S. sales is defined by another methodology. (e.g., POR entries.) The 90/60 day reporting requirement often results in respondents reporting foreign like product sales during the POR as well as three months before the first month of the POR and two months after the last month of the POR.

In certain cases, the Department may, at its discretion, limit the number of transactions to be reviewed by requesting that respondents report only a sample of their U.S. and EC sales. See section 777A(a)(1) of the Act and *Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42850 (August 19, 1996) at Comment 24. Further, after examining the totality of the circumstances surrounding a particular transaction, the Department will not review the transaction if it is found to be unrepresentative or distortive, and, therefore, non *bona fide*. See *Glycine From The People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co. Ltd.*, 69 FR 47405, 47406 (August 5, 2004) (upheld by the CIT in *Hebei New Donghua Amino Acid Co. Lts. v. United States*, 374 F. Supp. 2d 1333 (CIT 2005)).

V. Deadlines for Completion of Reviews; Expedited Reviews

The preliminary results of review must be signed within 245 days after the last day of the anniversary month in which the review was requested. See section 751(a)(3)(A) of the Act for the statutory deadlines for completion of administrative reviews. The final results must be signed within 120 days after the day on which the preliminary results of review are published in the Federal Register. The 245-day deadline may be extended to 365 days and the 120 deadline to 180 days (or 300 days if the preliminary results were not extended) if it is not practicable to complete the review within the un-extended deadlines. The Department will announce an extension of the time limits, as well as its reason for the extension, in a notice in the Federal Register. See 19 CFR 351.213(h)(2).

Under section 736(c) of the Act and 19 CFR 351.215, the Department may perform an expedited administrative review of any manufacturer, producer, or exporter. The advantages of an expedited administrative review are twofold. First, parties subject to the review are allowed to post a bond or other security in lieu of the deposit of estimated AD duties. Second, as the name implies, the Department will make its decision regarding assessment rates faster than it does in a normal review. Because the requirements for an expedited review are so strict and the procedures so demanding, very few of these reviews have been undertaken.

VI. Other Deadlines

Interested parties are subject to the following time limits in administrative reviews:

1. Submission of factual information: must be made no later than 140 days after the last day of the anniversary month. Factual information requested by verifiers normally is due no later than seven days after the verification is completed. See 19 CFR 351.301(b)(2).
2. Allegation regarding market viability: must be filed no later than 40 days after the initial questionnaire was transmitted, unless this deadline is altered by the Department. See 351.301(d)(1).
3. Allegation of sales at below-cost prices: must be filed no later than 20 days after the relevant response to the questionnaire is filed (i.e., the response to section B of the questionnaire). If the relevant response is incomplete, the Department will determine the time limit for filing the allegation. In an expedited review, the allegation must be filed no later than 10 days after publication of the notice of initiation of the review. See 19 CFR 351.301(d)(2)(i)(B).
4. Allegation of major inputs at below-cost prices: must be filed no later than 20 days after the relevant response to the questionnaire is filed. If the relevant response is incomplete, the Department will determine the time limit for filing the allegation. See 19 CFR 351.301(d)(3).
5. Requests for duty absorption determinations: must be filed no later than 30 days after the publication of the notice of initiation of the review, and only in reviews initiated two or four years after the publication of the order. See section 751(a)(4) of the Act and 19 CFR 351.213(j).
6. Submission of information to value factors of production: must be filed no later than 20 days after publication of preliminary results of review. See 19 CFR 351.301(c)(3).

VII. Duty Absorption

When subject merchandise is sold in the United States through an importer that is affiliated with the foreign exporter or producer, petitioners or other domestic interested parties may request that the Department determine whether antidumping duties have been absorbed by the exporter or

producer. Requests for duty absorption rulings may only be made in administrative reviews initiated two or four years after publication of the antidumping duty order. See section 751(a)(4) of the Act. Duty absorption occurs when the affiliated importer pays or “absorbs” the antidumping duties rather than adjusting its prices to eliminate dumping. Thus, the existence of a dumping margin in the administrative review in which the duty absorption determination was requested raises an initial presumption that duty absorption exists. To refute this presumption, respondents typically must provide an irrevocable agreement between the unaffiliated purchaser and the affiliated importer that demonstrates that the unaffiliated purchaser will pay the antidumping duties. See [Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part](#), 70 FR 39735 (July 11, 2005).

A finding of duty absorption does not affect the margin calculation in an administrative review. An affirmative finding of absorption in an administrative review initiated two years after the issuance of an order is intended to have a deterrent effect on continued absorption of duties by affiliated importers; if they engage in duty absorption, they will know that they will face an additional hurdle that will make it more difficult to obtain revocation or termination. Also, duty absorption is taken into account when determining in sunset reviews the dumping margins likely to prevail if an order were to be revoked. Absorption of duties is a strong indication that calculated dumping margins may not be indicative of the margins that would exist in the absence of an order. In fact, once an order is revoked, an importer could achieve the same pre-revocation return on its sales by lowering its prices in the United States by the amount of duty it was previously absorbing. The Department will notify the ITC of its findings regarding duty absorption and the ITC will take those findings into account when determining in a sunset proceeding whether injury is likely to continue.

As stated above, requests for duty absorption determinations must be filed within 30 days of the publication of the notice of initiation of the review in the Federal Register, must include the name of the exporter or producer for which the inquiry is requested, and may only be filed in reviews initiated in the second and fourth years after publication of the order. See [Fag Italia S.P.A. v. United States](#), 291 F.3d 806 (Fed. Cir. 2002) and 19 CFR 351.213(j).

VIII. No Shipment Responses in Administrative Reviews

At times, an exporter or producer who is named in the “Notice of Initiation” may respond to the Department’s questionnaire by claiming that it had no entries, exports, or sales of subject merchandise during the POR (a “no shipments” claim). Upon receipt of a no shipments claim in response to the questionnaire, the Department will examine CBP entry data to determine whether these data are consistent with the claim. Additionally, the Department will send a “No Shipments Inquiry” email to CBP requesting that CBP notify the Department if it has evidence of shipments from the exporter/producer making the no shipments claim (see the boilerplate email instructions on E&C’s website). If the Department concludes that there is no information which calls into question the no shipments claim, the Department, under 19 CFR 351.213(d)(3),

may rescind the administrative review with respect to the company making the no shipments claim.

Prior to fully or partially rescinding a review based on a no shipments claim, the Department will inform parties of its intention to rescind the review and provide parties with an opportunity to comment on the rescission (e.g., the Department may publish a “Preliminary Notice of Rescission (or Partial Rescission) of Administrative Review” in the Federal Register which provides parties with an opportunity to comment on the rescission). The Department rescinds the review by publishing a “Notice of Rescission (or Partial Rescission) of Administrative Review” in the Federal Register. The Federal Register notice should specify that the company for whom the review is being rescinded did not ship subject merchandise during the POR. The company’s cash deposit rate from the last completed administrative review (or investigation, if no prior administrative reviews have been conducted) will continue to apply.

IX. Rescissions

The Department may rescind an administrative review for a number of reasons. First, the Department shall rescind a review of a particular company if all requests to review the company were withdrawn within 90 days of the date on which the notice of initiation of the review was published. See 19 CFR 351.213(d)(1). The Department may, however, extend this time limit if it decides it is reasonable to do so. If the requests for review are withdrawn after the 90 day period, the Department may still rescind the review, in whole or in part, after considering, among other things, 1) how far the review has progressed (it may not be reasonable to allow a party to withdraw its review request when the Department has committed substantial time and resources to the review) and 2) whether other parties have commented on the withdrawal. See, e.g., [Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review](#), 70 FR 12651 (March 15, 2005) and accompanying “[Issues and Decision Memorandum](#)” at Comment 15.

Second, as noted above, the Department may rescind a review when, during the period covered by the review, there were no entries, exports, or sales of subject merchandise, as the case may be. See 19 CFR 351.213(d)(3). Given that section 751(a)(2)(A) of the Act states that the Department “shall determine the dumping margin for each ... entry,” the Department has rescinded antidumping duty administrative reviews when there were sales, but no entries of subject merchandise during the POR. See [Granular Polytetrafluoroethylene Resin from Japan: Notice of Rescission of Antidumping Duty Administrative Review](#), 70 FR 44088 (August 1, 2005) (“the Department’s practice, supported by substantial precedent, requires that there be entries during the period of review upon which to assess antidumping duties, irrespective of the export price or constructed export price designation of U.S. sales.”); see also [Chia Far Industrial Factory Co., Ltd. v. United States](#), 343 F. Supp. 2d 1344, 1374 (CIT August 2004) (“Commerce correctly decided to rescind Ta Chen’s review based on the fact that there were no entries of the merchandise at issue during the POR, regardless of whether there were sales.”). Third, the Department may rescind a self-initiated review. See 19 CFR 351.213(d)(2).

Fourth, if a review covers sales found to be non bona fide, the Department will rescind its review because it has nothing to review. See [Windmill Int'l Pte v. United States](#), 193 F. Supp. 2d 1303 (CIT 2002).

The Department publishes its notice of rescission of administrative review in the Federal Register. See the Operations Handbook for more information on rescinding reviews.