

CHAPTER 23
CHANGED CIRCUMSTANCES REVIEWS

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Statute and Regulations:

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

 Section 751(b)

 Department of Commerce (DOC) Regulations

 19 CFR 351.216 – changed circumstances review under section 751(b) of the Act

 19 CFR 351.221(c)(3) – special review procedure rules for changed circumstances review

 19 FR 351.222(g) -- revocations of AD orders

I. INTRODUCTION

In addition to an administrative review (AR), interested parties may request a changed circumstances review of an AD Order or suspension agreement. While an AR is used to calculate assessment rates and new cash deposit rates based on a period of sales subsequent to the investigation, a changed circumstances review addresses questions about the applicability of the order (for example, “no interest revocations,” where partial or total revocation of the order is warranted because domestic parties are no longer interested in covering certain products). Changed circumstances reviews may also address the applicability of cash deposit and assessment rates after there have been changes in the structure of a respondent, such as a merger or spinoff (“successor-in-interest,” or “successorship,” determinations). While section 351.222(g) of the DOC’s regulations specifically mentions revocation as an issue to be resolved under a changed circumstances review, the purpose of changed circumstances is not limited to revocation issues and is left open-ended by the language of the Act. Section 751(b) states simply that the DOC shall conduct a changed circumstances review whenever it receives information demonstrating changes sufficient to warrant a review. The issues resolved under changed circumstances reviews have changed over the years, and will likely continue to do so. It should be noted that while “no interest” revocations are specifically assigned to changed circumstances reviews for resolution, other issues, such as successorship, could be resolved under either changed circumstances reviews or in the course of an AR.

Examples of changed circumstances that have been found sufficient to warrant a review include:

1) Argentina’s accession to the GATT; and, 2) the unification of Germany. See, e.g., [Initiation of](#)

[Changed Circumstances Countervailing Duty Administrative Reviews: Leather From Argentina, Wool From Argentina, Oil Country Tubular Goods From Argentina, and Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina](#), 61 FR 14553 (April 2, 1996) and [Solid Urea From the German Democratic Republic; Initiation of Changed Circumstances Antidumping Duty Administrative Review](#), 57 FR 5130 (Feb. 12, 1992). However, the most common changed circumstances sufficient to warrant a review are the “no interest” revocations and company restructurings mentioned above and described in detail below.

II. OBJECTIVES OF CHANGED CIRCUMSTANCES REVIEWS

A. Revocation or Termination Based on Changed Circumstances (no domestic interest)

Under section 751(d) of the Act, the DOC may revoke an AD Order or terminate a suspension agreement based on a changed circumstances request if it concludes that 1) producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest, in whole, or, in part, in an order or a suspended investigation, or 2) other changed circumstances sufficient to warrant revocation or termination exist. The DOC revokes an order “in part” when the domestic industry expresses that it is no longer interested in having the order applied to a specific portion of the merchandise described in the scope of an order. The specific products under review are usually products that the domestic industry no longer produces and does not intend to produce in the future.

Our policy is to require the requesting party to submit a “letter of no interest,” in which the domestic industry explicitly states that it is no longer interested in the merchandise described in the request and will not oppose the partial revocation. *See, e.g.*, Memorandum to the File from Wendy J. Frankel regarding Television Receivers from Japan (Jan. 25, 1999): “[W]ith respect to no interest changed circumstances reviews, pursuant to 19 CFR 351.222(g)(1)(i), the Department’s practice is to initiate a review when the request is accompanied by a statement of no interest from the domestic industry.” If the party making the request is requesting a revocation in whole of the order, it will need to provide evidence that the domestic industry no longer exists, or provide a letter from the domestic industry explicitly stating it is no longer interested in any of the merchandise under review and will not oppose the revocation. Thus, the requesting party cannot simply allege that the domestic industry should no longer have an interest in the merchandise described in the revocation request, because the domestic industry no longer appears to be producing the merchandise in question. The expression of no interest must come from the domestic industry itself. *See, e.g.*, Memorandum to the File from Mark Hoadley regarding Mechanical Transfer Presses from Japan (April 17, 2001) where the requester provided evidence that of two U.S. manufacturers one had only the potential to produce presses, and the other was now controlled by a former Japanese respondent (now exempted from the AD Order), possibly acting only as a toller. When both companies opposed the request, the requester argued that these facts should discount the significance of their opposition. Because a labor union that had also participated in the original investigation submitted a letter stating its opposition, the DOC did not have to consider the importance of potential versus actual production, or of control by the former

respondent. The DOC determined that the union's objection precluded a determination of no interest by the domestic industry.

Once the DOC receives letter(s) of no interest from the domestic industry DOC must determine that the letter(s), came from "producers accounting for substantially all of the production of the domestic like product." It is not necessary to make such a determination in order to initiate, but it is necessary to make such a determination in order to revoke the order in whole or in part. If the Department has doubts about the percentage of domestic production accounted for by the producers expressing no interest, it may initiate the review then proceed to examine the issue in more detail. The DOC has opened the record to comments from interested parties, requested production information from domestic producers, and conducted verifications of domestic producers in order to determine whether the parties expressing no interest account for substantially all of domestic production. See, e.g., [Oil Country Tubular Goods from Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review](#), 64 FR 14213, 14214 (March 24, 1999) ([OCTGs Mexico](#)). The DOC has frequently required the parties expressing no interest to account for 85 percent of domestic production to satisfy the "substantially all" standard. See, e.g., [Certain Tin Mill Products from Japan: Final Results of Changed Circumstances Review](#), 66 FR 52109, 52110 (October 12, 2001) (where Weirton Steel and the Independent Steel Workers union expressed no interest in the revocation, but National Steel and another domestic producer submitted evidence that they accounted for over 15 percent of domestic production, and the DOC determined therefore not to revoke); [OCTGs Mexico](#); and, [Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part](#), 70 FR 35618 (June 21, 2005), affirmed by [Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Antidumping Duty Changed Circumstances Review and Determination Not to Revoke, In Part](#), 70 FR 47787 (August 15, 2005).

B. Successorship-in-Interest

A foreign exporter or producer that has received its own AD rate in an investigation or review may take a new name as a result of being purchased, merging with another company or simply as a matter of corporate reorganization. The new name should result in different treatment at the border for imports from that exporter/producer. If there is a calculated rate for the "new" name (e.g., company X is purchased by and takes company Y's name, and company Y has its own rate) then CBP should be collecting cash deposits at the calculated rate (unless instructed otherwise by the Department). However, if no rate has ever been calculated for the new name, CBP should be requiring cash deposits at the "all others" rate. Changed circumstances reviews are frequently used to address the appropriate cash deposit rates in both situations.

The core issue in these changed circumstances reviews is whether the "new" company succeeds the "former" company and, hence, whether the "new" company may assume the cash deposit rate of the "former" company. In determining whether the "new" company is a successor-in-interest

to the former, previously investigated/reviewed company, the Department examines several factors including, but not limited to, changes in: 1) management; 2) production facilities; 3) supplier relationships; and 4) customer base. See, e.g., [Notice of Final Results of Changed Circumstances Review: Polychloroprene Rubber from Japan](#), 69 FR 67890 (November 22, 2004) citing, [Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Duty Administrative Review](#), 57 FR 20460 (May 13, 1992); and, [Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Initiation of Antidumping Duty Changed Circumstance Review](#), 70 FR 17063 (April 4, 2005).

It is crucial to note that changed circumstances reviews should NOT be used to calculate new AD margins. Instead, the issue is whether a previously calculated rate (or, in the case of a merger, a combination of previously calculated rates) should be applied to the “new” company. (For an example of a combination of previously calculated rates, see, [Notice of Final Results of Antidumping Duty Review and Final Notice of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada](#), 69 FR 75921, 75924 (December 20, 2004), and the accompanying [Issues and Decision Memorandum](#). Also, assessment rates are not calculated in changed circumstances reviews involving successorship questions; only cash deposit rates are established.

Successorship analyses can be done as part of an administrative review. See, e.g., [Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Individually Quick Frozen Raspberries from Chile](#), 71 FR 45000, (August 8, 2006) at footnote 1 (unchanged in [Final Results](#), 72 FR 6524 (February 12, 2007)). In an administrative review, the Department can address both the assessment rate and the deposit rate of the “new” entity. More often, the Department conducts a separate changed circumstances review to examine successorship, even if there is an ongoing administrative review.

C. Other Objectives

As noted above, section 351.216 of the regulations and section 751(b) of the Act do not restrict the use of a changed circumstances review to reviewing only certain aspects of an order. Besides “no interest” revocations and successorship cases, the wide variety of matters reviewed includes the effect of Argentina’s GATT accession on preexisting orders and the unification of Germany. Two recent examples of new uses for a changed circumstances review involve determining a country’s non-market economy status and the reconsideration of a revocation when the Department determined that its decision to revoke was based on inaccurate information.

In 2005, the Department initiated a changed circumstances review to determine whether DOC should continue to treat Ukraine as a non-market economy. See [Initiation of a Changed Circumstances Review of the Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Ukraine](#), 70 FR 21396 (April 26, 2005). While a country’s NME status has only been reviewed previously in investigations or ARs, in this instance, the Government of the Ukraine opted to make its request through a changed circumstances review. In making its decision to

initiate this changed circumstances review, the Department determined changes occurring in Ukraine over the past several years were considered sufficient to warrant a review. Also in 2005, the DOC initiated a changed circumstances review to examine the significance of certain information contained in a federal court decision. Information in the court decision and record indicated that a respondent in an AR had not reported a large rebate on its sole sale reviewed. This was one of three reviews in which the respondent received a zero dumping margin leading to the partial revocation of the order. Petitioner also alleged that, because of the partial revocation of the order, the competition it faced from the respondent caused it such financial difficulties that it had not been able to properly represent itself during the DOC's sunset review, which resulted in the total revocation of the order. The DOC initiated a changed circumstances review on the basis that information on the omitted rebate might cause it to calculate a revised, positive margin for the AR, rescind the partial revocation of the order, and reopen the sunset review. Thus, a changed circumstances review has been used to reconsider a prior determination. See [Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Initiation of Changed Circumstances Review](#), 70 FR 24514 (May 10, 2005) and [Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Review](#), 71 FR 11590 (March 8, 2006) and the accompanying [Issues and Decision Memorandum](#).

III. PROCEDURES

Section 351.221 of the regulations contains the procedural rules that apply to all reviews, including changed circumstances reviews, and section 351.221(c)(3) contains special procedural rules solely for changed circumstances reviews. In addition to the option of combining the initiation and preliminary results, discussed below, section 351.221(c)(3) also requires the DOC to state what actions it will take as the result of the review, and exempts it from the requirement to issue a questionnaire, imposed for other reviews. Additional procedural rules for "no interest" revocations are within sections 351.222(g)(3) and (4), including an instruction that the effective date of the revocation for customs purposes is the effective date of the notice of revocation, which the DOC can set at its discretion (i.e., it does not necessarily have to be the publication date). Frequently, the DOC will instruct CBP to liquidate all entries not currently under AR without regard to AD duties and to stop collecting cash deposits on the merchandise within the partial revocation, and will set the effective date of the final notice accordingly. In any case, the DOC must describe how it plans to effect the revocation in the preliminary notice, in accordance with 351.221(c)(3). Finally, a few important procedural rules are contained in section 351.216, namely 1) a requirement that the Department determine whether to initiate within 45 days of receiving a request to do so, and issue final results within 240 days of initiation, or 45 days if all parties agree with the preliminary results, and, 2) a prohibition against conducting a review less than 24 months after the publication of a final determination or suspension of investigation, without good cause.

IV. COMBINING THE INITIATION AND PRELIMINARY RESULTS (EXPEDITED CHANGED CIRCUMSTANCES REVIEWS)

Section 351.221(c)(3)(ii) states that the DOC may “combine the notice of initiation of the review and the preliminary results of review in a single notice if the Secretary concludes that expedited action is warranted.” The DOC frequently does combine the notice of initiation and preliminary results in “no interest” cases where domestic producers have submitted a letter of no interest before initiation (see, e.g., [Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent To Revoke, in Part](#), 69 FR 75907 (December 20, 2004)) or when sufficient evidence is provided before initiation that the domestic industry no longer exists (see, e.g., [Extruded Rubber Thread from Malaysia: Notice of Initiation of Changed Circumstances Review of the Antidumping Duty Order, Preliminary Results of Changed Circumstances Review, and Intent To Revoke Antidumping Duty Order](#), 69 FR 10980 (March 9, 2004)). The DOC frequently combines the notice of initiation and preliminary results in successor-in-interest cases as well, when sufficient documentation has been provided supporting the request. See, e.g., [Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada](#), 70 FR 50299 (August 26, 2005).