

(6) Revise the weight and balance document, if required, and obtain FAA approval.

(7) Amend the applicable sections of the applicable airplane flight manual (AFM) to indicate that the auxiliary fuel tank is deactivated. Remove auxiliary fuel tank operating procedures to ensure that only the OEM fuel system operational procedures are contained in the AFM. Amend the Limitations Section of the AFM to indicate that the AFM Supplement for the STC is not in effect. Place a placard in the flight deck indicating that the auxiliary tank is deactivated. The AFM revisions specified in this paragraph may be accomplished by inserting a copy of this AD into the AFM.

(8) Amend the applicable sections of the applicable airplane maintenance manual to remove auxiliary tank maintenance procedures.

(9) After the auxiliary fuel tank is deactivated, accomplish procedures such as leak checks and pressure checks deemed necessary before returning the airplane to service. These procedures must include verification that the airplane FQIS and fuel distribution systems have not been adversely affected.

(10) Include with the operator's proposed procedures any relevant information or additional steps that are deemed necessary by the operator to comply with the deactivation and return the airplane to service.

Issued in Renton, Washington, on March 20, 2008.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 080225304-8463-01]

RIN 0625-AA77

Import Administration, Withdrawal of Regulations Governing the Treatment of Subcontractors ("Tolling" Operations)

ACTION: Interim final rule.

SUMMARY: Import Administration issues this interim final rule for the purpose of withdrawing its regulation governing the treatment of tollers or subcontractors for purposes of determining export price, constructed export price, fair value, and normal value in antidumping duty proceedings.

DATES: This interim final rule is effective on March 28, 2008. Although the amendment made by this Interim Final Rule is effective on March 28,

2008, Import Administration seeks public comments. To be assured of consideration, written comments must be received not later than April 28, 2008.

ADDRESSES: Comments on this Interim Final Rule must be sent to David M. Spooner, Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue.

FOR FURTHER INFORMATION CONTACT: Michael Rill, telephone 202-482-3058.

SUPPLEMENTARY INFORMATION: The Department promulgated the regulation governing the treatment of tollers or subcontractors in antidumping duty proceedings on May 19, 1997 ("Antidumping Duties; Countervailing Duties; Final Rule") (62 FR 27296, 27411 (May 19, 1997)). The Department regulation, 19 CFR 351.401(h), was intended to ensure, in calculating a dumping margin on merchandise determined to be within the scope of an antidumping order, that the Department's analysis is focused on the party setting the price of subject merchandise when the manufacture of such merchandise is subcontracted to another company. However, the regulation has been interpreted by the Court of International Trade as having the unintended effect of bestowing the status of "foreign manufacturer" or "producer" upon parties in the United States that otherwise would have assumed the status of purchasers of subject merchandise. See *USEC Inc. v. United States*, 281 F. Supp. 2d 1334 (2003), *aff'd on other grounds Eurodif v. United States*, 411 F.3d 1355, 1364 (Fed. Cir. 2005). This interpretation could restrict the Department's exercise of its discretion and could require the Department to identify the incorrect entity as the seller of subject merchandise, which would adversely affect the Department's antidumping determinations.

If a party that customarily assumes the status of a "purchaser" is bestowed with the status of "foreign manufacturer" or "producer", the proper application of the law is thwarted in a variety of ways. First, in some cases, the Department may have no basis upon which to make antidumping duty determinations because the customers who obtain the status of "foreign producer" make no sales of subject merchandise, but instead consume the merchandise themselves. In such cases, the Department would be unable to calculate a dumping margin. In other cases, the Department's determination of the margin of dumping could be

distorted or miscalculated because the incorrect U.S. sales were identified as the relevant sales under the regulation. Second, the right to appeal Department antidumping determinations is a right limited to interested parties as defined under 19 U.S.C. 1677(9). Purchasers of subject merchandise do not qualify as interested parties under the provision. Purchasers who have obtained the status of "foreign producers" under the regulation, however, become interested parties in error, and are afforded the right to appeal Department antidumping determinations where no such right was intended under the law.

These effects are contrary to the Department's intention in promulgating the regulation, and inconsistent with the Department's statutory mandate to provide relief to domestic industries suffering material injury from unfairly traded imports. The Department has a statutory duty under the Tariff Act of 1930, as amended, to determine instances of dumping by examining the price at which the merchandise is first sold in the United States. The regulation at issue, as recently interpreted, confounds the Department's ability to make such a determination. Because the regulation is applicable to on-going antidumping investigations and administrative reviews, and because the application of the regulation can act to deny relief to domestic industries suffering material injury from unfairly traded imports, immediate revocation is necessary to ensure the proper and efficient operation of the antidumping law and to provide the relief intended by Congress.

The Department is not replacing this regulation with a new regulation. Instead, the Department is returning to a case-by-case adjudication, until additional experience allows the Department to gain greater understanding of the problem.

Parties are invited to comment on the Department's withdrawal of the regulation governing the treatment of tollers or subcontractors in antidumping duty proceedings. Parties should submit to the address under the **ADDRESSES** heading, a signed original and two copies of each set of comments including reasons for any recommendation, along with a cover letter identifying the commenter's name and address. To be assured of consideration, written comments must be received not later than April 28, 2008.

Classification*Executive Order 12866*

It has been determined that this interim final rule is not significant for purposes of Executive Order 12866 of September 30, 1993 ("Regulatory Planning and Review") (58 FR 51735 (October 4, 1993)).

Paperwork Reduction Act

This interim final rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Administrative Procedure Act

The Assistant Secretary for Import Administration finds good cause to waive the requirement to provide prior notice and opportunity for public comment, pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such requirement is impracticable and contrary to the public interest.

The regulation has been interpreted to restrict the Department's exercise of its discretion and, in such cases, requires the Department to identify the incorrect entity as the seller of subject merchandise, which adversely affects the Department's antidumping determinations. The Department's antidumping regulation, 19 CFR 351.401(h), is intended to ensure that the antidumping analysis is focused on the party setting the price of subject merchandise when the manufacture of such merchandise is subcontracted to another company. The regulation has been construed to have the unintended effect of bestowing the status of "foreign manufacturer" or "foreign producer" on parties in the United States that would have otherwise assumed the status of "purchasers". As described in the preamble, if a party that customarily assumes the status of a "purchaser" is bestowed the status of "foreign manufacturer" or "foreign producer", the proper application of the law is thwarted. This effect is contrary to the Department's intention in promulgating the regulation, and inconsistent with the Department's statutory mandate to provide relief to domestic industries suffering material injury from unfairly traded imports. Courts have determined that notice and comment is impracticable when "the agency could both follow section 553 and execute its statutory duties." *Lavesque v. Block*,

723 F.2d 175, 184 (5th Cir. 1980). It went further to clarify that the Administrative Procedure Act good cause waiver authorizes departures from the requirements "only when compliance would interfere with the agency's ability to carry out its mission." *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485. Here, the Department has a statutory duty under the Tariff Act of 1930, as amended, to determine instances of dumping by examining the price at which the merchandise is first sold in the United States. The regulation at issue confounds the Department's ability to make such a determination. Because the regulation is applicable to on-going antidumping investigations and administrative reviews, and because the application of the regulation can act to deny relief to domestic industries suffering material injury from unfairly traded imports, immediate revocation is necessary to ensure the proper and efficient operation of the antidumping law and to provide the relief intended by Congress.

The Assistant Secretary for Import Administration also finds good cause to waive the 30-day delay in effectiveness, pursuant to the authority set forth at 5 U.S.C. 553(e) for the reasons given above. As described in the preamble, if a party that customarily assumes the status of a "purchaser" is bestowed the status of "foreign manufacturer" or "foreign producer", the proper application of the law is thwarted. This effect is contrary to the Department's intention in promulgating the regulation, and inconsistent with the Department's statutory mandate to provide relief to domestic industries suffering material injury from unfairly traded imports. The regulation at issue confounds the Department's ability to make such a determination. Because the regulation is applicable to on-going antidumping investigations and administrative reviews, and because the application of the regulation can act to deny relief to domestic industries suffering material injury from unfairly traded imports, immediate revocation is necessary to ensure the proper and efficient operation of the antidumping law and to provide the relief intended by Congress.

Regulatory Flexibility Act

Because a notice and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, a regulatory flexibility analysis has not been prepared.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Business and industry, Cheese, Confidential business information, Investigations, Reporting and recordkeeping requirements.

For the reasons stated above, amend 19 CFR part 351 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.

§ 351.401 [Amended]

2. Amend § 351.401 by removing and reserving paragraph (h).

Dated: March 21, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-6499 Filed 3-27-08; 8:45 am]

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9381]

RIN 1545-BF79

TIPRA Amendments to Section 199; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9381) that were published in the **Federal Register** on Friday, February 15, 2008 (73 FR 8798) concerning the amendments made by the Tax Increase Prevention and Reconciliation Act of 2005 to section 199 of the Internal Revenue Code. These final regulations also contain a rule concerning the use of losses incurred by members of an expanded affiliated group and affect taxpayers engaged in certain domestic production activities.

DATES: The correction is effective March 28, 2008.

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.199-2(e)(2) and 1.199-8(i)(5), Paul Handleman or David McDonnell, (202) 622-3040; concerning