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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

Docket No. 130917809-3809-01

RIN: 0625-AA96

Non-Application of Previously Withdrawn Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: Import Administration proposes not to apply, upon the effective date of this rule if implemented, the previously withdrawn regulatory provisions governing targeted dumping in antidumping duty investigations. Following the Court of International Trade's decision in *Gold East (Jiangsu) Paper Co. v. United States*, Import Administration is seeking comments from parties to clarify the status of the previously withdrawn regulatory provisions with regard to antidumping duty investigations. Import Administration also invites comment on the effect of this proposed rulemaking on recent modifications to its regulations concerning the calculation of the weighted-average dumping margin and assessment rate in certain antidumping proceedings.

DATES: To be assured of consideration, written comments must be received no later than

[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>, Docket No. ITA-2013-0002, unless the commenter does not have access to the internet. Commenters that do not have access to the internet may submit the

original and one electronic copy of each set of comments by mail or hand delivery/courier. All comments should be addressed to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, Room 1870, Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230. Comments submitted to the Department will be uploaded to the eRulemaking Portal at [www.Regulations.gov](http://www.Regulations.gov).

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available on the Federal eRulemaking Portal at [www.Regulations.gov](http://www.Regulations.gov).

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Moustapha Sylla, Import Administration Webmaster, at (202) 482-4685, e-mail address: [webmaster-support@ita.doc.gov](mailto:webmaster-support@ita.doc.gov).

FOR FURTHER INFORMATION CONTACT: James Maeder at (202) 482-3330; Charles Vannatta at (202) 482-4036; or Melissa Brewer (202) 482-1096.

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 10, 2008, the Department of Commerce (“the Department”) withdrew certain regulatory provisions governing targeted dumping in antidumping investigations.

*Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (Dec. 10, 2008) (“*Withdrawal Notice*”). In the *Withdrawal Notice*, the Department explained that in antidumping duty investigations it normally calculates dumping margins by one of two methods: (1) by comparing the weighted average of the normal values to

the weighted average of the export prices for comparable merchandise (known as the average-to-average method); or (2) by comparing the normal values of individual transactions to the export prices of individual transactions for comparable merchandise (known as the transaction-to-transaction method). *Id.* at 74930 (citing 19 U.S.C. 1677f-1(d)(1)(A)). The statute also provides for an exception to these two comparison methods when the Department finds that there is a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and where such differences cannot be taken into account using one of the above-described methods. *Id.* (citing 19 U.S.C. 1677f-1(d)(1)(B)). When these criteria are satisfied, the Department may compare the weighted average of the normal values to the export price of individual transactions for comparable merchandise (known as the average-to-transaction method). *Id.* In the *Withdrawal Notice*, the Department explained that in promulgating the regulations that established criteria for analyzing this issue, it “may have established thresholds or other criteria that may have prevented the use of this comparison methodology to unmask dumping, contrary to the Congressional intent.” *Id.* at 74931. For this reason, the Department withdrew the targeted dumping regulations, specifically 19 CFR 351.414(f) and (g), effective immediately. *Id.* Since the *Withdrawal Notice*, the Department has not applied the withdrawn regulations in antidumping duty investigations. No party has challenged as a stand-alone claim that this rulemaking violated the Administrative Procedure Act’s (“APA”) requirements.

On June 17, 2013, the Court of International Trade issued an opinion in *Gold East (Jiangsu) Paper Co. v. United States*, Ct. No. 10-00371, Slip Op. 13-74 (June 17, 2013), remanding certain matters to the Department. Among them, the Court of International Trade ordered the Department, on remand, to reconsider its final determination in that proceeding as it

applies to Gold East (Jiangsu) Paper Co. and to apply the withdrawn regulations. The Court disagreed with the Department's determination that the regulations were not applicable to Gold East (Jiangsu) Paper Co. in that antidumping investigation because the regulations had been properly withdrawn. During the underlying investigation, Gold East (Jiangsu) Paper Co. argued that the Department had improperly withdrawn the targeted dumping regulations because it did not satisfy the APA's notice and comment requirements.<sup>1</sup> Gold East (Jiangsu) Paper Co. claimed that the regulations were still in effect and that the Department should apply the alternative comparison method to only the sales that are targeted rather than to all sales. *See* 19 CFR 351.414(f)(2) (2007). The Department disagreed and determined that the regulations were properly withdrawn in 2008 in the *Withdrawal Notice* and, thus, did not apply to the underlying investigation. Therefore, the Department, consistent with its practice following the withdrawal of the regulations, applied the alternative comparison method to all of Gold East (Jiangsu) Paper Co.'s sales. Gold East (Jiangsu) Paper Co. appealed the Department's determination to apply the alternative comparison method to all sales to the Court of International Trade.

The Department continues to defend its position that the withdrawal of the targeted dumping regulations in the *Withdrawal Notice* was proper and that the withdrawn regulations are not operative. However, the Department recognizes that the Court of International Trade in *Gold East (Jiangsu) Paper v. United States* agreed with Gold East (Jiangsu) Paper Co.'s argument that the regulations should be applied to its dumping margin calculations in that proceeding because there was a procedural defect in the rulemaking process that withdrew the targeted dumping regulations. Therefore, without prejudice to the United States government's right to appeal the

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<sup>1</sup> *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 75 FR 59217 (Sept. 27, 2010), and Issues and Decision Memorandum at cmt. 3, *as amended by Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order*, 75 FR 70203 (Nov. 17, 2010) ("*Final Determination*").

decision in *Gold East (Jiangsu) Paper v. United States*, or to argue in other cases before the Court of International Trade that the withdrawn regulations should not be applied in antidumping duty investigations after the withdrawal was made effective in 2008, the Department has determined to issue this proposed rule to clarify the status of the previously withdrawn regulations pursuant to APA notice and comment procedures and to invite comment.

#### Proposed Provision

The Department proposes to continue to not apply the withdrawn provisions governing targeted dumping in antidumping investigations, implemented previously through the *Withdrawal Notice*. This rulemaking would be effective for proceedings initiated on or after 30 days following the date of publication of the final rule.

The Department invites parties to comment on this proposed rulemaking and the proposed effective date. Further, any party may submit comments expressing its disagreement with the Department's proposal and may propose an alternative approach. If any party believes that the Department should reinstate the previously withdrawn regulations, that party should explain how to reinstate the withdrawn regulations and include suggestions on how to codify such reinstatement, as well as any suggestions on the effective date.

The Department also invites comment on the effect of this proposed rulemaking on recent modifications to 19 CFR 351.414. On February 14, 2012, the Department published *Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101 (Feb. 14, 2012) ("*Final Modification for Reviews*"). In the *Final Modification for Reviews*, the Department modified the regulations governing comparison methods to be applied in antidumping investigations and administrative reviews. The *Final Modification for Reviews* revised 19 CFR 351.414, the section of the

regulations that previously included the withdrawn targeted dumping regulations. The *Final Modification for Reviews* applies to preliminary results of review issued after April 16, 2012.

## **Classifications**

### *Executive Order 12866*

It has been determined that this proposed 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 proposed rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

### *Executive Order 13132*

This proposed 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)).

### *Regulatory Flexibility Act*

The Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”) under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small business entities. A summary of the need for, objectives of, and legal basis for this rule is provided in the preamble, and is not repeated here.

The entities upon which this rulemaking could have an impact include foreign exporters and producers, some of whom are affiliated with U.S. companies, and U.S. importers. IA currently does not have information on the number of entities that would be considered small

under the Small Business Administration's size standard for small business. However, some of these entities may be considered small entities under that standard. Although this rule may impact small entities, this rule is not expected to have a significant economic impact. The administrative action proposed herein is a continuation of the Department's practice. No additional compliance measures or expenditure would be required of entities. Moreover, the previously withdrawn regulations did not regulate the entities that practice before the Department. Rather, the withdrawn regulations governed what methodology the Department applied in a particular case. Specifically, the withdrawn regulations instructed the Department on how to compare normal value and export price or constructed export price under certain factual scenarios. Therefore, the Department does not anticipate that the proposed rule would have a significant economic impact on a substantial number of small business entities. For this reason, an Initial Regulatory Flexibility Analysis is not required and one has not been prepared.

Dated: September 20, 2013.

Paul Piquado

Assistant Secretary  
for Import Administration

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