DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 050803215–5215–01]

RIN 0625–AA69

Procedures for Conducting Five–year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders

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

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Commerce (''the Department'') proposes to amend its regulations related to sunset reviews to conform the existing regulation to the United States' obligations under Articles 6.1, 6.2, and 11.3 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (''Antidumping Agreement''). The proposed regulations, if adopted, would amend the ''waiver'' provisions which govern treatment of interested parties who do not provide a substantive response to the Department's notice of initiation of a sunset review and clarify the basis for parties' participation in a public hearing in an expedited sunset review.

DATES: To be assured of consideration, written comments must be received not later than September 14, 2005.

ADDRESSES: A signed original and two copies of each set of comments, including reasons for any recommendation, should be submitted to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, Central Records Unit, room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC, 20230; attention: Proposed Amendments to Sunset Procedural Regulations.

FOR FURTHER INFORMATION CONTACT: Stacy J. Ettinger or Patrick V. Gallagher, Office of the Chief Counsel for Import Administration, room 3622, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW, Washington, DC, 20230; telephone: (202)482–4618 or (202)482–5053, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 1998, the Department published regulations addressing the procedures for participation in, and conduct of, sunset reviews. See 63 Fed. Reg. 13516. On December 17, 2004, the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) adopted the reports of the Appellate Body (''AB'') and the dispute settlement panel in *United States—Sunset Reviews of Anti–dumping Measures on Oil Country Tubular Goods from Argentina*, WT/DS268/AB/R (November 29, 2004) and WT/DS268/R (July 16, 2004), respectively. The AB/panel found that the waiver provisions of section 751(c)(4)(B) of the Tariff Act of 1930 and section 351.218(d)(2)(iii) of Commerce's sunset regulations are inconsistent with Articles 6.1, 6.2, and 11.3 of the Antidumping Agreement.

Section 123 of the Uruguay Round Agreements Act (''URAA'') governs the process for changes to the Department's regulations where a dispute settlement panel and/or the Appellate Body finds a regulatory provision to be inconsistent with any of the WTO agreements. Consistent with section 123(g)(1)(C), the Department is publishing proposed amendments to its regulations related to sunset reviews to conform the existing regulations to the United States' obligations under Articles 6.1, 6.2, and 11.3 of the Antidumping Agreement. The proposed regulations, if adopted, would amend the ''waiver'' provisions which govern treatment of interested parties who do not provide a complete substantive response to the Department's Notice of Initiation of a sunset review and clarify the basis for parties' participation in a public hearing in an expedited sunset review.

Explanation of Proposed Amendments

Section 351.218

Section 751(c)(4)(B) of the Tariff Act provides that where an interested party ''waives'' its participation in a sunset review, the Department ''shall conclude that revocation of the order ... would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) with respect to that interested party.'' Paragraph (d)(2) of 19 CFR 351.218 deals with the procedure for waiving participation in a sunset review before the Department. Specifically, paragraph (d)(2)(i) provides for filing a ''statement of waiver'' for parties electing not to participate in the Department's sunset review (so–called ''affirmative waiver''), and paragraph (d)(2)(iii) provides that failure to file a complete substantive response to a notice of initiation also will be treated as a waiver of participation (so–called ''deemed waiver''). The panel and Appellate Body found that the operation of the statutory and regulatory waiver provisions was inconsistent with the obligation under Article 11.3 to arrive at a ''reasoned conclusion'' because the Department's order–wide likelihood determination would be based, at least in part, on statutorily–mandated ''assumptions'' about a company's likelihood of dumping. The AB/panel also found that the operation of paragraph (d)(2)(iii) was inconsistent with ''due process rights'' of Articles 6.1 and 6.2, because the Department could *assume* likelihood with respect to a particular company even though that party had filed a substantive response to the notice of initiation, albeit an ''incomplete'' response.

To implement the AB/panel findings with respect to the operation of the waiver provisions, we propose to modify the Department's regulations to eliminate the possibility that the Department's order–wide likelihood determinations would be based on *assumptions* about likelihood of continuation or recurrence of dumping or a countervailable subsidy due to interested parties' waiver of participation in sunset reviews. Thus, we propose the following three modifications to paragraph (d)(2) of 19 CFR 351.218. First, with respect to so–called ''affirmative waivers'' set forth in paragraph (d)(2)(i) which provides that a party may elect not to participate in the Department's sunset review by filing a ''statement of waiver'' within 30 days of initiation of the sunset review we propose to amend the contents of a ''statement of waiver'' which are set forth in paragraph (d)(2)(ii). Specifically, we proposed to amend paragraph (d)(2)(ii) to require that a party filing a Statement of Waiver include a statement that it is likely to dump or benefit from a countervailable subsidy (as the case may be) or, in the case of a foreign government in a CVD sunset review, provide a countervailable subsidy, if the order is revoked or the investigation is terminated. Second, we propose to eliminate paragraph (d)(2)(iii) which provides that an interested party is ''deemed'' to have waived participation in the sunset review by failing to file a complete substantive response to a notice of initiation. Thus, the Department will no longer make company–specific likelihood findings for companies that fail to file a statement of waiver and fail to file a substantive response to the notice of initiation. Finally, we propose to modify paragraphs (d)(2)(iv)(C) and (e)(1)(ii)(B)(3) which address waiver of participation by a foreign government in a CVD sunset review to eliminate cross–references to paragraph (d)(2)(iii) and to

eliminate certain language that might suggest the possibility that the Department's order–wide likelihood determination in a CVD sunset review would be based on assumptions about likelihood of continuation or recurrence of a countervailable subsidy. In sum, these three modifications to the waiver provisions of the Department's sunset regulations will ensure that there is no longer the possibility that the Department's order–wide likelihood determinations might be based on *assumptions* about likelihood of continuation or recurrence of dumping or a countervailable subsidy. The Department will make its order–wide likelihood determinations on the basis of the facts and information available on the record of the sunset review.

Section 351.309

The Appellate Body upheld the panel's finding that the operation of paragraph (d)(2)(iii) of 19 CFR 351.218 was inconsistent with Article 6.2 in that it allegedly denies an interested party that is deemed to have waived its right to participate in a sunset review by submitting an incomplete substantive response the right to participate in a hearing. Paragraph (d)(2)(iii) does not explicitly address the issue of hearings; nor do the regulations preclude hearings in expedited sunset reviews resulting from the application of the waiver provisions. Nevertheless, in the interest of alleviating any perceived confusion with respect to participation in a hearing in an expedited sunset review, we propose to modify paragraph (c)(1)(iii) of 19 CFR 351.309 to clarify that the Secretary will specify a due date for case briefs in an expedited sunset review. Case briefs provide the basis for parties' affirmative presentations at a hearing. In addition, as discussed above, for other reasons we propose to eliminate paragraph (d)(2)(iii) in its entirety.

Effective Date

Pursuant to section 123(g)(2) of the URAA, the final amended regulation may not become effective until the end of the 60–day period beginning on the date on which the Department and the Office of the U.S. Trade Representative (''USTR'') undertake consultations with the appropriate congressional committees concerning the proposed contents of the final rule. Since the date of consultations has not yet been determined, we are unable to project the possible effective date at this time. If the proposed regulation is adopted, we will publish the effective date in the notice of final rule based upon the date on which USTR and the Department consult with Congress.

Classification

E.O. 12866

This proposed rule has been determined to be not significant under E.O. 12866.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for a failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This proposed rule involves collection–of-information requirements subject to the Paperwork Reduction Act, 44 USC Chapter 35. The requirements have been approved by OMB under control numbers 0625–0148.

E.O. 12612

This proposed rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed rules, if adopted, would not have a significant impact on a substantial number of small entities. We cannot identify the number of small entities that may be affected by this rule because we do not keep track of that information. The Department's existing regulations contain procedures for the conduct of five–year (''sunset'') reviews in which the Secretary considers whether to revocation of an order is likely to lead to continuation or recurrence of dumping or a countervailable subsidy. The proposed amendments revise the process for interested parties electing not to participate in a sunset review and clarify the basis for parties' participation in a hearing in an expedited sunset review. These actions, in and of themselves, will not have a significant economic impact because they do not impose any new reporting requirements. Therefore, the Chief Counsel concluded that the proposed rules would not have a significant impact on a substantial number of small business entities, and a regulatory flexibility analysis was not prepared.

List of Subjects in 19 CFR Part 351

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

Dated: August 5, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR Part 351 is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart B—Antidumping and Countervailing Duty Procedures

1. Section 351.218 is amended by revising paragraphs (d)(2)(ii), (d)(2)(iv) introductory text, (d)(2)(iv)(C), (e)(1)(ii)(B) introductory text, and (e)(1)(ii)(B)(3), and removing and reserving paragraph (d)(2)(iii), as follows:

§351.218 Sunset reviews under section 751(c) of the Act.

* * * * *

(d) Participation in sunset review (1) * * *

(2) Waiver of response by a respondent interested party to a notice of initiation (i) * * *

(ii) *Contents of statement of waiver.* Every statement of waiver must include a statement indicating that the respondent interested party waives participation in the sunset review before the Department; a statement that the respondent interested party is likely to dump or benefit from a countervailable subsidy (as the case may be) if the order is revoked or the investigation is terminated; in the case of a foreign government in a CVD sunset review, a statement that the government is likely to provide a countervailable subsidy if the order is revoked or the investigation is terminated; and the following information: * * *

* * * * *

(iii) [*reserved*]

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(iv) *Waiver of participation by a foreign government in a CVD sunset review.* Where a foreign government waives participation in a CVD sunset review under paragraph (d)(2)(i) of this section, the Secretary will:

* * * * *

(C) Base the final results of review on the facts available in accordance with § 351.308(f).

* * * * *

(e) *Conduct of sunset review*- (1) * * *

(ii) *Adequacy of response from respondent interested parties*-(A) * * *

(B) *Failure of a foreign government to file a substantive response to a notice of initiation in a CVD sunset review*. If a foreign government fails to file a complete substantive response to a notice of initiation in a CVD sunset review under paragraph (d)(3)(v) of this section or waives participation in a CVD sunset review under paragraph (d)(2)(i) of this section, the Secretary will:

* * * * *

(3) Base the final results of review on the facts available in accordance with § 351.308(f).

* * * * *

Subpart C—Information and Argument

2. Section 351.309(c)(1)(iii) is revised to read as follows:

§351.309 Written argument.

* * * * *

(c) *Case brief*. (1) * * *

(iii) For the final results of an expedited sunset review, expedited antidumping review, Article 8 violation review, Article 4/ Article 7 review, or section 753 review, a date specified by the Secretary.

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[FR Doc. 05–16133 Filed 8–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 50]

RIN 1513–AA82 thru 1513–AA88

Proposed Alta Mesa, Borden Ranch, Clements Hills, Cosumnes River, Jahant, Mokelumne River, and Sloughhouse Viticultural Areas

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish seven new viticultural areas within the boundary of the existing Lodi viticultural area, which lies within southern Sacramento and northern San Joaquin Counties in California. The seven proposed areas are Alta Mesa, Borden Ranch, Clements Hills, Cosumnes River, Jahant, Mokelumne River, and Sloughhouse. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on these proposed additions to our regulations.

DATES: We must receive written comments on or before October 14, 2005.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 50, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this proposal by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 925 Lakeville St., No. 158, Petaluma, California 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide consumers with adequate information regarding product identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, elevation, physical features, and soils, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Lodi American Viticultural Areas Steering Committee Petitions

The Lodi American Viticultural Areas (LAVA) Steering Committee has petitioned TTB to establish seven new viticultural areas within the boundary of the existing Lodi viticultural area (27 CFR 9.107) in southern Sacramento and northern San Joaquin Counties in California. The seven LAVA Steering Committee petitions propose the creation of the Alta Mesa, Borden