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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket Number: 200320-0083]

RIN: 0625-AB19

Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

ACTION: Temporary final rule.

SUMMARY: The Department Commerce (Commerce)'s Enforcement and Compliance Unit (E&C) is temporarily modifying certain requirements for serving documents containing business proprietary information in antidumping and countervailing duty (AD/CVD) cases to facilitate the effectuation of service through electronic means. The goal is to promote public health and slow the spread of COVID-19. These temporary modifications will be in place until May 19, 2020, unless extended.

DATES: *Effective* [INSERT DATE OF FILING FOR PUBLIC INSPECTION], through 17:00 hours EST, May 19, 2020.

FOR FURTHER INFORMATION CONTACT: Evangeline D. Keenan, Director, APO/Dockets Unit, at 202-482-3354.

SUPPLEMENTARY INFORMATION:

Background

In light of the recent COVID-19 outbreak, the U.S. Government is encouraging American citizens to work from home whenever possible. The service requirements in E&C's regulations

are often effectuated by hand delivery or by U.S. mail delivery of hard copy documents, which often takes place in an office setting. In turn, this poses a risk to the personnel tasked with serving or accepting service by hand or mail, as well as those around them. Accordingly, Enforcement & Compliance (E&C) will temporarily deem service of submissions containing business proprietary information (BPI) to be effectuated when the BPI submissions are filed by parties in ACCESS (E&C's online document portal), with certain exceptions, with the goal of promoting public health and slowing the spread of COVID-19 while at the same time permitting the continued administration of antidumping and countervailing duty proceedings.

In general, 19 CFR 351.303(f)(1) states that a person filing a document with Commerce simultaneously must serve a copy of the document on all relevant persons by personal service or first class mail. 19 CFR 351.303(f)(3) provides that case and rebuttal briefs must be made by personal service, overnight mail, courier, or in the case of service outside the United States, by first class airmail. E&C is temporarily modifying the means by which a person may serve documents containing BPI, as follows.

For BPI documents submitted with final bracketing on the due date (i.e., documents not submitted under the one-day lag rule, 19 CFR 351.303(c)(2)(i)), E&C will deem service to be effectuated upon the filing of the submission in ACCESS. E&C will notify interested parties that the document has been filed through daily ACCESS BPI Release Digest emails. This modification does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

For BPI documents submitted under the one-day lag rule, 19 CFR 351.303(c)(2)(i), E&C is temporarily waiving the service requirement for bracketing-not-final BPI submissions filed on

the due date. In addition, E&C will deem service to be effectuated upon the filing in ACCESS of the complete final BPI document on the next business day under 19 CFR 351.303(c)(2)(ii). This modification does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

For case and rebuttal briefs served pursuant to 19 CFR 351.303(f)(3)(i), service of BPI case and rebuttal briefs will be deemed effectuated via ACCESS. To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect). This modification does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

Notwithstanding the modifications described above, parties must still take active steps to serve pro se parties BPI documents containing only the pro se party's BPI and serve parties represented by a non-APO-authorized representative documents containing only that party's BPI, consistent with 19 CFR 351.306(c)(2). However, E&C is temporarily modifying the electronic service provision under 19 CFR 351.303(f)(1)(ii), so that a pro se party may give consent to another interested party to serve a document electronically on that pro se party only, provided that the document only contains the pro se party's BPI. In addition, a party represented by a non-APO-authorized representative may give consent to another interested party to serve a document electronically on that non-APO-authorized representative only, provided that the document only contains the BPI of the party represented by that non-APO-authorized representative. If such consent is given, then the serving party's APO-authorized representative may serve the submission on that party via electronic transmission with that recipient's consent. The document must not contain the business proprietary information of other parties.

Exceptions to Temporary Modifications

The following types of submissions and scenarios require the normal means of service as required by section 19 CFR 351.303(f) of E&C regulations, as ACCESS cannot effectuate service:

Requests for administrative review, new shipper review, changed circumstances review and expedited review. Service lists for these segments are not yet established at the time of filing of the relevant request. The service requirements under 19 CFR 351.303(f)(3)(ii) continue to apply.

Requests for scope ruling or anti-circumvention inquiry. These requests require service on the comprehensive scope service lists in accordance with 19 CFR 351.225(n).

E&C is not modifying the applicable requirements for serving public documents and public versions at this time, see 19 CFR 351.303(f)(1)(ii), which permit electronic service of public documents and public versions, provided that the receiving party consents.

Classification

Administrative Procedure Act

The provisions of the Administrative Procedure Act (5 USC 553) requiring notice of proposed rulemaking and the opportunity for public participation are waived for good cause because they would be impracticable and contrary to the public interest. (See 5 USC 553(b)(B)). Interested parties participating in E&C's antidumping and countervailing duty proceedings are generally required to serve other interested parties with documents they submit to E&C. If notice and comment were to be allowed, parties submitting documents containing BPI information to E&C likely either would be unable to serve other parties in the manners proscribed in E&C's regulations or potentially would put their health and safety at risk in doing

so. COVID-19 was unexpected and this circumstance could not have been foreseen; therefore E&C could not have prepared ahead of time for this set of circumstances. The provision of the Administrative Procedure Act otherwise requiring a 30-day delay in effectiveness is also waived for those same reasons, which constitute good cause. (5 USC 553(d)(3)).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this temporary rule is not significant for purposes of Executive Order 12866.

Executive Order 13771

This temporary rule is not expected to be subject to the requirements of Executive Order 13771 because this temporary rule is not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

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

Executive Order 13132

This temporary 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 analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable because no general notice of proposed rulemaking was required for this action. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 19 CFR Part 351

Administrative Practice and Procedure, Antidumping, Countervailing Duties, Confidential

Business Information, Reporting and Recordkeeping Requirements.

Dated: March 23, 2020.

Jeffrey I. Kessler,
Assistant Secretary for Enforcement and Compliance.

For the reasons stated in the preamble, 19 CFR part 351 is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

1. The authority citation for 19 CFR 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.

2. Amend § 351.303 by adding paragraph (f)(4) to read as follows:

§351.303 Filing, document identification, format, translation, service, and certification of documents.

* * * * *

(f) * * *

(4) Notwithstanding any other paragraph in this section, until further notice, as of [INSERT DATE OF FILING FOR PUBLIC INSPECTION], we are modifying the service requirements with respect to documents containing business proprietary information as follows:

(i) For BPI documents submitted with final bracketing on the due date (i.e., documents not submitted under the one-day lag rule, paragraph (c)(2)(i) of this section), E&C will deem service to be effectuated upon filing of the submission in ACCESS.

E&C will notify interested parties that the document has been filed through daily ACCESS BPI Release Digest emails. This paragraph (f)(4)(i) does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

(ii) For BPI documents submitted under the one-day lag rule, paragraph (c)(2)(i) of this section, E&C is temporarily waiving the service requirement for bracketing-not-final BPI submissions filed on the due date. In addition, E&C will deem service to be effectuated upon the filing in ACCESS of the complete final BPI document on the next business day under paragraph (c)(2)(ii) of this section. This paragraph (f)(4)(ii) does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

(iii) For case and rebuttal briefs served pursuant to paragraph (f)(3)(i) of this section, service of BPI case and rebuttal briefs will be deemed effectuated via ACCESS. This paragraph (f)(4)(iii) does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

(iv) Parties must still take active steps to serve pro se parties BPI documents containing only the pro se party's BPI and serve parties represented by a non-APO-authorized representative documents containing only that party's BPI, consistent with § 351.306(c)(2). However, E&C is temporarily modifying the electronic service provision under paragraph (f)(1)(ii) of this section, so that a pro se party may give consent to another interested party to serve a document electronically on that pro se party only, provided that the document only contains the pro se party's BPI. Such a document must not contain the BPI of other parties. In addition, a party represented by a non-APO-authorized representative may give consent to another interested party to serve a

document electronically on that non-APO-authorized representative only, provided that the document only contains the BPI of the party represented by that non-APO-authorized representative. Such a document must not contain the BPI of other parties. If such consent is given, then the serving party's APO-authorized representative may serve the submission on that party via electronic transmission with that recipient's consent.

(v) *Exceptions.* Notwithstanding paragraphs (f)(4)(i) through (iv) of this section, the following types of submissions and scenarios require the normal means of service as required by this paragraph (f):

(A) Requests for administrative review, new shipper review, changed circumstances review and expedited review.

(B) Requests for scope ruling or anti-circumvention inquiry.

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