

**Chapter 24**  
**NEW SHIPPER REVIEWS**

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**Statutes and Regulations:**

    The Tariff Act of 1930, as amended (“Act”)

        Section 751(a)(2)(B)

    Department of Commerce Regulations

        19 CFR 351.214(c) - opportunity to request a new shipper review

        19 CFR 351.214(d) - initiation timeframe

        19 CFR 351.214(j) - concurrent administrative review

        19 CFR 351.214(e) - bonding

        19 CFR 351.214(i)(1) and (2) - review time limits and extension of time limits

        19 CFR 351.214(j)(3) - waiver of expedited time limits

        19 CFR 351.213(h)(1) and (2) - deadlines if expedited time limits are waived

    WTO Antidumping Agreement

        Article 9.5 - expedited reviews for new shippers

    The Pension Protection Act of 2006 (H.R. 4)

        Section 1632 - suspension of new shipper bonding provision

**I. INTRODUCTION**

Section 751(a)(2)(B) of the Act provides for new shipper reviews upon request from exporters or producers establishing that: (1) they did not export subject merchandise to the United States during

the POI; and (2) they are not affiliated with any company that exported subject merchandise to the United States during the POI. A company that meets these requirements gets the benefits of: (1) an accelerated review schedule; (2) an individual dumping margin or countervailing duty rate at the completion of the review; and (3) when applicable, posting of a bond or security, at the option of the importer, in lieu of a cash deposit on imports while the review is being conducted (see [Bonding Privileges](#) section below). As with regular administrative reviews, the results of new shipper reviews serve as the basis for assessment for merchandise entered during the review period and for prospective cash deposits.

## II. INITIATION OF A NEW SHIPPER REVIEW

### A. Opportunity to Request a Review

In accordance with 19 CFR 351.214(c), an exporter or producer may request a new shipper review within one year of the date on which subject merchandise was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of the first entry, then the date on which it first shipped the merchandise for export to the United States.<sup>1</sup> Unlike in an administrative review, there is not a specific opportunity month in which the request must be made. If all applicable requirements are met, the Department may commence a new shipper review in the month following the six-month period in which the request is made. See “Deadlines” section, below. The new shipper review is available only to exporters or producers; there is no provision for importers to request a new shipper review. See, e.g., [Silicon Metal from the People’s Republic of China: Notice of Rescission of New Shipper Antidumping Duty Review](#), 66 FR 12927 (March 1, 2001). In this case, the Department rescinded the new shipper review discovering, subsequent to initiating the review, that the requester was a U.S. marketing company, and not a producer or exporter of silicon metal.

### B. Deadlines

In accordance with 19 CFR 351.214(d), the Department will initiate a new shipper review in the calendar month immediately following the anniversary month or the semi-annual anniversary month of the order, provided that: 1) the request is made during the six-month period ending with the end of the anniversary month or semi-annual anniversary month (whichever is applicable), and 2) the request has met all of the new shipper requirements.

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<sup>1</sup> See the Letter from Wendy J. Frankel, Director, AD/CVD Operations, Office 8, to Hangzhou Everbright Metal Products Co., Ltd., Re: Denial of Request for New Shipper Review of Certain Helical Spring Lock Washers from the People’s Republic of China, dated November 30, 2005 (the Department denied a request for a new shipper review because information from CBP indicated that subject merchandise from the requester had entered the United States more than one year prior to the date of its request for a new shipper review).

### **C. New Shipper Review Checklist**

To determine whether a new exporting firm has met all of the requirements for initiating a new shipper review, analysts use a new shipper review checklist for examining a new shipper review request. See 19 CFR 351.214(b)(2). The most current version of this document is located on the E&C website under “Reference Material.” The checklist is a public document which the Department places on the record as the basis for its decision whether to initiate a new shipper review. The checklist contains two parts. Part I examines whether the applicant’s review request meets all of the eligibility requirements for new shipper status. Part II examines whether the applicant’s request meets all of the filing requirements.

Immediately upon receiving a new shipper review request, the analyst should request a Arun@ or Aquery@ of the CBP database in order to corroborate information regarding entries of the subject merchandise contained in the new shipper review request. If the results of the data query show only a few applicable entries, the analyst should request and examine entry documentation (the 7501 entry summary and related documents) from CBP for those entries. If there are a number of entries, the analyst may choose several for which to request entry documentation.

If there is adequate time, the Department may ask supplemental questions of the applicant. Analysts may also do independent research to assist in examining the applicant’s status as a new shipper at the initiation stage.

### **D. Initiation FR Notice**

The Department initiates a new shipper review by issuing a Federal Register notice which summarizes the basis for initiating the review and notes the deadline for issuing the preliminary results. The initiation notice must specify both the exporter and the producer, as the results of the review will apply only to that producer/exporter combination. See [E&C Policy Bulletin 03.2: Combination Rates in New Shipper Reviews](#), dated March 4, 2003. Upon publication of the initiation notice, and if applicable, the Department instructs CBP to extend bonding privileges with respect to subject merchandise from that producer/exporter combination until the completion of the review (see Bonding Privileges section below).

If the Department determines that there is an insufficient basis on which to initiate a new shipper review, then the Department will issue a memorandum to the file or a letter to the applicant, rather than a Federal Register notice, which details the reasons for not initiating the review.

### **E. Concurrent Administrative and New Shipper Reviews**

19 CFR 351.214(j) provides that, if an administrative, new shipper, or changed circumstances review or request for review covers merchandise of an exporter or producer subject to another review, or request for review, then the Department may, after consulting with the exporter or producer, 1) rescind the review in progress, 2) decline to initiate a review, or 3) where the

requesting party agrees, conduct concurrent reviews.

## **F. Bonding Privileges**

Upon initiation of a new shipper review, section 751(a)(2)(B)(iii) of the Act required the Department to direct CBP to allow importers to post a bond or security in lieu of a cash deposit, until the completion of the review, for each entry of the subject merchandise produced and exported by the applicant, or exported by the applicant and produced by the producer identified in the notice of initiation, as applicable. See also 19 CFR 351.214(e). This bonding privilege applies only to future entries from the applicant and the producer of those entries which formed the basis for its new shipper review request.

On August 17, 2006, Section 1632 of The Pension Protection Act of 2006 (H.R.4) temporarily suspended bonding privileges for subject merchandise entered during the period April 1, 2006, through June 30, 2009. This temporary suspension of bonding privileges **does not** apply to subject merchandise from Canada or Mexico.

## **III. CONDUCT OF THE REVIEW**

### **A. Deadlines**

In accordance with 19 CFR 351.214(i)(1), the Department will issue the preliminary results of review within 180 days after the date on which the new shipper review was initiated, and the final results of review within 90 days after the date on which the preliminary results were issued. See also section 751(a)(2)(B)(iv) of the Act. If the Department finds that the new shipper review is extraordinarily complicated, then it may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days. See 19 CFR 351.214(i)(2) and section 751(a)(2)(B)(iv) of the Act.

However, an applicant may agree in writing to waive the time limits for conducting a new shipper review so that the Department may conduct the new shipper review concurrently with an administrative review. See 19 CFR 351.214(j)(3). If the new shipper review time limits are waived in writing, then the Department will issue the preliminary results of review in accordance with the deadlines for an administrative review, namely, no later than 245 days after the last day of the anniversary month of the antidumping order, and the final results of review within 120 days after the date on which the notice of the preliminary results was published in the Federal Register. See 19 CFR 351.213(h)(1). If it is not practicable to complete the review within the time limits specified above, the Department may extend the 245-day period to 365 days and 120-day period to 180 days. Alternatively, if the Department does not extend the period for issuing the preliminary results, the Department may extend the time for issuing the final results from 120 days to 300 days. See 19 CFR 351.213(h)(2) and section 751(a)(3)(A) of the Act.

## B. Questionnaire Issuance

The new shipper questionnaire includes a section of questions to which the U.S. importer should respond. This section, along with other sections of the antidumping new shipper questionnaire, will provide information for purposes of examining the *bona fides* of each reported U.S. sales transaction. Unlike the questionnaire for cases involving market economy countries, the NME new shipper questionnaire does not include home market sale questions and reporting requirements (i.e., Section B), but does include separate rate questions in order to establish whether the applicant is entitled to a separate rate.

## C. Entry Documentation

When CBP-sourced entry documentation is not received in time to analyze prior to initiation, questions regarding any discrepancies between the CBP-sourced entry documentation and the applicant-supplied entry documentation should be asked in a supplemental questionnaire during the course of the review. Refer to the “New Shipper Review Checklist” section, above, regarding requests for CBP data.

## D. Separate Rates

If an NME exporter does not demonstrate its eligibility for a separate rate, it will be deemed not separate from the NME entity. An exporter not able to demonstrate its eligibility for a separate rate would not meet the requirements of 19 CFR 351.214(b)(2)(i) and section 751(2)(B)(i) of the Act, and its new shipper review would be rescinded. See [Notice of Preliminary Results of Antidumping Duty New Shipper Review and Rescission of New Shipper Reviews; Freshwater Crawfish Tail Meat from the People’s Republic of China](#), 69 FR 53669 (September 2, 2004) and [Brake Rotors from the People’s Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review](#), 64 FR 61581 (November 12, 1999).

## E. *Bona Fides* Sales Analysis

For purposes of determining whether to rely on the exporter’s submitted data in response to the antidumping new shipper questionnaire, the Department conducts a *bona fides* sales analysis of each reported sales transaction. If the sales under review are not *bona fide*, the Department will rescind the review. For this purpose, the team will issue a decision memorandum for release with the preliminary results (or with the intent to rescind). In examining whether sales are *bona fide*, the Department analyzes several factors, including such items as:

- the timing of the sale;
- the sale price and quantity;
- the expenses arising from the sales transaction;

- whether the sale was sold to the customer at a loss;
- whether each sales transaction between the exporter and importer was executed on an arm's-length basis; and
- any other relevant issues which have arisen during the course of the review.<sup>2</sup>

## F. Verification

The Department will normally conduct verification of a new shipper applicant's submitted data prior to issuing the preliminary results in the new shipper review.

## G. Preliminary and Final Results

Procedures for release of preliminary and final review results are the same as for administrative reviews. As with administrative reviews, cash deposit instructions are issued to CBP upon completion of the review. These instructions notify CBP of the new cash deposit rate for the exporter/producer combination, which is effective as of the publication date of the final results in the Federal Register. For new shipper reviews, this new cash deposit only applies to the applicant and the producer of the subject merchandise for the reported U.S. sales transaction(s). Also in the case of new shipper reviews, these instructions notify CBP to discontinue the bonding privilege, if applicable, for imports from that exporter/producer combination. For entries exported by the new shipper exporter for which the producer is different from the company that produced the subject merchandise for the reported U.S. sales transaction(s), there is no change to the deposit rate; that is, the cash deposit remains the All others@ rate for market-economy cases, and the ANME-wide@ rate for NME cases.

## H. Rescission of New Shipper Review

If, after initiation, the Department determines that the documents submitted with the request for review do not meet the criteria specified in 19 CFR 351.214(b)(2)(iv), or that the reported sales transaction(s) are not *bona fide*, or that an NME applicant has not demonstrated its entitlement to a separate rate, the Department will issue a memorandum indicating our intent to rescind the new shipper review, and inviting interested parties to comment on the intended rescission. After considering any comments, the Department will either issue a Federal Register notice rescinding the review, or it will proceed with the review.

After a final rescission is published in the Federal Register, the Department issues to CBP instructions to discontinue any bonding privilege granted for imports from the named exporter/producer combination, and re-institute the cash deposit requirement.

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<sup>2</sup> See, e.g., [Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Notice of Intent to Rescind New Shipper Reviews](#), 71 FR 10644 (March 2, 2006) and accompanying February 23, 2006, *bona fides* analysis memoranda to the file, unchanged in the final results, see [Notice of Rescission of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China](#), 71 FR 37902 (July 3, 2006).