

**CHAPTER 25**  
**SECTION 751(c) FIVE-YEAR (“SUNSET”) REVIEWS**

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**Statute and Regulations:**

    The Tariff Act

        Section 751(c) - administrative review of determinations: five-year review

        Section 751(d) - administrative review of determinations: revocation of order

        Section 752 - special rules for section 751(b) and 751(c) reviews

        Section 782 - conduct of investigations and reviews

    Department Regulations

        Section 351.218 - sunset reviews under section 751(c) of the Act

        Section 351.221(c)(5) - review procedures; sunset review

        Section 351.222(i) - revocation or termination based on sunset review

    Statement of Administrative Action

        Section C.9.b. - duration and review of antidumping and countervailing duty orders;  
        five-year reviews

    WTO Antidumping Agreement

        Article 11.3 - duration and review of anti-dumping duties

## I. INTRODUCTION

The Uruguay Round Agreements Act ("URAA") revised the Tariff Act of 1930, as amended ("Act"), by requiring that antidumping ("AD") and countervailing duty ("CVD") orders be revoked, and suspended investigations be terminated, after five years, unless revocation or termination would be likely to lead to a continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry. See Section 751(c) of the Act. Section 751(c)(1) requires the Department and the ITC to conduct a review no later than five years after the issuance of an AD or CVD order, the suspension of an investigation, or a prior five-year review. Accordingly, unlike other reviews, the five-year reviews are conducted on an order-wide, rather than a company-specific, basis. The URAA assigns to the Department the responsibility of determining whether revocation of an AD or CVD order, or termination of a suspended investigation, would be likely to lead to a continuation or recurrence of dumping or a countervailable subsidy; the ITC is responsible for determining whether revocation or termination would be likely lead to continued or recurring material injury to the domestic industry.<sup>1</sup> These five year reviews are commonly referred to as "sunset" reviews. If the determinations of both the Department and the ITC are affirmative, the order (or suspended investigation) will continue (*i.e.*, remain in place). If either the Department's determination or the ITC's determination is negative, the order will be revoked (or the suspended investigation will be terminated).

Sunset reviews are conducted pursuant to the provisions of the Act, including sections 751(c), 751(d), 752, 777 and 782, and the Department's regulations at 19 CFR Part 351, primarily section 351.218. See [Procedures for Conducting Five-Year \("Sunset"\) Reviews of Antidumping and Countervailing Duty Orders](#), 70 FR 62061 (October 28, 2005) (Final rule); [Policy Bulletin 98.3](#); and [Procedures for Conducting Five-year \("Sunset"\) Reviews of Antidumping and Countervailing Duty Orders](#), 63 FR 13516 (March 20, 1998) (Interim final rules; request for comments). These policies and procedures are intended to complement the applicable statutory and regulatory provisions by providing guidance on methodological or analytical issues not explicitly addressed by the statute and regulations. In developing these policies, the Department has drawn on the guidance provided by the legislative history accompanying the URAA, specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994).

As interested parties are not required to formally request a sunset review, section 751(c)(1) essentially provides for the automatic initiation of sunset reviews. See SAA at Section C.9.b.(1). "Automatic initiation will avoid placing an unnecessary burden on the domestic industry and promote efficiency of administration by: (1) combining into a single action notification to all parties of the upcoming five-year review; and (2) providing an effective means of evaluating the level of interest of all affected parties and the need for a full-fledged review." Id. The Department's Lotus Notes AD/CVD Case Management database has a "Sunset Cases" folder that indicates past and upcoming initiation dates of sunset reviews.

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<sup>1</sup> The status of the ITC sunset reviews can be found on the ITC website, in the "Antidumping and countervailing investigations" section at [http://www.usitc.gov/trade\\_remedy/731\\_ad\\_701\\_cvd/investigations/active/index.htm](http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/active/index.htm).

While AD and CVD sunset reviews are usually conducted by the office responsible for the order, if there are multiple AD orders for subject merchandise, the Department assigns one office to conduct those AD sunset reviews jointly.<sup>2</sup> Suspended investigation sunset reviews are conducted by the Bilateral Agreements Unit in the Office of Policy. In addition, the Department has designated a team of “sunset coordinators” who report to the Senior Advisor (Deputy) Operations to the Deputy Assistant Secretary (“DAS”) of AD/CVD Operations for Import Administration. The sunset coordinators are responsible for overseeing the progress of the sunset reviews, acting as a general point of contact for outside parties, contacting the ITC Office of Investigations as required for each sunset review, assisting analysts with any questions in the course of conducting sunset reviews, ensuring consistency in determinations, and reviewing initiation and other Federal Register notices. The name of the assigned sunset coordinator for a particular sunset review can be found in the “Sunset Cases” folder on the Department’s Lotus Notes AD/CVD Case Management database.

The Department’s Operations Handbook on the shared drive at J:\Operations Handbook\Sunset Reviews contains examples of Federal Register notices, memorandums, letters, schedules and other documents that may be of assistance to the analysts. It should be kept in mind that these documents are not necessarily the most updated examples, and analysts are encouraged to conduct research or speak with their program manager or the sunset coordinator for more recent examples. In addition, a sunset review timeline chart is available at the end of this chapter, as a quick reference guide for analysts; this timeline chart is not meant to replace the Department’s regulations, but merely to assist the analysts in understanding the basic timeline and their general responsibilities in a sunset review.

## II. CONDUCT OF SUNSET REVIEWS

### A. Initiation of Sunset Review

The URAA requires that the Department initiate a sunset review of each order or suspended investigation not later than 30 days before the fifth anniversary of publication of the order or suspension agreement in the Federal Register. See Section 751(c)(2) of the Act; section 351.218(c) of the Department’s regulations.<sup>3</sup> In practice, the Department attempts to publish notification of sunset reviews on the first business day of the month in which the five year anniversary falls. After the first sunset review, subsequent sunset reviews of the order or suspended investigation must be identified further in the Federal Register by the segment of

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<sup>2</sup> For multiple orders issued on the same merchandise but in different months, the Department will jointly initiate on all orders for the merchandise using the earliest initiation date for the orders. See, e.g., [Initiation of Five-year \(“Sunset”\) Reviews](#), 73 FR 31974 (June 5, 2008) (polyvinyl alcohol follows June anniversary month for Japan, and not September anniversary month for the People’s Republic of China, and the Republic of Korea).

<sup>3</sup> For non-WTO member countries, any time during which imports of subject merchandise from those countries was prohibited is not counted toward the computation of the five-year period. See Section 751(c)(7) of the Act.

review (*i.e.*, the tenth year review is the “second sunset review,” the fifteenth year review is the “third sunset review,” *etc.*).

In addition to providing notification of initiation of sunset reviews, the Department has implemented a policy of providing a one month advance notification of sunset reviews in the Federal Register, informing interested parties of sunset reviews scheduled for initiation in the month to follow. While such notification is not required by statute, the Department publishes such advance notification as a service to the international trading community. Another service is noted in Federal Register initiation notice, wherein the Department states that: “As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department regulations, the Department’s schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department’s sunset Internet Web site at the following address: <http://ia.ita.doc.gov/sunset/>.”

The Customs Unit of Import Administration is responsible for drafting both the initiation notice and advance notification of initiation for sunset reviews, and advancing the documents through concurrence and publication. These Federal Register notices are signed by the DAS of AD/CVD Operations for Import Administration.

## B. Participation in Sunset Review

### 1. Interested Parties

The Federal Register initiation notice requests interested parties to contact the Department in writing, within ten days of publication of the initiation notice, if they seek recognition as an interested party to the proceeding. Pursuant to section 351.103(c) of the Department’s regulations, the Department compiles a sunset review service list consisting of those interested parties who contact the Department, and makes this service list available on the Department’s website at: <http://ia.ita.doc.gov/apo/apo-svc-lists.html>.

### 2. Notice of Intent to Participate

The Federal Register initiation notice requests domestic interested parties (*see* sections 771(9)(C) through (G) of the Act; section 351.102(b) of the Department’s regulations), to file a notice of intent to participate with the Department no later than fifteen days after the date of publication of the initiation notice.<sup>4</sup> The domestic interested party’s notice of intent to participate must include certain information, as set forth in section 351.218(d)(1)(ii) of the Department’s regulations. A notice of appearance is not considered the same as a notice of intent to participate; the domestic interested party must properly file a notice of intent to participate to take part in the sunset review. Any domestic party that fails to file a notice of intent to participate is considered not willing to participate and, thereafter, the Department will not accept any filings from such parties during the

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<sup>4</sup> A U.S. importer is a respondent interested party, not a domestic interested party.

sunset review. See section 351.218(d)(1)(iii)(A) of the Department's regulations. If no domestic party timely files a notice of intent to participate, the Department will issue a final determination revoking the order (or terminating the suspended investigation) no later than 90 days after the initiation notice. See section 351.218(d)(1)(iii)(B) of the Department's regulations.

The sunset coordinator is responsible for notifying the ITC Office of Investigations no later than twenty days after publication of the initiation notice of the status of domestic interest and notice of intent to participate. See section 351.218(d)(1)(iii)(B)(2) of the Department's regulations. The notification letter is signed by the office director.

### 3. Waiver of Participation

Respondent interested parties are not required to file a notice of intent to participate. See section 351.218(d)(1)(i) of the Department's regulations. However, respondent interested parties may waive participation in a sunset review no later than 30 days after the date of publication of the initiation notice; the Department will not accept any filings from such parties during the sunset review. See section 351.218(d)(2) of the Department's regulations. The waiver must include a statement that the respondent interested party is likely to dump (or benefit from a countervailable subsidy), if the order is revoked or the investigation is terminated. See section 351.218(d)(2)(ii) of the Department's regulations. Where a foreign government waives participation in a CVD sunset review, the Department will conclude the respondent interested parties submitted inadequate responses (see also "Substantive Responses" section, below) as a result of such waiver and conduct an expedited sunset review. See section 351.218(d)(2)(iv) of the Department's regulations.

### 4. Substantive Responses

If the Department receives proper notice of intent to participate, all parties wishing to participate in the sunset review must file a substantive response no later than 30 days after the date of publication of the initiation notice. See section 351.218(d)(3) of the Department's regulations. Substantive responses must include certain information, as set forth in sections 351.218(d)(3)(ii) through (vi) of the Department's regulations. Analysts should note that certain informational requirements differ depending on the interested party. Interested parties may submit rebuttal comments to substantive responses within five days after the submission of the other party's substantive response. See section 351.28(d)(4) of the Department's regulations.

The Department must make a determination regarding the adequacy of the substantive response(s) submitted by domestic and respondent interested parties. See section 351.218(e) of the Department's regulations. For domestic interested parties, the Department will consider it an adequate response if at least one domestic interested party submits a complete substantive response. See section 351.218(e)(1)(i) of the Department's regulations. For respondent interested parties, the Department will consider it an adequate response if the respondent interested parties submit complete substantive responses, and account on average for more than 50 percent

by volume (or value, if appropriate), of the total exports of subject merchandise to the United States during the sunset review period.<sup>5</sup> See section 351.218(e)(1)(ii) of the Department's regulations. Where there are no exports from the country, the Department has usually found the substantive response of respondent interested parties inadequate. See, e.g., [Solid Agricultural Grade Ammonium Nitrate from Ukraine; Final Results of the Expedited Sunset Review of the Antidumping Duty Order](#), 71 FR 70508 (December 5, 2006) and the accompanying [Issues and Decision Memorandum](#).

Procedurally, the Department issues its determination of the adequacy of the substantive response(s) in the form of an adequacy memo to the file. Of late, the adequacy memo has no longer been required in cases where there are no substantive responses from respondent interested parties. If the substantive response(s) are adequate, the Department shall conduct a full sunset review. See section 351.218(e)(2) of the Department's regulations. If the domestic interested party substantive response is inadequate, the Department will issue a final determination revoking the order (or terminating the suspended investigation) no later than 90 days after the initiation notice. See section 351.218(e)(1)(i)(C)(3) of the Department's regulations. If the respondent interested party substantive response is inadequate, the Department will conduct an expedited sunset review, and issue a final determination no later than 120 days after the initiation notice. See section 351.218(e)(1)(ii)(C)(2) of the Department's regulations.

The sunset coordinator is responsible for notifying the ITC Office of Investigations of the adequacy determinations on the substantive response(s). In the event of inadequate domestic interested party substantive response, such notification is due no later than forty days after publication of the initiation notice. See section 351.218(e)(1)(i)(C)(2) of the Department's regulations. In the event of inadequate respondent interested party substantive response, such notification is due no later than fifty days after publication of the initiation notice. See section 351.218(e)(1)(i)(C)(2) of the Department's regulations. The notification letter is signed by the office director.

### C. Preliminary Results in Sunset Review

If both domestic and respondent interested parties submit adequate substantive response, the Department shall conduct a full sunset review and normally issue its preliminary results no later than 110 days after that date of publication of the initiation notice. See section 351.218(f)(1) of the Department's regulations. Preliminary results are issued only for full sunset reviews; expedited sunset reviews bypass preliminary results for the final results (see "Expedited Sunset Review" section, below). For the preliminary results, the analyst issues: 1) a Federal Register

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<sup>5</sup> Imports by any companies that have been revoked or excluded from an order must be excluded from the statistics before making an adequacy determination. See, e.g., [Canned Pineapple Fruit from Thailand: Preliminary Results of the Full Sunset Review of the Antidumping Duty Order](#), 71 FR 62994 (October 27, 2006) and accompanying [Issues and Decision Memorandum](#), at 2 (referencing July 12, 2006, memorandum in the sunset review titled "Correction to the Adequacy Calculation in the Antidumping Duty Sunset Review of Canned Pineapple Fruit from Thailand").

notice (signed by the Assistant Secretary (“AS”) for Import Administration); and 2) an issues and decision memorandum (from either the DAS of AD/CVD Operations for Import Administration (for orders) or the DAS for Policy and Negotiations (for suspended investigations) to the AS for Import Administration) (“I&D Memo”). The I&D Memo analyzes: 1) the likelihood of continuation or recurrence of dumping; 2) the magnitude of the dumping margin likely to prevail; and 3) any other issues raised by interested parties in their substantive responses and rebuttals. The Department generally includes ITC Trade DataWeb statistics on subject merchandise for the five year sunset review period.

### 1. Likelihood of Continuation or Recurrence of Dumping

In determining whether revocation of an order (or termination of a suspended investigation) would likely lead to continuation or recurrence of dumping, the Department considers the margins established in the investigation and/or reviews conducted during the sunset review period<sup>6</sup>, as well as the volume of imports for the periods before and after issuance of the order (or acceptance of the suspension agreement). See Section 752(c)(1) of the Act. The Department may also consider other economic factors if interested parties can demonstrate good cause. See Section 752(c)(2) of the Act. Good cause arguments must be submitted as part of interested parties’ substantive responses, and may not be submitted later. See, e.g., [Furfuryl Alcohol from Thailand: Final Results of the Second Sunset Review of the Antidumping Duty Order and Revocation of the Order](#), 72 FR 9729 (March 5, 2007) and accompanying [Issues and Decision Memorandum](#) at Comment 2 (rejecting additional good cause arguments submitted after the substantive response deadline as untimely filed)(“[Furfuryl Alcohol from Thailand](#)”).

Past sunset reviews where the Department has accepted arguments for good cause include: [Preliminary Results of Sunset Review of Suspended Antidumping Duty Investigation on Uranium From the Russian Federation](#), 71 FR 16560 (April 3, 2006) and the accompanying [Issues and Decision Memorandum](#); [Corrosion-Resistant Carbon Steel Flat Products From Canada: Final Results of Full Sunset Review of Antidumping Duty Order](#), 65 FR 47379 (August 2, 2000); [Uranium From Uzbekistan: Preliminary Results of Sunset Review of Suspended Antidumping Duty Investigation](#), 65 FR 10471 (February 28, 2000) and the accompanying [Issues and Decision Memorandum](#); and [Preliminary Results of Full Sunset Review: Brass Sheet and Strip From the Netherlands](#), 64 FR 46637 (August 26, 1999). Past sunset reviews where the Department found good cause was not demonstrated include: [Furfuryl Alcohol from Thailand](#); [Oil Country Tubular Goods from Mexico](#); [Preliminary Results of the Sunset Review of Antidumping Duty Order](#), 71 FR 77372 (December 26, 2006); [Canned Pineapple Fruit from Thailand: Preliminary Results of the Full Sunset Review of the Antidumping Duty Order](#), 71 FR 62994 (October 27, 2006); and [Fresh and Chilled Atlantic Salmon From Norway: Final Results of the Full Sunset Review of](#)

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<sup>6</sup> This includes zero or *de minimis* margins, which do not by themselves require that the Department determine that a continuation or recurrence is not likely. See Section 752(c)(4)(A) of the Act.

[Antidumping Duty Order](#), 70 FR 77378 (December 30, 2005) and the accompanying [Issues and Decision Memorandum](#).

For purposes of determining whether more recently calculated rates are probative of future behavior, the Department considers the volume of imports. When comparing imports of subject merchandise for the five-year sunset review period, the Department recently decided that the practice should be to look at the full year prior to initiation of the investigation (as opposed to prior to issuance of the order). See, e.g., [Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order](#), 72 FR 56985 (October 5, 2007) and accompanying [Issues and Decision Memorandum](#) at 4-5; [Furfuryl Alcohol from Thailand; Preliminary Results of the Second Sunset Review of the Antidumping Duty Order](#), 71 FR 62583 (October 26, 2006) and accompanying [Issues and Decision Memorandum](#) at 5; [Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Mexico; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders](#), 70 FR 53159 (September 7, 2005) and accompanying [Issues and Decision Memorandum](#) at 6-7. The rationale behind this is that initiation of an investigation may immediately cause a dampening effect on trade, which could skew the comparison.

a. Affirmative Likelihood

Generally, the Department finds the following scenarios as highly probative of a likelihood of continued or recurred dumping: 1) dumping continued at any level above de minimis after the issuance of the order (or suspension agreement); 2) imports of the subject merchandise ceased after issuance of the order (or suspension agreement); or 3) dumping was eliminated after the issuance of the order (or suspension agreement), and import volumes for the subject merchandise declined. See SAA at 889-890.

If companies continue to dump with the discipline of an order or suspension agreement in place, it is reasonable to consider that dumping would continue if the discipline were removed. If imports cease after issuance of an order or suspension agreement, it is reasonable to consider that exporters had to dump to sell at pre-order/suspension agreement volumes, and would have to resume so to re-enter the U.S. market. Similarly, if dumping is eliminated and imports decline after issuance of an order or suspension agreement, it is reasonable to consider that this was a result of the order or suspension agreement and revocation would result in the continuation or recurrence of dumping. Of course, while these scenarios are highly probative of a likelihood of continued or recurred dumping, they are not absolute and interested parties may provide evidence to the record otherwise. In addition, likelihood determinations are made on an order-wide basis; if one company is found likely to continue or recur dumping, the likelihood determination is affirmative.

b. Negative Likelihood

Generally, the Department finds that declining (or no) dumping margins accompanied by steady or increasing imports as highly probative of no likelihood of continued or recurred dumping. See

SAA at 889-890. Such a scenario may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order or suspension agreement were revoked. But see [Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order](#), 72 FR 16765 (April 5, 2007) and the accompanying [Issues and Decision Memorandum](#) (despite zero margin and significant increase in imports, the Department found a likelihood of continued or recurred dumping; there was no participation from any respondent interested party and no company-specific data). It should be noted that declining margins, by themselves, are typically not enough for a conclusion on no likelihood of continued or recurred dumping, as the existence of margins at any level above de minimis over the five year review period indicate there is still a likelihood of continued or recurred dumping.

## 2. Magnitude of the Dumping Margin Likely to Prevail

In determining the magnitude of the margin of dumping that is likely to prevail if the order were revoked, the Department generally selects the margin(s) from the final determination in the original investigation, because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. See SAA at 890. In certain instances, the Department may use the margin(s) from the preliminary determination of the original investigation (e.g., in suspended investigations where a final determination was not issued because continuation was not requested).

However, the Department may use a more recently calculated margin, where appropriate. See SAA at 890-91. For example, declining (or no) dumping margins accompanied by steady or increasing imports may lead to the conclusion that exporters are likely to continue dumping at the lower rates found in a more recent review.<sup>7</sup> Past sunset reviews that used a more recently calculated lower margin include: [Stainless Steel Bar from Germany; Preliminary Results of the Sunset Review of Antidumping Duty Order](#), 72 FR 29970 (May 30, 2007) and accompanying [Issues and Decision Memorandum](#) at 7-8, as corrected in [Stainless Steel Bar from Germany; Preliminary Results of the Sunset Review of Antidumping Duty Order](#), 72 FR 31660 (June 7, 2007); [Ball Bearings and Parts Thereof from Japan and Singapore; Five-year Sunset Reviews of Antidumping Duty Orders; Final Results](#), 71 FR 26321 (May 4, 2006) and the accompanying [Issues and Decision Memorandum](#); and [Final Results of Expedited Sunset Reviews: Antifriction Bearings From Japan](#), 64 FR 60275 (November 4, 1999). As another example, the Department may use a rate from a more recent review where the dumping margin increased, as more representative of a company's behavior in the absence of an order (e.g., where a company increases dumping to maintain or increase market share, despite the order). The Department may also use an increased margin that was a result of the application of facts available

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<sup>7</sup> While the Department generally finds declining (or no) dumping margins accompanied by steady or increasing imports as highly probative of no likelihood of continued or recurred dumping (see "Negative Likelihood" section, above), such evidence may lead to this alternate conclusion.

(or best information available, the predecessor to facts available). Past sunset reviews that used a more recently calculated higher margin include: [Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings From Brazil, Canada and The People's Republic of China](#), 64 FR 30310 (June 7, 1999); [Final Results of Expedited Sunset Review: Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China](#), 64 FR 25011 (May 10, 1999); [Final Results of Expedited Sunset Review: Potassium Permanganate from the People's Republic of China](#), 64 FR 169070 (April 7, 1999); and [Final Results of Expedited Sunset Review: Potassium Permanganate from Spain](#), 64 FR 16904 (April 7, 1999).

The issue of duty absorption may arise in a limited number of sunset reviews, if it was an issue in an administrative review during the sunset review period. Essentially, duty absorption where antidumping duties may be absorbed by a foreign producer or exporter subject to an order so that the price of the subject merchandise sold in the United States through an affiliated importer remains unchanged. Evidence of duty absorption is a strong indicator that the margins calculated by the Department in reviews may not be indicative of the margins that would exist in the absence of an order. See SAA at 885. As a result, the Department normally will increase the margin likely to prevail by the amount of duty absorption on those sales for which the Department found duty absorption.<sup>8</sup>

Pursuant to section 752(c)(3) of the Act, the Department provides to the ITC the magnitude of the margin of dumping that is likely to prevail if the order is revoked or the suspended investigation is terminated. This notification is essentially achieved via the Federal Register notice and I&D Memo (which should include a history of reviews and rulings, a list of any companies excluded from the order based on zero or de minimis margins, or subsequently revoked from the order and an all-others or country-wide rate).

#### D. Final Results in Sunset Review

In a full sunset review, the Department is to make its final determination within 240 days after the review is initiated. See section 351.218(f)(3)(i) of the Department's regulations and section 751(c)(5)(A) of the Act. This date may be extended by no more than an additional 90 days if the Department deems that the review is extraordinarily complicated. See section 351.218(f)(3)(ii) of the Department's regulations and section 751(c)(5)(B) of the Act.

For the final results of a full sunset review, the analyst issues: 1) a Federal Register notice (signed by the AS for Import Administration); and 2) an I&D Memo (from either the DAS of AD/CVD Operations for Import Administration (for orders) or the DAS for Policy and Negotiations (for

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<sup>8</sup> It should be noted that the U.S. Court of Appeals for the Federal Circuit affirmed the U.S. Court of International Trade's finding that the Department does not have the authority to conduct duty absorption inquiries with respect to transition orders, *i.e.*, orders issued before January 1, 1995. See [FAG Italia S.p.A. v. United States](#), 291 F.3d 806, 819 (2002). In addition, we are not aware of any more recent administrative reviews, as of the revised date of this AD Manual, which involved duty absorption.

suspended investigations) to the AS for Import Administration) analyzing any issues raised in the case and rebuttal briefs, and on verification, if applicable, and making a final analysis of the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail. A template cover letter to the ITC is available on the shared drive at J:\Operations Handbook\Sunset Reviews, titled "ITC letter.announcing.final.results".

### 1. Verification

The Department normally conducts verification only in a full sunset review where the preliminary results are not based on rates from the investigation or subsequent reviews, and only where needed (i.e., where the preliminary results found no likelihood of continuation or recurrence of dumping). See section 351.218(f)(2)(i) of the Department's regulations and section 782(i)(2) of the Act. However, the Department has conducted verification in expedited sunset reviews in the past. See [Oil Country Tubular Goods from Italy: Final Results of Five-year \(Sunset\) Review and Revocation of the Countervailing Duty Order](#), 71 FR 77383, 77384 (December 26, 2006), and the accompanying [Issues and Decision Memorandum](#). Verification is normally conducted immediately after the preliminary results, around 120 days after the date of publication of the initiation notice. See section 351.218(f)(2)(ii) of the Department's regulations. Although verifications are not commonly conducted in every full sunset review, there are reviews that warrant verification. See [Furfuryl Alcohol from Thailand: Final Results of the Second Sunset Review of the Antidumping Duty Order and Revocation of the Order](#), 72 FR 9729 (March 5, 2007) and the accompanying [Issues and Decision Memorandum](#); [Final Results of Full Sunset Review and Termination of Suspended Investigation: Cotton Shop Towels From Peru](#), 64 FR 66894 (November 30, 1999); [Final Results of Full Sunset Review: Sugar and Syrups From Canada](#), 64 FR 48362 (September 3, 1999).

### 2. Case Briefs and Hearing

Interested parties may submit a case brief for the final results of the sunset review by a date specified by the Department. See section 351.309(C)(1)(iii) of the Department's regulations. Rebuttal briefs may be submitted by parties within five days after the case brief, unless otherwise specified by the Department. See section 351.309(d)(1) of the Department's regulations. In addition, interested parties may request a hearing on the issues raised in the briefs within 30 days after the publication of the preliminary results of review, unless otherwise specified by the Department. See section 351.310(c) of the Department's regulations. It should be noted that interested parties also have a right to submit briefs and to a hearing in an expedited sunset review, as clarified in the [Procedures for Conducting Five-Year \("Sunset"\) Reviews of Antidumping and Countervailing Duty Orders](#), 70 FR 62061, 62063 (October 28, 2005).

### 3. Expedited Sunset Review

As noted above, the Department conducts an expedited sunset review where there is an inadequate substantive response from respondent interested parties. In an expedited sunset review, the

Department is to make its final determination within 120 days after the review is initiated. See section 351.218(e)(1)(ii)(C)(2) of the Department's regulations. This date may be extended by no more than an additional 90 days if the Department deems that the review is extraordinarily complicated, in accordance with section 751(c)(5)(B) of the Act. See, e.g., [Oil Country Tubular Goods from Italy: Extension of Time Limit for Final Results of Expedited Five-year \(Sunset\) Review of Countervailing Duty Order](#), 71 FR 57922 (October 2, 2006). As noted above, verification, acceptance of case and rebuttal briefs, and a hearing may be conducted in an expedited sunset review.

For the final results of an expedited sunset review, the analyst issues: 1) a Federal Register notice (signed by the AS for Import Administration); and 2) an I&D Memo (from either the DAS of AD/CVD Operations for Import Administration (for orders) or the DAS for Policy and Negotiations (for suspended investigations) to the AS for Import Administration). The I&D Memo analyzes: 1) the likelihood of continuation or recurrence of dumping; 2) the magnitude of the dumping margin likely to prevail; and 3) any other issues raised by interested parties in their case and rebuttal briefs, and on verification, if applicable. A template cover letter to the ITC is available on the shared drive at J:\Operations Handbook\Sunset Reviews, titled "ITC letter.announcing.final.results".

### III. COMPLETION OF SUNSET REVIEWS

If the Department makes a final negative determination, either in a full or expedited sunset review, that revocation of an order, or termination of a suspended investigation, would not be likely to lead to a continuation or recurrence of dumping or subsidies, the Department includes the revocation or termination notice (as applicable) as part of its final determination in the Federal Register and notifies the ITC of the results. See, e.g., [Cut-to-Length Carbon Steel Plate from the United Kingdom: Final Results of Full Sunset Review](#), 71 FR 58587 (October 4, 2006).

If the Department makes a final affirmative determination, either in a full or expedited sunset review, that revocation of an order, or termination of a suspended investigation, would be likely to lead to a continuation or recurrence of dumping or subsidies, after the Department issues this final determination in the Federal Register, it must wait for the ITC to make its own determination, either in a full or expedited sunset review, on whether revocation or termination would likely lead to continued or recurring material injury to the domestic industry. See [Import Administration Policy Bulletin 98.2](#) 63 FR 18871 (February 23, 1998).

The Department has seven days after the ITC publishes its injury determination in the Federal Register to thereafter issue the revocation, continuation, or termination notice (as applicable) in the Federal Register. See section 351.218(f)(4) of the Department's regulations. While this may appear to provide too limited a period of time for the Department to draft the notice and advance it through the concurrence chain for signature, the ITC releases its vote on the sunset review the day of voting, on the main page of its website at <http://www.usitc.gov/>. As the ITC vote occurs well in advance of the actual publication of the ITC decision in the Federal Register, this provides the

Department with enough time to draft the revocation, continuation, or termination notice (as applicable) and have it ready for issuance within seven days after the ITC publishes its determination.

#### A. Continuation / Revocation / Termination FR

Where both the Department finds that revocation of an order (or termination of a suspended investigation) would likely lead to a continuance or recurrence of dumping or a countervailable subsidy, and the ITC finds that revocation or termination would likely lead to a continuance or recurrence of material injury to the domestic industry, the order or suspended investigation will continue. As noted above, the Department has seven days after the ITC publishes its injury determination in the Federal Register to thereafter issue the continuation notice in the Federal Register. The effective continuation date of an order is the month of publication of the continuation notice in the Federal Register (e.g., a continuation notice signed in January but published in February is effective as of February). The continuation FR also provides the anticipated initiation date of the next sunset review, which is five years minus one month from the publication of the continuation notice (e.g., if a continuation notice publishes in January 2010, the next sunset review will be initiated in December 2014). See section 351.218(c)(2) of the Department's regulations.

As noted above in the "Notice of Intent to Participate" section, the Department will revoke an order (or terminate a suspended investigation) in the event of no domestic interest. See section 351.218(d)(1)(iii)(B)(3) of the Department's regulations. As noted above in the "Substantive Response" section, the Department will also revoke an order (or terminate a suspended investigation) in the event of an inadequate domestic response. See section 351.218(e)(1)(i)(C)(3) of the Department's regulations. In both of these instances, the ITC will terminate its review and there is no ITC vote on injury. The Department has no later than 90 days after the initiation notice to issue its final determination in the Federal Register revoking the order (or terminating the suspended investigation). The Department would also revoke an order (or terminate a suspended investigation) where it finds no likelihood of continued or recurred dumping or subsidies. The final scenario where the Department would issue a revocation or termination notice would be in either a full or expedited sunset review, where the ITC finds no likelihood of a continuance or recurrence of material injury to the domestic industry. In this instance, the Department has seven days after the ITC publishes its injury determination in the Federal Register to thereafter issue the revocation/termination notice in the Federal Register. The effective revocation date of an order (or suspended investigation) is the fifth anniversary of the date of publication of the order, suspended investigation, or continuation notice. See section 351.222(i)(2)(i) of the Department's regulations.

##### 1. Gap Period in Revocations of Orders

Because the effective revocation date of an order is the fifth anniversary of the date of publication of the order (or continuation notice), this leaves an uncovered "gap" period between the last full

administrative review and the date of revocation. For example, the continuation notice for brake rotors from the People’s Republic of China (“PRC”) published on August 14, 2002. See [Continuation of Antidumping Duty Order: Brake Rotors from the People's Republic of China](#), 67 FR 52933 (August 14, 2002). Accordingly, the effective revocation date for the brake rotors from the PRC sunset review is August 14, 2007. See [Brake Rotors from the People’s Republic of China: Revocation of Antidumping Duty Order Pursuant to Second Five-Year \(Sunset\) Reviews](#), 73 FR 36039 (June 25, 2008). However, the last full administrative review of brake rotors from the PRC covered only the period 04/01/06 through 03/31/07. See [Initiation of Antidumping and Countervailing Duty Administrative Review and Request for Revocation in Part](#), 72 FR 29968 (May 30, 2007). As a result, this gap period between the last full administrative review and the date of revocation (04/01/07 through 08/12/07) is considered the period of review for the final administrative review of the order. Of course, if no parties request an administrative review, then automatic liquidation instructions will be issued for the gap period.

#### B. U.S. Customs and Border Protection Instructions

In sunset reviews, custom instructions are only issued to the CBP where an order is revoked or a suspension agreement is terminated. Boilerplate instructions, titled “Sunset Revocation of Antidumping/Countervailing Duty Orders,” are available on the Department’s website at <http://ia.ita.doc.gov/download/custboil.htm>. Procedurally, the Department has decided that these instructions are to be issued no earlier than day 15 after publication of the revocation or termination notice in the Federal Register. As noted above, the effective revocation date is the fifth anniversary of the date of publication of the order, suspended investigation, or continuation notice.

In addition to the customs instructions, the customs module must be updated with the effective revocation date; this must be done the day before publication of the revocation or termination notice in the Federal Register. Analysts can preview the notices that will be published in the Federal Register a day in advance on The National Archives website at <http://www.archives.gov/federal-register/index.html> (click on “Tomorrow’s Federal Register” under the header “Government Actions”).

#### **AD SUNSET REVIEWS TIMELINE (see 19 C.F.R. 351.218):**

<b>CHART #1 (Full Sunset Review)</b>			
<b>Date:</b>	<b>Action:</b>	<b>Regulation:</b>	<b>Responsible Party/Parties:</b>
-30	Advance Notification of Initiation FR		S. Forbes drafts; coordinator reviews
0	Initiation FR publishes (1st of month)	351.218(c)	S. Forbes drafts; coordinator reviews
15	Notice of Intent to Participate from domestic interested parties due	351.218(d)(1)(i)	

	*** IF NO DOMESTIC INTEREST, GO TO CHART #2, otherwise see below ***		
20	Notification to ITC re: domestic interest		Inform coordinator of the status; coordinator drafts notification letter
30	Statement of Waiver from respondent interested parties (if opted) due	351.218(d)(2)(i)	
30	Substantive Response from all interested parties due	351.218(d)(3)(i) through 351.218(d)(3)(vi)	Analyst drafts Adequacy Memo by day 40 re substantive responses (see factors listed in regs)
	*** IF DOMESTIC PARTY RESPONSE NONE/INADEQUATE, GO TO CHART #3, otherwise see below ***		
	*** IF RESPONDENT RESPONSE NONE/INADEQUATE, GO TO CHART #4, otherwise see below ***		
35	Rebuttal to substantive response due	351.218(d)(4)	
50	Notification to ITC re: adequacy of substantive response		Inform coordinator of the status; coordinator drafts notification letter
110	Preliminary Results FR	351.218(f)(1)	Analyst drafts FR and I&D Memo
120	Verification (if needed)	351.218(f)(2)(ii)	Analyst conducts
tbd	Case briefs due	351.309(c)(1)(iii)	
tbd	Rebuttal briefs due	351.309(d)(1)	
tbd	Hearing (if requested)	351.310(d)(1)	
240	Final Results due	351.218(f)(3)(i)	Analyst drafts FR and I&D Memo; coordinator notifies ITC.
330	IF EXTENDED: Final Results due	351.218(f)(3)(ii)	Analyst drafts FR and I&D Memo; coordinator notifies ITC.
	ITC announces decision		
0	ITC publishes decision in FR		
7	Revocation/Continuation FR due	351.218(f)(4)	Analyst drafts FR (and for Revocations, also

			drafts CBP instructions and updates module)
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<b>CHART #2 (no domestic interest)(Revocation):</b>			
20	Notification to ITC re: no domestic interest	351.218(d)(1)(iii)(B)(2)	Inform coordinator of the status; coordinator drafts notification letter
90	Final FR Revoking Order due	351.218(d)(1)(iii)(B)(3)	Analyst drafts FR and CBP revocation instructions, and updates module
180	If EXTENDED (highly unusual): Final Results due no later than this date	751(c)(5)(B) of the Tariff Act of 1930	Analyst drafts FR and CBP revocation instructions, and updates module

<b>CHART #3 (no/inadequate domestic substantive response)(Revocation):</b>			
40	Notification to ITC re: inadequate domestic substantive response	351.218(e)(1)(i)(C)(2)	Inform coordinator of the status; coordinator drafts notification letter
90	Final FR Revoking Order due	351.218(e)(1)(i)(C)(3)	Analyst drafts FR and CBP revocation instructions, and updates module
180	If EXTENDED (highly unusual): Final Results due no later than this date	751(c)(5)(B) of the Tariff Act of 1930	Analyst drafts FR and CBP revocation instructions, and updates module

<b>CHART #4 (no/inadequate respondent substantive response)(Expedited Sunset Review)</b>			
50	Notification to ITC re: inadequate respondent substantive response	351.218(e)(1)(ii)(C)(1)	Inform coordinator of the status; coordinator drafts notification letter
120	Final Results due	351.218(e)(1)(ii)(C)(2)	Analyst drafts FR and I&D Memo
210	If EXTENDED: Final Results due no later than this date	751(c)(5)(B) of the Tariff Act of 1930	Analyst drafts FR and I&D Memo
	ITC announces decision		
0	ITC publishes decision in FR		
7	Revocation/Continuation FR due	351.218(f)(4)	Analyst drafts FR (and for Revocations, also drafts CBP instructions

			and updates module)
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tbd = To Be Decided by the office handling the review

PLEASE INCLUDE COORDINATOR ON THE FR CONCURRENCE SHEET