

CHAPTER 27
REVOCATIONS OF AD DUTY ORDERS/AD DUTY FINDINGS AND
TERMINATIONS OF AD SUSPENSION AGREEMENTS

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References:

- The Tariff Act of 1930, as amended (the Tariff Act)
 - section 751(c)(3)(A) - no response to notice of initiation
 - section 751(d) - revocation of order or finding; termination of suspended investigation
 - section 751(d)(2) - five year reviews
 - section 752(c) - determination of likelihood of continuation or recurrence of dumping
- Department of Commerce (DOC) Regulations
 - section 351.213 - administrative review of orders and suspension agreements
 - section 351.218 - five-year sunset reviews
 - section 351.218(e)(1) - time limits in sunset reviews
 - section 351.222 - revocation of orders, termination of suspended investigations
 - section 351.222(b) - revocation or termination based on the absence of dumping
 - section 351.222(d) - treatment of un-reviewed intervening years
 - section 351.222(e) - request for revocation or termination
 - section 351.222(f) - procedures in revocations and suspensions
 - section 351.222(g) - revocation or termination based on changed circumstances
 - section 351.222(h) - revocation or termination based on injury reconsideration
 - section 351.222(h) - revocation or termination based on five-year sunset review
 - section 351.222(h) - revocation under section 129 of the URAA (implementation of WTO dispute settlement)

“Revocation” refers to the end of an AD proceeding in which an AD duty order or finding has been issued. The term “termination” means the end of an AD proceeding in which the investigation was suspended based on a suspension agreement. Generally, these actions cannot occur unless the DOC has conducted one or more reviews under section 751 of the Act.

I. Revocation or Termination Based on an Absence of Dumping

Under section 751(d) of the Tariff Act, the DOC may revoke an AD order/finding or terminate an AD suspension agreement if all exporters and producers covered by the action have sold the merchandise at not less than normal value (NV) (see Chapter 8 for an explanation of NV) for a period of at least three consecutive years and it is not likely that the exporters or producers will sell the merchandise at less than NV in the future. If a firm was found to have dumped merchandise in a past segment and if it meets the criteria cited above, it must in addition submit a certification that it will not dump in the future and agree to immediate reinstatement in the order/finding if the DOC concludes it has sold at less than NV subsequent to the revocation. See, e.g., [Final Results of Antidumping Duty Administrative Review and Final Determination To Revoke Order in Part: Canned Pineapple Fruit From Thailand](#), 69 FR 50164 (August 13, 2004), or [Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part: Silicon Metal from Brazil](#), 68 FR 57670 (October 6, 2003) (in which we revoked the order with respect to Companhia Brasileira Carbureto de Calcio).

For examples of situations where requests for revocation were denied, see [Certain Helical Spring Lock Washers from China: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order, in Part](#), 69 FR 12119, 12120 (March 15, 2004) and the accompanying [Issues and Decision Memorandum](#) (in which revocation was denied with respect to Hangzhou Spring Washer Co., Ltd. because that company sold the merchandise at less than fair value) and [Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Pasta from Italy and Determination Not to Revoke in Part](#), 69 FR 6255 (February 10, 2004) and the accompanying [Issues and Decision Memorandum](#) (a similar example where revocation was denied because Pagani sold the merchandise at less than fair value).

For an example in which the DOC terminated an AD suspension agreement, see [Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Termination of Suspension Agreement and Notice of Antidumping Duty Order](#), 68 FR 60081 (October 21, 2003).

In general, the DOC will not revoke an AD order/finding or terminate a suspension unless it has conducted a review of the first, third, or subsequent years in the AR review process. For purposes of revocation or termination, the DOC is not obligated to review the “intervening” years, i.e., the second year if a three- year period is being examined. However, the DOC must be satisfied that during each of the years in question there were exports to the United States in commercial quantities of the subject merchandise to which a revocation will apply.

Also, prior to revoking an order or finding the DOC must be satisfied that the respondent will refrain from selling at less than fair value in the future. When the respondents are unable to demonstrate such an ability to sell in the future at prices above fair value, we may deny revocation even in instances where the respondent has sold at not less than fair value for three

consecutive years. In determining whether to revoke, we consider such “factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace....” See e.g., [Notice of Final Results of Antidumping Duty Order and Determination not to Revoke in Part: Dynamic Access Memory Semiconductors of One Megabyte or Above from the Republic of Korea](#), 62 FR 39809, 39811 (July 24, 1997) (wherein we denied LGS and Hyundai’s request for revocation on the grounds that they would not be able to sell in the future at prices above fair value.) See, also, [Brass Sheet and Strip from Germany: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part](#), 61 FR 49727, 49730 (September 23, 1996) wherein we denied Wieland’s request for revocation based upon the competitive conditions of the brass industry.

Requests for revocations or terminations from exporters or producers may be made during the third and subsequent anniversary months of the AD order/finding or suspension agreement. See section 351.222(e) of the Department’s Regulations for the requirements of these requests. These types of requests are considered by the DOC to include a request for an AR and, accordingly, the DOC undertakes the appropriate AR per the requirements of section 351.213 when they are received. If a request for revocation is received after the anniversary month the DOC generally will not consider the request.

Procedural requirements for revocation and termination requests found in section 351.222(f) of the DOC’s regulations involve the following: 1) verification; 2) publication of receipt of request for revocation as part of the FR announcing the initiation of an administrative review; 3) publication of “Intent to Revoke” or “Intent to Terminate” notices as part of the FR announcing the preliminary results; 4) publication of a notice of “Revocation of Order” or “Termination of Suspension” as part of the final results FR notice, if the DOC final determination is affirmative; and 5) instructions to the U.S. Customs and Border Protection (CBP) in the event of a revocation (see this section of the DOC regulations for more information). If a firm requests revocation, that request will also be considered a request for review in the qualifying year if the request does not specifically request review.

The DOC may revoke for a non-producing exporter of subject merchandise. Normally, this revocation will apply only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for revocation.

On September 22, 1999, the DOC amended its regulation (section 351.222) governing revocation of antidumping orders and the termination of suspended antidumping investigations. This was done so that our regulations conform with Article 11 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“the Antidumping Agreement.”) See [Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders](#), 64 FR 51236, September 22, 1999.

Section 351.222(b) of our Regulations now specifies that the Department will consider

“[W]hether the continued application of the antidumping duty order is otherwise necessary to offset dumping.” (This replaces the previous standard which was whether respondents were “not likely” to dump subject merchandise in the future.) Also, section 351.222(b) now states that the Secretary “will revoke the antidumping order” if the Secretary determines that the “antidumping order or suspension of the antidumping order is no longer warranted.” (Previously, the Regulation stated that the DOC “may” revoke the order upon determining that the “antidumping order or suspension of the antidumping order is no longer warranted.”)

II. Revocation or Termination Based on Changed Circumstances

Under section 751(d) of the Tariff Act, the DOC may revoke an AD order/finding or terminate a suspension agreement based on changed circumstances if it concludes that 1) producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in whole or in part for an order or for a suspended investigation, or 2) other changed circumstances sufficient to warrant revocation or termination exist. For examples of cases in which the DOC revoked an AD order based on the results of a changed circumstances review, see [Final Results of Changed Circumstances Review and Revocation of the Antidumping Duty Order: Bulk Aspirin from the People’s Republic of China](#), 69 FR 77726 (December 28, 2004) and the accompanying [Issues and Decision Memorandum; Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People’s Republic of China](#), 68 FR 62428, 62429 (November 4, 2003). See also [Final Results of Changed Circumstances Review and Intent Not to Revoke the Antidumping Duty Order: Sebacic Acid from the People’s Republic of China](#), 68 FR 31684 (May 28, 2003), for an example of a case where a request for revocation based on a changed circumstances review was denied.

Also note that the ITC can revoke an order/finding based on changed circumstances involving its injury determination. See sections 351.222(g) and (h) of the DOC’s Regulations for other requirements and procedures associated with changed circumstances revocations and terminations involving the DOC and the ITC. See also Chapter 16 for additional information on ITC actions.

III. Revocations or Terminations Based on Five-Year Reviews (Sunset Reviews)

A. Circumstances for Revoking an Order or Terminating a Suspension Agreement

In the case of a sunset review, the DOC will revoke an order or terminate a suspension agreement under the following circumstances:

1. **No Domestic Party Interest or Adequate Response:** Where no domestic interested party files a “Notice of Intent to Participate” in a sunset review under section 351.218(d) of the Department’s Regulations or where the DOC determines under section 351.218(e)(1)(i)(C) of the Department’s Regulations that domestic interested parties have provided an inadequate

response to the “Notice of Initiation,” not later than 90 days after the date of publication in the Federal Register of the notice of initiation (see section 751(c)(3)(A) of the Tariff Act). For an explanation of what constitutes an “inadequate response,” see section 351.218 of the Department’s regulations.

2. **Revocation or Termination Would Not Lead to a Continuation or Recurrence of Dumping:** Where the DOC determines that revocation or termination is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (see sections 752(b) and 752(c) of the Tariff Act), as applicable, not later than 240 days (or 330 days where a full sunset review is fully extended) after the date of publication in the Federal Register of the notice of initiation (see 751(d)(2) of the Tariff Act); and
3. **The ITC Determines That Material Injury Would Not Be Likely to Continue or Recur:** Where the ITC makes a determination, under section 752(a) of the Tariff Act, that revocation or termination is not likely to lead to continuation or recurrence of material injury (see section 751(d)(2) of the Tariff Act).

See section 751(d) of the Tariff Act and section 351.222(i) of the Department’s Regulations for more information on revocations or terminations based on five-year reviews.

B. Steps for Revoking or Terminating

1. **ITC Notification:** After the DOC completes the expedited sunset review (a 120-day review) or the full sunset review (a 240-day review which can be extended to a 330-day review), it will send copies of the revocation or termination notice, the Issues and Decision Memorandum, and other relevant documents via facsimile to the ITC. In the case of no domestic party interest or adequate response (see C.1.a. above), the DOC will send the ITC a letter of inadequate response on the 20th day from the date of publication of the notice of initiation of the sunset review.
2. **The ITC Makes a Determination:** The ITC has up to 360 days to make its likelihood determination. See http://hotdocs.usitc.gov/pubs/701_731/sunrules.pdf for the ITC’s Sample Schedule for Five-Year Reviews in [E&C Policy Bulletin 98.3](#), 63 FR 18871, (April 16, 1998); see also http://www.usitc.gov/trade_remedy/731ad701cvd/investigations/active/index.htm for the ITC’s schedule for sunset reviews currently under review.
3. **Issue a Revocation or Termination Notice:** The DOC issues a revocation or termination notice to be published in the Federal Register within seven (7) calendar days after the ITC publishes its determination in the Federal Register. If the DOC revokes an order or terminates a suspension agreement because of no domestic party interest or adequate response, the ITC will terminate its injury determination. If the DOC determines that an order or suspension agreement should continue and the ITC makes a negative determination, then the DOC will issue a revocation or termination notice.

4. Issue Customs Instructions: With sunset reviews, custom instructions are only issued to the CBP in the event that an order is revoked or a suspension agreement is terminated.

C. Effective Date of Revocation

1. First Sunset Review: When the DOC determines to revoke an order or terminate a suspension agreement during the initial or first sunset review, the effective date of the revocation or termination Federal Register notice will be the date five years from the date of publication of the order or suspended investigation in the Federal Register. For instance, if an order was published on December 15, 1999, the effective date for revocation will be December 15, 2004.
2. Subsequent Sunset Reviews: When the DOC determines to revoke an order or terminate a suspension agreement during any sunset review subsequent to the first sunset review, the effective date of the revocation or termination Federal Register notice will be the date five years from the date of publication of the previous sunset review notice of continuation. For instance, if the DOC's continuation of an order was published on January 5, 2000, but the DOC determines to revoke the order as a result of the next sunset review, the effective date for revocation will be January 5, 2005.