

CHAPTER 14
POSTPONEMENTS OF DETERMINATIONS

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References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 733(c) - extension of provisional measures period
 - Section 733(d) - preliminary determinations
 - Section 735(a)(2) - final determinations
 - Sections 751(a)(2)(B)(iv) and (a)(3) - extensions of preliminary and final results of administrative reviews
- Department of Commerce (Department) Regulations
 - 19 CFR 351.205(e) and (f) - preliminary determinations
 - 19 CFR 351.210(b)(2), (e) and (g) - final determinations
 - 19 CFR 351.213(h)(2) and (i) - extensions of preliminary and final results of administrative reviews
- Statement of Administrative Action (SAA)
 - Section C.5 - extension of provisional (preliminary) measures for investigations
- Antidumping Agreement
 - Article 7.4 - extension of provisional (preliminary) measures for investigations

I. POSTPONEMENTS FOR PRELIMINARY DETERMINATIONS AND RESULTS

Section 733(c) of the Act and 19 CFR 351.205(e) provide for postponement of the preliminary determination in an investigation. Section 751(a) of the Act and 19 CFR 351.213(h) (annual reviews and suspension agreements) and 351.214(h) (new shipper reviews) provide for postponement of the preliminary results of an administrative review.

A. Petitioner Requests for Postponement of Preliminary Determinations for Investigations

Under section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), the petitioner may request a postponement from 140 days to not later than 190 days after the initiation of an investigation. A written request, including reasons for the postponement, must be submitted to the Department at least 25 days prior to the preliminary determination. In general, the Department grants all requests for postponement of preliminary determinations by the petitioner because an affirmative preliminary determination marks the beginning of antidumping protection for the petitioner.

B. Departmental Postponements of Preliminary Determinations for Investigations and Results of Administrative Reviews

Under section 733(c)(1)(B) of the Act, the Department may postpone the preliminary determination from 140 days to no later than 190 days after the initiation of an investigation if it determines that the parties concerned are cooperating and that the case is “extraordinarily complicated.” An investigation may be deemed extraordinarily complicated by reason of:

1. the number and complexity of the transactions to be investigated or adjustments to be considered;
2. the novelty of the issues presented; or
3. the number of firms whose activities must be investigated.

In addition to being extraordinarily complicated, additional time must be necessary to make the preliminary determination.

The Department cannot postpone a determination in an investigation where certain short life cycle merchandise is involved unless the petitioner gives its written consent.

For an administrative review of an antidumping duty order or suspension agreement, under section 751(a)(3) of the Act, if it is not practicable to complete the preliminary results in 245 days, the Department may postpone the preliminary results to 365 days after the last day of the

anniversary month of the order or suspension agreement. However, it is the Department's policy that there must be a substantive reason for postponing the preliminary results.

For new shipper reviews, under section 751(a)(1)(B) of the Act, the preliminary results may be postponed from 180 to 300 days after the date on which the review is initiated.

C. Notices of Postponement for Preliminary Determinations in Investigations and Results in Administrative Reviews

Section 733(c)(2) of the Act and 19 CFR 351.205(f) requires the Department to notify all parties to the proceeding of a postponement of an investigation no later than 20 days before the originally scheduled date of the preliminary determination and publish a postponement notice in the Federal Register (FR). See, e.g., [Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Orange Juice from Brazil](#), 70 FR 34086, (June 13, 2005); and [Stainless Steel Plate in Coils From Taiwan; Notice of Extension of Time Limits for Preliminary Results in Antidumping Duty Administrative Review](#), 70 FR 5610 (February 3, 2005). The postponement notice must set forth valid reasons as to why the postponement is necessary.

There are no statutory notification requirements for the postponement of the preliminary results of administrative review. It is the Department's policy, however, to notify the parties that an extension has been signed and then publish the postponement notice in the FR.

II. POSTPONEMENTS FOR FINAL DETERMINATIONS AND RESULTS

Section 735(a) of the Act and 19 CFR 351.210(b)(2) provide for the postponement of the final determination in an investigation. For postponements of final determinations of administrative reviews of antidumping orders and suspension agreements, see sections 751(a) and (c) of the Act and 19 CFR 351.213(h)(2) (annual reviews); 351.214(h)(i)(2) (new shipper reviews); 351.216(e) (changed circumstances reviews); and 351.218(f)(3)(iii) (five-year sunset reviews).

A. Respondent Requests for Postponement of Final Determinations in Investigations

Under section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), in the event of an affirmative preliminary determination in an investigation, exporters or producers who represent a significant proportion of the producers or resellers of the product under investigation may request a postponement of the final determination from 75 days after the date of the preliminary determination to up to 135 days after the date of publication of the preliminary determination in the FR. The request and the reasons for it must be in writing. Requests can be made at any time up to the date of the final determination. The Department generally accepts requests for postponement of final determinations absent compelling reasons to reject them. Section 351.210(e)(2) specifically states that requests for postponement of final determinations by

exporters who account for a significant portion of exports of the subject merchandise will be rejected if the exporters do not furnish a request to extend the period for provisional measures (suspension of liquidation) from four to six months (see section 733(d) of the Act). See, e.g., [Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil](#), 70 FR 49557 (August 24, 2005).

B. Petitioner Requests for Postponement of Final Determinations in Investigations

Under section 735(a)(2)(B) of the Act and 19 CFR 351.210(b)(2)(i), in the event of a negative preliminary determination in an investigation, a petitioner may request a postponement of the final determination from 75 days after the date of the preliminary determination to up to 135 days after the date of publication of the preliminary determination in the FR. A request, with the reasons for it, must be in writing. Requests can be made at any time up to the date of the final determination. The Department generally accepts a petitioner's request for postponement, absent compelling reasons to deny the request.

C. Departmental Postponements of Final Results of Administrative Review of Antidumping Orders and Suspension Agreements

Unlike postponements of final determinations for investigations, which can only be requested by the adversely affected party, postponements of the final results of administrative reviews and suspension agreements are at the discretion of the Department. The Department's policy is that there be a substantive reason to postpone the final results of administrative reviews and suspension agreements. Under section 751(a)(3) of the Act and 19 CFR 351.213(h), for administrative reviews of antidumping duty orders or suspension agreements where the preliminary results have been fully extended and it is not practicable to complete the review in 120 days from the date of publication of the preliminary results, the final results may be postponed by the Department to 180 days from the publication date of the preliminary results. For annual administrative reviews where the preliminary results have not been extended, the Department may postpone the final results from 120 days after the date of the publication of the preliminary results to 300 days after the date of publication of the preliminary results.

Under section 751(a)(2)(B) of the Act, the final results of new shipper reviews may be postponed by the Department from 90 days after the date of issuance of the preliminary results to 150 days after the date of issuance, if the case is extraordinarily complicated. Section 751(c)(5)(B) of the Act allows for Department postponements of final results for extraordinarily complicated or five-year sunset reviews for up to 90 days.

D. Notices of Postponements of Final Determinations in Investigations and Results in Administrative Reviews

In the event of postponement of the final determination in an investigation, the Department must notify all parties to the proceeding and publish a postponement notice in the FR. See section 735(d) of the Act. There are no statutory requirements for notification of the parties for administrative reviews. It is Department policy, however, to notify the parties of the decision to postpone and then publish a notice of postponement in the FR. See, e.g., [Certain Steel Concrete Reinforcing Bars from Turkey; Notice of Extension of Time Limits for Final Results of Antidumping Duty Administrative Review](#), 70 FR 47178 (August 12, 2005).

E. Extension of the Suspension of Liquidation Period for an Investigation

Section 733(d) of the Act specifies that suspension of liquidation of (imposition of provisional measures on) entries in an investigation may not remain in effect for longer than 4 months unless exporters representing a significant portion of exports request that the period be extended to not more than 6 months.

III. INTERNAL PROCEDURES

The analyst must ensure that the following is done: 1) the appropriate analysis of requests for postponement by the parties for investigations; 2) the proper analysis leading to Department-initiated postponements for investigations and administrative reviews; 3) the notification of the parties; and 4) the publication and distribution of the FR notice.

A. Pre-signature Responsibilities:

1. The analyst should meet with his or her supervisor and/or program manager to discuss the postponement to ensure that the Department's determination for the postponement of an investigation or administrative review or petitioner/respondent requests for the postponement of an investigation meet the criteria outlined above;
2. Draft an FR notice based on the FR for the most recently postponed antidumping investigation or administrative review; and
3. Circulate the FR notice for concurrence in accordance with the January 10, 2005, issuance entitled "IA Concurrence Process," (or according to the most current concurrence process).

B. Post-signature Responsibilities

1. For investigations, immediately notify the International Trade Commission (ITC) analyst by phone after the FR notice is signed;

2. For investigations and administrative reviews, notify the parties.
3. For investigations and administrative reviews, send a copy of the signed and dated FR notice to the petitioner(s) and respondent(s);
4. Distribute copies of the signed and dated FR notice to the following:
 - a. the original and four copies along with a computer disk to the Central Records Unit (CRU);
 - b. a copy for the working file; and
 - c. two copies for transmittal to CRU for the official and public files;
5. Amend the Lotus Notes case management system to reflect the new action dates; and
6. Notify each of the team members involved in the investigation or administrative review.