

§ 351.218

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(e) *Expedited reviews.* The Secretary will conduct reviews under this section on an expedited basis.

§ 351.218 Sunset reviews under section 751(c) of the Act.

(a) *Introduction.* The URAA added a new procedure, commonly referred to as “sunset reviews,” in section 751(c) of the Act. In general, no later than once every five years, the Secretary must determine whether dumping or countervailable subsidies would be likely to continue or resume if an order were revoked or a suspended investigation were terminated. The Commission must conduct a similar review to determine whether injury would be likely to continue or resume in the absence of an order or suspended investigation. If the determinations under section 751(c) of both the Secretary and the Commission are affirmative, the order (or suspended investigation) remains in place. If either determination is negative, the order will be revoked (or the suspended investigation will be terminated). This section contains rules regarding the procedures for sunset reviews.

(b) *In general.* The Secretary will conduct a sunset review, under section 751(c) of the Act, of each antidumping and countervailing duty order and suspended investigation, and, under section 752(b) or section 752(c) (whichever is applicable), will determine whether revocation of an antidumping or countervailing duty order or termination of a suspended investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy.

(c) *Notice of initiation of review; early initiation—(1) Initial sunset review.* No later than 30 days before the fifth anniversary date of an order or suspension of an investigation (see section 751(c)(1) of the Act), the Secretary will publish a notice of initiation of a sunset review (see section 751(c)(2) of the Act).

(2) *Subsequent sunset reviews.* In the case of an order or suspended investigation that is continued following a sunset review initiated under paragraph (c)(1) of this section, no later than 30 days before the fifth anniversary of the date of the last determination by the Commission to continue the order or suspended investigation, the Secretary

will publish a notice of initiation of a sunset review (see section 751(c)(2) of the Act).

(3) *Early initiation.* The Secretary may publish a notice of initiation at an earlier date than the dates described in paragraph (c) (1) and (2) of this section if a domestic interested party demonstrates to the Secretary’s satisfaction that an early initiation would promote administrative efficiency. However, if the Secretary determines that the domestic interested party that requested early initiation is a related party or an importer under section 771(4)(B) of the Act and § 351.203(e)(4), the Secretary may decline the request for early initiation.

(4) *Transition orders.* The Secretary will initiate sunset reviews of transition orders, as defined in section 751(c)(6)(C) of the Act, in accordance with section 751(c)(6) of the Act.

(d) *Participation in sunset review—(1) Domestic interested party notification of intent to participate—(i) Filing of notice of intent to participate.* Where a domestic interested party intends to participate in a sunset review, the interested party must, not later than 15 days after the date of publication in the FEDERAL REGISTER of the notice of initiation, file a notice of intent to participate in a sunset review with the Secretary.

(ii) *Contents of notice of intent to participate.* Every notice of intent to participate in a sunset review must include a statement expressing the domestic interested party’s intent to participate in the sunset review and the following information:

(A) The name, address, and phone number of the domestic interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status;

(B) A statement indicating whether the domestic producer:

(1) Is related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or

(2) Is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act;

(C) The name, address, and phone number of legal counsel or other representative, if any;

(D) The subject merchandise and country subject to the sunset review; and

(E) The citation and date of publication in the FEDERAL REGISTER of the notice of initiation.

(iii) *Failure of domestic interested party to file notice of intent to participate in the sunset review.* (A) A domestic interested party that does not file a notice of Intent to participate in the sunset review will be considered not willing to participate in the review and the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review.

(B) If no domestic interested party files a notice of intent to participate in the sunset review, the Secretary will:

(1) Conclude that no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act;

(2) Notify the International Trade Commission in writing as such normally not later than 20 days after the date of publication in the FEDERAL REGISTER of the notice of initiation; and

(3) Not later than 90 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (see §§ 351.221(c)(5)(ii) and 351.222(i)).

(2) *Waiver of response by a respondent interested party to a notice of initiation—*

(i) *Filing of statement of waiver.* A respondent interested party may waive participation in a sunset review before the Department under section 751(c)(4) of the Act by filing a statement of waiver with the Department, not later than 30 days after the date of publication in the FEDERAL REGISTER of the notice of initiation. If a respondent interested party waives participation in a sunset review before the Department, the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review. Waiving participation in a sunset review before the Department will not affect a party's opportunity to partici-

pate in the sunset review conducted by the International Trade Commission.

(ii) *Contents of statement of waiver.* Every statement of waiver must include a statement indicating that the respondent interested party waives participation in the sunset review before the Department and the following information:

(A) The name, address, and phone number of the respondent interested party waiving participation in the sunset review before the Department;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review; and

(D) The citation and date of publication in the FEDERAL REGISTER of the notice of initiation.

(iii) *No response from a respondent interested party.* The Secretary will consider the failure by a respondent interested party to file a complete substantive response to a notice of initiation under paragraph (d)(3) of this section as a waiver of participation in a sunset review before the Department.

(iv) *Waiver of participation by a foreign government in a CVD sunset review.* Where a foreign government waives participation in a CVD sunset review under paragraph (d)(2)(i) or (d)(2)(iii) of this section, the Secretary will:

(A) Conclude that respondent interested parties have provided inadequate response to the notice of initiation under section 751(c)(3)(B) of the Act;

(B) Notify the International Trade Commission and conduct an expedited sunset review and issue final results of review in accordance with paragraph (e)(1)(ii)(C) of this section; and

(C) Base the final results of review on the facts available in accordance with § 351.308(f), which normally will include a determination that revocation of the order or termination of the suspended investigation, as applicable, would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.

(3) *Substantive response to a notice of initiation—*(i) *Time limit for substantive response to a notice of initiation.* A complete substantive response to a notice of initiation, filed under this section,

must be submitted to the Department not later than 30 days after the date of publication in the FEDERAL REGISTER of the notice of initiation.

(ii) *Required information to be filed by all interested parties in substantive response to a notice of initiation.* Except as provided in paragraph (d)(3)(v)(A) of this section, each interested party that intends to participate in a sunset review must file a submission with the Department containing the following:

(A) The name, address, and phone number of the interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review;

(D) The citation and date of publication in the FEDERAL REGISTER of the notice of initiation;

(E) A statement expressing the interested party's willingness to participate in the review by providing information requested by the Department, which must include a summary of that party's historical participation in any segment of the proceeding before the Department related to the subject merchandise;

(F) A statement regarding the likely effects of revocation of the order or termination of the suspended investigation under review, which must include any factual information, argument, and reason to support such statement;

(G) Factual information, argument, and reason concerning the dumping margin or countervailing duty rate, as applicable, that is likely to prevail if the Secretary revokes the order or terminates the suspended investigation, that the Department should select for a particular interested party(s);

(H) A summary of the Department's findings regarding duty absorption, if any, including a citation to the FEDERAL REGISTER notice in which the Department's findings are set forth; and

(I) A description of any relevant scope clarification or ruling, including a circumvention determination, or

changed circumstances determination issued by the Department during the proceeding with respect to the subject merchandise.

(iii) *Additional required information to be filed by respondent interested parties in substantive response to a notice of initiation.* Except as provided in paragraph (d)(3)(v)(A) of this section, the submission from each respondent interested party that intends to participate in a sunset review must also contain the following:

(A) That party's individual weighted average dumping margin or countervailing duty rate, as applicable, from the investigation and each subsequent completed administrative review, including the final margin or rate, as applicable, where such margin or rate was changed as a result of a final and conclusive court order;

(B) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States;

(C) As applicable, for the calendar year (or fiscal year, if more appropriate) preceding the year of initiation of the dumping investigation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States;

(D) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, on a volume basis (or value basis, if more appropriate), that party's percentage of the total exports of subject merchandise (defined in section 771(25) of the Act) to the United States; and

(E) For each of the three most recent years, including the year of publication of the notice of initiation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States during the two fiscal quarters as of the month preceding the month in which the notice of initiation was published.

(iv) *Optional information to be filed by interested parties in substantive response to a notice of initiation—(A) Showing good cause.* An interested party may submit information or evidence to

show good cause for the Secretary to consider other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act and paragraph (e)(2)(ii) of this section. Such information or evidence must be submitted in the party's substantive response to the notice of initiation under paragraph (d)(3) of this section.

(B) *Other information.* A substantive response from an interested party under paragraph (d)(3) of this section also may contain any other relevant information or argument that the party would like the Secretary to consider.

(v) *Required information to be filed by a foreign government in substantive response to the notice of initiation in a CVD sunset review—(A) In general.* The foreign government of a country subject to a CVD sunset review (see section 771(9)(B) of the Act) that intends to participate in a CVD sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii) (A) through (E) of this section.

(B) *Additional required information to be filed by a foreign government in a CVD sunset review involving an order where the investigation was conducted on an aggregate basis.* The submission from the foreign government of a country subject to a CVD sunset review, involving an order where the investigation was conducted on an aggregate basis, must also contain:

(1) The information required under paragraphs (d)(3)(ii)(F), (d)(3)(ii)(G), and (d)(3)(ii)(I) of this section;

(2) The countervailing duty rate from the investigation and each subsequent completed administrative review, including the final rate where such rate was changed as a result of a final and conclusive court order; and

(3) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, the volume and value (normally on an FOB basis) of exports of subject merchandise to the United States.

(vi) *Substantive responses from industrial users and consumers.* An industrial user of the subject merchandise or a representative consumer organization,

as described in section 777(h) of the Act, that intends to participate in a sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii) (A) through (D) of this section and may submit other relevant information under paragraphs (d)(3)(ii) and (d)(3)(iv) of this section.

(4) *Rebuttal to substantive response to a notice of initiation.* Any interested party that files a substantive response to a notice of initiation under paragraph (d)(3) of this section may file a rebuttal to any other party's substantive response to a notice of initiation not later than five days after the date the substantive response is filed with the Department. Except as provided in § 351.309(e), the Secretary normally will not accept or consider any additional information from a party after the time for filing rebuttals has expired, unless the Secretary requests additional information from parties after determining to proceed to a full sunset review under paragraph (e)(2) of this section.

(e) *Conduct of sunset review—(1) Adequacy of response to a notice of initiation—(i) Adequacy of response from domestic interested parties—(A) In general.* The Secretary will make its determination of adequacy of response on a case-by-case basis; however, the Secretary normally will conclude that domestic interested parties have provided adequate response to a notice of initiation where it receives a complete substantive response under paragraph (d)(3) of this section from at least one domestic interested party.

(B) *Disregarding response from a domestic interested party.* In making its determination concerning the adequacy of response from domestic interested parties under paragraph (e)(1)(i)(A) of this section, the Secretary may disregard a response from a domestic producer:

(1) Related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or

(2) That is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act (see paragraph (d)(1)(ii)(B) of this section).

(C) *Inadequate response from domestic interested parts.* Where the Secretary determines to disregard a response from a domestic interested party(s) under paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section and no other domestic interested party has filed a complete substantive response to the notice of initiation under paragraph (d)(3) of this section, the Secretary will:

(1) Conclude that no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act;

(2) Notify the International Trade Commission in writing as such normally not later than 40 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation; and

(3) Not later than 90 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (see §§ 351.221(c)(5)(ii) and 351.222(i)).

(ii) *Adequacy of response from respondent interested parties—(A) In general.* The Secretary will make its determination of adequacy of response on a case-by-case basis; however, the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses under paragraph (d)(3) of this section from respondent interested parties accounting on average for more than 50 percent, on a volume basis (or value basis, if appropriate), of the total exports of subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation.

(B) *Failure of a foreign government to file a substantive response to a notice of initiation in a CVD sunset review.* If a foreign government fails to file a complete substantive response to a notice of initiation in a CVD sunset review under paragraph (d)(3)(v) of this section or waives participation in a CVD sunset review under paragraph (d)(2)(i) or (d)(2)(iii) of this section, the Secretary will:

(1) Conclude that respondent interested parties have provided inadequate response to the Notice of Initiation under section 751(c)(3)(B) of the Act;

(2) Notify the International Trade Commission and conduct an expedited sunset review and issue final results of review in accordance with paragraph (e)(1)(ii)(C) of this section; and

(3) Base the final results of review on the facts available in accordance with § 351.308(f), which normally will include a determination that revocation of the order or termination of the suspended investigation, as applicable, would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.

(C) *Inadequate response from respondent interested parties.* If the Secretary determines that respondent interested parties provided inadequate response to a notice of initiation under paragraph (d)(2)(iv), (e)(1)(ii)(A), or (e)(1)(ii)(B) of this section, the Secretary:

(1) Will notify the International Trade Commission in writing as such normally not later than 50 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation; and

(2) Normally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the FEDERAL REGISTER of the notice of initiation, issue, without further investigation, final results of review based on the facts available in accordance with § 351.308(f) (see section 751(c)(3)(B) of the Act and § 351.221(c)(5)(ii)).

(2) *Full sunset review upon adequate response from domestic and respondent interested parties—(i) In general.* Normally, only where the Department receives adequate response to the notice of initiation from domestic interested parties under paragraph (e)(1)(i)(A) of this section and from respondent interested parties under paragraph (e)(1)(ii)(A) of this section, will the Department conduct a full sunset review. Even where the Department conducts a full sunset review, only under the most extraordinary circumstances will the Secretary rely on a countervailing duty rate or a dumping margin other than those it calculated and published in its prior determinations, and in no case will the Secretary calculate a net

countervailable subsidy or a dumping margin for a new shipper in the context of a sunset review.

(ii) [Reserved]

(iii) *Consideration of other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act.* The Secretary will consider other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act if the Secretary determines that good cause to consider such other factors exists. The Secretary normally will consider such other factors only where it conducts a full sunset review under paragraph (e)(2)(i) of this section.

(f) *Time limits—(1) Preliminary results of full sunset review.* The Department normally will issue its preliminary results in a full sunset review not later than 110 days after the date of publication in the FEDERAL REGISTER of the notice of initiation.

(2) *Verification—(i) In general.* The Department will verify factual information relied upon in making its final determination normally only in a full sunset review (see section 782(i)(2) of the Act and § 351.307(b)(1)(iii)) and only where needed. The Department will conduct verification normally only if, in its preliminary results, the Department determines that revocation of the order or termination of the suspended investigation, as applicable, is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (see section 752(b) and section 752(c) of the Act), as applicable, and the Department's preliminary results are not based on countervailing duty rates or dumping margins, as applicable, determined in the investigation or subsequent reviews.

(ii) *Timing of verification.* The Department normally will conduct verification, under paragraph (f)(2)(i) of this section and § 351.307, approximately 120 days after the date of publication in the FEDERAL REGISTER of the notice of initiation.

(3) *Final results of full sunset review and notification to the International Trade Commission—(i) Timing of final results of review and notification to the International Trade Commission.* The Department normally will issue its final results in a full sunset review and notify the International Trade Commis-

sion of its results of review not later than 240 days after the date of publication in the FEDERAL REGISTER of the notice of initiation (see section 751(c)(5)(A) of the Act).

(ii) *Extension of time limit.* If the Secretary determines that a full sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Act, the Secretary may extend the period for issuing final results by not more than 90 days (see section 751(c)(5)(B) of the Act).

(4) *Notice of continuation of an order or suspended investigation; notice of revocation of an order or termination of a suspended investigation.* Except as provided in paragraph (d)(1)(iii)(B)(3) of this section and § 351.222(i)(1)(i), the Department normally will issue its determination to continue an order or suspended investigation, or to revoke an order or terminate a suspended investigation, as applicable, not later than seven days after the date of publication in the FEDERAL REGISTER of the International Trade Commission's determination concluding the sunset review. The Department immediately thereafter will publish notice of its determination in the FEDERAL REGISTER.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13520, Mar. 20, 1998]

§ 351.219 Reviews of countervailing duty orders in connection with an investigation under section 753 of the Act.

(a) *Introduction.* Section 753 of the Act is a transition provision for countervailing duty orders that were issued under section 303 of the Act without an injury determination by the Commission. Under the Subsidies Agreement, one country may not impose countervailing duties on imports from another WTO Member without first making a determination that such imports have caused injury to a domestic industry. Section 753 provides a mechanism for providing an injury test with respect to those “no-injury” orders under section 303 that apply to merchandise from WTO Members. This section contains rules regarding requests for section 753 investigations by a domestic interested party; and the procedures that the Department will follow in reviewing a