

**CHAPTER 19:
SUSPENSION OF LIQUIDATION AND ANTIDUMPING DUTY ORDERS**

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Statute and Regulations:

 The Tariff Act of 1930, as amended (the Act)

 Section 736(a) - publication of AD Order

 Section 736(d) - special rule for regional industries

 Section 737(a) – provisional measures cap

 Section 771(4)(C) - regional industries

 Section 773(d) – provisional measures

 Department of Commerce (DOC) Regulations

 19 CFR 351.210(e)(2) – extension of provisional measures

 19 CFR 351.211 - AD Order

 19 CFR 351.212 - assessment of antidumping duties and provisional measures cap

 Antidumping Agreement

 Article 9 - imposition and collection of AD duties

 Article 7 - provisional measures

I. INTRODUCTION

When the DOC makes a final affirmative determination of sales at less than fair value, the International Trade Commission (ITC) must then make a final determination involving material injury or threat of material injury. Section 736(a) of the Act requires that within 7 days after being notified in writing by the ITC of an affirmative final determination, the DOC shall publish an AD Order in the Federal Register (FR). Often, the ITC will vote several days before notifying us formally in writing of its injury decision. The time, place, and results of the vote are public information and may be obtained in advance. The following information should be obtained from the ITC case analyst or from the ITC’s website, which posts bulletins announcing the outcome of the ITC’s votes quickly after the vote takes place: 1) whether the vote was affirmative or negative and whether the ITC found more than one domestic like product; and 2) whether the determination involved material injury or threat of material injury. The language in

the AD Order will differ according to whether injury or threat of injury is found. If possible, the AD Order and related customs instructions should be prepared and started through the concurrence chain before the ITC notifies us in writing of its decision.

II. THE ANTIDUMPING DUTY ORDER

The AD Order signifies the final stage of the investigation before the case moves into the review phase. Up until this point, CBP requires the posting of a bond or cash deposit equal to the margins published in the preliminary determination or final determination notice. The AD Order announces the requirement of a cash deposit only; bonds will no longer be allowed. See Section 351.211(b)(2) of the regulations. The AD Order also specifies that AD duties will be assessed on all unliquidated entries of the merchandise entered, or withdrawn, from warehouse, for consumption on or after the date on which the DOC published its preliminary affirmative determination in the FR. If the ITC finds that critical circumstances exist (see Chapter 2), assessments would also cover a period of 90 days prior to the date on which suspension of liquidation was first ordered. If the ITC finds only a threat of material injury in its final determination, then the AD Order only pertains to entries made on or after the date of publication of the ITC's final determination under section 735(b) of the Act. In this situation, CBP is directed to release the bonds or refund cash deposits for all entries where liquidation has been suspended prior to the date of publication of the final ITC determination. Under section 351.212(f) of the regulations, if the ITC, in its final injury determination, finds injury to a regional industry under section 771(4)(C) of the Act, then the DOC may direct that duties not be assessed on the subject merchandise of a particular exporter or producer (see section 351.212(f) of the regulations).

Section 736(c) of the Act allows for the continuation of bonding for a 90-day period from the date of publication of the AD Order under special circumstances. Because this situation involves the submission of substantial information on post-affirmative preliminary determination sales, the DOC rarely agrees to undertake the analysis required to permit the continuation of the bonding procedure.

The final determination may have to be amended due to the correction of ministerial errors (see Chapter 11). If this is the case, an amendment to the final determination and the AD Order may be combined as one FR document. See [Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China](#), 70 FR 16223 (March 30, 2005).

Analysts must also prepare customs instructions instructing CBP to collect cash deposits at the rates contained in the AD Order, and to no longer accept bonds in lieu of cash deposits. If there is a concurrent CVD Order issued along with the AD Order, analysts may have to adjust the margins published in the AD Order to account for any export subsidies in order to obtain the correct cash deposit rates.¹ The rates of export subsidies determined by the CVD team must be subtracted from the AD margins. This may differ from the rate published in the CVD determination, so consult with the CVD team to determine the correct amount of export subsidies to subtract. Even if the ITC reaches a negative injury determination for the entire scope of the investigation, the analyst must still issue instructions to CBP to stop collecting cash deposits and bonds, to liquidate all suspended entries, and to release all cash deposits and bonds.

In certain instances, the DOC's AD Order may require or allow an importer to certify facts regarding the importation of the merchandise. In [Antidumping Duty Order: Fresh Garlic From the People's Republic of China](#), 59 FR 59209 (November 16, 1994), for example, the DOC required that the imported product be accompanied by declarations to CBP explaining the specific method of harvesting and the use of the product. Any such requirements should be clearly stated in the AD Order.

As described above, the collection of duties by CBP during and after an investigation typically follows a simple pattern: cash deposits or bonds equal to the preliminary margins are collected from the publication date of the preliminary determination (or earlier if the DOC reached an affirmative critical circumstances determination); cash deposits or bonds equal to the final margins from the publication date of the final determination; cash deposits or bonds equal to the amended final margins (if need be) from the publication date of the amended final determination; and cash deposits only equal to the final margins (or amended final margins) from the publication date of the AD Order.²

However, there is an exception to this pattern mandated by section 703(d) of the Act which states that the customs instructions sent out at the preliminary determination ("provisional measures")

¹If NV was based on home market prices, then an adjustment is required. If NV was based on third country prices or CV, analysts should consult with the CVD team to determine if adjustment is appropriate. Export subsidies may have already been reflected in the calculation of CV.

²An exception is the unusual situation where there is a gap period, and the ITC's final determination is published after the publication of the AD Order. In that case, no deposits can be collected from the beginning of the gap period until the publication date of the ITC's final determination, but, as of that date, cash deposits only are collected. See the discussion of the gap period, below.

“may not remain in effect for more than 4 months.” “Provisional measures” is a term used by the Agreement, not by section 703(d) the Act, which refers to the collection of cash deposits, bonds, or other securities that might be required by a member nation at the preliminary stage of an investigation. Section 703(d) is the Act’s expression of the Agreement’s requirement that such provisional measures be limited in duration. See Article 7.4 of the Agreement. However, the Act (and the Agreement) also provides that the 4-month limit on provisional measures may be extended by the DOC “at the request of exporters representing a significant proportion of exports of the subject merchandise . . . to not more than 6 months.” Moreover, section 351.210(e)(2) of the regulations requires exporters requesting an extension of the final determination to also request the 2-month extension of provisional measures. Thus, whenever the due date of a final determination following an affirmative preliminary determination is extended (petitioners can only request an extension following a negative preliminary determination), provisional measures will also be extended by two months. (The request for the extension of provisional measures should be contained in the exporters’ request for an extension of the final, and should be mentioned in the extension notice.) Once the ITC has published its final determination, the DOC requires the collection of “definitive duties,” and thus the limitation on provisional measures no longer applies.

Therefore, a period of time, known sometimes as the “gap period,” may exist between the expiration of the end of the provisional measures, even if extended, and the publication of the ITC’s final determination (the starting of definitive duties) where the DOC cannot require CBP to collect cash deposits, bonds, or other securities. (The gap period begins the day after the end of the 4- or 6-month period, and ends the day before the ITC’s final determination is published). The DOC normally administers this problem in one of two ways. We either send instructions to CBP towards the beginning of the gap period, instructing them to stop collecting cash deposits or bonds, or we wait until the order has been published, then instruct CBP to liquidate all entries during the gap period without regard to antidumping duties.

It should be noted that the 4-month or 6-month provisional measures is counted by the number of days after the preliminary publication date (i.e., 120 or 180 days), not calendar months. See [Corus Staal BV v. United States](#), 279 F. Supp. 2d 1363 (CIT 2003). It should also be noted that in counting the number of days, the preliminary publication date is day one, not day zero.

Another limitation on provisional measures exists in section 737(a) of the Act (see also section 351.212(d) of the regulations). That section states that if the antidumping duty rate determined

under 703(d) of the Act (provisional measures) is different from the rate indicated in the AD Order, which it frequently will be, the difference will be refunded if the provisional rate is higher than the AD Order rate, or the difference will be disregarded if the provisional rate is lower than the AD Order rate, for entries made under provisional measures. Note the different nature of the treatment of duties collected under provisional measures than cash deposits collected as definitive duties. If, after an administrative review, the DOC determined that the actual rate of dumping was higher than the cash deposit rate during the period of review, the DOC would instruct CBP to collect the difference from the importer, not disregard the difference.

Finally, another limit on provisional measures, as noted above, prevents the DOC from requiring only cash deposits during provisional measures. Up until the publication of the ITC's final determination, the DOC must instruct CBP to allow either a cash deposit or a bond. Remember, the limitations on provisional measures apply to all instructions sent to CBP after the preliminary determination and before the publication of the ITC's final determination, not just to instructions sent out pursuant to the preliminary determination. If instructions are sent out pursuant to a final or amended final determination they are provisional measures. Definitive duties cannot be collected until the publication of the ITC's final determination. See section 736(a)(3) of the Act.

While these measures might appear complicated, analysts should simply remember to be mindful of the following when preparing the customs instructions pursuant to the AD Order: 1) Is there a gap period, and if so, were entries during this period correctly liquidated without regard to antidumping duties? 2) If the provisional rate is higher than the AD Order rate, have we correctly instructed CBP to refund the difference? 3) Have we instructed CBP to allow for cash deposits or bonds up until the AD Order, but only to allow for cash deposits on the date of the AD Order's publication and thereafter?

III. INTERNAL PROCEDURES

A. PRE-ORDER PROCEDURES

As soon as possible after, if not before, the analyst receives information on the outcome of an ITC affirmative injury determination from the ITC analyst, they should prepare the FR notice. Analysts should be extremely careful to incorporate the appropriate material injury determination language (injury or threat of injury), and also pay close attention to the language. Under certain circumstances, the ITC may only find injury on certain portions of the scope of our final

determination, and the analyst will have to make appropriate adjustments in the AD Order scope to reflect this. See [Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation](#), 60 FR 16440 (March 30, 1995). [Notice of antidumping duty orders: pure magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation](#), 60 FR 25691 (May 12, 1995). In the Magnesium cases the ITC ruled that there was no injury with regard to Alloy Magnesium and that there was injury with regard to Pure Magnesium.

Once the AD Order package is complete, begin to circulate it immediately. We only have a seven-day window from the point of formal notification by the ITC to publish an AD Order in the FR (see Chapter 11 for concurrence requirements for AD Order packages). Because it normally takes several days to publish an FR once it is signed, analysts should try to have a signed AD Order by the third or fourth day of the seven-day period.

Analysts should remember that if the final determination margins have changed because of the correction of ministerial errors, the analyst may prepare a combined AD Order and amended final determination FR notice. Always look at the last FR published for an AD Order or AD Order/amended final determination to ensure that they are using the most up-to-date language.

As with any other FR concurrence package, the package containing the AD Order or AD Order/amended final determination should also contain the appropriate customs instructions. Remember, even if the ITC reaches a negative injury determination for the entire scope of the investigation, they will still have to prepare customs instructions instructing CBP to stop collecting cash deposits and bonds, to liquidate all suspended entries, and to release all cash deposits and bonds.

B. POST-ORDER PROCEDURES

1. File Preparation and Archiving

If any interested party decides to pursue litigation in light of the DOC's order, a summons will be filed with the CIT requesting that the DOC submit to the court a file certified as complete and accurate (the "court record"). The summons will be transmitted to the DOC attorney assigned to the case through the Department of Justice. When the deadline for initiating litigation (30 days after FR publication date) has passed, analysts should begin checking with the DOC

attorney to see whether a summons has been received or if he or she can estimate when one might arrive. If a summons is received, analysts will request and receive the case file from CRU (CRU will provide hard copies of the official file, but will first copy it on to microfilm). The analyst will then need to compare the index provided by CRU along with the case file to their own records to determine whether any documents are missing from the case file. Once the analyst has determined that the file is complete, they will take the complete file, certified as complete, to the paralegal working with the DOC attorney. The notice to the analyst of the summons will include a deadline for certifying the complete file. The deadline can be extended.

Analysts must also archive all computer programs and datasets used in the calculations. This is an internally mandated procedure used in E&C to ensure that a correct version of all programs and datasets is maintained by the computer support staff in case of a court-ordered remand, or for the reference purposes of team members working on reviews in the future. In a court-ordered remand, which is essentially the result of a court's determination that the DOC erred in its calculations or methodology, the original programs may be accessed from the archive and revised to comply with the court's instructions. The computer support team provides forms for the analyst to complete and submit with a CD containing the programs and datasets to be archived. The completed form and CD should be given to the computer support team.

2. Administrative Reviews

The team that handled the investigation will generally be handling the first administrative review. While copies of all documents (or at least microfilm copies, if litigation takes place) will be maintained by the CRU, for convenience and quick reference analysts may wish to keep copies of several documents within their own workspace: the petition, which will often be referenced during a review if adverse facts available based on the petition are applied; verification reports, which will provide the verification team during a review with a very helpful overview of what they can expect to see; and any analysis memos containing business proprietary information, which will not be accessible via E&C's website or any other website, such as LEXIS.