




January 28, 2019

MEMO TO: The Record

FROM: Gary Taverman 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

RE: Deadlines Affected by the Partial Shutdown of the Federal Government

As a result of a partial shutdown of the Federal Government, the Department of Commerce was closed on December 22, 2018, and resumed operations on January 28, 2019. After careful consideration, Enforcement and Compliance, International Trade Administration, has determined that any delay and confusion caused by the closure of the Federal Government will best be minimized by uniformly tolling all Enforcement and Compliance deadlines for the effective duration of the recent closure (*i.e.*, 40 days),¹ with the exception of requests for administrative reviews of suspension agreements and antidumping duty (AD) and countervailing duty (CVD) orders, as discussed below.

The Antideficiency Act, 31 U.S.C. § 1341 *et seq.*, makes it illegal to operate a government agency absent budgetary authority from Congress. Accordingly, it was impossible for Enforcement and Compliance to operate during the shutdown. It was also impossible for Enforcement and Compliance to accelerate its proceedings by the number of days on which the agency was closed -- we simply lack the resources. Any such acceleration would also be unfair to the parties to our proceedings. For example, although respondents in AD and CVD proceedings could, in theory, be given only the original amount of time to submit questionnaire responses, they were unable to contact Enforcement and Compliance during the shutdown to obtain what might have been quite necessary clarifications regarding the questionnaire. This effectively could reduce the amount of time available in which to prepare a response. Enforcement and Compliance also was not able to consider requests for extensions of any deadlines during the shutdown.

¹ The shutdown began December 22, 2018, and Enforcement and Compliance resumed operations January 28, 2019. Therefore, Enforcement and Compliance was closed for 37 calendar days. In addition, December 21, 2018, involved considerable focus on preparation for the potential for a shutdown. Moreover, on January 28 and January 29, 2019, Enforcement and Compliance is focusing largely on the resumption of operations.



Also, in theory, Enforcement and Compliance could meet certain deadlines and extend others. In reality, however, this is impracticable. The very process of sorting through the hundreds of deadlines and determining on a case-by-case basis which deadlines to extend would absorb a substantial amount of time, simply adding to the overall delay. Case-by-case determinations would also be impossible to predict with certainty, thereby leaving all parties to proceedings before Enforcement and Compliance uncertain as to the deadlines under which they were operating. The simple, universal rule we are adopting will permit all parties to our proceedings to know immediately what deadlines apply. This will minimize the overall disruption resulting from the closure of the agency.

For these reasons, Enforcement and Compliance is exercising its discretion to toll all deadlines for the effective duration for Enforcement and Compliance of the recent partial Federal Government shutdown. Every deadline will be extended by 40 days (the duration of Enforcement and Compliance's closure, as well as the days for the shutdown preparation and resumption of operations). The day on which any submission to Enforcement and Compliance is due should be calculated under the regulations as usual (see, *e.g.*, 19 CFR 351.301), except with the addition of 40 days.

With the exception of court-ordered redeterminations, this determination applies to every proceeding before Enforcement and Compliance as of the date of this memorandum, including proceedings relating to the U.S. Foreign-Trade Zones Board and any deadlines for submitting comments not connected with a specific proceeding (*e.g.*, requests for comments on proposed changes in methodology). It includes deadlines for actions by Enforcement and Compliance (such as preliminary and final determinations in investigations and administrative reviews in AD/CVD proceedings), as well as deadlines for actions by parties to our proceedings (such as the submission of AD/CVD questionnaire responses, supplemental questionnaire responses, pre- and post-hearing briefs, substantive responses in sunset reviews, etc.). If the new deadline falls on a weekend or a Federal holiday, in accordance with our practice, the deadline will be moved to the next business day. Court-ordered redeterminations will not be tolled and continue along the same deadlines as previously established by the court.

Finally, for AD and CVD orders and suspension agreements with December and January anniversary months, all requests for administrative reviews will now be due by February 28, 2019. Parties that have already submitted a request for review for proceedings with a December anniversary month do not need to resubmit the request. Because normal publication of the notification of opportunity to request a review for proceedings with a January anniversary would have published during the partial shutdown, Enforcement and Compliance will issue a combined opportunity notice with regard to requesting administrative reviews of antidumping and countervailing duty orders and suspension agreements with January and February anniversary months.

Interested parties should contact the Enforcement and Compliance staff assigned to a specific proceeding if there are further questions.