

INTERNATIONAL TRADE COMMISSION

Public Input on Improving Agency Procedures

AGENCY: International Trade Commission.

ACTION: Notice of changes in agency procedures.

SUMMARY: On December 4, 2002, the United States International Trade Commission invited the public to provide input on specific ways in which it could improve its conduct of antidumping duty (AD) and countervailing duty (CVD) investigations (67 FR 72221, December 4, 2002). After consideration of the comments that were received, the Commission has made some changes to its internal procedures not requiring amendment to its rules.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary, United States International Trade Commission, telephone (202) 205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: The preamble below is designed to give notice of certain non-regulatory changes in Commission procedures. The preamble begins with a discussion of the background leading up to these changes in procedures and includes a description of the changes in procedure (most of which are already being implemented) that do not require amendments to the Commission's Rules. In addition to these non-regulatory changes, the Commission has also decided to propose certain amendments to its Rules of Practice and Procedure, which are contained in a Notice of Proposed Rulemaking that has been published elsewhere in today's **Federal Register**.

Background

On December 4, 2002, the United States International Trade Commission published a notice in the **Federal Register** (67 FR 72221) inviting the public to provide input on specific ways in which it could improve its conduct of AD and CVD investigations under 19 U.S.C. 1671 *et seq.* The notice requested that such comments be filed within 90 days of publication of that notice in the **Federal Register**. Nine sets of comments were received, which suggested a

number of changes to Commission rules, questionnaires, opinions, hearings and other practices.

The Commission appreciates the time and effort those who provided comments took to present their views, and believes that the comments have contributed to improving Commission procedures. The comments stimulated an internal review of the Commission's non-regulatory practices in AD and CVD proceedings. That internal review has in turn resulted in certain changes in practices. Some of the changes were not specifically suggested by any comment. As is its normal practice, the Commission will continue to evaluate its procedures on an ongoing basis and will consider modifying them as is appropriate. Although the December 4, 2002 Notice noted that a hearing on these proposals might be held, after reviewing the comments, the Commission decided that such a hearing would not be necessary.

Overview of the Changes in Commission Procedures in Antidumping Duty and CVD Investigations Not Requiring Amendment of the Rules

Preliminary Phase Investigations

The Commission has decided to adjust its procedures specific to preliminary phase investigations by providing for opening statements by petitioners and respondents at the outset of preliminary conferences to improve the focus of the conference and the questions posed by the staff to the parties. Because preliminary phase investigations do not involve the filing of written submissions or briefs prior to the conference, a brief opening statement by each side at the outset will enable those in attendance to know the principal contentions of each side. Further, in order to improve the ability of the parties to prepare for the conference, the Commission will endeavor to make the first release of business proprietary data obtained by the Commission under Administrative Protective Order (APO) at least two days prior to the conference when this is feasible.

Final Phase Investigations

For final phase investigations, there were several suggestions regarding time lines for issuance of the Commission's prehearing report and for the filing of prehearing briefs. Current Commission practice has been to issue the business proprietary version of the report five business days before prehearing briefs are due, with the public version issued soon thereafter. After due consideration of all proposals, the Commission will

now seek to issue the business proprietary version of the prehearing report about ten business days prior to the hearing. As noted in the Notice of Proposed Rulemaking, which has been published in today's **Federal Register**, in light of the earlier release of the prehearing report, the Commission is also proposing to amend its rule to require prehearing briefs to be filed five business days before the hearing, rather than the four business days that is now the deadline. This will provide somewhat more time for the Commission, its staff, and all parties to consider the arguments and information presented in the prehearing report and briefs.

One comment requested that the Commission allow a party to file new factual information to rebut information presented for the first time by a party in its posthearing brief. Currently, pursuant to rule 207.30 and 19 U.S.C. 1677m(g), parties have an opportunity, at a date specified by the Commission (which is after the date for the submission of posthearing briefs), to submit final comments on factual information. Pursuant to the rule and the statute, new factual information contained in those final comments must be disregarded by the Commission. The suggestion that has been made would effectively require the Commission to allow an additional submission, between the time of the posthearing briefs and the submission of these final comments, for parties to provide factual information to rebut new information contained in other parties' posthearing briefs. This would in turn require that this time come at the expense of other activities in the already crowded period late in the investigation.

After careful consideration, it was decided that adding this additional opportunity to submit factual information this late in the investigation would not add a sufficient benefit to the Commission's investigation to justify shortening the time allotted to other events late in the investigation process. Throughout the course of an antidumping or countervailing duty investigation that proceeds to a final determination, parties to the Commission investigation(s) have at least nine opportunities to provide factual information or argument, or both, to the Commission: (1) Responses to the Commission's questionnaire in the preliminary phase of the investigation, (2) testimony and argument at the preliminary staff conference, (3) argument and information in postconference briefs, (4) written comments on draft questionnaires in the final phase of the

investigation, (5) responses to the Commission's questionnaire, (6) argument and information in prehearing briefs, (7) testimony and argument at the hearing, (8) argument and information in posthearing briefs, and information in response to Commissioner or staff questions and (9) final comments, though without submission of new factual data, after posthearing briefs have been submitted. (Petitioners have an initial additional opportunity to provide factual information in the form of the petition filed at the beginning of the investigation.)

The Commission understands the desire for parties to have "one more opportunity" to make their case, and particularly the desire to rebut factually the latest iteration of other parties' arguments or the latest data submissions by other parties or other persons. However, in light of the statutory deadlines in these investigatory proceedings, which the Commission cannot extend, adding another brief or opportunity for more factual submissions late in the investigative process would create problems in light of the need for the Commission and staff to evaluate, summarize, and consider the information and argument provided. The Commission also needs to allot sufficient time before the impending statutory deadline to write an opinion that explains its determination(s).

In light of this concern, the Commission wishes to restate its current practice and to clarify that normally no new factual information volunteered by a party after the filing of its posthearing brief will be considered by the Commission unless the information is in response to a specific request for that information by a Commissioner or member of the Commission staff. If a party comes into possession of some highly relevant fact that was not available for submission to the Commission earlier, it must seek leave to file such new factual information, justifying both why the "new" factual information could not have been submitted at an earlier date (normally, because it would represent such a recent occurrence that it could not have been provided earlier), and why the new information is sufficiently significant to warrant adding to the factual record of the case this late.

Such requests for leave will not be routinely granted. Simply wishing to rebut or respond to a factual assertion made in another party's posthearing brief is not a sufficient justification, nor is, for example, the proffered submission of a "new" affidavit that could have been provided at an earlier stage of the proceeding (unless the

affidavit was specifically requested by a Commissioner or Commission staff).¹ In the past, the Commission has only on rare instances "reopened" the factual record on its own initiative to allow consideration of (and party comment on) late developments. For example, it did so in response to a significant correction by the Commerce Department of its final determination that resulted in the exclusion from its affirmative determination of a major subject exporter, and in response to a modification by the President of import relief measures under section 201 of the Trade Act of 1974 that potentially had a major effect on conditions of competition for the domestic industry.

Questionnaires

While questionnaires for specific investigations reflect the unique issues pertinent to individual investigations, the following are among the changes the Commission has made to its "generic" questionnaires:

- A checklist will be provided with U.S. producer and importer questionnaires to assist recipients in providing complete responses.
- When requesting capacity figures, questionnaires will request that capacity be allocated between products produced on the same equipment.
- Foreign producers will be requested to supply the basis for any projections of capacity, production, shipments, and inventories.
- In five-year review questionnaires to foreign producers, a question will be added seeking a comparison of prices in the U.S. with prices for the same product in foreign markets.
- Purchaser questionnaires will be mailed to purchasers listed in lost sale/revenue allegations by domestic producers. Also, purchasers listed in lost sales/revenue allegations by domestic producers will be asked whether the purchaser switched from a domestic supplier to a subject import supplier, or obtained a price reduction from a domestic supplier based on subject import competition during the period of investigation,

¹ It is well-recognized that agencies need to provide some cut-off for submissions so "the debate does not go on indefinitely." *Avesta AB v. United States*, 689 F. Supp. 1173, 1188 (Ct. Int'l Trade 1988). See also *Cheflene Corp. v. United States*, 219 F. Supp. 2d 1303, 1308, n. 5 (Ct. Int'l Trade 2002); *General Motors Corp. v. United States*, 827 F. Supp. 774, 781–783 (Ct. Int'l Trade 1993) (upholding the Commission's reliance on data submitted late in the proceeding when other parties were not allowed to respond, noting "material injury investigations are not adversarial in a formal sense, and it is ultimately ITC's responsibility to evaluate the data it gathers.").

even if the specific lost sale/revenue allegation could not be confirmed.

The Commission has also completed an internal review of its questionnaires, which resulted in the elimination of redundant or marginally relevant questions, and the revision of some ambiguous questions to clarify the data being sought. The Commission is also including a question in all questionnaires seeking comment on any changes that the recipient believes may improve the clarity, ease of response, or usefulness of the questionnaire.

Staff Reports

Reports will now include (in Chapter 1) a description of the major firms supplying the market for the product(s) at issue. In investigations involving multiple countries, it was suggested that the Commission report import pricing data on a weight-averaged cumulated basis in assessing the degree of underselling by subject imports. The Commission has decided to add this aggregated data, but will continue to provide country-specific pricing data as well in its reports.

Staff reports will also include more detailed information concerning lost sale/revenue allegations.

By Order of the Commission.

Issued: November 1, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

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DEPARTMENT OF JUSTICE

Coordinating Council on Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) Docket No. 1410]

Notice of Meeting

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) is announcing the December 3, 2004, meeting of the Council.

DATES: Friday, December 3, 2004, 9 a.m.–12 p.m.

ADDRESSES: The meeting will take place at the Frances Perkins Department of Labor Building, Room N–4437, 200 Constitution Avenue, NW., Washington, DC. (Enter at 3rd and C Streets, NW.).

FOR FURTHER INFORMATION CONTACT: Timothy Wight, Designated Federal