

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201 Rules of General Application

19 CFR Part 207 Investigations of Whether Injury to Domestic Industries Results from Imports Sold at Less than Fair Value or from Subsidized Exports to the United States

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States International Trade Commission (“Commission”) proposes to amend its Rules of Practice and Procedure concerning rules of general application, and provisions concerning the conduct of antidumping and countervailing duty investigations and reviews. The proposed amendments seek to increase efficiency in processing and reviewing documents filed with the Commission and reduce Commission expenditures. There are six principal amendments which are outlined below.

DATES: To be assured of consideration, written comments must be received by 5:15 p.m. on [INSERT DATE 60 DAYS AFTER PUBLICATION].

ADDRESSES: You may submit comments, identified by docket number MISC-013, by any of the following methods:

--*Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

--*Agency Website*: <https://edis.usitc.gov>. Follow the instructions for submitting comments on the Website.

--*Mail*: For paper submission. U.S. International Trade Commission, 500 E Street, SW., Room 112A, Washington, DC 20436.

--*Hand Delivery/Courier*: U.S. International Trade Commission, 500 E Street, SW., Room 112A, Washington, DC 20436. From the hours of 8:45 a.m. to 5:15 p.m.

Instructions: All submissions received must include the agency name and docket number (MISC-013), along with a cover letter stating the nature of the commenter’s interest in the proposed rulemaking. All comments received will be posted without change to <https://edis.usitc.gov>, including any personal information provided. For paper copies, a signed original and 14 copies of each set of comments should be submitted to Lisa R. Barton, Acting Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112A, Washington, DC 20436. Docket: For access to the docket to read background documents or comments received, go to <https://edis.usitc.gov> and/or the U.S. International Trade Commission, 500 E Street, SW., Room 112A, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary, telephone (202) 205-2000, or David Goldfine, Attorney-Advisor, Office of the General Counsel, telephone (202) 708-5452, United States International Trade Commission. 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 at <http://www.usitc.gov>.

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these proposed amendments to the Commission's Rules. This preamble provides background information, a regulatory analysis of the proposed amendments, and a section-by-section explanation of the proposed amendments. The Commission encourages members of the public to comment on the proposed amendments as well as on whether the language of the proposed amendments is sufficiently clear for users to understand.

BACKGROUND

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to improve provisions of the Commission's existing Rules of Practice and Procedure. The Commission proposes amendments to its rules covering proceedings such as investigations and reviews conducted under title VII of the Tariff Act of 1930, and sections 202, 406, 421, 422 of the Trade Act of 1974 and sections 302 and 312 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 2252, 2436, 2451, 2451a, 3352, 3372). The Commission invites the public to comment on all of these proposed rules amendments. In any comments, please consider addressing whether the language of the proposed amendments is sufficiently clear for users to understand. In addition please consider addressing how the proposed rules amendments could be improved, and/or offer specific constructive alternatives where appropriate.

Consistent with its ordinary practice, the Commission is issuing these proposed amendments in accordance with provisions of section 553 of the Administrative Procedure Act ("APA") (5 U.S.C. § 553), although such provisions are not mandatory with respect to this rulemaking. The APA procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

The Commission proposes to require that all paper copies of electronic submissions exceeding fifty (50) pages in length must be securely bound and must have a divider page and an identifying tab preceding each exhibit and/or attachment. The divider page and/or tab must be labeled with a letter or number that corresponds to a more fully descriptive index. Examples of secure binding include spiral binding, velo binding, and stapling for documents close to the 50-page threshold. These new requirements, however, may be waived upon a showing of good cause.

During the course of many proceedings, in particular Title VII investigations and reviews, the Commission receives a significant number of large submissions with associated exhibits and attachments. These amendments will facilitate Commission review of lengthy submissions and will allow the Commission more readily to refer to discrete portions of these documents. Petitions, which are not electronic filings, will also be subject to these requirements, with the exception that one copy of the petition must be filed unbound to facilitate its scanning into the Commission's Electronic Document Information System.

(2) In addition to current information requirements, the Commission proposes to require that petitioners provide the email address, street address, city, state, and 5-digit zip code for each purchaser/contact with respect to each lost sales or lost revenue allegation. Requiring petitioners to provide this specific information should facilitate the Commission's ability to contact purchasers concerning these allegations. Under current practice, the Commission collects this information from non-petitioning U.S. producers in its questionnaires. Requiring petitioners to provide the same information in the petition as non-petitioning U.S. producers are required to provide in questionnaires should allow for the orderly collection and verification of lost sales and lost revenue data by the agency.

(3) The Commission proposes to require that petitioners must file any lost sales or revenue allegation(s) identified in the petition via a separate electronic data entry process in a manner to be specified in the Commission's Handbook on Filing Procedures. The Commission is contemplating various technology options and is soliciting comment prior to developing the specific filing instructions.

Commission staff members currently use facsimile as the primary method for contacting purchasers to verify lost sales and lost revenue allegations. Two significant problems exist with the use of facsimiles for this purpose. First, the process of sending facsimiles to purchasers and verifying their receipt is time-consuming and inefficient. Additionally, obtaining responses from purchasers via facsimile is becoming increasingly difficult as facsimile machines are more often perceived as a "legacy" technology that has been superseded by electronic mail or other electronic communication technologies.

Current options under consideration, for which the Commission is seeking comment, include (1) submission of lost sales and lost revenue data in an electronic spreadsheet document provided by the Commission or (2) direct entry of all allegations into a secure Web-based portal. Additional options may be contemplated based on information received from public comments or as a result of evolving technological capabilities. The Commission intends to develop additional details to be included in the Commission's Handbook on Filing Procedures after receiving and considering comments on the proposed changes, and once the process and system are finalized.

Requiring that all petitioners file lost sales and revenue allegations via a separate electronic data entry process will facilitate the use of email as a vehicle for contacting purchasers. Email communication will only be used to direct purchasers to a secure Website where they can access

the lost sales and/or lost revenue allegations specific to each purchaser, and respond to the allegations. This should provide faster and more efficient dissemination and verification of lost sales and lost revenue information while maintaining current levels of security. Requiring submission of the data via this separate electronic data entry process should not present an undue burden on petitioners since these data are already required to be in the petition.

(4) The Commission proposes to require petitioners to provide email addresses for all U.S. producers and U.S. importers identified in the petition. The current rules specify that petitioners are required to provide contact information for U.S. producers and U.S. importers, including street addresses, phone numbers, and contact person(s). Requiring petitioners also to provide email addresses for U.S. producers and U.S. importers should facilitate the process of contacting these firms, thereby streamlining agency proceedings.

(5) The Commission proposes that all requests for collecting new information should be presented at the draft questionnaire stage in final phase investigations. The intent of the current provision in Commission rule 207.20 was to direct parties to make information requests, particularly concerning domestic like product, domestic industry, and cumulation issues, in questionnaire comments rather than later in the investigation. 61 FR 37818, 37826 (July 22, 1996). Notwithstanding this, the Commission has found that parties occasionally include in briefs information requests that could have been made in questionnaire comments. Commission staff does not have sufficient time or resources during the latter stage of final phase investigations to embark upon major data collection efforts.

Consequently, the current information collection provisions of section 207.63(b) concerning five-year reviews will be incorporated in section 207.20(b). This provision requires that all requests for collecting new information should be presented in comments on draft questionnaires, and states that the Commission will disregard subsequent requests for additional information absent a showing of compelling need and that the information could not have been requested in the comments on draft questionnaires. These provisions pertaining to new information requests have worked effectively in five-year reviews and the Commission believes their adoption in final phase investigations will also be effective.

(6) The Commission proposes to extend the deadlines currently specified in the rule for instituting and completing changed circumstances reviews. The statutory provisions in 19 U.S.C. 1675(b)(1) and (b)(2) do not provide any deadline for the Commission to initiate or complete a changed circumstance review. Moreover, in prior changed circumstance reviews under 19 U.S.C. 1675(b), the Commission has extended the deadlines specified in the rule in a not insubstantial number of instances in order to analyze extensive record data or to collect additional data. The deadline for institution is being extended in order to provide the Commission with additional time to analyze issues pertaining to complex or contested requests. Extension will also provide the agency with greater scheduling flexibility, which is particularly needed because the Commission's antidumping and countervailing duty docket is larger now than when the rule was first promulgated. However, the Commission intends to make its decisions with respect to institution and completion of such reviews expeditiously.

REGULATORY ANALYSIS OF PROPOSED AMENDMENTS TO THE COMMISSION'S RULES

The Commission has determined that the final rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of final rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of proposed rulemaking, these proposed regulations are “agency rules of procedure and practice,” and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These proposed rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the proposed rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The proposed rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104-121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), because the amendments would impose no new collection of information under the statute.

SECTION-BY-SECTION ANALYSIS

Section 201.8 generally provides the requirements for filing documents with the Commission. The Commission proposes to amend paragraph (d) of section 201.8 to require that all paper copies of electronic submissions exceeding fifty (50) pages in length must be securely bound and must have a divider page and an identifying tab preceding each exhibit and/or attachment. The divider page and/or tab must be labeled with a letter or number that corresponds to a more fully descriptive index.

Section 207.10 addresses petition filings with the Commission. The Commission proposes to require petitioners to file one unbound copy of petitions.

Section 207.11 addresses the contents of petitions in Title VII proceedings. The Commission proposes to revise the language of section 207.11(b)(2)(ii) and (b)(2)(iii) to require that petitioners provide email addresses for all U.S. producers and U.S. importers identified in the petition. The Commission further proposes to revise the language of section 207.10(b)(2)(v) to specify that petitioners must submit all lost sales and lost revenue allegations in electronic format. The Commission also proposes to revise the language of section 207.10(b)(2)(v) to specify that petitioners also must provide the email address(es), street address(es), city, state, and 5-digit zip code for each purchaser/contact with respect to all lost sales and lost revenue allegations.

Section 207.20 addresses the Commission’s investigative activities in final phase investigations. The Commission proposes that all requests for collecting new information should be presented at the draft questionnaire stage in final phase investigations unless there is a compelling showing that a later request is justified.

Section 207.45 addresses the Commission’s procedures for initiating and conducting section 751(b) changed circumstances reviews. The Commission proposes to extend the deadlines specified in the rule.

List of Subjects in 19 CFR parts 201 and 207

Administrative practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations.

For the reasons stated in the preamble, the United States International Trade Commission proposes to amend 19 CFR parts 201 and 207 as follows:

PART 201-- RULES OF GENERAL APPLICATION

The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

Subpart B Initiation and Conduct of Investigations

1. Amend Sec. 201.8 to revise paragraph (d) to read as follows:

§ 201.8 Filing of documents.

* * * * *

(d) *Filing.* (1) Except as provided in paragraphs (d)(2) through (6) and (f) of this section, all

documents filed with the Commission shall be filed electronically. Completion of filing requires the submission of paper copies by 12 noon, eastern time, on the next business day. A paper copy provided for in this section must be a true copy of the electronic version of the document, *i.e.*, a copy that is identical in all possible respects. All paper copies of electronic submissions exceeding fifty (50) pages in length must be securely bound (excluding paper clips, binder clips, or rubber bands) and must have a divider page and an identifying tab preceding each exhibit and/or attachment. The divider page and/or tab must be labeled with a letter or number that corresponds to a more fully descriptive index. All filings shall comply with the procedures set forth in the Commission's Electronic Document Information System Website at <https://edis.usitc.gov>. Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures that apply to the filing of a document may result in the rejection of the document as improperly filed.

PART 207--INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES
RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM
SUBSIDIZED EXPORTS TO THE UNITED STATES

The authority citation for part 207 continues to read as follows:

Authority: 19 U.S.C. 1336, 1671-1677n, 2482, 3513.

1. Amend Sec. 207.10(a) to read as follows:

§ 207.10 Filing of petition with the Commission.

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or section 732(b) of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition and all exhibits, appendices, and attachments thereto, pursuant to section 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. A paper original and eight (8) true paper copies of a petition shall be filed. One copy of all exhibits, appendices, and attachments to the petition shall be filed in electronic form on CD-ROM, DVD, or other portable electronic format approved by the Secretary. Petitioners also must file one unbound copy of the petition (although the unbound copy of the petition may be stapled or held together by means of a clip). If the petition complies with the provisions of § 207.11, it shall be deemed to be properly filed on the date on which the requisite number of copies of the petition is received by the Secretary, provided that, if the petition is filed with the Secretary after 12:00 noon, eastern time, the petition shall be deemed filed on the next business day. Notwithstanding § 207.11 of this chapter, a petitioner need not file an entry of appearance in the investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance.

2. Amend Secs. 207.11(b)(2)(ii), (iii), and (v) to read as follows:

§ 207.11 Contents of Petition.

* * * * *

(ii) A listing of all U.S. producers of the proposed domestic like product(s), including a street address, phone number, and contact person(s) with email address(es) for each producer;

(iii) A listing of all U.S. importers of the subject merchandise, including street addresses, email addresses, and phone numbers for each importer.

* * * * *

(v) A listing of all sales or revenue lost by each petitioning firm by reason of the subject merchandise during the three years preceding filing of the petition. For each named purchaser, petitioners must provide the email address of the specific contact person, street address, city, state, and 5-digit zip code with respect to each lost sales or lost revenue allegation. Petitioners must certify that all lost sales or lost revenue allegations identified in the petition will also be submitted electronically in the manner specified in the Commission's Handbook on Filing Procedures.

3. Amend Sec. 207.20(b) to read as follows:

§ 207.20 Investigative activity following preliminary determination.

* * * * *

(b) The Director shall circulate draft questionnaires for the final phase of an investigation to parties to the investigation for comment. Any party desiring to comment on draft questionnaires shall submit such comments in writing to the Commission within a time specified by the Director. All requests for collecting new information shall be presented at this time. The Commission will disregard subsequent requests for collection of new information absent a showing that there is a compelling need for the information and that the information could not have been requested in the comments on the draft questionnaires.

4. Amend Sec. 207.45(c) to read as follows:

§ 207.45 Investigation to review outstanding determination.

* * * * *

(d) *Institution of an investigation.* Within forty-five (45) days after the close of the period for public comments following publication of the receipt of a request, the Commission shall

determine whether the request shows changed circumstances sufficient to warrant a review and, if so, shall institute a review investigation. The Commission may also institute a review investigation on its own initiative. The review investigation shall be instituted by notice published in the Federal Register and shall be completed within one hundred eighty (180) days of the date of such publication. If the Commission determines that a request does not show changed circumstances sufficient to warrant a review, the request shall be dismissed and a notice of the dismissal published in the Federal Register stating the reasons therefor.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized, cursive script.

Lisa R. Barton
Acting Secretary to the Commission

Issued: June 7, 2013