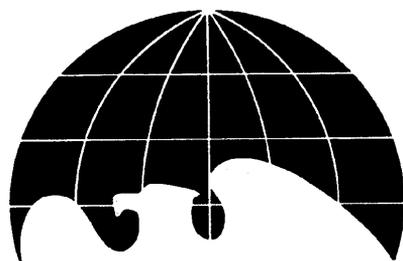


GUIDELINES FOR HEARINGS

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UNITED STATES

INTERNATIONAL

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Main Hearing Room

INTRODUCTION

Hearings conducted by the United States International Trade Commission are a vital part of the investigations the Commission performs relating to U.S. trade. Hearings provide an opportunity for face-to-face communication between Government decisionmakers and representatives of domestic producers, importers, and other interested persons. This pamphlet presents information explaining rules relating to hearings that are held in connection with certain investigations of the ITC, and it also describes the conduct of these hearings.

NATURE AND PURPOSE

The hearings held in connection with the most common types of investigations that the ITC undertakes are factfinding rather than adjudicative. They are not adversarial in nature, although participants do express different points of view. A participant does not need an attorney in order to testify. There are also no special qualifications required in order to testify. There are no formal rules for providing evidence. In most instances, persons appearing have the opportunity to question other persons testifying, in order to bring out any deficiencies in their testimony.

The purpose of ITC hearings is twofold: they provide the ITC with an opportunity to gather information, and they provide interested persons with an opportunity to appear and make their views known. The Commission's role is to make findings of fact rather than to resolve disputes.

The ITC is required by law to hold public hearings in investigations under sections 131 and 201 of the Trade Act of 1974 and section 22 of the Agricultural Adjustment Act. On receipt of a written request from parties to investigations, or on its own, the ITC also holds hearings in connection with investigations under sections 705, 735, and 751 of the Tariff Act of 1930. Also, the Commission conducts hearings in the course of investigations under section 332 of the Tariff Act of 1930 and preliminary investigations under section 603 of the Trade Act of 1974, when appropriate.

The information in this pamphlet does not apply to procedures relating to adjudicative hearings conducted by Commission administrative law judges in the course of proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and conferences held in connection with preliminary countervailing duty and antidumping investigations under sections 703 and 733 of the Tariff Act of 1930 (19 U.S.C. 1671b and 1673b).

A verbatim transcript of all hearings is prepared by a reporting service and is available to the public (see “Transcripts” on page 13).

SIGNIFICANCE

The public hearing is one of several sources of information that the ITC uses in conducting its investigations. The ITC staff also gathers information from fieldwork, other Government agencies, ITC files, and questionnaires sent to domestic and foreign producers, importers, and consumers. This information, however, is not introduced into the hearing record. The hearing transcript, while containing much information, is unlikely to contain all the information the Commissioners will need to make their determinations or recommendations.

Hearings provide Commissioners with an opportunity to question and obtain information from representatives of domestic industries, importers, and other interested parties. Hearings are considered by the Commissioners to be an important part of the investigative process.

PREHEARING BRIEFS

The submission of prehearing briefs is permitted in the final phase of countervailing duty and antidumping investigations. The timing and content of such briefs should conform to ITC’s Rules of Practice and Procedure 19 CFR 207.23.

In other investigations, the ITC frequently requests that hearing participants file with the Commission and serve, on other parties, prehearing briefs containing the full text of the arguments and information that they plan to present at the hearing. Such briefs must be filed and exchanged four working days prior to the hearing. At the hearing, parties are expected to summarize only their prehearing briefs and to respond to the information and arguments in other briefs.

PREHEARING CONFERENCES

Prehearing conferences are held prior to the hearing at the ITC's option. A primary purpose of such conferences is to set time limits for hearing presentations by the various participants. Notice of prehearing conferences is published in the *Federal Register*.

PRELIMINARY CONFERENCES

The Director of Operations conducts preliminary investigations under Title VII of the trade act. The investigations provide an opportunity for a public conference on the facts of the case. The preliminary investigation must be completed within 45 days of the filing.

The conference occurs on approximately the 21st day of the investigation. The parties are invited to present their arguments for or against the proposition that there is a reasonable indication that an industry in the United States is materially injured or threatened with injury by reason of the alleged unfair act (dumping or countervailable subsidies).

The Director of Operations and ITC staff assigned to the case ask questions of counsel and witnesses to clarify and/or develop the record, which together with the briefs filed by the parties and the staff report become the basis of the Commission's decision.

FILING DOCUMENTS

Documents may be filed between the hours of 8:45 a.m. and 5:15 p.m. by delivering the document to the Office of the Secretary, Dockets Branch, room 112, in the ITC Building. Documents transmitted by mail will be considered filed when they arrive in the Dockets Branch. Documents provided to other ITC personnel will not be treated as properly filed.

Unless authorization to the contrary is obtained in advance, a document will be deemed as properly filed only when an original and 14 copies are received by the Office of the Secretary. Thus, timely delivery of an original to meet a deadline and subsequent filing of 14 copies *after* the deadline do not constitute proper filing. See ITC's Rules 19 CFR 201.8(d). Generally, the only exception to the requirement for an original and 14 copies is for oversized, unusual, or unique documents. For example, voluminous reports, con-

tracts, physical exhibits, computer printouts of hundreds of pages, or oversized charts or diagrams need not be submitted in multiple copies, if approved in advance by the Secretary. If only one copy of such a document is submitted, it is placed in the docket file and is available to the Commission and staff upon request. Special requirements for filing documents containing Confidential Business Information are explained in section 19 CFR 201.6.

LOCATION

Hearings are usually held in the Main Hearing Room in the ITC Building, 500 E Street S.W., Washington, DC. The ITC Building is located one block east of the L'Enfant Plaza subway station, on Metro's blue, orange, green, and yellow lines. The Department of Transportation exit from the L'Enfant Plaza station is the exit closest to the ITC Building.

Occasionally, the ITC will hold hearings out of town, when domestic producers, importers, and other likely participants are concentrated in a particular geographic area of the country. The ITC may hold a series of hearings around the country in the course of an investigation if it appears that a large number of persons in several geographic locations desire to testify but could not if a hearing were held in only one place.

Persons who want the ITC to hold out-of-town and/or multiple hearings should make such a request at the time the petition or complaint is filed or as soon thereafter as possible. The ITC generally tries to make its decisions on the date and place of a hearing at the time the investigation is instituted. Such requests should include a written justification.

FACILITIES FOR TESTIFYING

Persons testifying may speak either standing behind a podium or seated at tables. The podium and tables are adjacent to each other and are located toward the front of the Hearing Room. The speaker stands or sits facing the Commissioners, who are seated at an elevated bench in the front of the Hearing Room. There is no witness box of the type commonly found in courtrooms.

There is ample space for a panel of witnesses to sit at the tables. There is a microphone at the podium, and there are several microphones at the tables. Arrangements may vary for out-of-town hearings.

Easels and pointers, blackboards, a screen, VCRs (Beta, VHS, and U-MATIC Sony), overhead, slide projectors, or vu-graph projectors, and extension cords are available at the Commission and may be used if witnesses need them to display visual material. Contact the Hearings Coordinator, Office of the Secretary, 202-205-1806, to arrange for their use at least three workdays before the hearing. Movie projectors are not available at the Commission but may be used if witnesses wish to bring their own equipment. Notify the Hearings Coordinator to make arrangements for setting up other-than-ITC equipment.

A conference room is generally available for use during a hearing to all interested parties involved in an investigation. In order to reserve the room, interested parties must contact the Hearings Coordinator at least three working days prior to the hearing.

HOURS, SEATING ARRANGEMENTS, AND OTHER MISCELLANEOUS MATTERS

Most often, hearings begin at 9:30 a.m., break for lunch around 12:30 p.m., resume at 1:30 p.m., and end for the day around 5:00 p.m. However, the Commissioners may choose to continue into the evening in order to complete a hearing. Sometimes it is necessary to change the starting time of a hearing.

There are no reserved seats in the Hearing Room except those designated for use by the ITC staff. However, it has been the custom for the parties participating in the hearing to use the tables in the Hearing Room shown in the diagram on pages 6 and 7. All other seats are available on a first-come-first-served basis.

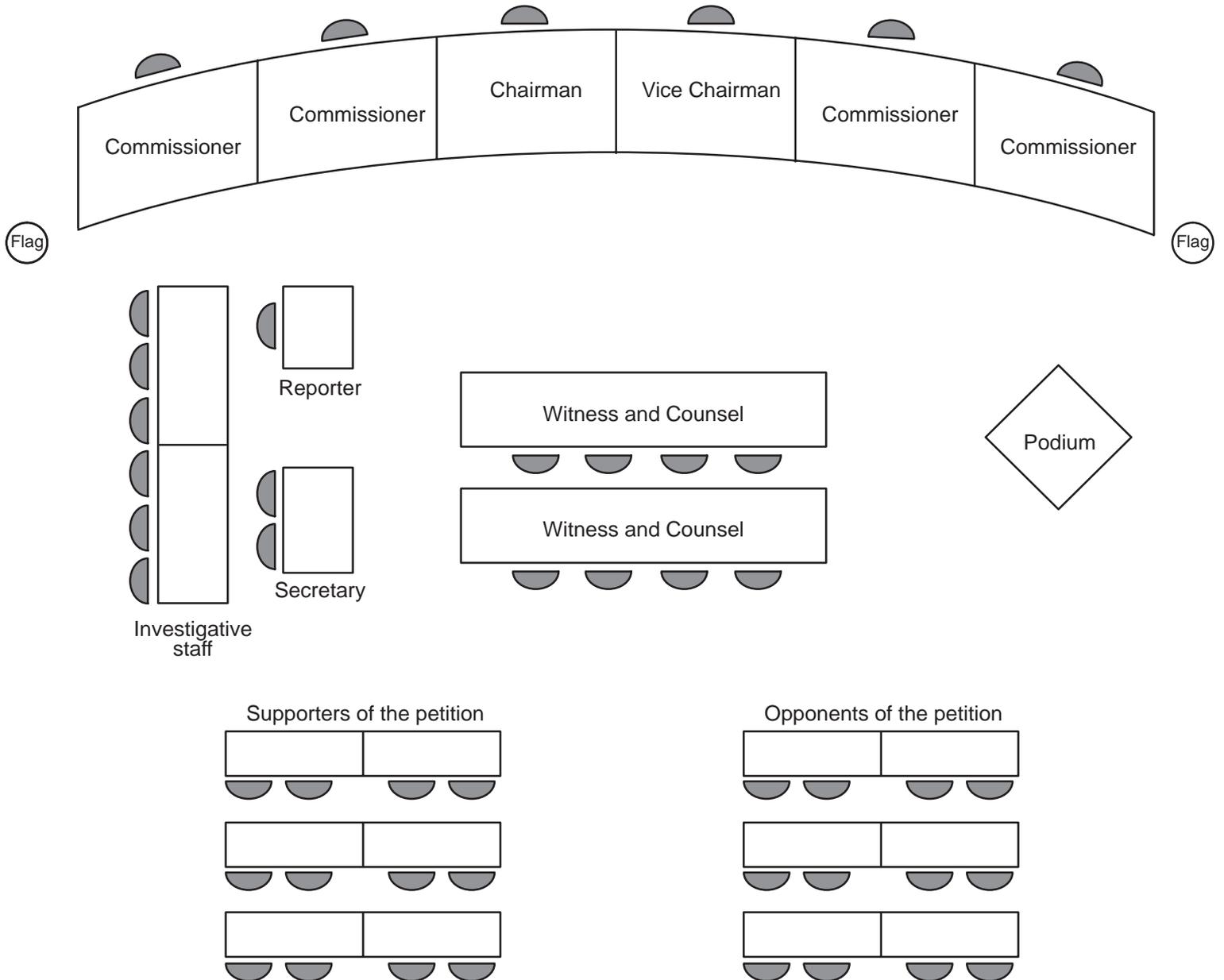
Cellular telephones and pagers must be turned off before entering the Hearing Room.

Food and drinks are not permitted in the Hearing Room. A lunch room with vending machines is available for use on the fourth floor during hearing sessions. Public telephones are available in the foyer outside the Hearing Room. Restrooms are located near the Hearing Room.

WHO MAY APPEAR

Any party may participate in the hearing. A nonparty may participate under conditions established by the presiding officials of ITC Rules 19 CFR 201.13(c). One need not be an

MAIN HEARING ROOM



attorney or be represented by counsel in order to appear. The ITC is interested in hearing from people who believe they have something relevant to say.

REQUESTS TO APPEAR

Persons wishing to appear at a hearing must write a letter to the Secretary to the Commission that serves as a notice of participation. This letter must be received no later than three workdays before the hearing or two workdays before the pre-hearing conference, whichever is earlier. Each person who intends to call witnesses at the hearing must file a witness list according to instructions in the *Federal Register* notice of hearing. If the names of witnesses are submitted separately, a new letter of notice of participation is not necessary. As noted below, the time of the filing of the letter of notice or participation determines, in part, the order of participation at the hearing.

Persons who do not file a timely notice of participation may still testify at the hearing, but only if the Commission has waived this requirement “for good cause.”

The filing of a notice of participation is not required for public officials who wish to testify. However, in order to facilitate the hearing process and the inclusion of the names of such public officials on the hearing witness list, such officials should advise the ITC of their desire to participate as early as possible.

ORDER OF APPEARANCE BY PARTICIPANTS

Participants generally testify in the following order: public officials, domestic producers, representatives of consumers groups, and importers and foreign producers. When several parties within a category seek to testify, they usually do so in the order in which they filed their request to appear. For example, the first importer to file is the first importer to testify. Sometimes persons within a category may wish to establish their own order for testifying. This is acceptable, if all persons in the category agree and the ITC is notified in a timely manner. The Commission reserves the right to make the final decision on the order of testimonies.

SWEARING IN

All persons, including attorneys and public officials, are sworn in by the Secretary to the Commission before testifying.

ADDRESSING A COMMISSIONER

There are no requirements concerning how to address a Commissioner. The most common practice is to address the Commissioner as “Mr.,” “Ms.,” “Mrs.,” “Dr.,” or “Commissioner Smith,” as appropriate, or “Madam or Mr. Chairman,” when appropriate. Commissioners are not addressed as “Your Honor.” Generally, nameplates are placed in front of each of the Commissioners in order that they may be easily identified.

FORM OF TESTIMONY

To the extent possible, the testimony should be brief and to the point. Lengthy statements and charts and graphs should be submitted as part of the prehearing brief (see “Prehearing Briefs” above) and need not be read directly into the record in order to be made a part of the record. Testimony should relate directly to the issues to be decided by the ITC in the particular investigation and should summarize the information and arguments in the prehearing briefs and respond to arguments made by other parties.

There are special rules governing the presentation of testimony in countervailing duty and antidumping investigations. Specifically, section 19 CFR 207.24 (b) requires, in part, that—

Each party shall limit its presentation at the hearing to a nonconfidential summary of the information and arguments contained in its prehearing brief, a nonconfidential analysis of the information and arguments required by section 207.23, and information not available at the time its prehearing brief was filed.

Persons testifying may present testimony in the form of a prepared statement that summarizes the information and arguments in their prehearing briefs. They may also speak from notes, or their testimony may be in the form of responses to questions posed by their attorneys or another per-

son. If their testimony is in the form of a prepared statement that is to be read, it should be filed three workdays before the hearing.

A thorough knowledge of the subject matter is very important for witnesses who testify. Many persons have observed that when a witness is an official of a large multiproduct firm, the company vice president or other official directly in charge of the product line is better able to answer questions than the chief executive officer or other official whose area of responsibility covers multiple products. Generally, a witness will spend more time answering questions than reading or summarizing a statement.

Any requests relating to Confidential Business Information that are to be submitted to the Commission at a hearing should be submitted at least three workdays prior to the beginning of the hearing.

TIME LIMITS ON PRESENTATIONS

The ITC sets time limits on hearing presentations. Generally such limits are set in the course of a prehearing conference with the agreement of the various interested parties. As a general rule, a party's time allocation includes the time that a party uses for direct testimony, questioning, and closing statements. All hearings are timed.

QUESTIONING WITNESSES

It is a common practice for Commissioners, staff members, and parties of record to question any person testifying at a hearing. The questioning is for the purpose of eliciting additional information or clarifying information already presented.

Commissioners generally ask numerous questions, and often half of the time of the hearing is spent in the asking and answering of such questions. Commissioners have available to them a staff-prepared prehearing report or other background paper, as well as the prehearing briefs of the parties, and thus are familiar with the subject matter and issues at the onset of the hearing.

In most hearings, persons filing notices of appearance may question other persons presenting testimony at the hearing. Such questioning should be for the purpose of eliciting or clarifying information. One of the microphones available

around the room should be used when questioning a witness. Only with the permission of the Chairman can questions be directed to a member of the staff; questions should not be addressed to the Commissioners, except with regard to procedural matters.

COMMISSIONER ATTENDANCE

Generally, the Commissioners will attend all or part of a hearing. However, workload may prevent all Commissioners from attending all hearings in full. Complete transcripts of each hearing are distributed to all Commissioners.

There need not be a quorum of Commissioners present to conduct a hearing; one Commissioner can do so. The Commissioners do not, as a general rule, divide themselves into panels for the purpose of holding hearings. Instead, the Commission tries to schedule hearings so that they do not overlap.

DOCUMENTS AND EXHIBITS

Charts, tables, and other documents should be submitted as attachments to the prehearing brief in advance of the hearing. They may be referred to in the course of hearing testimony but need not be introduced formally at the hearing. To avoid confusion, exhibits submitted with prehearing briefs should be assigned letters of the alphabet since the Secretary to the Commission will use numbers to identify physical exhibits introduced during the hearings.

Enlargements of material submitted with prehearing briefs may be used during the hearing. If special arrangements are needed for displays, the Hearings Coordinator, Office of the Secretary, should be contacted three workdays in advance.

All exhibits become the property of the Government upon submission and are not returned except by prior agreement. Exhibits should be tagged or marked to show the name and address of the submitter.

CONFIDENTIAL BUSINESS INFORMATION

Requests for special treatment of Confidential Business Information to be presented at the hearing must be submitted to the Secretary to the Commission at least three workdays before the hearing, except where good cause is shown for later submission.

The ITC's requirements on Confidential Business Information are set forth in 19 CFR 201.6. ITC defines Confidential Business Information as follows (section 201.6(a)):

Information that concerns or relates to the trade secrets, processes, operations, style of work, sales, shipments, purchases, transfers, identification of customers, inventories, or amount and source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, which, if disclosed, is likely to have the effect of either (1) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or (2) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information.

Persons submitting requests for special treatment of Confidential Business Information must provide a written description of the material for which special treatment is being requested, provide written justification, certify that substantially identical information is not available to the public, and follow the procedures in section 201.6 of ITC's Rules.

The submitter has the option of providing the Confidential Business Information at the time the request is filed or withholding it until a ruling on its confidentiality is issued. The general practice is to file two versions of a document simultaneously, one containing Confidential Business Information and one not containing it. Confidential Business Information should be clearly labeled "Confidential Business Information" or "Proprietary Information" and must be segregated from other material being submitted.

The ITC's rules on confidentiality are based on the Freedom of Information Act (5 U.S.C. 552), and in the case of anti-dumping, countervailing duty, and review investigations, the rules are based on the proprietary information provisions of title VII of the Tariff Act of 1930, as amended (19 U.S.C.

1677(f). The Freedom of Information Act provides that Government agencies are to make available to the public all information in their possession, but it permits agencies to protect certain types of information. Information of the types described in the ITC rule quoted above falls into one of the excepted categories. The confidentiality provision of title VII of the Tariff Act of 1930 requires the Commission to maintain as Business Proprietary Information certain information obtained in antidumping, countervailing duty, and review investigations, although business proprietary information may be released subject to an administrative protective order to interested parties who are parties to an investigation. There are penalties for the unauthorized disclosure of business proprietary information by ITC officials and employees (see 18 U.S.C. 1905).

Initial rulings on requests for special treatments are made by the Secretary to the Commission. Appeals of the Secretary's decision are made to the full Commission and should be addressed to the Chairman.

Procedures for requesting access to ITC records, including requests for access to information designated by the ITC as Confidential Business Information, are set forth in 19 CFR 201.17–201.21.

MEDIA COVERAGE

At times, reporters for newspapers, magazines, trade journals, and radio and television stations are present at hearings. To the extent possible, the ITC attempts to furnish copies of hearing statements (but not the prehearing briefs) to the news media. If there are insufficient copies, reporters may ask witnesses for copies. Witnesses may also be asked for interviews; the decision regarding such requests is entirely up to the witness.

TRANSCRIPTS

A verbatim transcript of all ITC hearings is made by a reporting firm under contract to the ITC. Persons wishing copies of transcripts, including participants in the hearing, should contact the reporting company before the hearing. The reporter usually has application forms that can be filled out at the hearing.

The reporting company charges a fee for copies of transcripts. Any purchase of transcripts is a transaction between the purchaser and the reporting firm; ITC is not a party to such transactions. Copies of the public transcripts are available for inspection on the Electronic Document Imaging System (EDIS) in room 112 of the ITC Building.

For other services or information, please call the ITC Hearings Coordinator, 202–205–1806.

POSTHEARING BRIEFS OR OTHER DOCUMENTS

Briefs on the information presented at the hearing and arguments with respect thereto may be filed by interested parties. Submitters should file 15 copies (1 original, 14 copies) of the brief with the Secretary to the Commission. Parties filing briefs must serve copies on other parties who appeared at the hearing in accordance with 19 CFR 201.16.

The deadline for submitting such briefs is generally announced by the presiding Commissioner at the close of the hearing. In countervailing duty and antidumping investigations, 19 CFR 207.25 limits posthearing briefs to 15 pages of text (single-sided, double-spaced). For other types of investigations there are no requirements concerning the text or format of such briefs except those applying generally to the submission of documents or those specifically announced at the hearing or in an ITC notice.