

# COMMITTEE TO SUPPORT U.S. TRADE LAWS

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**DAVID A. HARTQUIST**  
Executive Director

March 26, 2004

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Notice of Inquiry  
Docket No. 031120285-3285-01  
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## **DELIVERY BY HAND**

James J. Jochum  
Assistant Secretary for Import Administration  
U.S. Department of Commerce  
Attn: Central Records Unit, Room 1870  
Pennsylvania Avenue and 14th Street, N.W.  
Washington, DC 20230

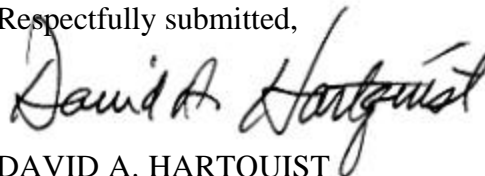
Attn: Elizabeth C. Seastrum; Philip J. Curtin

**Re: Certification and Submission of False Statements to Import Administration During Antidumping and Countervailing Duty Proceedings; Notice of Inquiry**

Dear Mr. Jochum:

The attached comments are filed in response to the Department's Notice of Inquiry, 69 Fed. Reg. 3562 (Jan. 26, 2004), concerning procedures for investigating and potentially imposing sanctions against persons who certify and submit false statements to the Department in the course of antidumping or countervailing duty proceedings. We appreciate this opportunity to present our comments. Please contact us if you have any questions.

Respectfully submitted,



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Executive Director

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## **INTRODUCTION**

- CSUSTL members strongly support the Department's interest in continuing to improve its enforcement of the antidumping and countervailing duty laws and protect the integrity of its administrative processes.
- Changes should be made to the agency's regulations and certifications. No change to the current statute is needed.
- The changes would add transparency to the agency process and make more clear to participants the consequences of failure to follow the statute and regulations.
- We propose a two-part process for addressing these issues: first decide some of the "big picture" issues and then ask for comments and suggestions on specific procedures to implement them (this goes to the "process" issues in particular).
- A conference or public hearing should be conducted following review of initial responses.

## **CERTIFICATIONS**

- A new regulation should be adopted so that parties to the action and their representatives are explicitly made aware that the information they provide to the agency, oral or written, is subject to specific civil and criminal sanctions (18 U.S.C. § 1001).
- Company certification should be modified: required language should identify name, title of the individual providing the certification, and a statement that this person is in a position to

know whether the information being submitted is complete and accurate, similar to the certification required by Customs under the CDSOA. Suggested language (new language in italics):

I, [name], currently employed by [name of company] *in the capacity of [title]* , certify that (1) I have read the attached submission, (2) *I am competent, because of my position with the company and professional background, to know that the information contained in this submission is complete and accurate,* and (3) the information contained in this submission is, to the best of my knowledge *and belief under penalty of law (including but not limited to 18 U.S.C. § 1001)*, complete and accurate.

- Counsel/Representative certification should be modified: suggested language (new language in italics):

I, [name], of [law or other firm], counsel or representative to [person], certify *under penalty of law (including but not limited to 18 U.S.C. § 1001)* that (1) I have read the attached submission, and (2) based on the information made available to me by [person], I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

### **AGENCY REGULATIONS**

- Regulations should clarify that all information provided to the agency – oral and written – is made under penalty of law, including but not limited to 18 U.S.C. § 1001, as appropriate.
- Parties’ representatives’ statements and certifications should be subject not only to lawyers’ ethics rules but to agency rules as well, and the agency should adopt rules to that effect as other agencies have done. Some agencies simply say the rules of conduct are the same as those by which attorneys are governed (state, Federal), and other agencies adopt their own rules of conduct in addition to those adopted by state and Federal bars. CSUSTL does not recommend adoption of separate standards of conduct, as the existing standards appear to be adequate, but does recommend that the regulations state that violations of these standards of conduct can subject the attorney to disbarment from practice before the agency.

- New regulations should be adopted to briefly describe the process the agency will follow to investigate allegations of a violation of standards of conduct and list of possible sanctions, including disbaring the attorney from an individual proceeding, disbaring the attorney from appearing before the agency for a period of time, and referral of a disciplinary matter to the attorney's state bar(s).
- Regulations should identify the Chief Counsel's Office as the point of contact for receiving allegations of fraud and conducting an appropriate inquiry and follow-up as necessary with other agencies. Attorneys involved in these investigations should receive training as necessary related to their duties.
- Regulation should state that the agency will not allow a party suspected of fraud to retrieve from the ITA information it has submitted for the administrative record and thus prevent the agency from pursuing a fraud inquiry. No statutory provision requires the agency to return to a party information it submits in the course of a proceeding.
- Referrals to other agencies, offices, or branch of government should be undertaken, as appropriate:
  - ITA's strongest tool presently applied is adverse facts available, which can have little or no deterrent effect.
  - When a party submits false information to the ITA, that falsification is usually – by definition – customs fraud as well, so Commerce should refer matters to Customs as appropriate.
  - Because the ITA lacks power to conduct criminal investigations of persons submitting false information, the ITA should make appropriate referrals to the Office of the

Inspector General of the Department of Commerce (“IG”), the Bureau of Customs and Border Protection, and the U.S. Justice Department.

- Regulations should provide that the ITA will inform the court if, during the course of a remand proceeding, it discovers evidence of fraud, misrepresentation, or other misconduct so that the court may determine what action, if any, is necessary under U.S. CIT R. 60(b)(3).