

February 28, 2007

The Honorable David M. Spooner
Assistant Secretary of Commerce
U.S. Department of Commerce
Central Records Unit, Room 1870
14th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20230

PUBLIC DOCUMENT

Attention: APO Regulations

Dear Assistant Secretary Spooner:

These comments have been prepared on behalf of Stewart and Stewart, pursuant to Commerce's request for comments regarding proposed revisions to regulations affecting the submission or service of documents and certain APO procedures. 72 Fed. Reg. 680 (Jan. 8, 2007). As reviewed below, the firm believes that Commerce should permit five days for serving business proprietary information (BPI) documents already on the record on newly authorized APO applicants, as set forth in the current regulation, regardless of when the application was made. In addition, while the firm supports an addition to the regulation addressing entries of appearance, Commerce should clarify that the requirement does not apply to petitioners.

A. Commerce should continue to allow a five-day period for the service of confidential documents on newly authorized APO applicants

Commerce's current regulation, 19 C.F.R. § 351.305(b)(3), adopted in 1998, requires a party to serve newly approved applicants within five days. 72 Fed. Reg. at 682. Commerce explains that this rule, when adopted in 1998, had been intended to apply only in instances where the newly approved applicant had filed its application after



the submission of the first questionnaire response. *Id.* at 682-83. Commerce further explains that it had not intended to drop its prior regulation, which generally required that a newly approved applicant should be served within two days. 19 C.F.R. § 355.34(b)(6)(i) (1997). Commerce explains it intends to restore the prior two-day requirement. 72 Fed. Reg. at 683. As such, parties would be required to serve newly authorized applicants within *two* days, if the application for access was filed prior to the submission of the first questionnaire response. *Id.*, and 687. In other circumstances, five days would be permitted. *Id.*

Stewart and Stewart proposes that the five day maximum period should continue to be applicable in all circumstances. As reviewed by Commerce, the current rule has not caused any undue delays, with parties generally serving well within the deadline. *Id.* at 682 (asserting that parties have generally served within two days). Further, reserving a more demanding requirement for the *initial* weeks of a proceeding, when no responses have yet been filed, disproportionately affects petitioners, who may be required to produce additional service copies of voluminous materials submitted in the context of initiation. Moreover, interested parties other than petitioners and domestic parties are permitted to and often waive their right to receive copies from other interest parties. Lastly, to the extent that a two-day requirement is intended to conform with the Commission's requirement that petitions be served within two days of the establishment of the Commission's APO service list, 19 C.F.R. § 207.10(b), we note that the Commission must issue its preliminary determination within 45 days from the filing of the petition. 19 U.S.C. § 1673b(a)(2). Commerce, however, does not issue its preliminary determination until 140 days after the initiation. 19 U.S.C. § 1673b(b).

B. Commerce should clarify that petitioners are not required to file “letters of appearance”

Commerce proposes to amend the regulations to require parties to file formal letters of appearance. The letters must be a separate document, and the certification requirements of 19 C.F.R. § 351.303(g) apply. 72 Fed. Reg. at 681. While we support the requirement, we believe that the proposed regulation should be amended to clarify that the requirement does not apply to petitioners. Generally, the petition already contains the information that would appear on the letter of appearance, making an additional formal appearance unnecessary. Moreover, the revised APO application form, in par. 10, already requires the applicant to designate a particular individual for purposes of service. 72 Fed. Reg. at 692.

Thank you for the opportunity to be heard and for your attention to this matter.

Respectfully submitted,

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Stewart and Stewart

