UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

NOTICE OF CHANGE IN POST EMPLOYMENT RESTRICTIONS FOR FORMER EMPLOYEES SEEKING TO APPEAR IN FIVE-YEAR REVIEWS.

AGENCY: United States International Trade Commission

ACTION: Notice.

SUMMARY: Notice is hereby given of a change in agency practice. Former employees of the U.S. International Trade Commission ("Commission") may now represent a party in a five-year review conducted under title VII of the Tariff Act of 1930 even if they participated personally and substantially in the corresponding underlying original title VII investigation while a Commission employee. The five-year review is not the same particular matter as the underlying original investigation for the purpose of applying post employment restrictions. In addition, former employees seeking to appear in a five-year review will no longer be required to seek approval to appear from the Commission, pursuant to Commission rule 201.15(b) (19 C.F.R. § 201.15(b)), even if the underlying original investigation had been pending when they were employed by the Commission.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Deputy Agency Ethics Official, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3088. 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 can also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission's authority to issue this notice is based on 19 U.S.C. § 1335 and 5 C.F.R. Part 2638.

Under Title VII of the Tariff Act of 1930, as amended, U.S. industries may petition the U.S. Department of Commerce ("Commerce") and the U.S. International Trade Commission ("Commission") for relief from imports that are sold in the United States at less than fair value ("dumped") or that benefit from countervailable subsidies provided through foreign government programs. If Commerce and the Commission make final affirmative determinations that dumped and/or subsidized imports are injuring or threaten to injure a domestic industry in the United States an antidumping duty or countervailing duty order will be issued. For the purposes of this notice, such investigations are considered to be "underlying original investigations."

In 1994, Congress passed the Uruguay Round Agreements Act, which added the requirement to Title VII of the Tariff Act of 1930 (19 U.S.C. §§ 1671 et. seq. and 1673 et. seq.) that five years after the date of publication of a countervailing duty order, an antidumping order, or a notice of suspension of an investigation, the Department of Commerce ("Commerce") and the Commission shall conduct a review to determine, in accordance with 19 U.S.C. § 1675(c), whether revocation of the countervailing or antidumping duty order or termination of the

investigation suspended under 19 U.S.C. §§ 1671c or 1673c would likely lead to continuation or recurrence of dumping or a countervailable subsidy and material injury. The statute, 19 U.S.C. § 1675a, mandates that certain information and factors be considered by Commerce and the Commission respectively in reaching their review determinations. 19 U.S.C. § 1675a(a)(1)(A) requires the Commission to take into account, among other factors, "its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted." In compliance with this provision, the Commission adds to the record of the review the Commission's published opinion and the Commission's staff report from the final phase of each original investigation.

Beginning in 1996, when questions were first raised about the effect of post employment laws and regulations on former employees seeking to represent parties in five-year reviews, the Commission's Designated Agency Ethics Official ("DAEO") advised former employees, after consideration of the relevant post employment and title VII statutes and regulations and consultation with the Office of Government Ethics ("OGE"), that the five-year review would be considered the "same particular matter" as the underlying original investigation for the application of the post-employment law, 18 U.S.C. § 207, and Commission rule 201.15(b) (19 C.F.R.§ 201.15(b)). Thus, a former employee who had worked personally and substantially on an underlying original investigation while a Commission employee could not represent a party in the corresponding five-year review after leaving the Commission. In addition, because the underlying investigation and the review were considered to be the same matter under 19 C.F.R. § 201.15(b), former employees who worked at the Commission while the underlying investigation was pending, even if they did not work on that investigation, were required to seek Commission approval to appear in such review.

As a result of the Commission's experience gained in administering the five-year review provisions of the law, and more specifically the experience in the second set of five-year reviews, which commenced in 2004, the Commission's DAEO has reassessed the previous advice given to former employees and has determined that an underlying original investigation should no longer be considered to be the same particular matter as any five-year review of the corresponding order.

As part of this reassessment, the Commission's DAEO sought an opinion from the Office of Government Ethics ("OGE"). On March 27, 2008, OGE issued an informal advisory letter ("2008 Opinion") concluding that "first, second and subsequent reviews are not the same particular matter involving specific parties as the underlying original investigation leading to the original order."

A. *Initial conclusion.*

The initial conclusion in 1996 that a first review was the same particular matter as the underlying original investigation was based on the definition of "same particular matter" found in OGE's regulations, 5 C.F.R. Part 2637, and in its published summary of post employment

restrictions, which was issued in 1992. OGE's regulation interpreting the "same particular matter" (5 C.F.R. § 2637.201(c)(4)) states that "[t]he same particular matter may continue in another form or in part." In determining whether two particular matters are the same, "the agency should consider the extent to which the matters involved the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information, and the continuing existence of an important Federal interest." Analyzing these factors in light of the statutory mandate that the Commission consider its prior injury determinations in reaching its determination in a five-year review, 19 U.S.C.§ 1675a(a)(1)(A), the Commission's DAEO at the time concluded and OGE confirmed in a 1999 informal advisory letter, OGE 99x14(2), that a review is the same particular matter as the underlying original investigation because the records of the original investigation and the review would contain much of the same basic facts and the same confidential information.

B. *The Commission's experience conducting reviews.*

The earlier view that the records of the review and underlying original investigation would largely involve the same basic facts and the same confidential information was necessarily formed without the benefit of the Commission's subsequent experience. Since 1999, when the earlier advisory opinion was issued by OGE, the Commission has conducted more than 175 reviews. With regard to the factors outlined in OGE's regulations defining "same particular matter," this experience has shown that a review differs in important respects from the underlying original investigation. Developments in the markets and industries that occur during the lapse of time between the original investigation and the review are an especially significant factor.

The Commission's experience with reviews has shown that although the volume, price effect, and impact of the imports on the industry before the order was in place must be taken into account, the key information frequently relied upon to reach the required forward-looking determination in a five-year review regarding the likely volume, price effect, and impact of the imports on the domestic industry in the event of revocation is the most current information that is developed on the record as part of the five-year review process.

C. *In conclusion*

In accordance with the DAEO's interpretation of both the statute and the Commission's experience in five-year reviews, which was confirmed in OGE's 2008 Opinion (that a five-year review is not the same particular matter as the underlying original investigation), appearances of former employees in Commission five-year reviews will be treated under 18 U.S.C. § 207 as appearances that are not in the same particular matter as the underlying investigation. In addition, the Commission has traditionally applied 19 U.S.C. § 201.15(b) consistently with the application of 18 U.S.C. § 207 and will do so in this situation. Therefore, a review will not be considered to be the same matter as the underlying original investigation pursuant to section

201.15(b). Consequently, former employees no longer need to seek approval from the Commission to appear in a review even if the underlying original investigation had been pending while they were employees.

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: April 29, 2008