

UNITED STATES INTERNATIONAL TRADE COMMISSION

19 CFR Part 207

Revised Procedures and Requests for Information During Adequacy Phase
of Five-Year Reviews

AGENCY: United States International Trade Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: The United States International Trade Commission (“the Commission”) proposes to amend its Rules of Practice and Procedure to require that responses to notices of institution of five-year reviews be filed within 30 days of publication of the notice, as opposed to the 50-day response period specified in its current rules. It additionally seeks public comment on proposals, which would not require changes in its rules, to seek additional information from interested parties at the institution of five-year reviews, and to seek information from purchasers during the adequacy phase of five-year reviews in certain circumstances.

DATES: To be assured of consideration, written comments must be received within 60 days of publication of this notice in the *Federal Register*.

ADDRESSES: You may submit comments, identified by docket number MISC–024, by any of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Agency Web Site*: <http://www.usitc.gov>. Follow the instructions for submitting comments on the Web site at <http://www.usitc.gov/secretary/edis.htm>.
- *Mail*: For paper submission. U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.
- *Hand Delivery/Courier*: U.S. International Trade Commission, 500 E Street, SW., Room 112, 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–024) for this rulemaking. All comments received will be posted without change to <http://www.usitc.gov>, including any personal information provided. For paper copies, a signed original and 14 copies of each set of comments, along with a cover letter stating the nature of the commenter’s interest in the proposed rulemaking, should be submitted to Marilyn R. Abbott, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

Docket: For access to the docket to read background documents or comments received,

go to <http://www.usitc.gov> and/or the U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. The pertinent docket number is MISC-024.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, telephone 202-205-3087, or Robert G. Carpenter, Office of Investigations, U.S. International Trade Commission, telephone 202-205-3160. Hearing-impaired individuals can obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by visiting its website at www.usitc.gov.

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these proposed changes to Commission procedures during the adequacy phase of five-year reviews. This preamble provides background information, a regulatory analysis of the proposed amendment to the Commission's Rules of Practice and Procedure, an explanation of the procedural changes proposed, and a description of the proposed amendment to the rules. The Commission encourages members of the public to comment, in addition to any other comments they wish to make on the proposed amendment, on whether the proposed amendment is in language that is sufficiently clear for users to understand.

If the Commission decides to proceed with this rulemaking after reviewing the comments filed in response to this notice, the proposed rule revision concerning the period for responding to notices of institution will be published in the *Federal Register* and will be codified in 19 CFR part 207.

Background

The Tariff Act of 1930, as amended, directs the Commission to conduct five-year reviews of antidumping and countervailing duty orders and suspension agreements. 19 U.S.C. 1675(c). Subpart F of Chapter 207 of Title 19 of the Code of Federal Regulations contains regulations concerning procedures the Commission uses in five-year reviews.

Under section 207.60(d) of the Commission's Rules of Practice and Procedure, 19 CFR 207.60(d), the Commission publishes a notice of institution when it institutes five-year review proceedings pursuant to 19 U.S.C. 1675(c). In the notice of institution, the Commission directs interested parties to provide certain information. Neither the statute nor the Commission's regulations specify the information the Commission requests in the notice of institution. The Commission's Rules of Practice and Procedure, however, require that any response to the notice of institution be filed within 50 days after publication of the notice in the *Federal Register*. 19 CFR 207.61(a).

In this notice, the Commission seeks comments on two sets of proposed modifications to its procedures in five-year reviews. The first, which does not require a change to the Commission's regulations, would modify the information the Commission requests in the notice of institution. The second proposes to amend section 207.61(a) of the Commission's Rules of

Practice and Procedure to require that responses to the notice of institution be filed within 30 days after its publication.

Regulatory Analysis of Proposed Amendment to the Commission's Rules

The Commission has determined that the proposed rule does not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus does 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 proposed 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, the proposed regulation falls within the exemption from the notice requirements imposed by 5 U.S.C. 553(b) for "agency rules of procedure and practice."

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

The proposed rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), because it does not contain any new information collection requirement. The information collection requirements that are discussed in this notice are the subject of a generic survey clearance proceeding currently pending before the Office of Management and Budget. See 72 FR 68896 (Dec. 6, 2007).

The Commission, as an independent regulatory agency as defined in Executive Order 12866 of Sept. 30, 1993, is exempt from the memorandum dated May 9, 2008, Issuance of Agency Regulations at the End of the Administration.

Explanation of Proposed Changes in Commission Data Collection

The Commission has modified the information it requests interested parties to provide in

response to its notice of institution in only minor respects since it began instituting five-year reviews in 1998.¹ The Commission now seeks to make more substantial changes to its information requests. Based on its decade of experience in conducting five-year reviews, the Commission believes that requesting additional information in its notice of institution will aid it both in deciding whether to expedite a review pursuant to 19 U.S.C. 1675(c)(3)(B) and 19 CFR 207.62 and in conducting expedited reviews.

The Commission is proposing to modify its notice of institution. As illustrated in Appendix A, the revised model notice contains the following additional information requests:

- All interested parties will be requested to provide a listing of the three to five leading purchasers of the domestic like product and the subject merchandise in the U.S. market.
- All interested parties will be requested to provide sources of information concerning prices for the domestic like product and the subject merchandise in the U.S. market and other world markets.
- Both producers of the domestic like product and producers of subject merchandise will be requested to provide capacity information for the most recent calendar year.
- Domestic producers will be requested to provide financial information on their operations producing the domestic like product for the most recent fiscal year, including the value of net sales; cost of goods sold; gross profit; selling, general, and administrative expenses; and operating income.

The Commission has two principal objectives in requesting additional information in its notice of institution. First, the Commission believes that the additional information it seeks will better enable it to ascertain whether to expedite a review pursuant to section 207.62 of the Commission's Rules of Practice and Procedure. As explained further below, the Commission believes that asking interested parties to identify three to five leading purchasers will enable it, in certain circumstances, to direct information requests to purchasers for use in the adequacy phase of the review. Second, the Commission seeks to have additional information in those reviews that it does expedite. The Commission believes that requesting additional information concerning capacity, financial performance, and pricing will enable it to achieve this objective. It further believes that the additional data requests it is proposing will not unduly burden interested parties.

In those reviews where the Commission does not receive responses to the notice of

¹ The Commission first published a sample notice of institution in the June 5, 1998, *Federal Register*. 63 FR 30599, 30609-10 (June 5, 1998). Since that time, the only material change the Commission has made to the notice is to request that producers of the domestic like product provide quantity and value data on internal consumption and company transfers.

institution from both domestic interested parties and respondent interested parties, the Commission will transmit brief questionnaires to purchasers shortly after it receives responses to the notice of institution.² A sample of this questionnaire appears as Appendix B to this Notice. These questionnaires will ask purchasers to identify significant changes, if any, in supply or demand conditions or the business cycle that have occurred in the United States for the domestic like product, or in world markets for the subject merchandise, since the date the order or suspension agreement under review became effective.

When there is inadequate response to the notice of institution from an interested party group, the Commission has the authority to conduct an expedited review. The Commission has found, however, that conducting an expedited review is not always appropriate when an interested party group response is inadequate. For example, if there have been major changes in the conditions of competition since the time of the original investigation pertaining to the domestic like product or the subject merchandise in the U.S. market, the subject countries, or worldwide, the Commission may find conducting a full review to be appropriate notwithstanding the inadequate response. The Commission believes that seeking information from purchasers concerning current conditions of competition, and asking purchasers to compare current conditions to those prevailing at the time the order or suspension agreement under review was imposed, will enable it better to ascertain whether it should conduct a full review notwithstanding inadequate response from an interested party group.

Explanation of Proposed Change to Commission Rule 207.61(a)

The changes proposed above, if implemented, will require the Commission staff to devote additional time during the adequacy phase of five-year reviews to analyze the additional information requested in the notice of institution, to circulate the brief adequacy phase questionnaires to purchasers in appropriate circumstances, and to analyze the responses to the purchaser questionnaires. To permit the Commission staff the additional time it needs to engage in such additional information collection and analysis, the Commission proposes amending section 207.61(a) of the Commission's Rules of Practice and Procedure to require that responses to the notice of institution be submitted within 30 days after publication of the notice, as opposed to the current 50 days. The Commission believes that the 30-day period will provide interested parties sufficient time to respond to the notice. Moreover, there will continue to be no need for respondent interested parties to file a response to the Commission's notice of institution in reviews where no domestic interested party has responded to the notice of initiation issued by the Department of Commerce ("Commerce"), which results in Commerce terminating the review (and revoking any pertinent orders under review) pursuant to 19 CFR 351.218(d)(1)(iii). Responses to the Commission's notice will not be due until 10 days after Commerce would

² When the Commission receives responses to the Notice of Institution from both domestic and respondent interested parties, it typically does not require further information to determine whether to conduct a full or expedited review. In such circumstances, it would not normally contemplate circulating the brief questionnaires to purchasers.

notify the Commission pursuant to 19 CFR 351.218(d)(1)(iii)(B)(2) that no domestic interested party has responded to Commerce's notice of initiation.

Request for Comment

The Commission solicits comments from interested parties and practitioners concerning these proposals. All comments should be filed in writing no later than 60 days after publication of this notice in the *Federal Register*.

With respect to the proposed changes in information collection, the Commission is particularly interested in comments concerning whether the additional information it intends to collect: (1) will satisfy the objective of augmenting the record before the Commission when it determines whether to conduct an expedited or full review; (2) will satisfy the objective of augmenting the record before the Commission in expedited reviews; and (3) will satisfy the objective of not unduly burdening interested parties and purchasers requested to provide the information. The Commission also seeks comment concerning whether requesting additional or alternative types of information will better enable the Commission to achieve these objectives. With respect to the proposed amendment to Commission rule 207.61(a), the Commission seeks comment concerning whether a 30-day response period will impair interested parties' ability to respond fully to the notice of institution.

List of Subjects

19 CFR Part 207

Administrative practice and procedure, investigations

For the reasons stated in the preamble, the Commission proposes to amend 19 CFR part 207 as follows:

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

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

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

2. Amend § 207.61 by revising paragraph (a) as follows:

§ 207.61 Responses to notice of institution.

(a) *When Information Must be Filed.* Responses to the notice of institution shall be submitted to the Commission no later than 30 days after its publication in the FEDERAL

REGISTER.
* * * * *

For the Commission.

/S/

Marilyn R. Abbott
Secretary to the Commission

Dated: July 11, 2008