INTERNATIONAL TRADE COMMISSION

19 CFR 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

Docket No. MISC-013

AGENCY: International Trade Commission.

ACTION: Final Rule.

SUMMARY: The United States International Trade Commission ("Commission") is amending a provision of its Rules of Practice and Procedure concerning the conduct of antidumping and countervailing duty investigations and reviews. The amendment is designed to facilitate the collection of information and reduce the burden on petitioning parties by changing the information they need to provide in petitions.

DATES: This regulation is applicable to all petitions filed with the Commission after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary, telephone (202) 205-2000, or Michael Haldenstein, Attorney-Advisor, Office of the General Counsel, telephone (202) 205-3041, United States International Trade Commission. 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 may also be obtained by accessing its Internet server at *http://www.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. § 1335) authorizes the Commission to adopt reasonable procedures, rules, and regulations that it deems necessary to carry out its functions and duties. The Commission has determined to amend Part 207 of its rules covering investigations conducted under title VII of the Tariff Act of 1930, as amended ("title VII proceedings"). The amendment is to Commission Rule 207.11 (19 C.F.R. § 207.11), which governs the information required in antidumping and countervailing duty petitions filed with the Commission (as well as the Department of Commerce). The change to the rule is aimed at decreasing the burden on petitioning parties to provide detailed information concerning lost sales and lost revenue allegations in petitions filed with the Commission.

The Commission recently amended its Rules of Practice and Procedure, including Commission Rule 207.11. Prior to promulgating final rules, it published a notice of proposed rulemaking (NOPR) in the Federal Register. 78 Fed. Reg. 36446-449 (June 18, 2013). Among the provisions it proposed to amend was the provision in 19 C.F.R. § 207.11(b)(2)(v) concerning submission of lost sales and lost revenue allegations. Three law firms which regularly appear before the Commission in Title VII proceedings filed comments on the NOPR. On June 25, 2014, the Commission published revisions to its rules, including 19 C.F.R. § 207.11(b)(2)(v), that largely adopted the changes proposed in the NOPR. 79 Fed. Reg. 35920 (June 25, 2014).

In this notice, the Commission is adopting new rules regarding collection of information on lost sales and lost revenue allegations. The Commission considers this rule to be procedural and therefore excepted from notice-and-comment requirements under 5 U.S.C. 553(b)(3)(A). The Commission typically engages in a notice-and-comment rulemaking process, even when it is not required, so it can receive comments and suggestions from affected parties concerning contemplated changes to its Rules of Practice and Procedure. The Commission decided that such processes were not warranted in this particular circumstance and, for reasons stated more fully below, finds under 5 U.S.C. 553(b)(3)(B) that good cause exists to waive prior notice and opportunity for public comment. In particular, the Commission conducted a rulemaking concerning the lost sales/lost revenue provision at 19 C.F.R. § 207.11(b)(2)(v) last year, received limited comments on the provision, and subsequently conducted an external survey process which yielded considerable commentary about procedures for collecting and investigating lost sales and lost revenue allegations. Consequently, the Commission has recently received and carefully considered extensive comments concerning the matters addressed in this notice.

Regulatory Analysis of Amendment to the Commission's Rules

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 final rulemaking is required under 5 U.S.C. 553(b) or any other statute. These regulations are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b). Moreover, the rules are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

The rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.).

The rule change does not constitute a "significant regulatory action" under Executive Order 12866 (58 FR 51735, October 4, 1993).

The rule change does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, October 7, 1999).

The amendment is not to 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 Act because it concerns a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

Explanation of the Rule Change

On June 25, 2014, the Commission amended 19 C.F.R. § 207.11(b)(2)(v) in two respects. First, the amendment required that petitioners provide the email address, street address, city, state, and 5-digit zip code for each purchaser/contact with respect to each lost sales or lost revenue allegation. Second, petitioners were required to file any lost sales or revenue allegation(s) identified in the petition via a separate electronic data entry process in a manner to be specified in the Commission's Handbook on Filing Procedures. The only comment on these changes asserted that the Commission's approach to investigating lost sales and lost revenue allegations was overly rigid and that the amendment would only further increase the number of lost sales or lost revenue allegations that go uninvestigated. When it adopted the rule changes, the Commission indicated that its staff was still in the process of examining possible methods for electronic entry of data pertaining to lost sales and lost revenue allegations. Some basic requirements were to be specified in the Commission's Handbook of Filing Procedures and the Commission indicated that these requirements may be further modified.

After the amendments of June 2014, the Commission staff conducted an external survey regarding the Commission's lost sales and lost revenue allegation process. It received 37 responses to the survey. Most survey respondents represented U.S. producers and they noted that they frequently submit lost sales and lost revenue allegations. Many survey respondents stated that it is difficult to provide the level of detail requested by the Commission regarding the allegations, particularly specific dates, quantities, and competing prices. They asserted that because of the level of detail and required research, compiling the information can be time consuming and costly for petitioners. Some survey respondents noted that collection of allegation information requires extensive document collection and review. Survey respondents also observed that the specificity of the details in the allegation makes it possible for purchasers to deny allegations based on minor differences in details.

After considering these comments, the Commission has determined to amend Commission Rule 207.11(b)(2)(v) to no longer require transaction-specific lost sales and lost revenue allegation information in the petition. Parties will no longer be required by the Rule to include in the petition "[a] listing of all sales or revenues lost by each petitioning firm by reason of the subject merchandise during the three years preceding filing of the petition." Rather, the Commission's revised rule will state that the petition must include "[a] listing of the main purchasers from which each petitioning firm experienced lost sales or lost revenue by reason of the subject merchandise during a period covering the three most recently completed calendar years and that portion of the current calendar year for which information is reasonably available." Petitioners will be required to provide the listing via a separate electronic data entry process in a manner to be specified in the Commission's Handbook on Filing Procedures. The Commission is also removing the requirement that petitioners supply physical addresses for purchasers. Instead, petitioners will be required to provide information identified in the template spreadsheet specified in the Commission's Handbook on Filing Procedures. The language of the rule also now clearly indicates that lost sales and revenue allegations should concern a period more closely reflecting the period of investigation the Commission typically uses rather than only the three years preceding the filing of the petition.

These changes in requirements for the petition should ease the burden on petitioners while not compromising the ability of Commission staff to investigate lost sales and revenue that occur during the period of investigation.

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

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

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

1. Amend Secs. 207.11(b)(2)(v) to read as follows:

§ 207.11 Contents of Petition.

* * * * *

(v) A listing of the main purchasers from which each petitioning firm experienced lost sales or lost revenue by reason of the subject merchandise during a period covering the three most recently completed calendar years and that portion of the current calendar year for which information is reasonably available. For each named purchaser, petitioners must provide the email address of the specific contact person, 5-digit zip code, and the information identified in the template spreadsheet specified in the Commission's Handbook on Filing Procedures. Petitioners must certify that all lost sales or lost revenue allegations identified in the petition will also be submitted electronically in the manner specified in the Commission's Handbook on Filing Procedures.

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: August 25, 2015