

CHAPTER 14

HEARINGS AND BRIEFS

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LIST OF ACRONYMS & ABBREVIATIONS

APO	ADMINISTRATIVE PROTECTIVE ORDER
CEP	CONSTRUCTED EXPORT PRICE
CFR	CODE OF FEDERAL REGULATIONS
CRU	CENTRAL RECORDS UNIT
DAS	DEPUTY ASSISTANT SECRETARY
DOC	DEPARTMENT OF COMMERCE
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
ICA	IMPORT COMPLIANCE ASSISTANT
OD	OFFICE DIRECTOR
PM	PROGRAM MANAGER
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

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References:

- The Tariff Act of 1930, as amended (the Act)
 - Section 774 - hearings for investigations
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.309 - briefs
 - 19 CFR 351.310 - hearings
- SAA
 - Section C.4.c. - public comment on information
- Antidumping Agreement
 - Article 6.2 - hearings
 - Article 6.3 - briefs

I. PRE-HEARING CONFERENCE

In accordance with section 19 CFR 351.310 (b), we may conduct a telephonic, pre-hearing conference with representatives of interested parties to facilitate the conduct of the hearing for an investigation or **administrative review**. Issues to be discussed will include the necessity of conducting a hearing, time limits for direct and rebuttal presentations, identification of significant issues, and page limits for case and rebuttal briefs. Pre-hearing conferences may also be held at the DOC if deemed appropriate. Consult your program manager (PM) or supervisor before any type of pre-hearing conference is scheduled.

II. HEARINGS, BRIEFS, AND REBUTTALS

A. General Hearings

In accordance with 19 CFR 351.310(c), a public hearing is held when requested by an interested party in an investigation or review. The hearing provides interested parties an opportunity to present oral views. Notice of the scheduled date of the hearing will be published in the Federal Register (FR) notice that announces the preliminary determination for an investigation or the preliminary results for a review. In accordance

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with 19 CFR 351.310(2)(g), we will place a verbatim transcript of the public session of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript. If a portion of the hearing is closed, the transcript for the closed hearing session will be business proprietary and subject to **administrative protective order** (APO).

Hearing requests must be submitted within 30 days after the date of publication of the preliminary determination or preliminary results, unless the DOC alters this time limit. A party requesting a hearing should identify issues to be raised at the hearing. In addition, we normally request the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) the reasons for attending. In the event that the final determination date or final results date is postponed, the hearing date will normally also be postponed. If the hearing date is changed, you must ensure that all interested parties are informed. Ordinarily a hearing for an investigation or review will be held two days after submission of rebuttal briefs.

B. Closed Hearings

In accordance with 19 CFR 351.310(f), an interested party may request that a portion of a hearing be closed. This type of request must be made no later than the date the case briefs are due. Closed hearing sessions will be considered business proprietary. All attendees must have APO access to business **proprietary information** or be authorized to have access to the business proprietary information, or they cannot participate.

Closed hearing sessions will not consume the entirety of a hearing. This portion of the hearing will be limited to discrete issues that must be identified by the requesting party. The requesting party must also specify the amount of time needed to present the issues, and justify the need for a closed session with respect to each issue.

If a request for a closed hearing is made, you should notify your program manager at the Import Administration APO Coordinator's Office immediately in order to ensure that appropriate measures are taken.

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C. Consolidated Hearings

In accordance with 19 CFR 351.310(e), we may consolidate hearings in two or more investigations or reviews. Cases where we are most likely to consolidate hearings are those where common issues exist concerning the same product from different countries or where common issues exist concerning different products from the same country. Should we chose to consolidate hearings, the aforementioned and following procedures are applicable. Note that a consolidated hearing which is “closed” may present APO problems. If these problems can not be resolved, we will change the format of the hearing.

D. Briefs and Rebuttals

Requirements for written arguments are contained in 19 CFR 351.309(c). Case briefs may be submitted within 50 days after the preliminary determination in an investigation or 30 days after the preliminary results in a review unless we approve an extension. Six copies of the case briefs must be submitted to the DOC one week prior to the hearing. Six copies of the rebuttal briefs may be submitted within five days after the time limit for filing the case brief, unless we alter this time limit. As part of their case brief and rebuttal briefs, parties should provide a summary of their arguments not to exceed five pages and a table of authorities. Case briefs must contain all arguments which parties still believe are relevant so that the DOC will have the opportunity to address these issues in the final determination or final results of review. Rebuttal briefs may only address issues raised in the case briefs.

III. INTERNAL PROCEDURES

A. Pre-Hearing Procedures

Notice of the scheduled hearing date is published in the FR announcing our preliminary determination or preliminary results of review. In setting this date for an investigation, you should consider the following: 1) **verification** reports will have to be issued one week prior to the due date for the case briefs; 2) hearings usually occur seven to nine days after the submission of briefs; and 3) hearings should usually be conducted no later than 30 days prior to the final determination date. For reviews, remember the following: 1)

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briefs are due within 30 days of the publication of the preliminary results date and that rebuttals are due five days later; and 2) like an investigation, the hearing should be conducted no later than 30 days prior to the final action date. The preliminary action FR notice also specifies that requests for hearings must be received within 30 days of the date of publication of the notice. Once a written request for a hearing has been received, the following steps should be followed:

1. Determine the approximate number of attendees so that you can reserve a hearing room of a proper size. Those expected to attend are the analysts, policy and legal team members, supervisor, staff accountant, petitioners' and respondents' counsel, company officials, and other interested persons. An approximation of interested party attendees can be obtained from the hearing requests. If there is any doubt about the number of outside attendees, you should call all participants to determine an approximate number.
2. Your program assistant or secretary should reserve a conference room for the hearing by phoning the Space Management and Construction Division at 482-3460 as far in advance as possible. Always advise the scheduling office on the approximate number of attendees. After the room number has been officially assigned, you should examine the conference room to determine whether the accommodations are adequate.
3. Schedule hearings to start early in the day, if possible, so that the hearing can be completed without having to reconvene the following day. If you allow one hour per party for combined direct and rebuttal testimony, a normal hearing will last from two to four hours. You should always check with the hearing chairperson (usually the DAS for your group) to determine how much time will be allotted to each participant. Once time allotments are determined, you should call the participants, and advise them how much time they will have to present their issues.
4. Inform the program secretary or assistant of the hearing time, date, approximate hearing length, and product under investigation or review, and he/she will make the necessary arrangements for obtaining the services of a reporter.

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5. Pencil in the hearing date and time on the(DAS's) and office director's calendar. In addition, you should update their schedules on the "Word Perfect Office" system, if appropriate.
6. Approximately ten days before the hearing, ask the DAS whether he/she will be chairing the hearing. If not, inform the office director so that he/she can chair the hearing or assign someone else to the task. You should also remind all team members of the hearing at this time. Advise your supervisor or PM if a team member will not be attending.
7. As soon as the case briefs are received (typically one week prior to the hearing in an investigation and a review), business proprietary versions should immediately be given to the chairperson. Make certain that the briefs include executive summaries of the issues of no more than five pages and tables of authorities. If these are not part of the briefs and rebuttals, you should call counsel, and ask for them. When the rebuttal briefs are received (approximately two days prior to the hearing in an investigation or a review), they should also be given to the chairperson immediately. The chairperson's copies of the briefs and rebuttals should be marked "For Briefing Book".
8. New factual information cannot be submitted as part of the briefs or rebuttals. If you detect new factual information as you read these documents in preparation for the hearing, inform your team members and supervisor or PM immediately.
9. One day prior to the hearing prepare a briefing book for use by the chairperson. The briefing book should contain the copies of the briefs and rebuttal briefs that have been reviewed and highlighted by the chairperson. The book should be prepared in a loose-leaf, 3-ring binder with appropriate index tabs. It should be assembled as follows:
 - a. A properly completed "Welcoming and Closing Remarks" section;
 - b. Participant list (if part of the hearing will be closed, a separate list of the participants that have APO coverage should be included);

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- c. Letters from the parties requesting the hearing;
- d. Copies of briefs and rebuttal briefs;
- e. Initiation and preliminary determination notices;
- f. Concurrence memos.

Confirm with the chairperson that the above list meets his/her requirements. You should also ask the program secretary or assistant to phone the recording service two days before the scheduled hearing to make certain that a reporter has been scheduled and that this person has the correct date, time and room number, and to ensure that the room is still available..

B. Hearing Procedures

1. On the day of the hearing, the program secretary or assistant should check to see that the room is unlocked and that there are sufficient chairs. You should phone the team members and remind them about the hearing.
2. If a portion of the hearing will be closed, the analyst must have the reporter sign a confidentiality statement before the hearing starts. A current copy of this statement can be obtained from the office of the APO specialist.
3. The analyst may want to provide the reporter with a list of participants, a list of frequently used acronyms such as CEP, APO, etc., acronyms relative to the specific case, and any foreign words or names that may be used.
4. During the welcoming remarks, the chairperson will apprise the participants of their allotted time, generally one hour per party to be divided as they choose between direct and rebuttal remarks. If no case brief is submitted, a party is normally allowed only a limited amount of time for rebuttal. The analyst should time each speaker and, when necessary, inform the chairperson when the speaker nears the end of his allotted time. The analyst and other team members should also be attentive to ensure that speakers limit their

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remarks only to issues raised in their briefs. You should advise the chairperson if you believe the speaker has introduced issues that have not been briefed. Also advise the chairperson if the participants attempt to introduce new factual information either orally or by the submission of exhibits for the transcript record. Generally, we do not accept exhibits which were not made part of the briefs and, therefore, were not properly filed and on the record with the Central Records Unit (CRU).

5. The public hearing provides an excellent opportunity for DOC personnel to ask questions about outstanding issues. Analysts may be asked to prepare questions for the hearing chairperson. If not, plan to ask your own questions (consult your supervisor prior to the hearing to determine if the questions are appropriate) when asked by the chairperson to do so. Usually the chairperson calls for staff questions at the end of the direct and rebuttal testimony segments of the hearing. Remember, no business proprietary information can be discussed during the public session of the hearing.
6. If there is a closed portion to the hearing, all interested parties that do not have access to business proprietary information under APO must vacate the room before this segment of the hearing begins. The chairperson will then appraise the participants of their allotted time for direct and rebuttal remarks. The reporter should also be advised that all portions of the closed session will have to be placed in a business proprietary document, apart from the transcript of the open portions of the hearing.

C. Post-Hearing Procedures

1. After the hearing concludes, the hearing transcript is generally received within one week. Copies should be sent to the CRU for immediate filing. In some cases, due to time constraints, we ask the reporting service to provide the transcript within one or two business days after the hearing. Hearing participants may come to the CRU and copy the public file version of the transcript, or they can request a copy of the transcript from the reporter at the hearing. The business proprietary section of the transcript, if any, must be released under APO by the office of the APO specialist.

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2. Sometimes the hearing chairperson may ask participants for supplemental written submissions on selected issues. If this is the case, the analyst must ensure that these submissions are timely and meet all procedural filing requirements.