

GUIDELINES FOR HEARINGS

INTRODUCTION

The hearing is one of several sources of information that the Commission relies on in conducting its investigations. Hearings are held by the Commission when required by law or, if not required by law, when in the judgment of the Commission there is good and sufficient reason to hold a hearing. The purpose of these hearings is twofold: hearings provide the Commission with an opportunity to gather information, and they provide interested persons an opportunity to appear and make their views known. The hearing testimony becomes part of the record that the Commission relies on to make its determinations and recommendations.

Hearings provide Commissioners and investigative staff with an opportunity to question and obtain information from representatives of foreign manufactures, producers, or exporters; U.S. importers; representatives of foreign governments; U.S. manufacturers, producers of wholesalers; union representatives; local, state, and federal government officials; trade or business associations; and other interested persons. Hearings are a vital part of the investigative process.

This booklet describes the conduct of certain types of Commission hearings. The hearings process is governed by Commission rules and this introduction should not be construed as modifying or limiting them in any way. If you intend to appear at a Commission hearing, do not rely exclusively on this introduction: consult the Commission's rules or phone the Secretary's Office for assistance.

COMMISSION HEARINGS

Nature and Purpose

The Commission may hold hearings in antidumping and countervailing duty, general fact-finding, safeguards, and other types of investigations¹. The hearing process in these types of investigations can be divided into three phases: pre-hearing activities; the hearing, and post-hearing actions. Procedures for each of the three phases for antidumping and countervailing duty (preliminary, final, and review)² and general fact-finding hearings are discussed following.

¹Although the Commission may hold hearings in Section 337 proceedings, most Section 337 hearings are conducted by the Administrative Law Judge (ALJ) assigned to the investigation and are not discussed here. At the beginning of each investigation the ALJ issues ground rules to aid in the orderly conduct of the hearing pursuant to the Administrative Procedures Act (5 U.S.C. 556(c)) and to supplement the Commission's procedural rules contained in 19 CFR Part 210. Any questions regarding a Section 337 hearing should be directed to the ALJ.

²Safeguard hearings are similar to antidumping and countervailing duty hearings.

PRE-HEARING

At the beginning of each investigation staff develops a work schedule for conduct of the investigation and prepares a notice for publication in the *Federal Register* and posting to the USITC's website. The purpose of the notice is to provide information to the public concerning the subject matter of the investigation and the schedule to be followed. Included in the notice are: the date of the hearing, the date that requests to appear are due, and the dates for pre-hearing and post-hearing submissions. Also included in the notice will be any special instructions that relate to the hearing for that investigation.

Requests to Appear/Testify

Any interested person may apply to appear either in person or by representative (See 19 CFR 201.11(a)). You need not be an attorney or be represented by counsel in order to appear at a hearing.

Persons wishing to appear must file a request with the Secretary by close-of-business of the date specified in the *Federal Register* notice that serves as a notice of participation. This request must be received in compliance with the deadline set in the Federal Register notice. Persons who do not file a timely request to appear still may present testimony at the hearing, but only if the presiding official waives this requirement for good cause (See 19 CFR 201.13(c)(2)).

You will be contacted by staff regarding your request to appear. A few days in advance of the hearing, the staff will inform you by telephone and/or e-mail of the time allocations and ground rules for the conduct of the hearing. A draft copy of the hearing calendar is provided at this time. The hearing calendar sets forth all witnesses, the time allocated for their testimony, and the order of testimony.

Countervailing and Antidumping Duty Witnesses in support of the petition or for continuation of orders; and respondent witnesses or those in opposition to the continuation of orders, are general grouped into panels and given a combined 60 minutes to present direct testimony. Requests for additional time for testimony should be included in the original request to testify and should include a justification for the additional time.

Pre-hearing Conference In these types of investigations, involving a large number of parties or complex procedural issues, a pre-hearing conference may be held prior to the hearing. The Director of Investigations presides at such conferences which have the primary purpose to assist the parties in allocating time appropriately. Parties should contact the Investigator or Supervisory Investigator for information on whether a pre-hearing conference will be held.

General Fact-finding Investigations Witnesses in general fact-finding investigations are typically granted 10 minutes to present their testimony. Requests for additional time for testimony should be included in the original request to testify and should include a justification for the additional time. Depending on the number of witnesses, all witnesses may sit as one panel; for larger hearings, witnesses may be grouped in individual panels.

Audio/Video and Exhibits Support

The Commission has an assortment of audiovisual equipment for use by witnesses. Easels, laser pointer, screen, and an LCD projector are available and may be used if witnesses require them to display visual materials. Witnesses must supply their own laptop for use with the LCD projector.

Tables are available to display physical exhibits. Exhibits must be marked to show the name of the submitter.

Requests for audio visual and/or exhibits support should be made to the Secretary at least three days prior to the hearing. Arrangements can also be made with the Secretary for you to visit the Main Hearing Room a day or two prior to the hearing to test your connectivity with the system.

Pre-Hearing Submissions

The Commission frequently requests that hearing participants file pre-hearing submissions which contain the full text of the arguments and information that they plan to present at the hearing. Such briefs must be filed five working days prior to the hearing and must meet all filing requirements as outlined in the *USITC Rules of Practice and Procedure* (available at www.usitc.gov). At the hearings, parties are expected to summarize only their pre-hearing briefs and respond to information and arguments in other briefs.

Countervailing and Antidumping Duty Each party who is an interested party must submit to the Commission, no later than the close-of-business of the date of the hearing specified in the *Federal Register* notice, a pre-hearing brief. Pre-hearing briefs should present a party's case concisely and, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination. Any person not an interested party may submit a brief written statement of information pertinent to the investigation within the specified time.³

³ See 19 CFR 207.23

General Factfinding Investigations

THE HEARING

The hearing is essentially a fact-finding forum. Its purpose is to allow interested parties to express their views and to permit Commissioners to ask questions and solicit information that will be useful in preparation of the final report to the requestor. The hearing unfolds in several stages.

Upon Arrival

Location and Building Security

Hearings are usually held in the Main Hearing Room (room 101) in the USITC building at 500 E Street SW., Washington, DC 20436. The USITC building is located one block east of the L'Enfant Plaza subway station, on Metro's blue, orange, green, and yellow lines.

All visitors must proceed through a scanner and have their bags, boxes, and other personal items scanned before signing-in at the guard desk and entering USITC. You should schedule your arrival to include time for clearing securing. A form of federally-issued identification must be presented to the guards'.

Hours, Seating Arrangements, and Other Miscellaneous Matters

Hearings generally begin promptly at 9:30 a.m. Lunch breaks of 45-60 minutes are scheduled based on the flow of the hearing, i.e., there is no set time. Hearings generally end for the day at 5:00 p.m. However, the length of a hearing is dependent on the number of witnesses and the number of issues that need to be addressed. The Commissioners may choose to continue into the evening in order to complete a hearing or to forego a lunch break.

There are no reserved seats in the Main Hearing Room except those designated for use by the USITC staff. However, the hearings staff may reserve tables and/or seats for Congressional or Embassy witnesses.

Due to interference with the sound system, all cellular devices must be turned OFF while you are seated at the witness tables. Members of the audience should also silence devices, or at the least, place them on vibrate.

Food and drinks (with the exception of bottled water and some other covered drinks) are not permitted in the Main Hearing Room. Check with the Secretary if you have a question.

Antidumping and Countervailing Duty It is customary for parties participating in these types of hearings to use tables in the Main Hearing Room as shown in the diagram on pages xx and xx.

Swearing In

Once in the hearing room, all witnesses need to check in with the Secretary. All witnesses, either presenting testimony or available to respond to Commission questions, must be sworn in by the Secretary before being seated at the witness tables. Also at this time, the Secretary will answer any questions you may have and let you know of any special procedures for the hearing. The Secretary will also verify the information pertaining to you on the calendar and the correctness of your name sign, if necessary.

Presenting Your Testimony

Persons testifying may speak either standing behind a podium or seated at tables. The podium and tables are adjacent to each other and are located toward the front of the Main Hearing Room. The speaker stands or sits facing the Commissioners, who are seated at an elevated dais in the front of the Main Hearing Room. There is no witness box of the type commonly found in courtrooms.

Addressing a Commissioner

There are no requirements concerning how to address a Commissioner. The most common practice is to address the Commissioner as “Mr.,” “Madam,” or “Commissioner,” as appropriate. Commissioners are not addressed as “Your Honor.” Generally, nameplates are placed in front of each of the Commissioners in order that they may be easily identified.

Time Limits on Presentation

All hearings are timed. The USITC sets time limits on hearing presentations; time limitations are set by the Commission and investigative staff. If multiple parties are involved in an investigation and are unable to agree on time allocations, a pre-hearing conference may be held to assist the parties in allocating time appropriately. As a general rule, a party’s time allocation includes the time that a party uses for direct testimony and questioning of the other side.

Order of Appearance by Participants

Participants generally testify in the following order: public officials (such as Congressional or Embassy witnesses), domestic producers, representatives of consumer groups, and importers and foreign producers. Sometimes persons within a category may wish to establish their own order for testifying. This is acceptable, if all persons in the category agree and the USITC is notified in a timely manner. The presiding official reserves the right to make the final decision on the order of testimonies.

Parties in support of the petition and parties in opposition are each collectively given five minutes at the beginning of the hearing for opening remarks.

The term *record* is defined in Commission rule 207.2(f) (19 CFR § 207.2(f)) as all information presented to or obtained by the Commission during the course of an investigation, including completed questionnaires, any information obtained from the Department of Commerce, written communications from any person filed with the Secretary to the Commission, staff reports, all governmental memoranda pertaining to the investigation, and the record of *ex parte* meetings required to be kept pursuant to section 777(a)(3) of the Act (19 U.S.C. § 1677f(a)(3)); and a copy of all Commission orders and determinations, all transcripts or records of conferences or hearings, and all notices published in the *Federal Register* concerning the investigation.

Form of Testimony

To the extent possible, the testimony should be brief and to the point. Lengthy statements and charts and graphs should be submitted as part of the pre-hearing brief (see “Prehearing Briefs”) and need not be read directly into the record in order to be made a part of the record. Testimony should relate directly to the issues to be decided by the USITC in the particular investigation, and should summarize the information and arguments in the pre-hearing briefs and respond to arguments made by other parties.

Persons testifying may present testimony in the form of a prepared statement that summarizes the information and arguments in their pre-hearing briefs. They may also speak from notes, or their testimony may be in the form of responses to questions posed by the attorneys.

A thorough knowledge of the subject matter is very important for witnesses who testify. Many have observed that when a witness is an official of a large multi-product firm, the company vice president or other official directly in charge of the product line is better able to answer questions than the chief executive officer or other official whose area of responsibility covers multiple products. Generally, a witness will spend more time answering questions than reading or summarizing a statement.

Any requests relating to Confidential Business Information (CBI) that may be submitted to the Commission at a hearing should be submitted at least three workdays prior to the beginning of the hearing.

Questioning Witnesses

It is a common practice for Commissioners, staff members, and parties of record (if desired) to question any person testifying at a hearing. The questioning is for the purpose of eliciting additional information or clarifying information already presented. Commissioners generally ask numerous questions, and often half of the hearing is spent asking and answering their questions. Commissioners have available to them a staff-prepared pre-hearing report or other background paper, as well as pre-hearing briefs of the parties, and thus are familiar with the subject matter and issues at the onset of the hearing.

In most hearings, persons filing notices of appearance may question other persons presenting testimony at the hearing. Such questioning should be for the purpose of eliciting or clarifying information. A microphone should be used when questioning a witness. Only with the permission of the Chairman can questions be directed to a member of the staff; questions should not be addressed to the Commissioners, except with regard to procedural matters.

During questioning by the Commission, each Commissioner is given 10 minutes per “round” for questioning. Commissioners are not limited to the number of questions they may pose. There may be as many “rounds” of questioning as necessary, i.e., six Commissioners at 10 minutes per Commissioner equals 60 minutes per round of questioning. If the Commission poses three “rounds” of questions that would be three hours of questioning (if all six Commissioners are present). The presiding official will introduce each Commissioner in turn in accordance with the questioning order established by the hearings staff.

Questions may also be posed to witnesses in writing, especially if a witness is unable to remain for the entire hearing. We ask that witnesses allow all day for a hearing due to the fact that we are unable to accurately calculate the length of a hearing. Witnesses who need to be dismissed early should notify the hearings staff. Questions may also be posed for inclusion in the post hearing brief.

Commissioner Attendance

Generally, the Commissioners will attend all or part of a hearing. However, workload may prevent all Commissioners from attending all hearings in-full. Complete transcripts of each hearing are distributed to all Commissioners.

There need not be a quorum of Commissioners present to conduct a hearing; one Commissioner can do so. The Commissioners do not, as a general rule, divide themselves into panels for the purpose of holding hearings. Instead, the Commission tries to schedule hearings so that they do not overlap.

Documents and Exhibits

Charts, tables, and other documents should be submitted as attachments to the pre-hearing brief in advance of the hearing. They may be referred to in the course of the hearing testimony but need not be introduced formally at the hearing. Supplemental information may be introduced at the hearing in accordance with 19 CFR 201.13(f).

Enlargements of material submitted with pre-hearing briefs may be used during the hearing. If special arrangements are needed for displays, the hearings staff, Office of the Secretary, 202-205-2595, should be contacted three workdays in advance. Paper copies of any audio visual presentations should be provided to the hearings staff. Testimony should not be placed directly on the public distribution table but given to the hearings staff for proper distribution.

POST-HEARING

Post-hearing Submissions

Briefs on the information presented at the hearing and arguments with respect thereto may be filed by interested parties. Submitters should electronically file briefs via EDIS and submit nine (nine) hard copies of the brief with the Secretary to the Commission. Parties filing briefs must serve copies on other parties who appear on the service list in accordance with 19 CFR 201.16.

The deadline for submitting such briefs is generally announced by the presiding Commissioner at the close of the hearing. In antidumping and countervailing duty investigations, 19 CFR 207.25 limits post-hearing briefs to 15 pages of text (single-sided, double-spaced). For other types of investigations there are no requirements concerning the text or format of such briefs except those applying generally to the submission of documents or those specifically announced at the hearing or in an USITC notice.

Confidential Business Information (CBI)

Requests for special treatment of Confidential Business Information (CBI) to be presented at the hearing must be submitted to the Secretary to the Commission at least three workdays before the hearing, except where good cause is shown for later submission. The USITC's requirements on CBI are set forth in 19 CFR 201.6 ITC defines CBI as follows (201.6(a)):

“Information that concerns or relates to the trade secrets, processes, operations, style of work, sales, shipments, purchases, transfers, identification of customers, inventories, or amount and source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, which, if disclosed, is likely to have the effect of either (1) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or (2) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information.”

Persons submitting requests for special treatment of CBI must provide a written description of the material for which special treatment is being requested, provide written justification, certify that substantially identical information is not available to the public, and follow the procedures in 19 CFR 201.6.

The submitter has the option of providing the CBI at the time the request is filed or withholding it until a ruling on its confidentiality is issued. The general practice is to file two versions of a document simultaneously, one containing CBI and one not containing it (public version). CBI must be clearly labeled “CONFIDENTIAL BUSINESS INFORMATION” or “PROPRIETARY INFORMATION” and must be segregated from other material being submitted.

The USITC's Rules on confidentiality are based on the Freedom of Information Act (FOIA)(5 U.S.C. 552), and in the case of antidumping, countervailing duty, and review investigations, the Rules are based on the proprietary information provisions of Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1677(f)). The FOIA provides that government agencies are to make available to the public all information in their possession, but it permits agencies to protect certain types of information. Information of the types described in the USITC Rule quoted above falls into one of the excepted categories. The confidentiality provision of Title VII of the Tariff Act of 1930 requires the Commission to maintain as BPI certain information obtained in antidumping, countervailing duty, and review investigations, although BPI may be released subject to administrative protective order (APO) to interested parties who are parties to an investigation. There are penalties for the unauthorized disclosure of BPI by USITC officials and employees (See 18 U.S.C. 1905).

Initial rulings on requests for special treatments are made by the Secretary to the Commission. Appeals of the Secretary's decision are made to the full Commission and should be addressed to the Chairman.

Procedures for requesting access to USITC records, including requests for access to information designated by the USITC as CBI, are set forth in 19 CFR 201.17-201.21.

PRELIMINARY CONFERENCES

The Director of Investigations conducts preliminary conferences to allow the parties to present to the Commission through the staff their views with respect to the subject matter of the investigation. This information assists the Commission in determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise which is the subject of the investigation. The parties are invited to present their arguments for or against the proposition that there is a reasonable indication that an industry in the United States is materially injured or threatened with injury by reason of the alleged unfair act (dumping of countervailable subsidies).

The Director of Investigations and USITC staff assigned to the investigation ask questions of counsel and witnesses to clarify and/or develop the record, which together with the briefs filed by the parties and the staff report become the basis of the Commission's decision(s).

Documents or exhibits may be submitted during the course of presentations. Any documents that are letter-size and can be copied are accepted as conference exhibits and incorporated into the record of the investigation as an attachment to the transcript. However, materials tendered as business proprietary information must be submitted to the Secretary in accordance with Commission Rule 201.6.

All speakers must be sworn-in before presenting testimony.

Proceedings are shown within the building on closed-circuit television.

Questions regarding preliminary conferences should be directed to the Director of Investigations.

MEDIA COVERAGE

At times, reporters for newspapers, magazines, trade journals, and radio and television stations are present at hearings. To the extent possible, the USITC attempts to furnish copies of public hearing statements (but not the pre-hearing briefs) to the news media. If there are insufficient copies, reporters may ask witnesses for copies. Witnesses may also be asked for interviews; the decision regarding such requests is entirely up to the witness.

Media should contact the Commission's Public Affairs Officer at 202-205-3141.

TRANSCRIPTS OF PROCEEDINGS

A verbatim transcript of all Commission hearings is made by a reporting firm under contract to the Commission. Persons seeking copies of the public transcript, including participants in the hearing, should contact the reporting company. The reporter has order forms that can be completed at the hearing. Order forms are also available on the public distribution table. Transcripts of confidential sessions are available only to those who are signatories to the protective order issued for the investigation.

The hearing is transcribed by a court reporter under contract to the Commission; transcripts are made available for sale by the reporting firm.

Parties are welcome to submit transcript corrections by the deadline date outlined by the presiding official at the hearing. Transcript corrections are at the discretion of the Secretary.

The reporting company charges a fee for copies of transcripts. Any purchase of transcripts is a transaction between the purchaser and the reporting firm; USITC is not a party to such transactions. However, those who require assistance with the court reporting company should feel free to contact the Office of the Secretary. Copies of the public transcript are available for public inspection in the Commission's Public Reading Room, room 112A of the USITC building. They are also available on the USITC's website (www.usitc.gov) 45 days after the date of the proceeding.

HEARINGS FAQs

1. *What if I am late in filing my request to testify?*

If you are late filing your request to testify, you may still be permitted to testify. A request to testify should immediately be filed with the Secretary. The request to testify must include a justification as to why the request to testify is late. You will be notified of the Commission's determination of your request.

2. *Am I able to provide testimony via a satellite link or via video?*

A large part of hearings is Commission/witness interaction. As such, these methods of testimony are not viable for Commission interaction. At this time, the Commission does not provide for satellite or video testimony.

3. *Can witnesses be added to the witness list at a hearing?*

The Commission understands that often witnesses may need to be changed at the last minute. Witnesses to be added to the witness list should present themselves at the Secretary's desk at the hearing by 9:15 a.m. so that they can be added to the witness list and sworn in as a witness. The Secretary will seek permission from the Chairman to add witnesses to the hearing.

4. *Can I file my post-hearing brief late?*

The Commission understands that circumstances may arise that may prevent the timely filing of post-hearing briefs. Arrangements should be made to file the brief(s) as soon as possible after the deadline. Permission must be granted for acceptance of late filings. A justification for late filing must be provided when filing. You will be notified of the Commission's determination on your request for late filing.

5. *What services does the Commission provide for hearings?*

The Commission provides audio visual equipment such as LCD projector, screen (parties must provide a laptop with their presentation loaded), easels, markers, jumbo writing pads, exhibit table(s), lunch facilities (if available, there are several restaurants within walking distance of the Commission). See the Hearings Staff for additional information.

6. *Can we have lunches delivered to the Commission?*

Parties are welcome to have lunches delivered to the Commission. However, the Commission will not accept or be responsible for lunches. We will provide a secure location to store lunches. There are several eateries within walking distance of the Commission.

7. *Can I leave a hearing early to catch my flight?*

The Commission understands that witnesses may have travel arrangements that may cause them to have to leave a hearing early. In this event, please let the Secretary or staff know and they will alert the Chairman. In turn, the Chairman can alert the other Commissioners and questions can be posed to that witness prior to departure.

8. *I understand there are new entry procedures at the USITC. What are they?*

All persons entering the facility must present a federally-issued photo identification. All persons are also required to go through the security procedures such as the x-ray machine. All persons should follow the guards' instructions at all times.

9. *I lost my ID. Can I still attend a hearing?*

No. A federally-issued photo identification must be presented at the guard station to enter the facility.

10. *Does the Commission provide translation services for witnesses?*

No. The Commission does not provide translation services. A translator will have to be provided by the requesting party. The translator must be sworn in as a witness; the translator must translate the swearing in for the witness that does not speak English. A copy of witness testimony is often requested to assist the court reporter in preparing the transcript; this is also true for a witness with a heavy accent.

11. *How many witnesses can be on my panel to testify?*

There is no limit to how many witnesses can be on a panel. However, seating for witnesses is limited to 50 individuals (including the ends of each table).

12. *If I am late to a hearing, can I still testify?*

The Commission understands that circumstances may prevent a witness from arriving on time for a hearing. Immediately upon arrival the witness should present themselves to the Secretary or Hearing staff to be sworn in. Depending on where we are in a hearing, you may be seated. The Secretary will seek permission from the Chairman to provide you the opportunity to testify.

13. *What happens if there is a delay in Government operations or the Government closes?*

When there are disruptions of Government operations, the U.S. Office of Personnel Management (OPM) will make announcements to the media as to whether Federal agencies in the Washington, DC, area are **open** or **closed**, or operating under an **unscheduled leave policy**, a **delayed arrival policy**, or an **early dismissal policy**. The USITC will provide a link to such notices on its website at www.usitc.gov. If OPM closes the Federal government, the hearing would be canceled. If an unscheduled leave policy or delayed arrive policy is in effect, USITC staff will try to contact the parties to let them know the decision of the presiding official regarding start time. The presiding official is responsible for determining change in starting time for a hearing or early dismissal of a hearing.

USITC Main Hearing Room

