United States International Trade Commission

§ 210.35

Prehearing conferences.

(a) When appropriate. The administrative law judge in any investigation may direct counsel or other representatives for all parties to meet with him for one or more conferences to consider any or all of the following:

(1) Simplification and clarification of the issues;
(2) Negotiation, compromise, or settlement of the case, in whole or in part;
(3) Scope of the hearing;
(4) Necessity or desirability of amendments to pleadings subject, however, to the provisions of § 210.14(b) and (c);
(5) Stipulations and admissions of either fact or the content and authenticity of documents;
(6) Expedition in the discovery and presentation of evidence including, but not limited to, restriction of the number of expert, economic, or technical witnesses; and

(2) A court or an administrative order (other than an order of a court reviewing a Commission decision);
(3) A discovery request; 
(4) An agreement; or
(5) Any other written request, if the request or order seeks disclosure, by him or any other person, of the subject confidential business information to a person who is not, or may not be, permitted access to that information pursuant to either a Commission protective order or § 210.3(b).

NOTE TO PARAGRAPH (d): This reporting requirement applies only to requests and orders for disclosure made for use of confidential business information in non-Commission proceedings.

(e) Sanctions and other actions. After providing notice and an opportunity to comment, the Commission may impose a sanction upon any person who willfully fails to comply with paragraph (d) of this section, or it may take other action.

§ 210.36 General provisions for hearings.

(a) Purpose of hearings. (1) An opportunity for a hearing shall be provided in each investigation under this part, in accordance with the Administrative Procedure Act. At the hearing, the presiding administrative law judge will take evidence and hear argument for the purpose of determining whether there is a violation of section 337 of the Tariff Act of 1930, and for the purpose of making findings and recommendations, as described in § 210.42(a)(1)(ii), concerning the appropriate remedy and the amount of the bond to be posted by respondents during Presidential review of the Commission’s action, under section 337(j) of the Tariff Act.

(2) An opportunity for a hearing in accordance with the Administrative Procedure Act shall also be provided in connection with every motion for temporary relief filed under this part.

(b) Public hearings. All hearings in investigations under this part shall be public unless otherwise ordered by the administrative law judge.

(c) Expedient. Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed unless otherwise ordered by the administrative law judge.

(d) Rights of the parties. Every hearing under this section shall be conducted in accordance with the Administrative Procedure Act (i.e., 5 U.S.C. §§ 554 through 556). Hence, every party shall have the right of adequate notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

(e) Presiding official. An administrative law judge shall preside over each hearing unless the Commission shall otherwise order.

§ 210.37 Evidence.

(a) Burden of proof. The proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

(b) Admissibility. Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, or unduly repetitious evidence shall be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded as far as practicable.

(c) Information obtained in investigations. Any documents, papers, books, physical exhibits, or other materials or information obtained by the Commission under any of its powers may be disclosed by the Commission investigative attorney when necessary in connection with investigations and may be offered in evidence by the Commission investigative attorney.

(d) Official notice. When any decision of the administrative law judge rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.

(e) Objections. Objections to evidence shall be made in timely fashion and shall briefly state the grounds relied upon. Rulings on all objections shall appear on the record.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38324, July 7, 2008]
§ 210.38 Record.

(a) Definition of the record. The record shall consist of all pleadings, the notice of investigation, motions and responses, all briefs and written statements, and other documents and things properly filed with the Secretary, in addition to all orders, notices, and initial determinations of the administrative law judge, orders and notices of the Commission, hearing and conference transcripts, evidence admitted into the record (including physical exhibits), and any other items certified into the record by the administrative law judge or the Commission.

(b) Reporting and transcription. Hearings shall be reported and transcribed by the official reporter of the Commission under the supervision of the administrative law judge, and the transcript shall be a part of the record.

(c) Corrections. Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be addressed to the administrative law judge, who may order that the transcript be changed to reflect such corrections as are warranted, after consideration of any objections that may be made. Such corrections shall be made by the official reporter by furnishing substitute typed pages, under the usual certificate of the reporter, for insertion in the transcript. The original uncorrected pages shall be retained in the files of the Commission.

(d) Certification of record. The record, including all physical exhibits entered into evidence or such photographic reproductions thereof as the administrative law judge approves, shall be certified to the Commission by the administrative law judge upon his filing of an initial determination or at such earlier time as the Commission may order.

§ 210.39 In camera treatment of confidential information.

(a) Definition. Except as hereinafter provided and consistent with §§ 210.5 and 210.34, confidential documents and testimony made subject to protective orders or orders granting in camera treatment are not made part of the public record and are kept confidential in an in camera record. Only the persons identified in a protective order, persons identified in § 210.5(b), and court personnel concerned with judicial review shall have access to confidential information in the in camera record. The right of the administrative law judge and the Commission to disclose confidential data under a protective order (pursuant to § 210.34) to the extent necessary for the proper disposition of each proceeding is specifically reserved.

(b) Transmission of certain Commission records to district court. (1) In a civil action involving parties that are also parties to a proceeding before the Commission under section 337 of the Tariff Act of 1930, at the request of a party to a civil action that is also a respondent in the proceeding before the Commission, the district court may stay, until the determination of the Commission becomes final and the stay is dissolved, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission under certain conditions. If such a stay is ordered by the district court, after the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission under certain conditions, if such a stay is ordered by the district court, the Commission shall certify to the district court such portions of the record of its proceeding as the district court may request. Notwithstanding paragraph (a) of this section, the in camera record may be transmitted to a district court and be admissible in a civil action, subject to such protective order as the district court determines necessary, pursuant to 28 U.S.C. 1659.

(2) To facilitate timely compliance with any court order requiring the Commission to transmit all or part of the record, the administrative law judge may, in accordance with § 210.39(b)(1), order the transmission of the in camera record to the district court prior to the final determination of the Commission. The district court shall certify to the Commission such portions of the record of the Commission proceeding as the district court may request.

(3) The district court may stay proceedings in the civil action pending the final determination of the Commission, and the stay may only be dissolved by order of the district court.

(4) The Commission shall make its record available to the district court.

(5) A decision of the district court shall be final and binding on the Commission.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38324, July 7, 2008]
§ 210.40 Proposed findings and conclusions and briefs.

At the time a motion for summary determination under § 210.18(a) or a motion for termination under § 210.21(a) is made, or when it is found that a party is in default under § 210.16, or at the close of the reception of evidence in any hearing held pursuant to this part (except as provided in § 210.63), or within a reasonable time thereafter fixed by the administrative law judge, any party may file proposed findings of fact and conclusions of law, together with reasons therefor. When appropriate, briefs in support of the proposed findings of fact and conclusions of law may be filed with the administrative law judge for his consideration. Such proposals and briefs shall be in writing, shall be served upon all parties in accordance with § 210.4(g), and shall contain adequate references to the record and the authorities on which the submitter is relying.

Subpart G—Determinations and Actions Taken

§ 210.41 Termination of investigation.

Except as provided in § 210.21(b)(2), (c), and (d), an order of termination issued by the Commission shall constitute a determination of the Commission under § 210.45(c). The Commission shall publish in the Federal Register notice of each Commission order that terminates an investigation in its entirety.

[60 FR 53120, Oct. 12, 1995]

§ 210.42 Initial determinations.

(a)(1)(i) On issues concerning violation of section 337. Unless otherwise ordered by the Commission, the administrative law judge shall certify the record to the Commission and shall file an initial determination on whether there is a violation of section 337 of the Tariff Act of 1930 in an original investigation no later than 4 months before the target date set pursuant to § 210.51(a)(1).

(ii) Recommended determination on issues concerning permanent relief, bonding, and the public interest. Unless the Commission orders otherwise, within 14 days after issuance of the initial determination on violation of section 337 of the Tariff Act of 1930, the administrative law judge shall issue a recommended determination containing findings of fact and recommendations concerning—

(A) The appropriate remedy in the event that the Commission finds a violation of section 337, and

(B) The amount of the bond to be posted by the respondents during Presidential review of Commission action under section 337(j) of the Tariff Act.