draft Memorandum of Agreement that includes a schedule with critical action dates and milestones, mutual responsibilities, designated points of contact, and expectations for handling pre-decisional information.


BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEM during the normal public input phases of the NEPA process.

6. Comments

Federal, state, local government agencies, tribal governments, and other interested parties are requested to send their written comments regarding environmental issues and the identification of reasonable alternatives related to the proposed action described in this Notice in one of the following ways:

1. Electronically: http://www.regulations.gov. In the entry titled “Enter Keyword or ID,” enter BOEM–2012–0090, then click “search.” Follow the instructions to submit public comments and view supporting and comment submissions.

2. In written form, delivered by hand or by mail, enclosed in an envelope labeled “Comments on North Carolina EA” to Program Manager, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 381 Elder Street, HM 1328, Herndon, Virginia 20170–4817.

Comments should be submitted no later than January 28, 2013.


Tommy P. Beaudreau,
Director, Bureau of Ocean Energy Management.
recommended determination on remedy. Specifically, the ALJ recommended issuance of a limited exclusion order, cease and desist order, and a bond in the amount of 100 percent of the covered products during the period of Presidential review with respect to Pandigital. No party petitioned for review of the ID. The Commission has determined not to review the subject ID. The Commission notes that in the subject ID, the ALJ retroactively extended the target date by nine days, to account for the delay in the issuance of his final ID finding Pandigital in default and in violation of section 337. The delay was caused by TPL’s failure to properly serve its motion seeking default against Pandigital. Extension of the target date in this circumstance was not necessary because the Commission did not require additional time to complete this investigation. In any event, we note that an ID extending the target date must be issued in advance of the final ID, rather than retroactively. See 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission Rule 210.16(c) (19 CFR 210.16(c)) authorize the Commission to order limited relief against respondents, such as Aiptek and the WinAccord respondents, found in default for failure to respond to the complaint and notice of investigation, unless after consideration of the public interest factors, it finds that such relief should not issue. With respect to Pandigital, the Commission may (1) Issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. See 19 U.S.C. 337(d)(1).

Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission’s action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

The Commission also requests additional briefing from TPL addressing the following issues: (1) Assuming TPL requests a cease and desist order (“CDO”) against Aiptek, does the evidence support a finding that Aiptek maintains a commercially significant inventory of accused products in the United States or otherwise has significant domestic ties sufficient to warrant imposition of a CDO as to this foreign respondent? See Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof, Inv. No. 337–TA–486, Comm’n Op. at 17 (Aug. 19, 2003). (2) In its previous briefing of March 8 and April 23, 2012, TPL previously asserted that section 337(g)(3) does not permit importation under bond with respect to a defaulting respondent under section 337(g). Does TPL maintain that position? (3) What evidence does Complainant rely upon in support of a bond amount for Aiptek, Pandigital, and the WinAccord respondents? In your answer, please address the applicability of Order Nos. 9, 12, 16, 18–20, 23, and 28.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding as well as issues concerning whether respondents found in default under section 337(g) may import under bond during the period of Presidential review.

Complainant is also requested to submit proposed remedial orders for the Commission’s consideration.

Complainant is also requested to state the dates that the asserted patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on December 21, 2012. Reply submissions must be filed no later than the close of business on December 28, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f). Any submission, whether or not marked confidential, must be filed no later than close of business on December 21, 2012. Remedial orders must be filed no later than close of business on December 28, 2012.

Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission’s Rules of Practice and Procedure, 19 CFR 201.6.

Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.


By order of the Commission.


Lisa R. Barton.
Acting Secretary to the Commission.

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