DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 221115–0239]

RIN 0625–AB23

Determining the Existence of a Particular Market Situation That Distorts Costs of Production

AGENCY:

Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION:

Advanced notice of proposed rulemaking.

SUMMARY:

Enforcement and Compliance (E&C), of the Department of Commerce (Commerce), administers the antidumping duty (AD) and countervailing duty (CVD) AD/CVD trade remedy laws of the Tariff Act of 1930, as amended (the Act). Section 773(e) of the Act provides for Commerce to address, in its antidumping calculations, the existence of a particular market situation (PMS), such that the cost of materials and fabrication do not accurately reflect the cost of production in the ordinary course of trade. Commerce seeks public comments as it considers revisiting its PMS methodology and issuing a new regulation that would identify information that Commerce should take into consideration and should not take into consideration in determining whether a PMS exists that "does not accurately reflect the cost of production in the ordinary course of trade," for determining constructed value, "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade," Commerce "may use another calculation methodology under this subtitle or any other calculation methodology." The Act does not (1) define a particular market situation ("PMS"); (2) identify the information which Commerce should consider in determining the existence of a PMS that "does not accurately reflect the costs of production in the ordinary course of trade," or (3) provide Commerce with guidance as to the information which Commerce should consider in determining if a market situation is, or is not, "particular."

The legislative history of the cost-based particular market situation reflects that Congress intended for Commerce to not only identify such situations, but also effectively address them in its calculations. For example, in advocating for the TPEA language, one
member of the House of Representatives argued that the legislation would “empower” Commerce “to be able to disregard prices or costs of inputs that foreign producers purchase if the Department of Commerce” determined that those input values were “subsidized” or otherwise outside the ordinary course of trade. Likewise, on the United States Senate floor, a Senator explained that the proposed legislation would “guarantee that Americans can find a more level playing field as we compete in the world economy.”

The Senator emphasized that this legislation would help stop United States workers and manufacturers from “being cheated” by foreign industries that were not playing fair and “illegally subsidizing” the production of certain products.

Since the Act was amended, Commerce has in certain instances identified a PMS and adjusted its calculations in response, which has been challenged before both the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit (CAFC). One matter which has been at issue before the courts is the information Commerce should consider in determining the existence of a PMS. That matter came before the CAFC this past year in Nexteel v. United States, in which the CAFC held that Commerce’s finding of a PMS existed in Korea during the period of review was unsupported by substantial evidence.

In analyzing Commerce’s PMS determination, the CAFC appeared to reach at least four conclusions. First, a PMS which distorts costs, as referenced in the Act, must cause costs to deviate from what they would have otherwise been in the ordinary course of trade. Second, a PMS must be particular to certain producers or exporters, inputs, or the market where the inputs are manufactured. Third, if there is a claim of a subsidy or government interference, there should be evidence that the producer or seller of the input at issue received, or should have received, that subsidy or government assistance, and that there is some form of impact on the price of the input as a result of that subsidy or government interference.

Finally, Commerce is not required to quantify a distortion in costs by the

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2022–0008]

RIN 0651–AD60

Standardization of the Patent Term Adjustment Statement Regarding Information Disclosure Statements

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The United States Patent and Trademark Office (USPTO) is reopening the comment period for the proposed rule titled “Standardization of the Patent Term Adjustment Statement Regarding Information Disclosure Statements” that was published in the Federal Register on July 12, 2022. The proposed rule’s comment period, which ended on September 12, 2022, is extended until December 2, 2022. In addition, the USPTO will treat as timely any comment that was received between September 12, 2022, and November 18, 2022.

DATES: The USPTO is reopening the comment period for the proposed rule that published at 87 FR 41267 on July 12, 2022, and that requested comments by July 12, 2022. Comments on this proposed rule must be received on or before December 2, 2022. The USPTO will also treat as timely any comments received between September 12, 2022, and November 18, 2022.

ADDRESSES: For reasons of government efficiency, comments must be submitted through the Federal eRulemaking Portal at www.regulations.gov. To submit comments via the portal, enter docket number PTO–P–2022–0008 on the homepage and click “Search.” The site will provide a search results page listing all documents associated with this docket. Find a reference to this document and click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Attachments to electronic comments will be accepted as various file types, including Adobe® portable document format (PDF) and Microsoft Word® format. Because comments will be made available for public inspection, information the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing

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1 See Congressional Record-House, H4666, H4690 [June 25, 2015].
2 See Congressional Record-Senate, S2899, S2900 [May 14, 2015].
3 Id.
4 See Nexteel Co. v. United States, 28 F.4th 1226 (Fed. Cir. 2022).
5 Id. at 1234.
6 Id. at 1234, 1236.
7 Id. at 1235–36.
8 Id. at 1234.