

## Insights: Alerts

# New Rules Center On Multi-Investigations & 100-Day Proceedings Before the U.S. International Trade Commission

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The U.S. International Trade Commission just published amendments to its rules of practice and procedure (“Commission Rules”), which will be effective for all Section 337 unfair importation investigations instituted after June 7, 2018. Proposed amendments to twenty-one Commission Rules were initially published in September 2015 in the Federal Register (80 FR 57553–64). As explained in the ITC’s new Federal Register notice (83 FR 21140–64), the final amendments to the Commission Rules include eleven changes to the amended rules proposed in 2015. These new rules give the Commission and its Administrative Law Judges new tools to ensure timely investigations of unfair imports.

The first focus-point for the ITC’s new rules is specifying how the Commission or an ALJ may expand a single new complaint or pending proceeding into multiple investigations within 30 days when “necessary to allow efficient adjudication.” Such flexibility will allow the ITC to break larger complaints with extensive parties, patents, or claims into more than one investigation to ensure sufficient resources are allocated, and that each investigation fits within the ITC’s expedited Section 337 timeline. While the 2015 proposals provided criteria limiting the circumstances under which an ALJ could split an investigation, those limitations were removed in the final amendments, thus maximizing the ALJ’s and Commission’s discretion on the issue.

The second focus-point of the new rules is the adoption of formalities governing the process for achieving early resolution of potentially dispositive issues within the first 100 days of the investigation (“100-day proceedings”). 100-day proceedings were first launched in March 2013 (*Products Having Laminated Packaging*, ITC. No. 337-TA-874) and have been used as part of a pilot program in several subsequent investigations. The first 100-day proceedings were used to determine that the Complainant in the -874 investigation lacked a domestic industry. Four more investigations using 100-day proceedings followed in 2015 and 2016, with one of those investigations (337-TA-994) being terminated by 100-day proceedings when the asserted patent was found invalid. In other investigations, 100-day proceedings were requested but denied. (E.g., *Quartz Slabs and Portions Thereof*, Inv. No. 337-TA-1017 (request as to only two of the five asserted patents was denied because the issues could not be investigation-dispositive).) In the sixth, and most recent, 100-day proceeding (*Certain Solid State Storage Drives*, Inv. No. 337-TA-1097), the ALJ issued the Initial Determination (ID) just last week (May 11, 2018) finding that the economic prong of the domestic industry requirement was satisfied as to 3 of 4 patents in the investigation.

Although the proposed rule amendments implementing 100-day proceedings within the Commission Rules largely follow the 2015 proposals, the final rules published last week clarify that:

- the ALJ may hold expedited hearings on any designated issue in a 100-day proceeding;
- the ALJ has discretion to stay discovery on remaining issues until the 100-day proceeding is resolved;
- the ALJ's initial determination in a 100-day proceeding is due within 100 days of institution of the investigation;
- the ALJ's initial determination in a 100-day proceeding will become the Commission's Final Determination 30 days after issuance, absent review; and
- petitions to review an ID in a 100-day proceeding are due after five business days, and the responses to such a petition is due five business days after the petition.

Finally, in a reversal of course over the 2015 proposals, the adopted Commission Rules provide the ALJ may not designate issues for inclusion in a 100-day proceeding following institution of the investigation, and, accordingly, the parties may not file requests seeking such designation by the ALJ.

Beyond these two focus-points, the new rules guide Commission notices of investigation, clarify timing for subpoena responses, govern how and when an ALJ may regulate electronic service to protect confidential business information, and make other rule modifications directed to administrative efficiency. In sum, the Commission's new rules move the ITC forward in ensuring expedited investigations of unfair imports.

## Related People

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