

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Committee on Anti-Dumping Practices

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Committee on Subsidies and
Countervailing Measures

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Supplement

Reproduced herewith are amended regulations of the United States International Trade Commission (19 CFR Parts 201 and 207).

General Application; Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

Agency: US International Trade Commission

Action: Final rules.

Summary: The Commission is amending parts 201 and 207 to address concerns which have arisen relating to Commission practice. The amendments in large measure incorporate and are intended to replace the interim amendments which appeared at 53 FR 33039 (29 August 1988) and 54 FR 5220 (2 February 1989) and which were issued to conform with the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418 (23 August 1988) (the 1988 Act).

Notice of proposed rulemaking was published in the Federal Register of 14 June 1990 (55 FR 24, 100), and interested persons were given until 16 July 1990 to submit comments. Several comments were submitted. These comments and the Commission's responses thereto are discussed below under "Section-by-Section Analysis". The final rules adopted are the same as the proposed rules published on 14 June, with the exception of certain changes made in response to public comments and certain other changes also discussed below under "Section-by-Section Analysis".

The amendments to parts 201 and 207 provide, in particular and among other modifications, for changes in the procedure for handling business proprietary (formerly confidential business) information under administrative protective order; page limits on briefs; clarification of procedures relating to hearings, staff reports, and review investigations; and removal of outdated and redundant language.

Effective Date: 22 April 1991.

Addresses: Kenneth R. Mason, Secretary, US International Trade Commission, 500 E Street SW, room 112, Washington DC 20436.

For further information contact: Paul R. Bardos, Esq., Office of the General Counsel, US International Trade Commission, telephone 202-252-1102. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Supplementary Information: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

On 23 August 1988, the 1988 Act became effective. This trade legislation contains provisions which, inter alia, amend title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.) ("the Act"). The Commission's rules concerning title VII practice and procedure were amended to conform to the new legislation. 53 FR 33039 (29 August 1988) and 54 FR 5220 (2 February 1989).

Commission rules ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq.) (APA), which entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. See 5 U.S.C. 553. Because of exigency caused by the passage of the 1988 Act, the Commission issued interim rules, which became effective upon issuance and were to remain in effect until the Commission could adopt final rules promulgated in accordance with the usual notice, comment, and advance publication procedure. The Commission published notice of proposed rulemaking on 14 June 1990 (55 FR 24,100). The present notice of final rulemaking is the final step in that normal procedure.

The Commission has determined that these rules do not meet the criteria described in section 1(b) of Executive Order 12291 (46 FR 13193, 17 February 1981) and do not constitute a major rule for the purposes of the E.O. The amendments are not subject to the filing requirement of section 3(c)(3) of the E.O. Moreover, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 note), the Commission hereby certifies

pursuant to 5 U.S.C. 605(b) that the rules set forth in this notice are not likely to have a significant economic impact on a substantial number of small business entities. This is because the rule amendments constitute merely clarifications and streamlining of the procedures of the Commission.

In issuing the proposed rules published on 14 June 1990, the Commission requested public comments on the proposed rules. The comments received by the Commission and the Commission's responses to the comments are discussed below under "Section-by-Section Analysis". Certain amendments have been made to the rules in addition to those suggested by the comments and those proposed in the notice published on 14 June 1990. The additional amendments and the reasons for them are also discussed under "Section-by-Section Analysis".

Section-by-Section Analysis

Section 201.2

This section is issued as proposed. No comments were received concerning the section.

Section 201.8

Section 201.8 is amended to require the filing of four copies of the public version of each business proprietary submission rather than one copy. This change is made to permit all staff members who need one to obtain a public version. Although the notice of proposed rulemaking increased the required number of copies of each submission from fourteen to sixteen, that change is now deleted, because a review of Commission procedures has revealed no further need for the increase. No comments were received concerning this section.

Section 201.11

Section 201.11 is amended to replace references to a person's "interest" in an investigation to a person's "reason for participating" in an investigation. The notice of proposed rulemaking deleted the phrase "interested person" from the rule to avoid confusion with statutory term "interested party", and this further change brings the rest of § 201.11 into line with that deletion. No comments were received concerning this section.

Section 201.14

This section is issued as proposed. No comments were received concerning the section.

Section 201.15

Section 201.15 is amended to provide that the Commission may impose sanctions that are less severe than suspension or barring from practice before the agency. Because improper conduct may not always rise to a level for which the severe sanction of disbarment is appropriate, this amendment insures that a relatively minor offence need not be met by a severe sanction. Section 201.15 is further amended to replace the phrase "opportunity to be heard" with "opportunity to present his views", in order to clarify that such an opportunity does not necessarily include a full Commission hearing. This same wording change is made in § 207.7. No comments were received concerning this section.

Section 207.1

This section is issued as proposed. No comments were received concerning the section.

Section 207.2

The Customs and International Trade Bar Association (CITBA) urged that the definition of the record in § 207.2 should state that all information received by the Commission that is not rejected or returned is included in the administrative record for purposes of appeal. The Commission has determined not to adopt CITBA's recommendation. The current definition already covers all information received by the Commission that is not rejected or returned.

Section 207.3

CITBA argued that the overnight mail requirement in § 207.3 should be liberalized so that in particular cases parties would be permitted to agree among themselves on less costly arrangements where appropriate. The Commission has not modified the overnight mail requirement in that respect, but notes that the parties may submit at any time a request to the Secretary to make other arrangements, provided that the arrangements are agreed to by all parties. The rule is amended to add the petition to the list of documents that must be served by hand or overnight mail, in order to insure prompt service of that important document. A further amendment specifies that, where a document is filed with the Commission before a service list is issued, a certificate of service need not be filed with the document, but must be filed when service has been made.

Section 207.3 is also amended to change the procedure for filing the public version of a document that contains business proprietary information. Until recently, the Commission has given submitters a 24-hour extension to file the public version of such documents. This "one-day rule" was intended to reduce the incidence of administrative protective order breaches caused by parties failing under the pressure of deadlines to adequately sanitize the public version of their submissions. Practice has shown that the "one-day rule" did not relieve parties of an

appreciable amount of pressure, because the business proprietary version filed on the deadline had to have all business proprietary information accurately bracketed. If a submitter discovered and corrected misbracketing during the 24-hour period, the submitter could nevertheless be found guilty of an administrative protective order breach, if recipients, relying on the correctness of bracketing, disclosed unbracketed information to persons not subject to the administrative protective order.

Under the new procedure, parties will continue to be required to file the business proprietary version of their document on the deadline for filing such documents. That version will be filed with business proprietary information enclosed in brackets but with the following warning on every page: "Bracketing of BPI not final for one business day after date of filing". In accordance with the warning, parties are not to discuss information received in the document with anyone not subject to the administrative protective order until the bracketing becomes final. One business day after the deadline, submitters are to file a public version with all business proprietary information deleted. In the event that a party finds an error in the bracketing done on the first day, the party is permitted to notify the Commission on the second day of the necessary changes to bracketing, and must then file replacement pages to correct the business proprietary version of the document. Such corrections will not give rise to an allegation of breach, provided that the corrections are made within the time permitted.

This change is made in response to the concerns expressed by the bar, and should ease the task of party representatives by providing a day, on which they have no other obligations to the Commission, to concentrate on properly sanitizing submissions. The one-day extension is not to be used to amend the submission in ways other than bracketing and deletion of business proprietary information. Any violation of that restriction could result in striking all or part of the document from the record. The Commission will not look with favour on attempts to amend a submission in a substantive fashion during the one-day extension, and may strike improperly filed submissions. Nothing in this rule relieves a party from the obligation to seek an extension of time to substantively amend a submission after the deadline for filing the business proprietary version of that submission.

Section 207.4

Section 207.4 is amended to change "Director" to the more appropriate "Commission", and delete an unnecessary reference to the auditing of questionnaires. No comments were received concerning this section.

Sections 207.5 and 207.6

These sections are issued as proposed. No comments were received concerning the sections.

Section 207.7

Powell, Goldstein, Frazer and Murphy (Powell, Goldstein) recommended that the Commission supplement paragraphs (d) and (e) of § 207.7 concerning breaches of administrative protective orders and sanctions for breaches, in order to clarify what constitutes a breach and how sanctions are chosen. Powell, Goldstein recommended that clear guidelines be published with regard to the intentionality of a breach, the degree of resulting prejudice of a breach, and efforts to mitigate harm. Powell, Goldstein suggested that the Commission's General Counsel has determined not to publish guidelines on this subject to avoid "protracted litigation". Powell, Goldstein suggested further that an inadvertent and non-prejudicial breach should result in the imposition of no sanctions.

The Commission has found it inappropriate to clarify in the rules what constitutes a breach and how sanctions are chosen. Such matters are best dealt with on a case-by-case basis. Contrary to Powell, Goldstein's suggestion, it is the Commission, not the Commission's General Counsel, that decides whether guidelines on breaches and sanctions will be issued. The Commission has not determined not to publish guidelines on this subject to avoid "protracted litigation". Moreover, periodic reports giving guidance on breaches and sanctions are planned for publication in the Federal Register. The first such report has already appeared, at 56 FR 4846 (6 February 1991). In answer to Powell, Goldstein's further recommendation that an inadvertent and non-prejudicial breach should result in the imposition of no sanctions, the Commission considers any breach to be a serious matter and one that undermines the investigative process whether or not particular parties have been prejudiced. Powell, Goldstein asked specifically whether it is a breach to publish material that is covered by an administrative protective order but that is also in the public domain whether by company disclosure or from other public sources. Section 207.7 forbids a recipient of information under administrative protective order to divulge such information if it is "not otherwise available to him".

Section 207.7 should be amended, according to CITBA, to specify a time in preliminary investigations for petitioners to file their administrative protective order applications. The rule is allegedly unclear, because the deadline for such application is the deadline for filing entries of appearance, and § 207.10 is abolishing the need for petitioners to file entries of appearance in preliminary investigations. CITBA further argued that § 207.7 should be amended to clarify the term "consultant or expert who appears regularly before the Commission". CITBA urged the Commission to explore alternatives, such as pro bono legal representation, to permitting pro se litigants access to business proprietary information under administrative protective order.

CITBA also suggested changes to § 207.7 to clarify that no administrative protective order application will be accepted from a person involved in competitive decision-making within the meaning of such cases as *US Steel v. United States*, 730 F.2d 1465 (Fed.Cir. 1984), and

Matsushita Elective Industrial Co. Ltd. v. United States, 13 CIT ____, 746 F. Supp. 1103 (1990). CITBA also suggested that sanctions other than private letters of reprimand may be appropriately expunged from a recipient's record, especially in cases of inadvertent breach. CITBA urged the Commission to refrain in most circumstances from making public the fact that a breach has occurred. CITBA recommended that the Secretary compile the administrative protective order service list as early as possible and preferably before the deadline for filing applications, in order that the business proprietary version of the petition can be obtained by respondents as early as possible. CITBA urged that § 207.7 specify that a submitter dissatisfied with the Secretary's decision that a document must be served may withdraw the document. CITBA's final point on § 207.7 was a recommendation that the Commission reinstate the opportunity to comment on business proprietary information received in or after the briefs.

Section 207.7 has been amended to clarify that in preliminary investigations petitioner's deadline for filing their administrative protective order applications is the deadline for filing entries of appearance. Although § 207.10 has abolished the need for petitioners to file entries of appearance in preliminary investigations, petitioners retain a deadline for applications that is the same as the deadline for other parties to file entries of appearance. The Commission has declined to clarify in § 207.7 the term "consultant or expert who appears regularly before the Commission", because that is a term taken from legislative history. Although the Commission intends, as urged by CITBA to explore alternatives to permitting pro se litigants access to business proprietary information under administrative protective order, no change to § 207.7 is considered necessary on that point.

The final rules adopt in modified form CITBA suggested changes to § 207.7 to clarify that no administrative protective order application will be accepted from a person involved in competitive decision-making within the meaning of such cases as *US Steel v. United States*, 730 F.2d 1465 (Fed.Cir. 1984), and *Matsushita Electric Industrial Co. Ltd. v. United States*, 13 CIT ____, 746 F. Suppl. 1103 (1990). At the present time, the Commission does not consider it appropriate to permit sanctions more serious than private letters of reprimand to be expunged from a recipient's record. The Commission intends to refrain in most circumstances from making public the fact that a breach has occurred, but retains the power to make a breach public where circumstances warrant, as discussed in the notice of proposed rulemaking published on 14 June 1990. The Commission also does not consider it appropriate to instruct the Secretary to compile the administrative protective order service list before the deadline for filing applications, in view of the heavy administrative burden imposed on the Secretary and the investigative staff.

CITBA urged that a submitter dissatisfied with the Secretary's decision that a document must be served under § 207.7(f) be given the opportunity to withdraw the document. However, the statute does not

permit the Secretary to accord such an opportunity. Should a party wish to submit a document it considers sensitive yet not wish to risk having to serve the document if the request for exemption is denied, the party may, pursuant to § 201.12, file a non-sensitive version or description of the allegedly exempt material and request the Secretary to make a ruling on it. Alternatively, the party may request the Secretary to inspect the information without the party surrendering custody of it.

The Commission has declined to adopt CITBA's recommendation that the Commission reinstate the opportunity to comment on late-field business proprietary information. In view of the lack of useful information provided in such comments to date, the widespread practice of misusing the opportunity by submitting legal arguments, and the time allowed by statute for the Commission to consider the record.

Section 207.7 is amended to subject an authorized applicant to sanctions in the event representations made in the authorized applicant's application are untrue or inaccurate. The section is also amended stylistically to make clearer the provisions on applications and sanctions. Moreover, two or more authorized applicants representing the same party must choose among them a lead authorized applicant to accept service of business proprietary documents, in order to avoid redundant service of documents.

Section 207.7 is further amended to add a new paragraph (g) which clarifies Commission procedure by specifying how a person may file a request for exemption from disclosure of business proprietary information under administrative protective order pursuant to 19 U.S.C. 1677f(c)(1)(A). The Commission does not intend hereby to suggest that such objections will often be granted. On the contrary, the statute provides only narrow circumstances in which business proprietary information will not be disclosed under administrative protective order.

Section 207.8

Powell, Goldstein argued that § 207.8 should provide for the taking of adverse inferences only in cases of refusal to co-operate with a Commission request for information, not in cases of inability to provide the requested data. The final rules do not incorporate Powell, Goldstein's suggested amendment. An adverse inference may be appropriate where a person claims inability to co-operate if the record suggests that the claimed inability is not real.

CITBA argued that the adverse inference provision should be deleted as unsupported by statutory authority, or at least should be limited to instances of refusal to co-operate. CITBA also pointed out a typographical error. As discussed above, the final version of § 207.8 does not limit the adverse inference provision to instances of overt refusal to co-operate. The final version does correct the typographical error noted by CITBA. As to CITBA's argument that adverse inferences are never statutorily sanctioned, section 776 of the Tariff Act Commission to

use the best information available when a person refuses or is unable to produce information requested or otherwise significantly impedes an investigation. Under that provision, the Commission is fully justified in taking an adverse inference from conduct such as a refusal to co-operate with a Commission investigation.

Section 207.10

CITBA urged the Commission to make clear in § 207.10 that multiple copies of a petition need be filed only in section 303 cases in which an injury test is required. If an injury test becomes appropriate at a later time, the rule could specify a deadline for such a filing. CITBA also argued for deleting paragraph (d) of § 207.10, which requires a petitioner to provide information to the Commission if an injury test becomes appropriate, as unnecessary. According to CITBA, such information can better be obtained in other ways, because a petitioner can be sent a questionnaire, can be subpoenaed, and can have adverse inferences taken against it in case of non-compliance. CITBA also questioned the propriety of requiring such information only from petitioner. If the intent of the rule was to require the filing of a new petition, CITBA argued that such a requirement was inconsistent with the statute.

The final version of § 207.10 is amended in response to CITBA's concern to provide that a petition is to be filed with the Commission in section 303 cases only where an injury test is required. Paragraph (d) of § 207.10 stands as proposed, because although a petitioner can indeed be sent a questionnaire, the investigation can be materially advanced if petitioner comes forward at an early date with information relevant to the investigation. This requirement is similar to the one imposed on petitioner at the start of an investigation under 19 U.S.C. 1871a or 1673a. To clarify a point on which CITBA posed a query, the rule is intended to require petitioner to submit information, not to file an entirely new petition.

The section is also amended to replace a reference to the "injury test" with a reference to the "Commission determination under title VII of the Act", a phrase conforming more closely to statutory language.

Section 207.11

CITBA recommended that § 207.11 be amended to specify that it applies only to section 303 investigations if an injury test is called for. CITBA expressed the concern that petitioners might erroneously think it necessary to file multiple copies of a petition with the Commission in a case in which the Commission has no rôle. Because, as discussed above, § 207.10 is amended to address only section 303 cases in which an injury test is required, the Commission sees no need to repeat that limitation in § 207.11.

Section 207.12

In § 207.12, a reference is made to a preliminary investigation "to determine whether there is a reasonable indication of injury". The quoted language is deleted as unnecessary and incomplete. No comments were received concerning this section.

Sections 207.13 and 207.14

These sections are issued as proposed. No comments were received concerning the sections.

Section 207.15

Marks Murase & White proposed that the page limitation on briefs in § 207.15 be supplemented by the phrase "printed in no smaller than 10 pitch type with no less than one-inch margins". The Commission has determined not to implement the proposed change. Such a change might involve the Commission in policing minor details of procedure to an unacceptable degree. Wiley, Rein & Fielding suggested that §§ 207.15, 207.22, 207.24 and 207.25 be harmonized by specifying in § 207.15 that only parties may submit briefs and that non-parties may submit brief statements. The final rules incorporate the suggested amendment. The section is further amended to correct a cross-reference to make clear that the conference in a preliminary investigation is held according to the same procedures as are full Commission hearings.

CITBA urged the elimination of all page limits on briefs. CITBA stated its understanding of the page limits to permit the submission of exhibits of unlimited length. CITBA also requested the opportunity to submit comments on business proprietary information in a preliminary investigation up to the date of the Commission's determination.

The Commission has determined to reject CITBA's call for the elimination of all page limits on briefs. In the short time available to the Commission to make a preliminary determination, briefs of excessive length can be more of a hindrance than a help. Although CITBA is correct in its understanding that there is no page limit on non-textual material such as certain exhibits, the Commission will look with disfavour on attempts to evade the page limits by secreting textual material in exhibits. As discussed above under § 207.7, the Commission declines to allow the filing of comments after the deadline for filing briefs.

The last sentence of § 207.15, providing that the Commission can hold a hearing in lieu of a staff conference, is deleted as unnecessary. The Commission may when it deems appropriate waive this and any other rule pursuant to § 201.4. The section is amended to permit the filing of witness testimony prior to the conference, in a manner similar to the procedure added to § 207.23 for hearings, as described below.

Section 207.17

Section 207.17 should be amended, according to CITBA, to clarify that a draft of the staff report in preliminary investigations will be made available to the parties for comment before the Commission's determination. The section has been issued as proposed, without an opportunity for parties to view the staff report before the Commission's determination, because there is insufficient time in preliminary investigations to provide an opportunity to comment on the report.

The section has been clarified, however, to indicate that the public and proprietary versions of staff reports are not always issued at the same time. The same clarification is made to § 207.21.

Sections 207.18, 207.20, 207.21 and 207.22

These sections are issued as proposed, except for the change to § 207.21 discussed under § 207.17 above. No comments were received concerning the sections.

Section 207.23

Section 207.23 sets forth procedures for hearing witnesses to file copies of their testimony before the hearing. In past hearings, certain witnesses have taken up significant portions of the proceedings by reading their prepared statements. The Commission does not consider this practice to be a constructive use of agency resources, and would prefer a witness to file his prepared testimony, keep his oral statement brief, and offer to answer the Commission's questions. However, the opportunity to file witness testimony is not intended to permit the filing of additional briefs. The section is also amended to specify that a party may ask that a portion of a hearing be closed to the public, but may not request that the hearing as a whole be closed. This limitation is imposed by the statutory requirement, under 19 U.S.C. 1677c(b), that a transcript of the hearing be made public. No comments were received concerning this section.

Sections 207.24, 207.25 and 207.26

These sections are issued as proposed. No comments were received concerning the sections.

Section 207.27

In § 207.27 concerning anti-circumvention proceedings, CITBA requested that comments be required to reference the underlying administrative record and be limited to a discussion of facts and arguments supporting interpretation of the outstanding order with respect to the articles at issue. CITBA further recommended that the rule specify whether the comments should be served on anyone, whether the

comments could contain business proprietary information, whether administrative protective orders would be issued, how would persons be given access to the public record, and whether persons would have access to the non-public record.

The Commission considers it unnecessary to expressly limit the scope of comments concerning anti-circumvention proceedings. In answer to CITBA's other questions, the comments need not be served on anyone; comments may contain business proprietary information, provided that such material is accompanied by a request for confidential treatment under § 201.6 of the Commission's rules; no administrative protective order is considered necessary in anti-circumvention proceedings; any person may request access to the public record at any time; and persons will not have access to the non-public record in anti-circumvention proceedings. The Commission must keep procedure in anti-circumvention proceedings simple because of the short deadlines imposed by the statute.

Sections 207.28 and 207.40 Through 207.44

These sections are issued as proposed. No comments were received concerning the sections.

Section 207.45

With respect to § 207.45 concerning review proceedings, CITBA recommended providing an opportunity at the pre-review stage both for rebuttal of initial comments and for access to business proprietary information under administrative protective order. CITBA also suggests renaming paragraph (a). The Commission considers it inappropriate to expand pre-review proceedings to the considerable extent of permitting rebuttal of initial comments and access to business proprietary information under administrative protective order. Paragraph (a) is renamed in accordance with CITBA's suggestion from "commencement of investigation" to the more appropriate "request for review".

Section 207.50

This section is issued as proposed. No comments were received concerning the section.

Section 207.51

CITBA recommended against the proposed amendment to § 207.51 that would extend the time to 20 days for the Commission to file the record in a 19 U.S.C. 1677f(c)(2) action, suggesting instead that "fifteen days (twenty where service is by mail)" would be more appropriate. Section 207.51 has been issued as proposed because the Commission considers that twenty days is the minimum necessary to collect and transmit the record in a 19 U.S.C. 1677f(c)(2) action.

List of Subjects in 19 CFR Parts 201 and 207

Administrative practice and procedure, Investigations, Imports.

19 CFR chapter II, parts 201 and 207 are amended as follows:

1. The authority citation for part 201 continues to read as follows:

Authority: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and section 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. Section 201.2 is revised to read as follows:

§ 201.2: Definitions

As used in this chapter-

(a) **Commission** means the United States International Trade Commission;

(b) **Tariff Act** means the Tariff Act of 1930, 19 U.S.C. 1202-1677j;

(c) **Trade Expansion Act** means the Trade Expansion Act of 1962, 19 U.S.C. 1801-1991;

(d) **Trade Act** means the Trade Act of 1974, 19 U.S.C. 2101-2487;

(e) **Trade Agreements Act** means the Trade Agreements Act of 1979, Public Law 96-39, 93 Stat. 144;

(f) **Rule** means a section of the Commission Rules of Practice and Procedure (19 CFR chapter II);

(g) **Secretary** means the Secretary of the Commission;

(h) Except for adjudicative investigations under sub-chapter C of this chapter, **party** means any person who has filed a complaint or petition on the basis of which an investigation has been instituted, or any person whose entry of appearance has been accepted pursuant to § 201.11(a) or (c). Mere participation in an investigation without an accepted entry of appearance does not confer party status;

(i) **Person** means an individual, partnership, corporation, association, or public or private organization.

3. Paragraph (d) of § 201.8 is revised to read as follows:

§ 201.8: Filing of documents

(d) **Number of copies.** A signed original (or a copy designated as an original) and fourteen (14) copies of each document shall be filed. All submissions shall be on letter-sized paper (8½ inches by 11 inches), except copies of documents prepared for another agency or a court (e.g. patent file wrappers or pleadings papers). The original and at least one copy of all submissions shall be printed on one side only and shall be unbound (although they may be stapled or held together by means of a clip). In the event that confidential treatment of the document is requested under § 201.6, at least four (4) additional copies shall be filed, in which the confidential business information shall have been deleted and which shall have been conspicuously marked "non-confidential" or "public inspection". The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

4. Section 201.11 is revised to read as follows:

§ 201.11: Appearance in an investigation as a party

(a) **Who may appear as a party.** Any person may apply to appear in an investigation as a party, either in person or by representative, by filing an entry of appearance with the Secretary. Each entry of appearance shall state briefly the nature of the person's reason for participating in the investigation and state the person's intent to file briefs with the Commission regarding the subject matter of the investigation. The Secretary shall promptly determine whether the person submitting the entry of appearance has a proper reason for participating in the investigation. If it is found that a person does not have a proper reason for participating in the investigation, that person shall be so notified by the Secretary and shall not be entitled to appear in the investigation as a party. A person found to have a proper reason for participating in the investigation shall be permitted to appear in the investigation as a party, and acceptance of such person's entry of appearance shall be signified by the Secretary's inclusion of such person on the service list established pursuant to paragraph (d) of this section.

(b) **Time for filing.** Each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication of the Commission's notice of investigation in the Federal Register. In the case of investigations conducted under sub-part B of part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than seven (7) days after publication of the Commission's notice of investigation in the Federal Register.

(c) **Late filing.** Any entry of appearance filed with the Secretary after the filing date established in paragraph (b) of this section shall be referred to the Chairman, or other person designated to conduct the investigation, who shall promptly determine whether to

accept such entry for good cause shown by the person desiring to file the notice. The Secretary shall promptly notify the submitter of a decision to deny the entry, or if the entry is accepted, include such person on the service list established pursuant to paragraph (d) of this section.

(d) **Service list.** Upon the expiration of the time for filing notices of appearance established in paragraph (b) of this section, the Secretary shall prepare a service list. The service list shall contain the names and addresses of all persons, or their representatives, who are parties to the investigation pursuant to § 201.2(h) and paragraph (a) of this section. Upon the acceptance of a late entry of appearance pursuant to paragraph (c) of this section, the Secretary shall amend the service list to include the name and address of the person whose notice has been accepted and shall promptly forward such notice to all parties to the investigation.

5. Paragraph (b) of § 201.14 is revised to read as follows:

§ 201.14: Computation of time, additional hearings, postponements, continuances, and extensions of time

(b) **Additional hearings, postponements, continuances, and extensions of time.**

(1) Prior to its final determination in any investigation, the Commission may in its discretion for good cause shown grant additional hearings, postponements, or continuances of hearings.

(2) The Chairman of the Commission or such other person as is designated to conduct the investigation shall determine whether to grant for good cause shown extensions of time for performing any act required by or pursuant to the rules contained in this chapter.

(3) A request that the Commission take any of the actions described in this section shall be filed with the Secretary and served on all parties to the investigation.

6. Paragraph (a) of § 201.15 is revised to read as follows:

§ 201.15: Attorneys or agents

(a) **In general.** No register of attorneys or agents who may practice before the Commission is maintained. No application for admission to practice is required. Any person desiring to appear as attorney or agent before the Commission may be required to show to the satisfaction of the Commission his acceptability in that capacity. Any attorney or agent practicing before the Commission, or desiring so to practice, may for good cause shown be suspended or

barred from practicing before the Commission, or have imposed on him such lesser sanctions as the Commission deems appropriate, but only after he has been accorded an opportunity to present his views in the matter.

* * * * *

7. 19 CFR chapter II, part 207, § 207.1 and sub-parts A-F, are revised to read as follows:

PART 207 - INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

Sec.

207.1 Applicability of part.

Sub-part A: General Provisions

- 207.2 Definitions applicable to Part 207.
- 207.3 Service, filing and certification of documents.
- 207.4 The record.
- 207.5 Ex parte meetings.
- 207.6 Reports of progress of investigation.
- 207.7 Limited disclosure of certain business proprietary information under administrative protective order.
- 207.8 Questionnaires to have the force of subpoenas; subpoena enforcement.

Sub-part B: Preliminary Determinations

- 207.10 Filing of petition with the Commission.
- 207.11 Contents of petition.
- 207.12 Notice of preliminary investigation.
- 207.13 Co-operation with administering authority; preliminary investigation.
- 207.14 Negative petition determination.
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Sub-part F: Reserved

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Authority: 19 U.S.C. 1303, 1335, 1671-1677k, and 2482

§ 207.1: Applicability of part

Part 207 applies to proceedings of the Commission under section 303, section 516A and title VII of the Tariff Act of 1930 (19 U.S.C. 1306, 1516A and 1671-1677j) (the Act), and 19 U.S.C. 1677k.

Sub-part A: General Provisions

§ 207.2: Definitions applicable to part 207.

For the purposes of this part, the following terms have the meanings hereby assigned to them:

- (a) The term **the Act** means: The Tariff Act of 1930, as amended.
- (b) The term **administering authority** means: The Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under section 303 or title VII of the Act is transferred by law.
- (c) The term **Director** means: The incumbent Commission Director or Acting Director, Office of Operations, or, in the absence of either, a person designated by the Director.

- (d) The term **ex parte meeting** means: Any communication between
- (1) Any interested party or other person providing factual information in connection with an investigation, and
 - (2) Any Commissioner, or member of a Commissioner's staff, in which less than all parties participate, and which is not a hearing or conference for which an opportunity to participate is given to the parties.
- (e) The term **injury** means: Material injury or threat of material injury to an industry in the United States, or material retardation of the establishment of an industry in the United States, by reason of imports into the United States of a class or kind of merchandise which is found by the administering authority to be subsidized, or sold, or likely to be sold, at less than its fair value.
- (f) The term **record** means:
- (1) All information presented to or obtained by the Commission during the course of an investigation, including completed questionnaires, any information obtained from the administering authority, written communications from any person filed with the Secretary, staff reports, all governmental memoranda pertaining to the case, and the record of ex parte meetings required to be kept pursuant to section 777(a)(3) of the Act; and
 - (2) 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.
- (g) The term **coalition or trade association** as used in an investigation referred to in section 771(9)(G) of the Act means a coalition or trade association which is representative of domestic processors, domestic processors and producers, or domestic processors and growers.

§ 207.3: Service, filing, and certification of documents

- (a) **Certification.** Any person submitting factual information on behalf of the petitioner or any other interested party for inclusion in the record, and any person submitting a response to a Commission questionnaire, must certify that such information is accurate and complete to the best of the submitter's knowledge.
- (b) **Service.** Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8 of this chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter. If a document is filed before the

Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 207.7, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, and testimony filed by parties pursuant to §§ 207.10, 207.15, 207.22, 207.23, and 207.24 shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings, business proprietary information, privileged information, and information required to be served under this section, placed in the record of the investigation by the Commission.

(c) **Filing.** Documents to be filed with the Commission must comply with applicable rules, including § 201.8 of this chapter. If the Commission establishes a deadline for the filing of a document, and the submitter includes business proprietary information in the document, the submitter is to file and, if the submitter is a party, serve the business proprietary version of the document on the deadline and may file and serve the non-business proprietary version of the document no later than one business day after the deadline for filing the document. The business proprietary version shall enclose all business proprietary information in brackets and have the following warning marked on every page: "Bracketing of BPI not final for one business day after date of filing". The bracketing becomes final one business day after the date of filing of the document, i.e., at the same time as the non-business proprietary version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the business proprietary document at the same time as the non-business proprietary version is filed. No changes to the document other than bracketing and deletion of business proprietary information are permitted after the deadline. Failure to comply with this paragraph may result in the striking from the record of all or a portion of a submitter's document.

§ 207.4: The record

(a) **Maintenance of the record.** The Secretary shall maintain the record of each investigation conducted by the Commission pursuant to section 303 or title VII of the Act. The record shall be maintained contemporaneously with each actual filing in the record. It shall be divided into public and non-public sections. The Secretary shall

also maintain a contemporaneous index of all materials filed in the record. All material properly filed with the Secretary shall be placed in the record. The Commission need not consider in its determinations or include in the record any material that is not filed with the Secretary. All material which is placed in the record shall be maintained in the public record, with the exception of material which is privileged, or which is business proprietary information submitted in accordance with § 201.6 of this chapter. Privileged and business proprietary material shall be maintained in the non-public record.

(b) **Audits.** The Commission may in its discretion verify information received in the course of an investigation. To the extent a verification results in new or different information, the Commission shall place such information on the record.

(c) **Materials provided by the administering authority.** Materials received by the Commission from the administering authority shall be placed on the Commission's record and shall be designated by the Commission as public or non-public in conformity with the applicable designation of the administering authority. Any requests to the Commission either to permit access to such materials or to release such materials shall be referred to the administering authority for its advice.

§ 207.5: Ex parte meetings

There shall be included in the record of each investigation a record of ex parte meetings as required by section 777(a)(3) of the Act. The record of each ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted.

§ 207.6: Reports of progress of investigation

The Secretary shall upon the request of a party inform the parties to an investigation of the progress of that investigation. No such progress report, however, shall be issued by the Secretary less than thirty (30) days after the date of publication of commencement of an investigation by notice in the Federal Register, nor shall the Secretary be required to issue a report on the progress of any investigation less than thirty (30) days after the date of issuance of the previous such report with respect to the same investigation. A report shall be limited to a statement of what official actions the Commission has taken since the previous such report, if any.

§ 207.7: Limited disclosure of certain business proprietary information under administrative protective order

- (a)(1) **Disclosure.** Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for the request (e.g. all business proprietary information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all business proprietary information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure, e.g. trade secrets) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term "business proprietary information" has the same meaning as the term "confidential business information" as defined in § 201.6 of this chapter.
- (2) **Application.** An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. An application on behalf of a petitioner, a respondent, or another party must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with business proprietary information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five (5) days before the deadline for filing post-hearing briefs in the investigation, or the deadline for filing briefs in a preliminary investigation, and shall not be served with business proprietary information.
- (3) **Authorized applicant.** (i) Only an authorized applicant may file an application under this section. An authorized applicant is:
- (A) An attorney for an interested party which is a party to the investigation;

(B) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i)(A) of this section;

(C) A consultant or expert who appears regularly before the Commission and who represents an interested party which is a party to the investigation; or

(D) A representative of an interested party which is a party to the investigation, if such interested party is not represented by counsel.

(ii) In addition, an authorized applicant must not be involved in competitive decision-making, as defined in *US Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for an interested party which is a party to the investigation.

- (4) **Forms and determinations.** (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific business proprietary information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, or seven (7) days in a preliminary investigation, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30) days from the filing of the information, or ten (10) days in a preliminary investigation. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final for purposes of review by the US Court of International Trade under section 777(c)(2) of the Act.

(ii) Should the Secretary determine pursuant to this section that materials sought to be protected from public disclosure by a person do not constitute business proprietary information or were not required to be served under paragraph (f) of this section, then the Secretary shall, upon request, issue an order on behalf of the Commission requiring the return of all copies of such materials served in accordance with paragraph (f) of this section.

(iii) The Secretary shall release business proprietary information only to an authorized applicant whose application has been accepted and who presents the application along with adequate personal identification; or a person described in paragraph (b)(1)(iv) of this section who presents a copy of the statement referred to in that paragraph along with adequate personal identification.

(iv) An authorized applicant granted access to business proprietary information in a preliminary investigation may, subject to paragraph (c) of this section, retain such business proprietary information during any final investigation corresponding to that preliminary investigation, provided that the authorized applicant has not lost his authorized applicant status (e.g., by terminating his representation of an interested party who is a party). When retaining business proprietary information pursuant to this paragraph, the authorized applicant need not file a new application in the final investigation, but shall list in his entry of appearance in the final investigation the authorized applicants in the same firm and the persons employed or supervised by the authorized applicant who continue to participate in the investigation.

(b) **Administrative protective order.** The administrative protective order under which information is made available to the authorized applicant shall require him to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, he shall:

(1) Not divulge any of the business proprietary information obtained under the administrative protective order and not otherwise available to him, to any person other than

(i) Personnel of the Commission concerned with the investigation;

(ii) The person or agency from whom the business proprietary information was obtained;

(iii) A person whose application for access to business proprietary information under the administrative protective order has been granted by the Secretary; and

(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by the authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decision-making for an interested party which is a party to the investigation; and who have submitted to the Secretary a signed statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be deemed responsible for such persons' compliance with the administrative protective order);

(2) Use such business proprietary information solely for the purposes of the Commission investigation then in progress or for judicial or other review of such Commission investigation.

(3) Not consult with any person not described in paragraph (b)(1) of this section concerning such business proprietary information without first having received the written consent of the Secretary and the party or the attorney of the part from whom such business proprietary information was obtained.

(4) Whenever materials (e.g., documents, computer disks, etc.) containing such business proprietary information are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container.

(5) Serve all materials containing business proprietary information as directed by the Secretary and pursuant to paragraph (f) of this section.

(6) Transmit all materials containing business proprietary information with a cover sheet identifying the materials as containing business proprietary information.

(7) Comply with the provisions of this section.

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (e.g., change in personnel assigned to the investigation).

(9) Report promptly and confirm in writing to the Secretary any breach of the administrative protective order; and

(10) Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions as the Commission deems appropriate.

(c) **Final disposition of material released under administrative protective order.** At such date as the Secretary may determine appropriate for particular data, each authorized applicant shall return or destroy all copies of materials released to authorized applicants pursuant to this section and all other materials containing business proprietary information, such as charts or notes based on any such information received under administrative protective order, and file with the Secretary a certificate attesting to his personal, good faith belief that all copies of such material have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized.

- (d) **Sanctions for breach of administrative protective order.** A breach of an administrative protective order may subject an offender to:
- (1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;
 - (2) Referral to the United States Attorney;
 - (3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association; and
 - (4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, and denial of further access to business proprietary information in the current or any future investigations before the Commission.
- (e) **Sanction procedure.** (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions in accordance with paragraph (d) of this section. Whenever the Commission has reason to believe that a person may have breached an administrative protective order issued pursuant to this section, the Secretary shall issue a letter informing such person that the Commission has reason to believe a breach has occurred and that the person has a reasonable opportunity to present his views on whether a breach has occurred. If subsequently the Commission determines that a breach has occurred, then the Secretary shall issue a letter informing such person of that determination and that the person has a reasonable opportunity to present his views on whether mitigating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has occurred. Once such person has been afforded a reasonable opportunity to present his views, the Commission shall determine what sanction if any to impose.
- (2) Where the sanction imposed is a private letter of reprimand, the Secretary shall expunge the sanction from the recipient's record two (2) years from the date of issuance of the sanction, provided that
 - (i) The recipient has not received another unexpunged sanction pursuant to this section at any time prior to the end of the two-year period, and

(ii) The recipient is not the subject of an investigation for possible breach of administrative protective order under this section at the end of the two-year period. Upon the completion of such a pending breach investigation without the issuance of a sanction, the original sanction shall be expunged. The Secretary shall notify a sanction recipient in the event that the sanction is expunged.

(f) **Service.** (1) Any party filing written submissions which include business proprietary information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and a non-business proprietary version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) A party may seek an exemption from the service requirement of paragraph (f)(1) of this section for a particular submission by filing a request for exemption with the reasons therefor along with the submission. The Secretary shall not accept the submission into the record but shall hold the submission until the request has been granted or denied. The Secretary shall promptly respond to the request. If a request is granted, the Secretary shall accept the submission into the record. If a request is denied, the party shall serve the submission within two (2) days of the denial and file a certificate of service in the form described in paragraph (f)(1) of this section, and the Secretary shall then accept the submission into the record. All submissions which include business proprietary information must be accompanied by a certificate attesting either that complete copies of the submission have been properly served, or that a request for exemption has been filed with the submission.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Business proprietary information in submissions must be clearly marked as such when submitted, and must be segregated from other material being submitted.

- (g) **Exemption from disclosure.** Any person submitting business proprietary information to the Commission may request exemption from the disclosure of such information under administrative protective order. A request must be filed in writing with the reasons therefor at the same time as the information being submitted is filed. Such a request shall only be granted if the Secretary finds that such information is privileged information, classified information, or specific information of a type for which there is a clear and compelling need to withhold from disclosure. In the case of a party, the request shall be treated as a request for exemption from service under paragraph (f) of this section. In the case of a non-party, the Secretary shall promptly notify the submitter as to whether the request has been approved or denied.

§ 207.8: Questionnaires to have the force of subpoenas; subpoena enforcement

Any questionnaire issued by the Commission in connection with any investigation under section 303 or title VII of the Act, may be issued as a subpoena and subscribed by a Commissioner, after which it shall have the force and effect of a subpoena authorized by the Commission. Whenever any party or any other person fails to respond adequately to such a subpoena or whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Commission may use the best information otherwise available in making its determination; seek judicial enforcement of the subpoena pursuant to 19 U.S.C. 1333; make inferences adverse to such person's position; and take such other actions as necessary to obtain needed information.

Sub-part B: Preliminary Determinations

§ 207.10: Filing of petition with the Commission

(a) **Filing of the petition.** Any interested party who files a petition with the administering authority pursuant to section 702(b) or 732(b) of the Act, or section 303 of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition, pursuant to § 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. If the petition complies with the provisions of § 207.11, it shall be deemed to be properly filed on the date on which the requisite number of copies of the petition is received by the Secretary. The Secretary shall notify the administering authority of that date. Notwithstanding § 201.11 of this chapter, a petitioner need not file an entry of appearance in the preliminary investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance, although the petitioner must file an entry of appearance in any final investigation corresponding to that preliminary investigation.

(b) **Service of the petition.** A copy of the petition, or a version thereof omitting business proprietary information, shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant to § 201.11(d) of this chapter within two (2) days of the establishment of the Secretary's list. A copy of the petition including all business proprietary information shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant to § 207.7(a)(4) within two (2) days of the establishment of the Secretary's list. Service shall be attested by a certificate of service as required in § 201.16(c)(2) of this chapter.

(c) **Amendments and withdrawals; critical circumstances.** (1) Any amendment or withdrawal of a petition shall be filed on the same day with both the Secretary and the administering authority, without regard to whether the requester seeks action only by one agency.

(2) When not made in the petition, any allegations of critical circumstances under section 303, 703 or 733 of the Act shall be made in an amendment to the petition and shall be filed as early as possible. Critical circumstances allegations, whether made in the petition or in an amendment thereto, shall contain information reasonably available to petitioner concerning the factors enumerated in sections 705(b)(4)(A) and 735(b)(4)(A) of the Act.

(d) **Section 303(a)(1) petitions.** If during an investigation under section 303(a)(1) of the Act a Commission determination under title VII of the Act becomes required, the Commission shall issue an order instructing petitioner to provide all information reasonably available to it concerning the determination that the Commission is to make in the investigation.

§ 207.11: Contents of petition

The petition shall be signed by the petitioner or his duly authorized officer, attorney, or agent, and shall set forth the name, address, and telephone number of the petitioner and any such officer, attorney, or agent, and the names of all representatives of petitioner who will appear in the investigation. The petition shall allege the elements necessary for the imposition of a duty under section 303(a)(1), 701(a) or 731(a) of the Act and contain information reasonably available to the petitioner supporting the allegations. Petitioners are advised to refer to the administering authority's regulations concerning the contents of petitions.

§ 207.12: Notice of preliminary investigation

Upon receipt by the Commission of a petition under § 207.10 or receipt of notice that the administering authority has commenced an investigation under section 303, 702(a) or 732(a) of the Act, the Director shall, as soon as practicable after consultation with the administering

authority, institute a preliminary investigation under section 303, 703(a) or 733(a) of the Act and shall publish a notice to that effect in the Federal Register.

§ 207.13: Co-operation with administering authority; preliminary investigation

Subsequent to institution of an investigation pursuant to § 207.12, the Director shall conduct such investigation as he deems appropriate. Information adduced in the investigation shall be placed on the record. The Director shall co-operate with the administering authority in its determination of the sufficiency of a petition and in its decision whether to permit any proposed amendment to a petition. Notwithstanding §§ 201.11(c) and 201.14(b) of this chapter, late filings in a preliminary investigation shall be referred to the Director, who shall determine whether to accept such filing for good cause shown by the person making the filing.

§ 207.14: Negative petition determination

Upon receipt by the Commission of notice from the administering authority under section 303, 702(d) or 732(d) of the Act that the administering authority has made a negative petition determination under section 303, 702(c)(3) or 732(c)(3) of the Act, the investigation begun pursuant to § 207.12 shall terminate. The Director shall notify all persons who have received requests for information from him of the termination.

§ 207.15: Written briefs and conference

Each party may submit to the Commission on or before a date specified in the notice of investigation issued pursuant to § 207.12 a written brief containing information and arguments pertinent to the subject matter of the investigation. Briefs shall be signed, shall include a table of contents, and shall contain no more than fifty (50) double-spaced and single-sided pages of textual material, on stationery measuring 8½ x 11 inches. Any person not a party may submit a brief written statement of information pertinent to the investigation within the time specified for the filing of briefs. In addition, the presiding official may permit persons to file within a specified time answers to questions or requests made by the Commission's staff. If he deems it appropriate, the Director shall hold a conference. The conference, if any, shall be held in accordance with the procedures in § 201.13 of this chapter, except that in connection with its presentation a party may file witness testimony with the Secretary no later than three (3) days before the conference. The Director may request the appearance of witnesses, take testimony, and administer oaths.

§ 207.16 [Reserved.]

§ 207.17: Staff report

Prior to the Commission's preliminary determination, the Director shall submit to the Commission a staff report. A public version of the staff report shall be made available to the public after the Commission's preliminary determination and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under § 207.7.

§ 207.18: Notice of determination in preliminary investigations

Whenever the Commission makes a determination in a preliminary investigation under section 303, 703(a) or 733(a) of the Act, the Secretary shall serve copies of the determination and a public version of the staff report on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish a notice of such determination in the Federal Register. If the Commission's determination is negative, the investigation shall be terminated. If the Commission's determination is affirmative, the Director may continue investigative activities pending notice by the administering authority of its preliminary determination under section 303, 703(b) or 733(b) of the Act. If the administering authority's preliminary determination is affirmative, the Commission shall institute an investigation in accordance with sub-part C. If the administering authority's preliminary determination is negative, the Director shall continue such investigative activities as he deems appropriate pending a final determination by the administering authority under section 303, 705(a) or 735(a) of the Act.

Sub-part C: Final Determinations, Short Life Cycle Products

§ 207.20: Institution of investigation; notice

(a) Notice from the administering authority of an affirmative preliminary determination under section 303, 703(b) or 733(b) of the Act and notice from the administering authority of an affirmative final determination under section 303, 705(a) or 735(a) of the Act shall be deemed to occur on the date on which the transmittal letter of such determination is received by the Secretary from the administering authority or the date on which notice of such determination is published in the Federal Register, whichever shall first occur.

(b) Upon receipt of notice from the administering authority of an affirmative preliminary determination under section 303, 703(b) or 733(b) of the Act or, if the administering authority's preliminary determination is negative, notice of an affirmative final determination under section 303, 705(a) or 735(a) of the Act, the Commission shall publish in the Federal Register notice of its investigation to reach a final determination under section 303, 705(b) or 735(b) of the Act. Upon receipt by the Commission of notice from the administering authority of its final negative determination under section 303, 705(a) or 735(a) of the Act, the corresponding Commission investigation shall be terminated.

§ 207.21: Pre-hearing and final staff reports

(a) **Pre-hearing staff report.** The Director shall prepare and place in the record, prior to the hearing, a pre-hearing staff report containing information concerning the subject matter of the investigation. A version of the staff report containing business proprietary information shall be placed in the non-public record and made available to persons authorized to receive business proprietary information under § 207.7, and a non-business proprietary version of the staff report shall be placed in the public record.

(b) **Final staff report.** After the hearing, the Director shall revise the pre-hearing staff report and submit to the Commission, prior to the Commission's final determination, a final version of the staff report. The final staff report is intended to supplement and correct the information contained in the pre-hearing staff report. A public version of the final staff report shall be made available to the public after the Commission's final determination and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under § 207.7.

§ 207.22: Pre-hearing brief

Each party may submit to the Commission, no later than a date specified in the notice of investigation, a pre-hearing brief. The Commission strongly encourages each party to file a pre-hearing brief. Pre-hearing briefs shall be signed and shall include a table of contents. The pre-hearing brief should present a party's case in brief and shall, to the extent possible, refer to the record and shall include information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 303, 705(b) or 735(b) of the Act. Any person not a party may submit a brief written statement of information pertinent to the investigation within the time specified for the filing of pre-hearing briefs.

§ 207.23: Hearing

(a) **In general.** The Commission shall hold a hearing concerning an investigation before making a final determination under section 303, 705(b) or 735(b) of the Act. Upon a request filed no later than seven (7) days prior to the date of the hearing, and providing good cause is shown therefor, the Commission may close a portion of a hearing to persons not authorized under § 207.7 to have access to business proprietary information.

(b) **Procedures.** Any hearing shall be conducted after notice published in the Federal Register. The hearing shall not be subject to the provisions of sub-chapter II, chapter 5, title 5, United States Code, or to section 702 of that title. Each party shall limit its presentation at the hearing to a summary of the information and arguments contained in its pre-hearing brief, an

analysis of the information and arguments contained in the pre-hearing briefs described in § 207.22, and information not available at the time its pre-hearing brief was filed. Unless the hearing is closed, presentations at the hearing shall not include business proprietary information. Notwithstanding § 201.13(f) of this chapter, in connection with its presentation a party may file witness testimony with the Secretary no later than three (3) days before the hearing. Any person not a party may make a brief oral statement of information pertinent to the investigation.

(c) **Hearing Transcripts - (1) In general.** A verbatim transcript shall be made of all hearings or conferences held in connection with Commission investigations conducted under this part.

(2) **Revision of transcripts.** Within ten (10) days of the completion of a hearing, any person who testified at the hearing may submit proposed revisions to the transcript of his testimony to the Secretary. No substantive revisions shall be permitted. If in the judgement of the Secretary a proposed revision does not alter the substance of the testimony in question, he shall incorporate the revision into a revised transcript.

§ 207.24: Post-hearing briefs

Any party may file a post-hearing brief concerning the information adduced at or after the hearing with the Secretary within a time specified in the notice of investigation or by the presiding official at the hearing. No such post-hearing brief shall exceed fifteen (15) pages of textual material, double-spaced and single-sided, on stationery measuring 8½ x 11 inches. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing post-hearing briefs or answers which do not comply with this rule.

§ 207.25: Statements by non-parties

Any person other than a party may submit a brief written statement of information pertinent to the investigation within the time specified for the filing of post-hearing briefs.

§ 207.26: Short life cycle products

(a) An eligible domestic entity may file a petition to establish a product category for short life cycle merchandise which has been the subject of two or more affirmative dumping determinations. The Commission shall within thirty (30) days of the filing of the petition determine its sufficiency. If the petition is found to be sufficient, the Commission shall institute a proceeding to establish a product category and publish a notice of institution in the Federal Register. Upon request of an interested person filed within fifteen (15) days after publication of the notice of institution, the

Commission shall conduct a hearing which shall be transcribed. The Commission's determination concerning the scope of the product category into which to classify the short life cycle merchandise identified by the petition shall be issued no later than ninety (90) days after the filing of the petition.

(b) The Commission may on its own initiative and at any time modify the scope of a product category established in a proceeding pursuant to paragraph (a) of this section. Ninety (90) days prior to such modification, the Commission shall publish a notice of proposed modification in the Federal Register. Upon request of an interested party filed within fifteen (15) days after publication of the notice of proposed modification, the Commission shall conduct a hearing which shall be transcribed. Written submissions concerning the proposed modification shall be accepted if filed no later than sixty (60) days after publication of the notice of proposed modification.

§ 207.27: Anti-circumvention

Prior to providing advice to the administering authority pursuant to section 781(e)(3) of the Act, the Commission shall publish in the Federal Register a notice that such advice is contemplated. Any person may file one written submission concerning the matter described in the notice no later than fourteen (14) days after publication of the notice. Such a statement shall contain no more than fifty (50) double-spaced and single-sided pages of textual material, on stationery measuring 8½ x 11 inches. The Commission shall by notice provide for additional statements as it deems necessary.

§ 207.28: Publication of notice of determination

Whenever the Commission makes a final determination under section 303 or title VII of the Act, the Secretary shall serve copies of the determination and the non-business proprietary version of the final staff report on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish notice of such determination in the Federal Register.

Sub-part D: Terminated, Suspended, and Continued Investigations, Investigations to Review Negotiated Agreements, and Investigations to Review Outstanding Determinations

§ 207.40: Termination and suspension of investigation

(a) An investigation under title VII may be terminated by the Commission by giving notice in the Federal Register to all parties to the investigation, upon withdrawal of the petition by the petitioner, or upon issuance of a final negative determination or termination of its investigation by the administering authority under section 303, 705 or 735 of the Act. The Commission may not terminate an investigation, however, before a determination is made by the administering authority under section 702(c), 732(c), 703(b) or 733(b) of the Act.

- (b) Upon receipt of notice of suspension of an investigation by the administering authority under section 704(b) or (c) or 734(b) or (c), the Secretary shall issue a notice of suspension of the Commission investigation. Such suspension shall not prevent the Director from conducting such other investigative activities as he deems appropriate with respect to the subject matter of the suspended investigation.
- (c) **Resumption of suspended investigation - (1) Purpose.** If the administering authority determines pursuant to section 704(i) or 734(i) of the Act to resume a suspended investigation and so notifies the Commission of its determination, and in the event that the suspended investigation was not terminated, the Commission shall resume the investigation.
- (2) **Procedures.** The procedures set forth in sub-part C shall apply to all investigations instituted under this section.

§ 207.41: Commission review of agreements to eliminate the injurious effect of subsidized imports or imports sold at less than fair value

If the administering authority determines to suspend an investigation upon acceptance of an agreement to eliminate the injurious effect of subsidized imports or imports sold at less than fair value, the Commission shall, upon petition, initiate an investigation to determine whether the injurious effect of imports of the merchandise which was the subject of the suspended investigation is eliminated completely by the agreement. Petitions may be filed by a party to the investigation which is an interested party described in paragraph (C), (D), (E), (F) or (G) of section 771(9) of the Act. Investigations under this section shall be completed within seventy-five (75) days of their initiation.

§ 207.42: Investigation continued upon request

Upon receipt of advice from the administering authority that it has received a request for the continuation of a suspended investigation pursuant to section 704(g) or 734(g) of the Act, the Commission shall continue the investigation. The procedures set forth in sub-parts B and C of this part, including applicable time limitations, shall apply to all continued investigations within this rule.

§ 207.43: [Reserved.]

§ 207.44: Consolidation of investigations

The Commission may, when appropriate, consolidate continued investigations under section 704(g) or section 734(g) of the Act with investigations to review agreements for the elimination of injury under section 704(h) or section 734(h) of the Act.

§ 207.45: Investigation to review outstanding determination

(a) **Request for review.** Any person may file with the Commission a request for the institution of a review investigation under section 731 of the Act. The person making the request shall also promptly serve copies of the request on the parties to the original investigation upon which the review is to be based. All requests shall set forth a description of changed circumstances sufficient to warrant the institution of a review investigation by the Commission.

(b) **Notice of receipt of a request.** Upon the receipt of a properly filed and sufficient request for a review investigation, the Secretary shall publish a notice of having received such a request in the Federal Register inviting public comment on the question of whether the Commission should institute a review investigation. Persons shall have at least thirty (30) days from the date of publication in the Federal Register within which to submit comments to the Commission.

(c) **Institution of an investigation.** Within thirty (30) days after the close of the period for public comments following publication of the receipt of a request, the Commission shall determine whether the request shows changed circumstances sufficient to warrant a review and, if so, shall institute a review investigation. The Commission may also institute a review investigation on its own initiative. The review investigation shall be instituted by notice published in the Federal Register and shall be completed within one-hundred twenty (120) days of the date of such publication. If the Commission determines that a request does not show changed circumstances sufficient to warrant a review, the request shall be dismissed and a notice of the dismissal published in the Federal Register stating the reasons therefor.

(d) **Conduct of review investigation.** The procedures set forth in sub-part C of part 207 shall apply to all investigations instituted under this section.

Sub-part E: Judicial Review

§ 207.50: Judicial review

(a) **In general.** Persons entitled to judicial review under section 516A of the Act may seek review in the US Court of International Trade.

(b) **Transmittal of record.** In the event a Commission determination is appealed to the US Court of International Trade under section 516A, a copy of the record in the investigation before the Commission, as such record is defined in § 207.2(f), or a certified list of all items therein, shall be transmitted to the court by the Secretary in accordance with the rules of the court.

(c) **Service of process.** The Commission's General Counsel shall be the Commission's agent for service of process in cases arising under section 516A of the Act.

§ 207.51: Judicial review of denial of application for disclosure of certain business proprietary information under administrative protective order

(a) **In general.** Persons entitled to judicial review under section 777(c)(2) of the Commission determination not to disclose business proprietary information may apply to the US Court of International Trade for an order directing the Commission to make the information involved available.

(b) **Transmittal of record.** In the event a court order is sought under section 777(c)(2) requiring the Commission to disclose business proprietary information, the Secretary shall within 20 days after service of a summons and complaint upon the Commission transmit to the court under seal the business proprietary information involved along with pertinent parts of the record.

(c) **Pertinent parts of the record.** The pertinent parts of the record shall consist of:

(1) The application for Commission disclosure together with any documents filed in support thereof or in opposition thereto,

(2) Any Government memoranda relating to the Commission's determination, and

(3) The Commission's action on the application.

(d) **Service of process.** The Commission's General Counsel shall be the Commission's agent for service of process in cases under section 777(c)(2) of the Act.

Sub-part F: [Reserved.]

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Issued: 14 March 1991

By order of the Commission.

Kenneth R. Mason.

Secretary.

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