

motion for termination of the investigation in whole or part; and procedures undertaken in response to a judgment or judicial order issued in an appeal of a Commission determination or remedial order issued under section 337 of the Tariff Act of 1930.

Party means each complainant, respondent, intervenor, or the Office of Unfair Import Investigations.

Proposed intervenor means any person who has filed a motion to intervene in an investigation or a related proceeding under this part.

Proposed respondent means any person named in a complaint filed under this part as allegedly violating section 337 of the Tariff Act of 1930.

Related proceeding means preinstitution proceedings, sanction proceedings (for the possible issuance of sanctions that would not have a bearing on the adjudication of the merits of a complaint or a motion under this part), bond forfeiture proceedings, proceedings to enforce, modify, or revoke a remedial or consent order, or advisory opinion proceedings.

Respondent means any person named in a notice of investigation issued under this part as allegedly violating section 337 of the Tariff Act of 1930.

U.S. Customs Service means U.S. Customs and Border Protection.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67626, Dec. 30, 1994; 73 FR 38320, July 7, 2008; 76 FR 24363, May 2, 2011]

§ 210.4 Written submissions; representations; sanctions.

(a) *Caption; names of parties.* The front page of every written submission filed by a party or a proposed party to an investigation or a related proceeding under this part shall contain a caption setting forth the name of the Commission, the title of the investigation or related proceeding, the docket number or investigation number, if any, assigned to the investigation or related proceeding, and in the case of a complaint, the names of the complainant and all proposed respondents.

(b) *Signature.* Every pleading, written motion, and other paper of a party or proposed party who is represented by an attorney in an investigation or a related proceeding under this part shall be signed by at least one attorney of

record in the attorney's individual name. A party or proposed party who is not represented by an attorney shall sign, or his duly authorized officer or agent shall sign, the pleading, written motion, or other paper. Each paper shall state the signer's address and telephone number, if any. Pleadings, written motions, and other papers need not be under oath or accompanied by an affidavit, except as provided in § 210.12(a)(1), § 210.13(b), § 210.18, § 210.52(d), § 210.59(b), or another section of this part or by order of the administrative law judge or the Commission. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after omission of the signature is called to the attention of the submitter.

(c) *Representations.* By presenting to the presiding administrative law judge or the Commission (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party or proposed party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances—

(1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the investigation or related proceeding;

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(d) *Sanctions.* If, after notice and a reasonable opportunity to respond (see paragraphs (d)(1) (i) and (ii) of this section and § 210.25), the presiding administrative law judge or the Commission determines that paragraph (c) of this

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section has been violated, the administrative law judge or the Commission may, subject to the conditions stated below and in §210.25, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated paragraph (c) or are responsible for the violation. A representation need not be frivolous in its entirety in order for the administrative law judge or the Commission to determine that paragraph (c) has been violated. If any portion of a representation is found to be false, frivolous, misleading, or otherwise in violation of paragraph (c), a sanction may be imposed. In determining whether paragraph (c) has been violated, the administrative law judge or the Commission will consider whether the representation or disputed portion thereof was objectively reasonable under the circumstances.

(1) *How initiated*—(i) *By motion*. A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate paragraph (c). It shall be served as provided in paragraph (g) of this section, but shall not be filed with or presented to the presiding administrative law judge or the Commission unless, within seven days after service of the motion (or such other period as the administrative law judge or the Commission may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. See also §210.25 (a) through (c). If warranted, the administrative law judge or the Commission may award to the party or proposed party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(ii) *On the administrative law judge's or the Commission's initiative*. The administrative law judge or the Commission may enter an order sua sponte describing the specific conduct that appears to violate paragraph (c) of this section and directing an attorney, law firm, party, or proposed party to show cause

why it has not violated paragraph (c) with respect thereto.

(2) *Nature of sanctions; limitations*. A sanction imposed for violation of paragraph (c) of this section shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (d)(2) (i) through (iv) of this section, the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(i) Monetary sanctions shall not be imposed under this section against the United States, the Commission, or a Commission investigative attorney.

(ii) Monetary sanctions may not be awarded against a represented party or proposed party for a violation of paragraph (c)(2) of this section.

(iii) Monetary sanctions may not be imposed on the administrative law judge's or the Commission's initiative unless—

(A) The Commission or the administrative law judge issues an order to show cause before the investigation or related proceeding is terminated, in whole or in relevant part, as to the party or proposed party which is, or whose attorneys are, to be sanctioned; and

(B) Such termination is the result of—

(1) A motion to withdraw the complaint, motion, or petition that was the basis for the investigation or related proceeding;

(2) A settlement agreement;

(3) A consent order agreement; or

(4) An arbitration agreement.

(iv) Monetary sanctions imposed to compensate the Commission for expenses incurred by a Commission investigative attorney or the Commission's Office of Unfair Import Investigations will include reimbursement for some or all costs reasonably incurred as a direct result of the violation, but will not include attorney's fees.

(3) *Order*. When imposing sanctions, the administrative law judge or the

Commission shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed. See also § 210.25(d)–(f).

(e) *Inapplicability to discovery.* Paragraphs (c) and (d) of this section do not apply to discovery requests, responses, objections, and motions that are subject to provisions of §§ 210.27 through 210.34.

(f) *Filing of documents.* (1) Written submissions that are addressed to the Commission during an investigation or a related proceeding shall comply with the Commission's Handbook on Filing Procedures, which is issued by and available from the Secretary and posted on the Commission's Electronic Document Information System Web site at <https://edis.usitc.gov>. Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures in the filing of a document may result in the rejection of the document as improperly filed.

(2) A complaint, petition, or request, and supplements and amendments thereto, filed under § 210.8, § 210.75, § 210.76, or § 210.79 shall be filed in paper form. An original and eight (8) true paper copies shall be filed. All exhibits, appendices, and attachments to the document shall be filed in electronic form on one CD-ROM, DVD, or other portable electronic media approved by the Secretary. Sections 210.8 and 210.12 set out additional requirements for a complaint filed under § 210.8. Additional requirements for a petition or request filed under § 210.75, § 210.76, or § 210.79 are set forth in those sections. Submitted media will be retained by the Commission, except that media may be returned to the submitter if a document is not accepted for filing.

(3) Responses to a complaint, briefs, comments and responses thereto, compliance reports, motions and responses or replies thereto, petitions and replies thereto, prehearing statements, and proposed findings of fact and conclusions of law and responses thereto provided for under § 210.4(d), § 210.13, § 210.8, § 210.14, § 210.15, § 210.16, § 210.17, § 210.18, § 210.19, § 210.20, § 210.21, § 210.23, § 210.24, § 210.25, § 210.26, § 210.33, § 210.34, § 210.35, § 210.36, § 210.40, § 210.43, § 210.45, § 210.46, § 210.47, § 210.50, § 210.52, § 210.53, § 210.57,

§ 210.59, or § 210.71; and submissions filed with the Secretary pursuant to an order of the presiding administrative law judge shall be filed electronically, and true paper copies of such submissions shall be filed by 12 noon, eastern time, on the next business day.

(4) Except for the documents listed in paragraphs (f)(2) and (f)(3) of this section, all other documents shall be filed electronically, and no paper copies will be required.

(5) If paper copies are required under this section, the required number of paper copies shall be governed by paragraph (f)(6) of this section. A paper copy provided for in this section must be a true copy of the electronic version of the document, *i.e.*, a copy that is identical in all possible respects.

(6) Unless the Commission or this part specifically states otherwise:

(i) Two (2) true paper copies of each submission shall be filed if the investigation or related proceeding is before an administrative law judge; and

(ii) Eight (8) true paper copies of each submission shall be filed if the investigation or related proceeding is before the Commission.

(7)(i) If a complaint, a supplement or amendment to a complaint, a motion for temporary relief, or the documentation supporting a motion for temporary relief contains confidential business information as defined in § 201.6(a) of this chapter, the complainant shall file nonconfidential copies of the complaint, the supplement or amendment to the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief concurrently with the requisite confidential copies, as provided in § 210.8(a). A nonconfidential copy of all exhibits, appendices, and attachments to the document shall be filed in electronic form on one CD-ROM, DVD, or other portable electronic media approved by the Secretary, separate from the media used for the confidential version.

(ii)(A) Persons who file the following submissions that contain confidential business information covered by an administrative protective order, or that are the subject of a request for confidential treatment, must file nonconfidential copies and serve them on the

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other parties to the investigation or related proceeding within 10 calendar days after filing the confidential version with the Commission:

(1) A response to a complaint and all supplements and exhibits thereto;

(2) All submissions relating to a motion to amend the complaint or notice of investigation; and

(3) All submissions addressed to the Commission.

(B) Other sections of this part may require, or the Commission or the administrative law judge may order, the filing and service of nonconfidential copies of other kinds of confidential submissions. If the submitter's ability to prepare a nonconfidential copy is dependent upon receipt of the nonconfidential version of an initial determination, or a Commission order or opinion, or a ruling by the administrative law judge or the Commission as to whether some or all of the information at issue is entitled to confidential treatment, the nonconfidential copies of the submission must be filed within 10 calendar days after service of the Commission or administrative law judge document in question. The time periods for filing specified in this paragraph apply unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(8) The Secretary may provide for exceptions and modifications to the filing requirements set out in this chapter. A person seeking an exception should consult the Handbook on Filing Procedures.

(9) *Where to file; date of filing.* Documents shall be filed at the Office of the Secretary of the Commission in Washington, DC. Such documents, if properly filed within the hours of operation specified in §201.3(c), will be deemed to be filed on the date on which they are actually received in the Commission.

(10) *Conformity with rules.* Each document filed with the Commission for the purpose of initiating any investigation shall be considered properly filed if it conforms with the pertinent rules prescribed in this chapter. Substantial compliance with the pertinent rules may be accepted by the Commission provided good and sufficient reason is

stated in the document for inability to comply fully with the pertinent rules.

(11) During any period in which the Commission is closed, deadlines for filing documents electronically and by other means are extended so that documents are due on the first business day after the end of the closure.

(g) *Cover Sheet.* When making a paper filing, parties must complete the cover sheet online at <http://edis.usitc.gov> and print out the cover sheet for submission to the Office of the Secretary with the paper filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of confidential information under §210.5.

(h) *Specifications.* (1) Each document filed under this chapter shall be double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced. All submissions shall be in letter-sized format (8.5 × 11 inches), except copies of documents prepared for another agency or a court (e.g., patent file wrappers or pleadings papers), and single sided. Typed matter shall not exceed 6.5 × 9.5 inches using 11-point or larger type and shall be double-spaced between each line of text using the standard of 6 lines of type per inch. Text and footnotes shall be in the same size type. Quotations more than two lines long in the text or footnotes may be indented and single-spaced. Headings and footnotes may be single-spaced.

(2) The administrative law judge may impose any specifications he deems appropriate for submissions that are addressed to the administrative law judge.

(i) *Service.* Unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise, every written submission filed by a party or proposed

party shall be served on all other parties in the manner specified in § 201.16(b) of this chapter.

[59 FR 39039, Aug. 1, 1994; 59 FR 64286, Dec. 14, 1994, as amended at 59 FR 67626, Dec. 30, 1994; 60 FR 32443, June 22, 1995; 68 FR 32978, June 3, 2003; 73 FR 38320, July 7, 2008; 76 FR 61944, Oct. 6, 2011]

§ 210.5 Confidential business information.

(a) *Definition and submission.* Confidential business information shall be defined and identified in accordance with § 201.6 (a) and (c) of this chapter. Unless the Commission, the administrative law judge, or another section of this part states otherwise, confidential business information shall be submitted in accordance with § 201.6(b) of this chapter. In the case of a complaint, any supplement to the complaint, and a motion for temporary relief filed under this part, the number of nonconfidential copies shall be prescribed by § 210.8(a) of this part.

(b) *Restrictions on disclosure.* Information submitted to the Commission or exchanged among the parties in connection with an investigation or a related proceeding under this part, which is properly designated confidential under paragraph (a) of this section and § 201.6(a) of this chapter, may not be disclosed to anyone other than the following persons without the consent of the submitter:

(1) Persons who are granted access to confidential information under § 210.39(a) or a protective order issued pursuant to § 210.34(a);

(2) An officer or employee of the Commission who is directly concerned with—

(i) Carrying out or maintaining the records of the investigation or related proceeding for which the information was submitted;

(ii) The administration of a bond posted pursuant to subsection (e), (f), or (j) of section 337 of the Tariff Act of 1930;

(iii) The administration or enforcement of an exclusion order issued pursuant to subsection (d), (e), or (g), a cease and desist order issued pursuant to subsection (f), or a consent order issued pursuant to subsection (c) of section 337 of the Tariff Act of 1930; or

(iv) Proceedings for the modification or rescission of a temporary or permanent order issued under subsection (d), (e), (f), (g), or (i) of section 337 of the Tariff Act of 1930, or a consent order issued under section 337 of the Tariff Act of 1930;

(3) An officer or employee of the United States Government who is directly involved in a review conducted pursuant to section 337(j) of the Tariff Act of 1930; or

(4) An officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under section 337 (d), (e), or (g) of the Tariff Act of 1930 resulting from the investigation or related proceeding in connection with which the information was submitted.

(c) *Transmission of certain records to district court.* Notwithstanding paragraph (b) of this section, confidential business information may be transmitted to a district court and be admissible in a civil action, subject to such protective order as the district court determines necessary, pursuant to 28 U.S.C. 1659.

(d) *Confidentiality determinations in preinstitution proceedings.* After a complaint is filed under section 337 of the Tariff Act of 1930 and before an investigation is instituted by the Commission, confidential business information designated confidential by the supplier shall be submitted in accordance with § 201.6(b) of this chapter. The Secretary shall decide, in accordance with § 201.6(d) of this chapter, whether the information is entitled to confidential treatment. Appeals from the ruling of the Secretary shall be made to the Commission as set forth in § 201.6(e) and (f) of this chapter.

(e) *Confidentiality determinations in investigations and other related proceedings.* (1) If an investigation is instituted or if a related proceeding is assigned to an administrative law judge, the administrative law judge shall set the ground rules for the designation, submission, and handling of information designated confidential by the submitter. When requested to do so, the administrative law judge shall decide whether information in a document addressed to the administrative law judge, or to be exchanged among