

**III. Delegation of Authority to the Director of the Division of Market Regulation**

In the absence of a delegation of authority, the Commission is required to consider each bylaw and rule change proposed by SIPC. In order to relieve the Commission from the burden of considering routine matters regarding the operation of SIPC, the Commission is delegating certain of its authority under sections 3(e)(1) and (3)(e)(2) of SIPA to the Director of the Division.

Specifically, the Commission is delegating its authority under section 3(e)(1) to the Director of the Division to make a determination, and to notify SIPC of this determination, as to whether a proposed bylaw change (i) should not be disapproved and, therefore, become effective 30 days after filing or (ii) involves matters of such significant public interest that public comment should be obtained. In addition, the Commission is delegating authority to the Director of the Division to accelerate the effective date of a bylaw change. Finally, the Commission is delegating its authority to publish for comment, in accordance with section 3(e)(2) of SIPA, those proposed bylaw changes determined to be matters of significant public interest, as well as all proposed rule changes. The Commission, however, will retain its authority to approve proposed bylaw and rule amendments after the comment period is completed.

Accordingly, the Commission is amending Rule 30-3 of the Rules of Practice and Investigations ("Rule 30-3").<sup>1</sup> Notwithstanding these delegations of authority, the Division will bring any significant proposed bylaw or rule amendments to the Commission's attention for its consideration.

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedures Act,<sup>2</sup> that these amendments relate solely to agency organization and procedure, and do not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment 30 days before its effective date also is unnecessary.

**IV. Statutory Basis and Text of Amendments**

**List of Subjects in 17 CFR Part 200**

Administrative practice and procedure, Authority delegations (Government agencies), Organizations

and functions (Government organizations).

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

**PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS**

**Subpart A—Organization and Program Management**

1. The authority citation for Part 200, Subpart A continues, in part, to read as follows:

**Authority:** 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

\* \* \* \* \*

2. Section 200.30-3 is amended by revising paragraph (f) to read as follows:

**§ 200.30-3 Delegation of authority to director of division of market regulation.**

\* \* \* \* \*

(f) With respect to the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aaa, et seq. ("SIPA"):

(1) Pursuant to Section 3(a)(2)(B) of SIPA, to:

(i) Extend for a period not exceeding 90 days from the date of the filing of the determination by the Securities Investor Protection Corporation ("SIPC") that a registered broker-dealer is not a SIPC member because it conducts its principal business outside the United States and its territories and possessions, the period during which the Commission must affirm, reverse or amend any determination by SIPC; and

(ii) Affirm such determination filed by SIPC.

(2) Pursuant to Section (3)(e)(1) of SIPA, to:

(i) Determine whether proposed bylaw changes filed by SIPC should not be disapproved or whether the proposed bylaw change is a matter of such significant public interest that public comment should be obtained, in which case the Division will notify SIPC of such finding and publish notice of the proposed bylaw change in accordance with Section 3(e)(2) of SIPA; and

(ii) Accelerate the effective date of proposed bylaw changes filed by SIPC.

(3) Pursuant to Section (3)(e)(2) of SIPA, to publish notice of proposed rule changes filed by SIPC.

By the Commission.  
Dated: December 27, 1994.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 94-32250 Filed 12-30-94; 8:45 am]  
BILLING CODE 8010-01-M

**INTERNATIONAL TRADE COMMISSION**

**19 CFR Part 206**

**Implementing Rules for the Uruguay Round Agreements Act**

**AGENCY:** United States International Trade Commission.

**ACTION:** Interim rules with request for comment.

**SUMMARY:** The Commission is amending its Rules of Practice and Procedure to conform with amendments made to sections 201-204 of the Trade Act of 1974 by the Uruguay Round Agreements Act. The amendments, among other things, conform U.S. law with the Uruguay Round Agreement on Safeguards and provide for limited disclosure of confidential business information under administrative protective order.

**DATES:** The interim amendment to section 206.17 is effective January 3, 1995. All other amendments are effective on January 1, 1995, the date on which the World Trade Organization (WTO) Agreement enters into force with respect to the United States, unless the United States Trade Representative announces prior to that date that the WTO Agreement will not enter into force on that date. Should the effective date of such other amendments not be January 1, 1995, the Commission will publish notice to such effect in the **Federal Register**.

To be assured of consideration, written comments must be received not later than April 3, 1995.

**ADDRESSES:** A signed original and 14 copies of each set of comments, along with a cover letter addressed to Donna R. Koehnke, Secretary, should be sent to the Commission, 500 E Street SW., room 112, Washington, D.C. 20436.

**FOR FURTHER INFORMATION CONTACT:** William Gearhart, Office of General Counsel, U.S. International Trade Commission [202-205-3091]. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Uruguay Round Agreement on Safeguards sets out specific conditions and rules for taking safeguard actions under the GATT 1947 safeguards provision, article XIX. Article XIX permits a country to impose import restrictions when increased imports are found to cause or threaten to cause

<sup>1</sup> 17 CFR 200.30-3.  
<sup>2</sup> 15 U.S.C. § 553(b)(A).

serious injury to a domestic industry, but otherwise provides few rules with respect to the circumstances under which such restrictions may be imposed and for how long. The new Agreement on Safeguards provides additional guidance on how and when safeguard measures may be applied. Among other things, it requires that contracting parties follow procedures to ensure transparency (including a public investigation and published report); limits measures to an 8-year maximum duration; requires progressive liberalization of safeguard measures; and provides for expedited procedures that may be applied in "critical circumstances," including special provisions for proceedings concerning imports of perishable products. It also provides that for the first 3 years of any safeguard measure put in place to counter an absolute increase in imports, the exporting countries may not impose trade retaliation.

Sections 201–204 of the Trade Act of 1974 (Trade Act) implement article XIX in the United States. U.S. law was already largely consistent with the Agreement on Safeguards, and therefore only minor statutory changes were necessary to bring U.S. law into conformity with the Agreement. U.S. law and practice, in fact, served as a model for the drafters of the Agreement.

Subtitle A of title III of the Uruguay Round Agreements Act (URAA) amends sections 201–204 of the Trade Act to bring them into conformity with the Agreement on Safeguards. Section 301 of the URAA implements provisions of the Agreement that relate to investigations and determinations by the United States International Trade Commission (Commission) under section 202 of the Trade Act. Section 301 also amends section 202 to require the Commission to promulgate regulations to provide for limited disclosure of confidential business information under an administrative protective order in the course of investigations under section 202 of the Trade Act. Section 302 of the URAA implements provisions of the Agreement that relate to (1) actions by the President under section 203 of the Trade Act after he receives an affirmative Commission determination; and (2) Commission monitoring reports and investigations and determinations under section 204 of the Trade Act concerning extension of relief.

The amendments to these rules bring Commission procedures into conformity with the amendments to sections 202 and 204 of the Trade Act. The amendments to the rules—

(1) provide for the submission by parties of nonconfidential summaries of confidential business information and state the circumstances under which the Commission may disregard the submission if such summary is not provided;

(2) require petitioners to include within their petition information with regard to productivity;

(3) incorporate the new limitations in section 202(h) of the Trade Act concerning investigations with respect to articles the subject of a prior relief action or articles subject to the Textiles Agreement;

(4) provide for limited disclosure of confidential business information under administrative protective order;

(5) revise the time for making determinations and reports when critical circumstances are alleged;

(6) adjust the time for Commission monitoring reports; and (7) provide procedures for investigations and determinations concerning extension of relief actions.

#### Implementation of Interim Rules

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. Additionally, section 103(a) of the URAA specifies that appropriate officers of the United States Government may issue such regulations as may be necessary to ensure that any provision of that act, or amendment made by the act, is appropriately implemented on the effective date of that act, and section 103(b) of the URAA directs that any interim regulations necessary or appropriate to carry out any action proposed in the Statement of Administrative Action approved under section 101(a) of the URAA to implement an agreement described in section 101(d)(7), (12), or (13) of the URAA be issued not later than 1 year after the date on which the agreement enters into force with respect to the United States. Section 301(b) directs the Commission to promulgate regulations providing for the limited disclosure of confidential business information under administrative protective order in investigations under section 202 of the Trade Act, and the Statement of Administrative Action directs that the Commission promulgate interim regulations providing for such disclosure as soon as practicable.

Commission rules to implement new legislation ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the

Administrative Procedure Act (APA) (5 U.S.C. § 551 *et seq.*), 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. That procedure could not be utilized in this instance because the new legislation was enacted on December 8, 1994, and became effective, with respect to the amendment to section 202 of the Trade Act providing for limited disclosure of confidential business information under administrative protective order, on the date of enactment, and in other respects was expected to become effective on January 1, 1995. Consequently, it was not possible to complete the section 553 rulemaking procedure prior to the effective date of the new legislation.

The Commission thus has determined to adopt interim rules that will go into effect when the provisions of the URAA amending sections 201–204 of the Trade Act become effective. These rules will remain in effect until the Commission can adopt final rules promulgated in accordance with the usual notice and advance publication procedure for issuing such rules, taking into account any comments received in response to this notice.

The Commission's authority to adopt interim rules without following all steps listed in section 553 of the APA is derived from three sources: (1) section 335 of the Act (19 U.S.C. § 1335); (2) sections 103 and 301(b) of the URAA, and the Statement of Administrative Action approved by the URAA; and (3) provisions of section 553 of the APA which allow an agency to dispense with various steps in the prescribed rulemaking procedure under certain circumstances. Because these interim rules comprehensively implement the rules changes required by the URAA, no additional notice of proposed rulemaking is necessary or contemplated at this time. However, as stated above, the public is invited to submit written comments to the Commission for the Commission's consideration in preparing final rules. To be assured of consideration, such comments should be received by the Commission not later than 90 days after publication of this notice in the **Federal Register**.

The Commission has determined that the need for interim rules is clear in this instance. The Commission notes that the new legislation alters practice and procedure in proceedings under sections 201–204 of the Trade Act, and

that the existing Commission rules do not encompass certain procedures required by the new legislation. The Commission finds that rulemaking is essential for the orderly administration of sections 201–204 of the Trade Act as amended by the new legislation. Furthermore, since the legislation becomes effective very shortly after enactment, the Commission has concluded that interim implementing rules should be in place as soon as practicable following the effective date of the new statute.

The Commission notes that an agency may dispense with publication of a notice of proposed rulemaking when the following circumstances exist: (1) the proposed rules are interpretive rules, general statements of policy, or rules of agency organization, procedure or practice; or (2) the agency for good cause finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest, and that finding (and the reasons therefor) are incorporated into the rules adopted by the agency. 5 U.S.C. § 553(b). An agency may also dispense with the publication of a notice of final rules thirty days prior to their effective date if (1) the rules are interpretive rules of statements of policy or (2) the agency finds that “good cause” exists for not meeting the advance publication requirement and that finding is published along with the rule. 5 U.S.C. § 553(d)(3).

In this instance, the Commission has determined that the requisite circumstances existed for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rulemaking which solicits public comment, the Commission finds that (1) the interim rules are “agency rules of procedure or practice”; and (2) because the new legislation becomes effective on the date of enactment in the case of the administrative protective order provision, and is projected to become effective within 1 month in the case of the other provisions, it clearly would be “impracticable” for the Commission to comply with the usual notice, comment, and advance publication procedure. For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim rules thirty days prior to their effective date, the Commission finds that the fact that the new legislation either becomes effective on the date of enactment or is expected to become effective within 1 month after enactment makes such

advance publication impossible and constitutes “good cause” for the Commission not to comply with that requirement.

The Commission recognizes that interim regulations should not respond to anything more than the exigencies created by the new legislation. Having been promulgated in response to exigencies created by the new legislation, each interim rule accordingly comes under one or more of the following categories:

- (1) revision of a pre-existing rule that conflicted with the new legislation;
- (2) a technical amendment to make a pre-existing rule conform to the language of the new legislation;
- (3) rewording of a pre-existing rule to avoid confusion about how the rule is to be applied in light of the new legislation; or
- (4) a new rule covering a matter provided for in the new legislation but not covered by a pre-existing rule.

Because the interim regulations merely respond to exigencies created by the new legislation, the Commission has further determined that they do not meet the criteria described in section 3(f) of Executive Order (EO) 12866 (58 FR 51735, Oct. 4, 1993) and do not constitute a significant regulatory action for purposes of the EO.

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 impact on a substantial number of small business entities. In any event, the Regulatory Flexibility Act is inapplicable to this rulemaking because it is not one in which a notice of proposed rulemaking is required under 5 U.S.C. § 553(b).

#### **Explanation of Proposed Amendments**

Section 206.2, which provides for the identification of type of petition or request, is amended to include a reference to petitions for extension of relief actions filed under section 204(c) of the Trade Act and Subpart F of Part 206 of the Commission’s rules. Section 302(d) of the URAA amends section 204 to provide for the filing of such petitions.

Section 206.3, concerning institution of investigations, publication of notice, and availability of petitions for public inspection, is revised to add subheadings and to indicate that there are exceptions to the general rule that the Commission will institute an investigation after receipt of a petition—namely, as set out in section 206.15(b).

Section 206.5, concerning public hearings, is amended by adding a new

paragraph (c) to state that the Commission will hold a public hearing in connection with each investigation under Subpart F of Part 206 of the Commission’s rules concerning whether an action taken by the President under section 203 of the Trade Act should be extended. Section 204(c) of the Trade Act, as amended by section 302(d) of the URAA, requires that the Commission hold a public hearing in connection with each such investigation. Current paragraph (c) of rule section 206.5 is redesignated as paragraph (d). Two minor editorial changes are made in paragraphs (a) and (d).

Section 206.6, concerning Commission reports to the President, is amended by adding new subheadings and redesignating paragraphs, and by adding language to clarify what information will be included in all Commission reports to the President under Part 206, and what additional findings and information will be included in reports containing determinations under section 202(b) of the Trade Act and section 302(b) of the North American Free Trade Agreement Implementation Act.

Section 206.7, concerning confidential business information, is retitled and subdivided into two paragraphs. Paragraph (a) largely tracks the current rule and states that the Commission will not release confidential business information except under the circumstances indicated. Language is added to provide notice that the Commission, when appropriate, will include confidential business information in reports furnished to the President; this language reflects longstanding Commission practice, and Commission questionnaires issued in connection with investigations under section 202 of the Trade Act routinely provide notice of this possibility. Paragraph (b) is new. It requires, except as the Commission may otherwise provide, that parties submitting confidential business information must also submit nonconfidential summaries of such information. It further states the circumstances under which the Commission may disregard the information when the party does not provide a summary. Section 301(a) of the URAA amended section 202(a)(8) of the Trade Act to provide that the Commission may request that parties furnish such summaries and to authorize the Commission to disregard a confidential submission when it finds that a request for confidentiality is not warranted and the party concerned is either unwilling to make the information public or to authorize its

disclosure in generalized or summarized form.

Section 206.8 is new, and has been added to provide a general service, filing, and certification requirement to supplement the more specific service and filing requirements in new § 206.17 of these rules relating to documents subject to disclosure under administrative protective order. New § 206.8 parallels § 207.3 of current Commission rules, which performs a similar function in conjunction with § 207.7 of the rules. The Commission traditionally has provided for service of documents in investigations covered by this Part 206 in its notices of investigation published in the **Federal Register**. However, the Commission believes that the inclusion of specific requirements in § 206.17 for documents subject to an administrative protective order without including requirements of general application may give rise to confusion on the part of submitters of documents as to applicable Commission requirements. In general, new § 206.8 reflects current Commission practice in investigations under Part 206, and would be made applicable to all investigations conducted under this part.

Section 206.12, concerning definitions applicable to Subpart B of Part 206 of the Commission's rules, is amended to delete paragraphs (c) and (d), which provide cross references to the statutory provisions where the terms "critical circumstances" and "perishable agricultural product" are defined. Because of amendments made by section 301(d) of the URAA to the critical circumstances provision in section 202, the cross reference in paragraph (c) is no longer accurate. However, the inclusion of cross references was viewed as unnecessary.

Section 206.13, concerning who may file a petition, has been divided. As amended, it contains the text of what was formerly paragraph (a). The text formerly in paragraphs (b) and (c) of that section, which described two circumstances under which the Commission would not institute an investigation after receipt of a petition, was moved to new section 206.15, relating to institution of investigations, where it was combined with two additional circumstances.

Section 206.14, concerning contents of petitions, is amended in three respects. First, in the introductory paragraph, wording is added that directs petitioners, in stating whether provisional relief is sought, to state whether they are asserting that critical circumstances exist. Second, paragraph (e)(2)(i) is amended to include

"productivity" in the list of economic factors relating to threat of injury for which a petitioner is directed to provide data in its petition. Section 301(e)(1) of the URAA added "productivity" to the list of economic factors in section 202(c)(1)(B)(i) of the Trade Act that the Commission is to take into account in determining whether an industry is threatened with serious injury. Third, paragraph (j), which describes the information to be provided in a petition when critical circumstances are alleged, is amended to reflect the new statutory standard relating to the critical circumstances in amended section 202(d)(2) of the Trade Act.

Section 206.15, concerning institution of an investigation, is a new rule. Paragraph (a) sets forth the general rule that the Commission will institute an investigation after receiving a petition, otherwise properly filed, under Subpart B of Part 206 of the rules. Paragraph (b) sets out four circumstances in which the Commission will not institute an investigation. These follow the limitations on Commission investigations set forth in section 202(h) of the Trade Act. Section 301(f) of the URAA amended section 202(h) to, among other things, clarify when a product subject to the WTO Agreement on Textiles and Clothing will become eligible for a Commission safeguard investigation.

Current rule section 206.15, which concerns industry adjustment plans and commitments, is redesignated as section 206.16, and current rule sections 206.16 and 206.17 are redesignated as sections 206.18 and 206.19, respectively.

Section 206.17, which sets forth rules for providing limited disclosure of confidential business information under administrative protective order, is new. Section 301(b) of the URAA amended section 202 of the Trade Act to add a new subsection (i) that requires the Commission to promulgate regulations to provide for disclosure of confidential business information, under an administrative protective order, to authorized representatives of interested parties who are parties to an investigation under section 202. The Statement of Administrative Action approved by the URAA states that it is expected that the Commission regulations will generally parallel the appropriate provisions of section 777 of the Tariff Act of 1930 (19 U.S.C. 1677f) and the regulations issued under that section. New section 206.17 is modeled after Commission rule section 207.7, which sets forth rules providing for limited disclosure of confidential business information under administrative protective order in

Commission investigations under the antidumping and countervailing duty laws in the Tariff Act of 1930. Section 206.17 includes wording that parallels amendments to section 207.7 of the rules scheduled to become effective on or about January 27, 1995. The term "confidential business information" is substituted for the term "business proprietary information," and certain other changes are made to reflect the differences between the two statutes. The definition of "interested parties" in paragraph (a)(3)(iii) is based on that found in section 771(9) of the Tariff Act of 1930 (19 U.S.C. 1677(9)).

Section 206.18 (formerly designated as section 206.16), which sets forth the times for Commission determinations and reports under Subpart B, is amended to reflect the new statutory times for determinations and reports when critical circumstances are alleged. As provided under section 202(d)(2) of the Trade Act, as amended by section 301(d) of the URAA, the Commission is required to make a critical circumstances determination within 60 days of the filing of a petition alleging such circumstances. When critical circumstances are alleged, the Commission will commence the regular 120-day injury phase of its investigation only after it completes the 60-day critical circumstances phase, and the Commission will submit its report on its investigation to the President not later than 240 days after the petition was filed, the request or resolution received, or the motion adopted.

Section 206.34, which sets forth the requirements concerning the contents of a petition filed under Subpart D of Part 206 with regard to imports from a NAFTA country, is amended in three respects. First, in the introductory paragraph, language is added that directs petitioners, in stating whether provisional relief is sought, to state whether they are asserting that critical circumstances exist. Second, paragraph (e)(2)(i) is amended to include "productivity" in the list of economic factors for which a petitioner is directed to provide data in its petition. Third, paragraph (i), which describes the information to be provided in a petition when critical circumstances are alleged, is amended to reflect the new statutory standard relating to the critical circumstances. These changes parallel changes made in section 206.14 of these rules with respect to petitions filed under Subpart B of Part 206. Section 302(c) of the NAFTA Implementation Act (19 U.S.C. 3352(c)) makes applicable to investigations conducted by the Commission under section 302(b) of the NAFTA Implementation Act the

factors applied in making determinations set forth in section 202(c) of the Trade Act and the provisional relief provisions in section 202(d) of the Trade Act.

Section 206.35, which sets forth the times for Commission determinations and reports under Subpart D with respect to imports from a NAFTA country, is amended at paragraph (c) to reflect the change in time for making and reporting determinations concerning whether critical circumstances exist.

Section 206.52, concerning monitoring, is amended to reflect the change in timing of Commission monitoring reports under section 204(a) of the Trade Act. Section 204(a), as amended by section 302(c)(1) of the URAA, requires the Commission to submit reports on monitoring at the mid-point of the initial period of relief or any extension thereof, provided that the initial period of relief or the extension exceeds 3 years in duration.

Section 206.53, concerning investigations to provide certain probable economic effect advice to the President, is amended to delete reference to the term "extension," to reflect deletion of this term from section 204(b) of the Trade Act by section 302(c)(2) of the URAA.

Section 206.54 is new and provides for Commission investigations and determinations with respect to extension of relief actions in response to a request or petition under amended section 204(c) of the Trade Act. Section 204(c) of the Trade Act, as amended by section 302(d)(2) of the URAA, provides that the Commission, upon the request of the President or upon petition by the concerned industry, is to investigate to determine whether action under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition. Industry petitions must be filed not earlier than 9 months or later than 6 months before action under section 203 is to terminate. The Commission is required to hold a public hearing in the course of its investigation and to transmit its report to the President not later than 60 days before the action under section 203 is due to terminate, unless the President specifies a different date. The rule provides for the institution of investigations, states who may file a petition and when, describes the information to be included in a petition, states when the Commission will make its report to the President, and states that the Commission will make its report available to the public

(with the exception of confidential business information). Section 206.5(c) of these rules states that the Commission will hold a public hearing in connection with each investigation under section 204(c) of the Trade Act.

Section 206.54 also provides for the limited disclosure under administrative protective order of confidential business information in the same manner as provided under section 206.17 of these rules.

Former section 206.54, which concerns investigations to evaluate the effectiveness of relief, has been redesignated as section 206.55.

#### List of Subjects in 19 CFR Part 206

Administrative practice and procedure, Investigations, Imports.

#### PART 206—[AMENDED]

19 CFR Part 206 is amended as follows:

1. The authority citation for Part 206 is revised to read as follows:

**Authority:** 19 U.S.C. 1335, 2251–2254, 3351–3382; secs. 103, 301–302, Pub. L. 103–465, 108 Stat. 4809.

2. Subpart A is revised to read as follows:

##### Subpart A—General

206.2 Identification of type of petition or request.

206.3 Institution of investigations; publication of notice; availability of petition for public inspection.

206.4 Notification of other agencies.

206.5 Public hearing.

206.6 Report to the President.

206.7 Confidential business information; furnishing of nonconfidential summaries thereof.

206.8 Service, filing, and certification of documents.

##### Subpart A—General

#### § 206.2 Identification of type of petition or request.

An investigation under this Part 206 may be commenced on the basis of a petition, request, resolution, or motion described in section 202(a)(1), 204(c)(1), or 406(a)(1) of the Trade Act of 1974 or section 302(a)(1) or 312(c)(1) of the North American Free Trade Agreement Implementation Act. Each petition or request, as the case may be, filed by an entity representative of a domestic industry under this Part 206 shall state clearly on the first page thereof "This is a [petition or request] under section [202, 204(c), or 406 of the Trade Act of 1974, or section 302 or 312(c) of the North American Free Trade Agreement Implementation Act] and Subpart [B, C, D, E, or F] of Part 206 of the rules of practice and procedure of the United

States International Trade Commission".

#### § 206.3 Institution of investigations; publication of notice; availability of petition for public inspection.

(a) *Institution of investigation and publication of notice.* Except as provided in § 206.15(b), the Commission, after receipt of a petition or request under Part 206, properly filed, will promptly institute an appropriate investigation and publish notice thereof in the **Federal Register**.

(b) *Contents of notice.* The notice will identify the petitioner or other requestor, the imported article that is the subject of the investigation and its tariff subheading, the nature and timing of the determination to be made, the time and place of any public hearing, dates of deadlines for filing briefs, statements, and other documents, the place at which the petition or request and any other documents filed in the course of the investigation may be inspected, and the name, address, and telephone number of the office that may be contacted for more information.

(c) *Availability for public inspection.* The Commission will promptly make such petition or request available for public inspection (with the exception of confidential business information).

#### § 206.4 Notification of other agencies.

The Commission will promptly transmit copies of petitions or requests filed and notification of investigations instituted to the Office of the United States Trade Representative (hereinafter USTR), the Secretary of Commerce, the Secretary of Labor, and other Federal agencies directly concerned.

#### § 206.5 Public hearing.

(a) *Investigations under subpart B of this part.* A public hearing on the question of injury and a second public hearing on remedy (if necessary) will be held in connection with each investigation instituted under Subpart B of this Part after reasonable notice thereof has been caused to be published in the **Federal Register**. A hearing on remedy is not necessary if the Commission has made a negative determination on the question of injury.

(b) *Investigations under subparts C, D, and E of this part.* A public hearing on the subject of injury and remedy will be held in connection with each investigation instituted under subparts C, D, and E of this part after reasonable notice thereof has been published in the **Federal Register**.

(c) *Investigations under subpart F of this part.* A public hearing on the subject of whether an action taken

under section 203 of the Trade Act of 1974 should be extended will be held in connection with each investigation instituted under subpart F of this part after reasonable notice thereof has been published in the **Federal Register**.

(d) *Opportunity to appear and to cross-question.* All interested parties and consumers, including any association representing the interests of consumers, will be afforded an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted in the case of an investigation under section 202(b) of the Trade Act of 1974, and to be heard at such hearings. All interested parties and consumers, including any association representing the interests of consumers, will be afforded an opportunity to cross-question interested parties making presentations at the hearing.

#### **§ 206.6 Report to the President.**

(a) *In general.* The Commission will include in its report to the President the following:

- (1) The determination made and an explanation of the basis for the determination;
- (2) If the determination is affirmative, to the extent appropriate, the recommendations for action and an explanation of the basis for each recommendation;
- (3) Any dissenting or separate views by members of the Commission regarding the determination and any recommendations;

#### *(b) Additional findings and information.*

(1) In the case of a determination made under section 202(b) of the Trade Act, the Commission will also include in its report the following:

- (i) The findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry;
- (ii) A copy of the adjustment plan, if any, submitted by the petitioner;
- (iii) Commitments submitted and information obtained by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition;
- (iv) A description of the short- and long-term effects that implementation of the action recommended is likely to have on the petitioning domestic industry, other domestic industries, and consumers; and
- (v) A description of the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and

communities where production facilities of such industry are located, and other domestic industries.

(2) In the case of a determination made under section 302(b) of the NAFTA Implementation Act, the Commission will also include in its report the findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry.

#### **§ 206.7 Confidential business information; furnishing of nonconfidential summaries thereof.**

(a) *Nonrelease of information.* Except as provided for in § 206.17, in the case of an investigation under Subpart B, C, D, or F of this Part, the Commission will not release information which the Commission considers to be confidential business information within the meaning of § 201.6 unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. When appropriate, the Commission will include confidential business information in reports transmitted to the President and the Trade Representative; such reports will be marked as containing confidential business information, and a nonconfidential version of such report will be made available to the public.

(b) *Nonconfidential summaries.* Except as the Commission may otherwise provide, a party submitting confidential business information shall also submit to the Commission, at the time it submits such information, a nonconfidential summary of the information. If a party indicates that the confidential business information cannot be summarized, it shall state in writing the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

#### **§ 206.8 Service, filing, and certification of documents.**

(a) *Certification.* Any person submitting factual information on behalf of the petitioner or any other interested party for the consideration of the Commission in the course of an investigation to which this part pertains, and any person submitting a response to a Commission questionnaire issued in

connection with an investigation to which this part pertains, 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 the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with § 201.8 of this chapter, serve a copy of the public version of such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter, and, when appropriate, serve a copy of the confidential version of such document in the manner provided for in § 206.17(f). 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 § 206.17, 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 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, upon request, to all parties to the investigation a copy of each document, except transcripts of hearings, confidential business information, privileged information, and information required to be served under this section, placed in the docket file 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 confidential business information in the document, the submitter is to file and, if the submitter is a party, serve the confidential version of the document on the deadline and may file and serve the nonconfidential version of the document no later than one business day after the deadline for filing the document. The confidential version shall enclose all confidential business information in brackets and have the following warning marked on every page: "Bracketing of CBI 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 nonconfidential 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 confidential document at the same time as the nonconfidential version is filed. No changes to the document other than bracketing and deletion of confidential business information are permitted after the deadline. Failure to comply with this paragraph may result in the striking of all or a portion of a submitter's document.

3. Subpart B is revised to read as follows:

**Subpart B—Investigations Relating to Global Safeguard Actions**

- 206.11 Applicability of Subpart.
- 206.12 Definitions applicable to Subpart B of this part.
- 206.13 Who may file a petition.
- 206.14 Contents of petition.
- 206.15 Institution of investigation.
- 206.16 Industry adjustment plan and commitments.
- 206.17 Limited disclosure of certain confidential business information under administrative protective order.
- 206.18 Time for determinations, reporting.
- 206.19 Public report.

**Subpart B—Investigations Relating to Global Safeguard Actions**

**§ 206.11 Applicability of subpart.**

This subpart B applies specifically to investigations under section 202(b) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

**§ 206.12 Definitions applicable to subpart B of this part.**

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

(a) *Adjustment plan* means a plan to facilitate positive adjustment to import competition submitted by a petitioner to the Commission and USTR either with the petition or at any time within 120 days after the date of filing of the petition.

(b) *Commitment* means commitments that a firm in the domestic industry, a certified or recognized union or group of workers in the domestic industry, a local community, a trade association representing the domestic industry, or any other person or group of persons submits to the Commission regarding actions such persons and entities intend

to take to facilitate positive adjustment to import competition.

**§ 206.13 Who may file a petition.**

A petition under this Subpart B may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article like or directly competitive with a foreign article that is allegedly being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

**§ 206.14 Contents of petition.**

A petition under this Subpart B shall include specific information in support of the claim that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. Such petition shall state whether provisional relief is sought because *critical circumstances* exist or because the imported article is a *perishable agricultural product*. In addition, such petition shall include the following information, to the extent that such information is available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(2) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(3) The names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that the article concerned is being imported in increased quantities, either actual or relative to domestic production;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Imports from NAFTA countries.* Quantitative data indicating the share of imports accounted for by imports from each NAFTA country (Canada and Mexico), and petitioner's view on the extent to which imports from such NAFTA country or countries are contributing importantly to the serious injury, or threat thereof, caused by total imports of such article.

(j) *Critical circumstances.* If the petition alleges the existence of critical circumstances, a statement setting forth the basis for the belief that there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and that delay in taking action would cause damage to that industry that would be difficult to repair, and a statement concerning the provisional relief requested and the basis therefor.

#### § 206.15 Institution of investigation.

(a) *In general.* Except as provided in paragraph (b) of this section, the Commission, after receipt of a petition under this Subpart B, properly filed, will promptly institute an appropriate investigation and will cause a notice thereof to be published in the **Federal Register**.

(b) *Exceptions.*

(1) *Reinvestigation within one (1) year.* Except for good cause determined by the Commission to exist, no new investigation will be made under section 202 of the Trade Act with respect to the same subject matter as a previous investigation under section 202 unless one (1) year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) *Articles subject to prior action.* No new investigation will be made under section 202 of the Trade Act with respect to an article that is or has been the subject of an action under section 203(a) (3)(A), (B), (C), or (E) of the Trade Act if the last day on which the President could take action under section 203 of the Trade Act in the new investigation is a date earlier than that permitted under section 203(e)(7) of the Trade Act.

(3) *Articles subject to the Textiles Agreement.* No investigation will be made under section 202 of the Trade Act with respect to an article that is the subject of the WTO Agreement on Textiles and Clothing unless the United

States has integrated the article into GATT 1994 and the Secretary of Commerce has published notice to such effect in the **Federal Register**.

(4) *Perishable agricultural product.* An entity of the type described in § 206.13 that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to such product only if such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

#### § 206.16 Industry adjustment plan and commitments.

(a) *Adjustment plan.* A petitioner may submit to the Commission, either with the petition or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(b) *Commitments.* If the Commission makes an affirmative injury determination, any firm in the domestic industry, certified or recognized union or group of workers in the domestic industry, local community, trade association representing the domestic industry, or any other person or group of persons may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

#### § 206.17 Limited disclosure of certain confidential business 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 confidential business 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 confidential business 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 "confidential business

information" is 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 an authorized applicant 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 a 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 confidential business 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 posthearing briefs in the investigation, and shall not be served with confidential business information.

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. 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 decisionmaking for an interested party which is a party to the investigation. Involvement in "competitive decisionmaking" includes past, present, or likely future activities, associations, and relationships with an interested party which is a party to the investigation that involve the prospective authorized applicant's advice or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).

(iii) For purposes of this § 206.17, the term "interested party" means:

(A) A foreign manufacturer, producer, or exporter, or the United States importer, of an article which is the subject of an investigation under this section or a trade or business association a majority of the members of which are producers, exporters, or importers of such article;

(B) The government of a country in which such article is produced or manufactured;

(C) A manufacturer, producer, or wholesaler in the United States of a like or directly competitive article;

(D) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale of a like or directly competitive article in the United States;

(E) A trade or business association a majority of whose members manufacture, produce, or wholesale a like or directly competitive article in the United States; and

(F) An association, a majority of whose members is composed of interested parties described in paragraphs (a)(3)(iii) (C), (D), or (E) of this section with respect to a like or directly competitive article.

(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 confidential business information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, 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. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final.

(ii) Should the Secretary determine pursuant to this section that materials sought to be protected from public disclosure by a person do not constitute confidential business 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 confidential business 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.

(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 confidential business 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 confidential business information was obtained,

(iii) A person whose application for access to confidential business 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 an authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decisionmaking on behalf of 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 confidential business information solely for the purposes of the Commission investigation then in progress;

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

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

(5) Serve all materials containing confidential business information as

directed by the Secretary and pursuant to paragraph (f) of this section;

(6) Transmit all materials containing confidential business information with a cover sheet identifying the materials as containing confidential business 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 or other actions 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 confidential business 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) *Commission responses to a 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;

(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, denial of further access to confidential business information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

(e) *Breach investigation procedure.* (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions or other actions in accordance with paragraph (d) of this section. At any time within sixty (60) days of the later of

(i) the date on which the alleged violation occurred or, as determined by the Commission, could have been discovered through the exercise of reasonable and ordinary care; or

(ii) the completion of an investigation conducted under this subpart, the Commission may commence an investigation of any breach of an administrative protective order alleged to have occurred at any time during the pendency of the investigation, including all appeals, remands, and subsequent appeals. 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 and that further investigation is warranted, 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 confidential business 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, except as provided in § 206.8(c), a nonconfidential 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 particular confidential business information by filing a request for exemption from disclosure in accordance with paragraph (g) of this section. The Secretary shall promptly respond to the request. If a request is granted, the Secretary shall accept the information. The party shall file three versions of the submission containing the information in accordance with paragraph (g) of this section, and serve the submission in accordance with the requirements of § 206.8(b) and paragraph (f)(1) of this section, with the specific information as to which exemption from disclosure under administrative protective order has been granted redacted from the copies served. If a request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

(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. Confidential business information in submissions must be clearly marked as such when submitted,

and must be segregated from other material being submitted.

(g) *Exemption from disclosure.*

(1) *In general.* Any person may request exemption from the disclosure of confidential business information under administrative protective order, whether the person desires to include such information in a petition filed under this Subpart B, or any other submission to the Commission during the course of an investigation. 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 which there is a clear and compelling need to withhold from disclosure.

(2) *Request for exemption.* A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the confidential business information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The confidential business information for which exemption from disclosure is sought shall remain the property of the requester, and shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the confidential business information in question. One version shall contain all confidential business information, bracketed in accordance with § 206.8(c), with the specific information as to which exemption from disclosure was granted enclosed in double brackets. This version shall have the following warning marked on every page: "CBI exempted from disclosure under APO enclosed in double brackets." The other two versions shall conform to and be filed in accordance with the requirements of § 206.8, except that the specific information as to which exemption from disclosure was granted shall be redacted from those versions of the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary

shall promptly be returned to the requester.

**§ 206.18 Time for determinations, reporting.**

(a) *In general.* The Commission will make its determination with respect to injury within 120 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be, except that—

(1) if the Commission determines before the 100th day that the investigation is extraordinarily complicated, the Commission will make its determination within 150 days; or

(2) if critical circumstances are alleged, the Commission will make its determination within 120 days after completion of its investigation with respect to critical circumstances.

The Commission will make its report to the President at the earliest practicable time, but not later than 180 days (240 days if critical circumstances are alleged) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(b) *Perishable agricultural product.* In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days after the date on which the request for provisional relief is received.

(c) *Critical circumstances.* If petitioner alleges the existence of critical circumstances in the petition, the Commission will report its determination regarding such allegation and any finding on or before the 60th day after such filing date.

**§ 206.19 Public report.**

Upon making a report to the President of the results of an investigation to which this Subpart B relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the **Federal Register**.

**Subpart D—Investigations Relating to Bilateral Safeguard Actions**

4. Section 206.34 is revised to read as follows:

**§ 206.34 Contents of petition.**

A petition under this Subpart D shall include specific information in support of the claim that, as a result of the reduction or elimination of a duty

provided for under the North American Free Trade Agreement, a Canadian or Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury, or (except in the case of a Canadian article) a threat of serious injury, to the domestic industry producing an article that is like or directly competitive with the imported article. Such petition shall state whether provisional relief is sought because *critical circumstances* exist or because the imported article is a *perishable agricultural product*. In addition, such petition shall include the following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.*

(1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(2) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(3) The names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years that form the basis of the claim that the Canadian or Mexican article concerned is being imported in increased quantities in absolute terms;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data

indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports of the Canadian or Mexican article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Critical circumstances.* If the petition alleges the existence of critical circumstances, a statement setting forth the basis for the belief that there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and that delay in taking action

would cause damage to that industry that would be difficult to repair, and a statement concerning the provisional relief requested and the basis therefor.

5. Section 206.35 is revised to read as follows:

**§ 206.35 Time for determinations, reporting.**

(a) *In general.* The Commission will make its determination with respect to injury within 120 days after the date on which the investigation is initiated. The Commission will make its report to the President no later than 30 days after the date on which its determination is made.

(b) *Perishable agricultural product.* In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days after the date on which the request for provisional relief is received.

(c) *Critical circumstances.* If petitioner alleges the existence of critical circumstances in the petition, the Commission will report its determination regarding such allegation and any finding on or before the 60th day after such filing date.

6. Subpart F is revised to read as follows:

**Subpart F—Monitoring; Advice as to Effect of Extension, Reduction, Modification, or Termination of Relief Action**

206.51 Applicability of Subpart.

206.52 Monitoring.

206.53 Investigations to advise the President as to the probable economic effect of reduction, modification, or termination of action.

206.54 Investigations with respect to extension of action.

206.55 Investigations to evaluate the effectiveness of relief.

**Subpart F—Monitoring; Advice As to Effect of Extension, Reduction, Modification, or Termination of Relief Action**

**§ 206.51 Applicability of subpart**

This subpart F applies specifically to investigations under section 204 of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

**§ 206.52 Monitoring.**

(a) *In general.* As long as any import relief imposed by the President pursuant to section 203 of the Trade Act remains in effect, the Commission will monitor developments with respect to the domestic industry, including the progress and specific efforts made by

workers and firms in the industry to make a positive adjustment to import competition.

(b) *Reports.* Whenever the initial period of import relief, or any extension thereof, exceeds three (3) years, the Commission will submit a report on the results of such monitoring to the President and the Congress. Such report will be submitted not later than the date which is the mid-point of the initial period of import relief, or any extension thereof. In the course of preparing each such report, the Commission will hold a hearing at which interested persons will be given a reasonable opportunity to be present, to produce evidence, and to be heard.

**§ 206.53 Investigations to advise the President as to the probable economic effect of reduction, modification, or termination of action.**

Upon the request of the President, the Commission will conduct an investigation for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the industry concerned of any reduction, modification, or termination of the action taken under section 203 of the Trade Act which is under consideration.

**§ 206.54 Investigations with respect to extension of action.**

(a) *Institution of investigations.* Upon the request of the President, or upon petition on behalf of the industry concerned, the Commission will investigate to determine whether an action taken under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(b) *Who may file a petition.* A petition under this § 206.54 may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of the industry producing the domestic article concerned in the investigation of the Commission which resulted in the imposition by the President of the import relief action.

(c) *Time for filing.* Any petition filed on behalf of an industry for a determination under this § 206.54 must be filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under section 203 of the Trade Act is to terminate.

(d) *Contents of petition.* A petition under this § 206.54 shall include the

following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(1) *Identification of relief action.* An identification of the action under section 203, or portion of such action, for which a determination under this § 206.54 is sought;

(2) *Representativeness.* (i) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(ii) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(iii) The names and locations of all other producers of the domestic article known to the petitioner;

(3) *Import data.* Import data on the foreign article concerned for each full year since action was taken under section 203 of the Trade Act, starting with the year in which action was taken;

(4) *Domestic production data.* Data on total U.S. production of the domestic article concerned for each year for which data are provided pursuant to paragraph (d)(3) of this section;

(5) *Efforts to adjust.* Specific information in support of the claim that action under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is making a positive adjustment to import competition.

(e) *Limited disclosure of certain confidential business information under administrative protective order.* Upon receipt of a timely application filed by an authorized applicant, the Secretary shall make available to an authorized applicant under administrative protective order all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during an investigation under this section with respect to an article that was the subject of an affirmative Commission determination under section 202 of the Trade Act (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure). Such disclosure shall be made in the manner provided for and in accordance with the procedures set forth in § 206.17. The

provisions in paragraphs (d) and (e) of § 206.17 relating to Commission responses to a breach of an administrative protective order and breach procedure shall apply with respect to orders issued under this paragraph.

(f) *Time for reporting.* The Commission will make its report to the President at the earliest practical time, but not later than 60 days before the action under section 203 of the Trade Act is to terminate, unless the President specifies a different date.

(g) *Public report.* Upon making a report to the President of the results of an investigation to which this § 206.54 relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the **Federal Register**.

**§ 206.55 Investigations to evaluate the effectiveness of relief.**

(a) *Investigation.* After any action taken under section 203 has terminated, the Commission will conduct an investigation for the purpose of evaluating the effectiveness of the relief action in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b) of the Trade Act.

(b) *Hearing.* In the course of such investigation, the Commission will hold a hearing at which interested persons will be given an opportunity to be present, to produce evidence, and to be heard.

(c) *Time for reporting.* The Commission will submit its report to the President and to the Congress by no later than the 180th day after the day on which the action terminated.

By order of the Commission.

Issued: December 23, 1994.

**Donna R. Koehnke,**  
Secretary.

[FR Doc. 94-32126 Filed 12-30-94; 8:45 am]

BILLING CODE 7020-02-P

**19 CFR Part 207**

**Notice of Interim Amendment to Rules of Practice and Procedure**

**AGENCY:** United States International Trade Commission.

**ACTION:** Interim rules with request for comment.

**SUMMARY:** The Commission is amending its Rules of Practice and Procedure on an interim basis to conform with the

Uruguay Round Agreements Act, (URAA). These rules govern investigations of whether domestic industries are injured by reason of imports sold at less than fair value or from subsidized imports to the United States.

The amendments provide, in particular, for new rules concerning comments on information obtained in investigations and for investigations concerning certain countervailing duty orders entered under section 303 of the Tariff Act of 1930 (the Act).

Additionally, several rules are amended to conform their language with the provisions to the Act added or amended by the URAA.

**DATES:** The interim amendments become effective on January 1, 1995, the date on which the World Trade Organization (WTO) Agreement enters into force with respect to the United States, unless the United States Trade Representative (USTR) announces prior to that date that the WTO Agreement will not enter into force on that date. Should the effective date be other than January 1, 1995, the Commission will publish notice to such effect in the **Federal Register**.

To be assured of consideration, written comments must be received not later than April 3, 1995.

**ADDRESSES:** A signed original and 14 copies of each set of comments, along with a cover letter, should be submitted to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436.

**FOR FURTHER INFORMATION CONTACT:** Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, telephone 202-205-3087. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The URAA was enacted on December 8, 1994. This legislation contains provisions which, *inter alia*, amend Title VII of the Act (19 U.S.C. 1671 *et seq.*), concerning antidumping and countervailing duty investigations and review. The Commission's rules concerning Title VII practice and procedure need to be amended to conform to the new legislation.

Section 335 of the Act (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. Additionally, section 103(a) of the URAA specifies that appropriate officers of the United States Government

may issue such regulations as may be necessary to ensure that any provision of that act, or amendment made by the act, is appropriately implemented on the effective date of that act, and section 103(b) of the URAA directs that any interim regulations necessary or appropriate to carry out any action proposed in the Statement of Administrative Action approved under section 101(a) of the URAA to implement an agreement described in section 101(d)(7), (12), or (13) of the URAA be issued not later than 1 year after the date on which the agreement enters into force with respect to the United States.

Commission rules to implement new legislation ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), which entails the following steps: (1) publication of a notice of proposed rulemaking; (2) solicitation of public comments 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. That procedure could not be utilized in this instance because the new legislation was enacted on December 8, 1994, and will become effective when the WTO enters into force with respect to the United States, which will be January 1, 1995, unless USTR announces otherwise prior to that date. Consequently, it was not possible to complete the section 553 rulemaking procedure prior to the effective date of the new legislation.

The Commission thus determined to adopt interim rules that will go into effect when the provisions of the URAA amending Title VII become effective and will remain in effect until the Commission adopts final rules promulgated in accordance with the usual notice, comment, and advance publication procedure.

The Commission's authority to adopt interim rules without following all steps listed in section 553 of the APA is derived from three sources: (1) section 335 of the Act (19 U.S.C. 1335), the pertinent portion of which was discussed above; (2) section 103 of the URAA and the Statement of Administrative Action approved by the URAA, the pertinent portions of which were also discussed above; and (3) provisions of section 553 of the APA which allow an agency to dispense with various steps in the prescribed rulemaking procedure under certain circumstances.