

**AN INTRODUCTION TO
ADMINISTRATIVE PROTECTIVE
ORDER PRACTICE IN
IMPORT INJURY
INVESTIGATIONS**

(THIRD EDITION)

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TABLE OF CONTENTS

I.	Introduction	1
II.	The APO	2
III.	The application process	3
	A. Who can apply	3
	B. The application	5
	C. Deadlines for applying	6
IV.	Obtaining BPI/CBI	7
	A. The APO service list	7
	B. Disclosure of BPI/CBI under the APO	8
V.	Filing BPI/CBI	8
	A. The one day rule	8
	B. Certification of BPI/CBI filings	9
	C. Exemption from disclosure for certain BPI/CBI	10
VI.	Sanctions	11
VII.	Answers to frequently asked questions	12
VIII.	Important Contacts and Addresses	21
Appendices		
A.	Selected statutory provisions	
B.	Selected provisions of the Commission's Rules of Practice and Procedure	
C.	Sanctions Notice	
D.	Form Administrative Protective Order	
E.	Section 206 Form Administrative Protective Order	
F.	APO NAFTA Form C	
G.	Properly Filled Out APO Forms	

I. Introduction

In antidumping and countervailing duty investigations (AD/CVD) under Title VII of the Tariff Act of 1930 (19 U.S.C. § 1671 et seq.), the Commission receives and collects significant amounts of “business proprietary information” (BPI) such as data on private companies’ profits, investment, and production processes. Similarly, in safeguards investigations under sections 202 and 204(c) of the Trade Act of 1974 (19 U.S.C. §§ 2252, 2254(c)), the Commission receives and collects “confidential business information”(CBI).¹ The Commission holds such BPI/CBI in strict confidence and does not publish such information in ways that would reveal the operations of individual firms without the consent of the submitter.

However, the Commission gives certain representatives of certain parties to an AD/CVD or safeguards investigation access to the BPI/CBI gathered in that investigation.² This access is permitted subject to an administrative protective order (APO) which is designed to protect the confidentiality of the BPI/CBI. The APO process is governed by statute³ and by Commission rules.⁴

This publication is intended as a general introduction to the process under which BPI/CBI is disclosed under APO. The APO process is governed by the statute and the Commission’s rules, and this introduction should not be construed as modifying or limiting them in any way. If you intend to practice in this area, do not rely exclusively on this introduction; consult the statute and the Commission’s rules. You should read the entirety of 19 C.F.R. Parts 201, 206, and 207.

¹ The term “business proprietary information” (BPI) has the same meaning as the term “confidential business information” (CBI) as defined in section 201.6(a) of the Commission’s Rules of Practice and Procedure. See Appendix B for the text of the rule.

² However, no such access is provided in proceedings under 19 U.S.C. 2254(a).

³ Section 777(c)(1)(A) of the Tariff Act of 1930 (19 U.S.C. § 1677f(c)(1)(A)) provides that:

Upon receipt of an application. . . the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to interested parties who are parties to the proceeding under a protective order . . .

Section 202 of the Trade Act of 1974 (19 U.S.C. 2252) contains a similar provision.

⁴ The most directly applicable provisions are 19 C.F.R. §§ 201.6, 206.8, 206.17, 207.3, and 207.7. These are provided in Appendix B.

Public Law 106-286, an Act to Authorize Extension of Non-Discriminatory Treatment (Normal Trade Relations Treatment) to the People's Republic of China and To Establish a Framework for Relations between the United States and the People's Republic of China, created new forms of investigations authorizing the grant of access to CBI under APO in certain circumstances. At a later date the Commission may issue revised APO procedures. These will be made available to the public, including on the Commission's Web site, www.usitc.gov. Please contact the Office of the Secretary if you have questions about APO practice in such proceedings.

Questions regarding APO practice should be directed to the Docket Section of the Office of the Secretary, Room 112A, telephone (202) 205-1802 or the Secretary on (202) 205-2000. Hearing-impaired individuals can obtain information on this matter via the Commission's TDD terminal at (202) 205-1810.

II. The APO

At the beginning of each antidumping, countervailing duty and safeguards investigation (including a five-year review), the Secretary to the Commission (Secretary) signs and issues an APO applicable to the investigation. The APO contains a list of obligations that a person to whom BPI/CBI is disclosed under the APO must assume. Those obligations include such requirements as not divulging BPI/CBI to unauthorized persons, using the BPI/CBI only for the relevant investigation and litigation, properly storing and transmitting BPI/CBI, and reporting possible breaches of the APO. The APO also specifies when and how BPI/CBI disclosed under the APO must be returned or destroyed, and describes the sanctions that may be imposed on a person who breaches his or her obligations under the APO.

APO forms used in AD/CVD investigations are included in Appendix D. Please note that the March 2001 version of the AD/CVD APO form differs from the previous version by allowing retention of BPI after filing a BPI certification with the Court of International Trade and by requiring return or destruction no later than the 150 day deadline if no application for protective order BPI certification has been filed. Samples of safeguards APO forms are included in Appendix E. Although the APO forms maybe photocopied, they may not be retyped or altered in any way.

The Secretary may revise the APO, and require that you re-file an APO application.

Copies of the APO application and forms are obtainable from the Docket Section during normal business hours, 8:45 a.m. to 5:15 p.m., Eastern time, by calling the Docket Section at (202) 205-1802 and requesting that one be mailed or held for pick-up, or by visiting the USITC Web site at <http://www.usitc.gov/apo.htm> and downloading the form.

III. The application process

A. Who can apply

Only certain persons are permitted under the statutes and legislative history to apply for disclosure of BPI/CBI under APO. The Commission's rules call these persons "authorized applicants."⁵ To qualify as an authorized applicant, a person must meet the following criteria:

1. The person must be one of the following:

(a) An attorney,⁶

(b) A consultant or expert under the direction and control of an attorney representing an interested party which is a party to the investigation;

(c) A consultant or expert who appears regularly before the Commission;⁷ or

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

⁵ The term "authorized applicant" means an individual. Consequently, each attorney, consultant, or expert in a firm who seeks access to BPI/CBI must fill out a separate application. A person who obtains disclosure of BPI/CBI under APO must not discuss that information with a colleague in the same firm who has not filed an application that has been accepted by the Secretary.

⁶ An attorney must be able to show that he or she is admitted to practice before the bar of a United States state or the District of Columbia. The purpose of this requirement is to ensure that the Commission grants APO access only to persons with respect to whom the Commission can impose effective sanctions for breaches of APOs. Nevertheless, the Commission may permit an attorney not admitted to practice in the United States to gain access to BPI/CBI under the APO as a consultant or expert working under the supervision of an attorney licensed to practice in the United States. The Commission's authority to regulate the credentials of attorneys or agents appearing before it is found in 19 C.F.R. § 201.15.

⁷ The Commission has not defined the term "appears regularly before the Commission." The Secretary determines whether a particular applicant falls into that category on a case-by-case basis, and may request additional information from an applicant to aid in this determination.

2. The person must represent an interested party which is a party to the relevant AD/CVD or safeguards investigation. The term "interested party" is defined by statute and regulation.⁸ The term "party" is defined in the Commission's rules.⁹ In most investigations, an authorized applicant must be a representative of petitioners, of other domestic producers, or of importers (not just purchasers from importers) or foreign producers of the articles subject to investigation, or the government of the country in which the articles subject to investigation are produced.

3. The person must not be involved in competitive decision making for an interested party which is a party to the investigation. The regulations define

⁸ See 19 U.S.C. § 1677(9), which provides that an interested party in an AD/CVD investigation can be:

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise or trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured or from which such merchandise is exported,

(C) a manufacturer, producer, or wholesaler in the United States of a domestic like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product, and

(G) in any investigation under this subtitle involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either -

(i) processors,

(ii) processors and producers, or

(iii) processors and growers,

but this subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the International [sic] obligations of the United States.

19 C.F.R. § 206.17 contains a similar, although not identical, provision applicable to safeguards investigation.

⁹ 19 C.F.R. § 201.2, Party means "any person who has filed a complaint or petition on the basis of which an investigation has been instituted, or any person whose entry of appearance has been accepted."

“competitive decision making” by incorporating the definition used in U.S. Steel Corp. v. United States.¹⁰ Accordingly, “competitive decision making” 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 applicants advise [sic] or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).¹¹

The U.S. Steel decision was interpreted in Matsushita Electric Ind. Corp. v. United States.¹² In that case, the court held, inter alia, that an in-house corporate counsel may not be denied disclosure of BPI under an APO on the sole ground of status as a corporate officer.¹³

B. The application

An authorized applicant wishing to obtain disclosure of BPI/CBI under APO must file an application with the Secretary. The application must be made on a form approved by the Secretary. Although the form may be photocopied, it may not be retyped or altered in any way. Any such alteration will result in rejection of the application.

The application is essentially divided into three parts. First, the applicant must state under oath that he or she has authorized applicant status. Second, the applicant must request disclosure of BPI/CBI under the APO and agree to be bound by the APO. Third, the applicant must acknowledge that a breach of the APO may subject him or her to certain sanctions.

If you fall into one of three categories of authorized applicants,¹⁴ you must attach to your application a written statement describing your job functions, disclosing all financial holdings you may have in the interested party you represent or its affiliates, and indicate whether you are involved in the formulation of the interested party's pricing policies.

¹⁰ 730 F.2d 1465 (Fed. Cir. 1984).

¹¹ 19 C.F.R. §§ 206.17(a)(3)(ii), 207.7(a)(3)(ii).

¹² 929 F.2d 1577 (Fed. Cir. 1991), reversing, 14 CIT 674, 746 F. Supp. 1103 (1990).

¹³ 929 F.2d at 1580.

¹⁴ (1) an in-house counsel, (2) a consultant or expert who practices regularly before the Commission, or (3) a representative of an interested party that is not represented by counsel.

Please note that there is both a three page APO Form issued by the Secretary for the investigation(s), and a two page APO Application for Disclosure to be filled out and then filed by the applicant. Only the two page APO Application for Disclosure must be filed.

In most cases, an authorized applicant wants to give access to BPI/CBI disclosed under APO to paralegal or clerical staff such as a secretary, word processor, messenger, or other such support persons employed or supervised by the authorized applicant. Before such a person is allowed access, the person must fill out the Acknowledgment for Clerical Personnel form approved by the Secretary. This form provides for the person to agree to be bound by the APO and for the authorized applicant to sign in recognition of his or her assumption of responsibility for any breach the person might commit.

C. Deadlines for applying

Under the Commission's rules, you must file an application within certain time limits. In an original AD/CVD investigation, you must file your application within seven days after the publication in the Federal Register of the notice of institution of the preliminary phase investigation. If you do not file an application in the preliminary phase, you may file an application in the final phase within 21 days of the hearing date indicated in the final phase notice of scheduling published in the Federal Register.

In a five-year review, or a safeguard investigation, you must file an application within 21 days after the publication of the notice of institution in the Federal Register. If the Commission should conduct a full review in a sunset case, there will be an additional period for filing an application which will be indicated in the notice of scheduling published in the Federal Register.

In some cases, one interested party which is a party to the investigation is represented by more than one authorized applicant, e.g., several attorneys from one or more law firms, as well as an economist from a consulting firm. So long as one authorized applicant applies within the time limit, the deadlines are extended for other authorized applicants representing the same party. One authorized applicant must file an application by the deadline and must identify herself or himself as "lead authorized applicant." Only the lead authorized applicant will receive service of BPI/CBI in the investigation.¹⁵ The other authorized applicants may file their applications at a later date, although no later than five days prior to the deadline for filing post-hearing briefs in an investigation or full five-year review or post-conference briefs in a preliminary phase investigation. However, the lead authorized applicant is not to

¹⁵ 19 C.F.R. § 207.7(a)(2).

discuss BPI/CBI disclosed under APO with another authorized applicant until the latter's application has been approved.

There is no specific deadline for the filing of form statements by paralegals and clerical staff persons employed or supervised by authorized applicants. However, you cannot give such staff access to BPI/CBI disclosed under APO until the form statements have been approved. The Docket Section will notify the lead authorized applicant when the APO amendments have been approved. This notice may be either by telephone, facsimile, or e-mail.

If your APO application was approved in the preliminary phase of an original AD/CVD investigation and you intend to continue representation in the final phase, you need not file another application. However, you must notify the Secretary in writing that you will participate in the final phase. Each firm is to file a letter listing the attorneys, consultants, and staff that will participate in the final phase. Such a letter should indicate whether any persons who participated in the preliminary phase of the investigation have ended their involvement with the matter. If a new attorney or other authorized applicant is being retained, the appropriate forms must be filed.

IV. Obtaining BPI/CBI

A. The APO service list

After the deadline for filing APO applications, the Secretary will establish a list of authorized applicants whose applications have been approved. All parties must serve their business proprietary submissions to the Commission on the persons listed on that APO service list. If one interested party is represented by more than one authorized applicant, the APO service list will designate one authorized applicant as the lead authorized applicant on whom service must be made.

This APO service list is not to be confused with the public service list established by the Secretary.¹⁶ Only submissions to the Commission with all BPI/CBI deleted are to be served on the persons appearing on the public service list. To avoid confusion, the APO service list is printed on pink paper, whereas the public service list is printed on blue paper.

In the period in a preliminary phase AD/CVD investigation between the filing of a petition and the issuance of the APO service list, the Secretary will notify the petitioner and applicant when application(s) for APO are approved. When practical,

¹⁶ The public service list is established pursuant to Commission rule 201.11 (d). All parties appear on that list, and are to be served with nonproprietary versions of documents filed in the investigation.

this notification will be made by facsimile or e-mail transmission to the applicant and the petitioner. A copy of the petition, including all business proprietary information shall then be served by petitioner on those approved applicants within two days of the time notification is made by the Secretary.¹⁷

If you have questions regarding either your APO application status or the APO status of a party, you should contact the Docket Section at (202) 205-1802.

B. Disclosure of BPI/CBI under the APO

Once a lead authorized applicant appears on the APO service list, the lead applicant is eligible to receive BPI/CBI under the APO. Other parties must now serve the lead applicant with their BPI/CBI. In addition, the lead applicant may obtain BPI/CBI not normally served by other parties, such as Commission reports and nonparty questionnaire responses. Docket personnel will contact the lead authorized applicant when there is BPI/CBI available.

Docket personnel will only give BPI/CBI to a person whose name appears on the approved service list. An authorized applicant may pick up BPI/CBI, or send a member of the clerical staff who has signed the APO form statement and been approved by the Secretary. Picture identification is required. Docket personnel will not give access to BPI/CBI to any person not on the approved APO service list, or those without picture identification.

V. Filing BPI/CBI

A. The one-day rule

A person who files with the Commission a brief or other submission that contains BPI/CBI must also file a public version of that submission.¹⁸ If the submission is to be filed by a deadline set by the Commission, Commission rules 206.8 and 207.3 permit a submitter to file the public version no later than one business day after the confidential version is due. This "one-day rule" is intended to reduce the incidence of APO breaches caused by persons failing under the pressure of deadlines to adequately sanitize the public version of their submissions.

Under the "one-day rule," the BPI/CBI version of a document is due by the deadline set by the Commission. You must file that version with all BPI/CBI enclosed

¹⁷ 19 C.F.R. § 207.10(b)

¹⁸ If the person is a party, the submission must also be served on all persons designated in the Secretary's service list.

in brackets but with a warning on every page that bracketing of BPI/CBI is not final for one business day after date of filing. In accordance with the warning, a person to whom the submission is disclosed under APO is not to disclose information received in the document to anyone not subject to the APO until the bracketing becomes final. One business day after the deadline, submitters are to file a public version with all BPI/CBI deleted. In the event that a submitter files the confidential version on the deadline day and then finds an error in the bracketing in the confidential version, the submitter is permitted to notify the Commission no later than one business day after the deadline of the necessary changes to bracketing, and must file replacement pages to correct the business proprietary version of the document. Such corrections will not give rise to a breach, provided that the corrections are made within the time permitted and provided that BPI/CBI has not been included in the public version.

The one-day extension is not to be used to amend the submission in any way other than bracketing and deletion of BPI/CBI. Making other changes to the submission may result in striking all or part of the document from the record. If a submitter wishes to make other changes, including errata and typographical corrections, the submitter must request leave to file such changes and clearly itemize each requested change. Unless the submitter requests leave to file the changes, they will not be accepted.

When submitting corrections to bracketing of BPI/CBI in a brief, do not submit an entire replacement brief; individual replacement pages are sufficient and preferable. If you choose to submit a replacement brief, please itemize each change.

The Commission instituted the "one-day rule" to minimize the number of APO breaches. Please take advantage of the opportunity afforded by the rule to ensure that BPI/CBI is properly handled.

B. Certification of BPI/CBI filings

A person who files with the Commission a brief or other submission that contains BPI/CBI must satisfy Commission rules pertaining both to filings of BPI/CBI and to filings of documents generally. These rules require separate certifications, and only the former requires notarization. The procedure for submitting business information in confidence requires a "certification in writing under oath that substantially identical information is not available to the public."¹⁹ As "under oath" suggests, this certification either must be notarized or must comply with 28 USC § 1746 regarding unsworn declarations under penalty of perjury. The rule for service, filing, and certification of documents generally requires certification "that such

¹⁹ 19 C.F.R. § 201.6(b)(3)(iii).

information is accurate and complete to the best of the submitter's knowledge."²⁰ This certification requires no notarization.

C. Exemption from disclosure for certain BPI/CBI

Under statute and regulation,²¹ information that is privileged, classified, or "of a type for which there is a clear and compelling need to withhold from disclosure" is exempt from disclosure and service under APO. Privileged material includes information such as that covered by the attorney-client, deliberative process, or attorney work product-privileges. Classified material is covered by a national security classification such as "Secret" or "Confidential." The third category, for which there is a "clear and compelling need to withhold," is not defined in the statute. According to legislative history, the category --

is expected to be used rarely, in situations in which substantial and irreparable financial or physical harm may result from disclosure. An example of a specific type of information which may fit this definition is trade secrets, that is, a secret formula or process having a commercial value, not patented, known only to certain individuals who use it in compounding or manufacturing an article of trade.²²

Commission rules 206.17(g) and 207.7(g) provide a procedure for a submitter of BPI/CBI to follow if the submitter considers that any of the information falls within the exempt categories. The submitter may request an exemption from the Secretary, who will either grant or deny the request. The Secretary will grant such requests only in rare cases, because secret formulas and other such extremely sensitive data are not normally involved in AD/CVD or safeguards investigations.

When requesting an exemption, a submitter is to file the request and lodge a copy of the information at issue with the Secretary, when possible two days before any relevant deadline. If the Secretary grants the request, the submitter is to file three versions of the document containing the now exempt information: (1) a complete version, with the exempt information properly marked, (2) a version with the exempt information but not other BPI/CBI deleted, and (3) a public version with all BPI/CBI deleted. The second and third versions are to be served in accordance with normal BPI/CBI and public service rules. If the Secretary denies the exemption request, the information will be returned to the submitter.

²⁰ 19 C.F.R. §§ 206.8(a) and 207.3(a).

²¹ 19 U.S.C. § 1677f(c)(1)(A) and 19 C.F.R. § 206.17(a)(1).

²² H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess., at 623.

VI. Sanctions

The Commission makes every attempt to preserve the confidentiality of BPI/CBI. Consequently, any breach of an APO, particularly if it results in the improper dissemination of BPI/CBI, is regarded as a serious matter. An authorized applicant who breaches the APO is subject to sanctions.

Commission rules 206.17(d) and 207.7(d), the APO, and the APO application list the responses the Commission may make to a breach. These are:

- (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 BPI/CBI 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.

The procedure for investigating alleged breaches of APOs has two parts. First, the Commission determines whether a breach has occurred and who is responsible for it. This is done after the alleged breachers have been provided an opportunity to present their views on the matter. The first phase may conclude with the issuance of a warning letter if the Commission finds a breach has occurred but no further action is warranted, or the phase may conclude when the Commission determines that no breach occurred and it issues a letter stating that. Second, if a breach is found to have occurred and the Commission determines that further action is warranted, the Commission determines what sanction, if any, to impose. The breachers are provided an opportunity to present their views on this issue.

The Commission's most common responses to breaches have been the issuance of warning letters and private letters of reprimand. A warning letter is not a sanction,

and may be issued in an instance in which the Commission determines that a sanction is not appropriate. The private letter of reprimand is a sanction. It can be expunged from the recipient's record after two years of good behavior, *i.e.*, no further breaches. Where this sanction is imposed, the Commission keeps confidential the identity of the offender, although the Commission yearly issues a public notice describing in general terms the private letters of reprimand and other actions it has taken in response to breaches issued.²³

Similarly, all correspondence between the Commission and an alleged breacher is kept confidential by the Commission. Any correspondence relating to APO breaches filed with the Secretary should be clearly marked as NOT FOR PUBLIC INSPECTION. This correspondence is not served on parties to the investigation.

VII. Answers to frequently asked questions

Certain questions come up frequently when practitioners participate in the APO process. The following are some of those questions and their answers. If you have questions about the APO rules and procedures, you are encouraged to call the Secretary on (202) 205-2000, the Docket Section (202) 205-1802, or the Office of the General Counsel (202) 205-3061 for assistance.

1. How does the Commission determine whether industry or aggregate business information should be treated as proprietary?

The Commission has established criteria as to when it will treat as proprietary aggregate business information - that is, information that pertains collectively to more than one company. Aggregate business information pertaining to fewer than three companies normally is *always* treated as proprietary. Information pertaining to three or more companies normally is treated as publishable, unless two companies account for more than 90 percent of the data, or unless one company accounts for more than 75 percent of the data. While these percentages initially applied to production shares within an industry, the Commission has maintained the flexibility to apply these percentages to other data such as import shares within an industry.

In particular instances the Commission may need to provide for exceptions to the normal criteria. Accordingly, do not assume that you can disclose aggregate data to persons not authorized to have access to BPI/CBI unless the aggregate data appear in a public Commission document. When in doubt as to the status of aggregate information, please consult Commission staff.

²³ A copy of the most recently-issued notice can be found at Appendix C.

2. If I obtained disclosure of BPI under APO in the preliminary phase of an AD/CVD investigation, do I have to re-file an APO application in the corresponding final phase?

No, you do not need to re-file an APO application to retain access to BPI in the corresponding final phase investigation. However, you must notify the Secretary in writing at the beginning of the final phase of the persons who will continue to be subject to the APO during the final phase and those persons who should be removed from the APO. Notification procedures are discussed in Question 13.

3. If I am participating in a final phase of an AD/CVD investigation but did not participate in the corresponding preliminary phase, can I see BPI which was disclosed under APO during the preliminary phase?

An authorized applicant whose APO application has been granted has access to all BPI disclosed during both the preliminary phase and final phase investigations. If you represent a party already represented by a lead authorized applicant, please contact him or her for access to the BPI served by the Commission under APO prior to granting of your APO access. Otherwise, the lead authorized applicant must submit a written request for the BPI to the Secretary.

4. If one attorney files his APO application on time, how much time does he have in an AD/CVD investigation to add other attorneys to the list of persons with access to BPI?

In an AD/CVD investigation, the attorney who has filed a timely application can have colleagues submit APO applications at any time up until five days before the post-hearing briefs are due in a final phase or full five-year review (or the post-conference briefs are due in a preliminary phase). The attorney who filed on time must be designated the "lead authorized applicant," and will be the only one to receive service of BPI under the APO.

5. When one party is represented by two or more law firms and an economic consulting firm, who is served with BPI/CBI under APO?

When one interested party which is a party to the investigation is represented by several authorized applicants, the authorized applicants must agree to designate a "lead authorized applicant," who must file the application on time and will be the only one to be served with BPI/CBI under the APO.

6. What are the service requirements prior to the issuance of the APO, particularly with respect to questionnaires?

Parties, other than the petitioner, should not serve copies of submissions containing BPI/CBI on other parties before the issuance of the APO and the APO service list (Administrative Protective Order Certificate of Service). The petitioner in the preliminary phase of an AD/CVD investigation should serve a BPI copy of the petition on parties whose APO applications have been approved within two calendar days of notification that the Secretary has approved the applications. Within two business days after the issuance of the APO service list, however, all parties must serve all other submissions on the designated persons on the APO service list. The Docket Section will serve the APO service list on all lead authorized applicants. The Docket Section will serve amended versions of the list (1) as changes are made in preliminary phase investigations, and (2) no more than once a week in final phase investigations and five-year reviews, if changes have been made.

If circumstances warrant, the Secretary may issue an amended service list at any time. If you have questions regarding the status of a party, you should contact the Docket Section at (202) 205-1802.

Service lists are available on the Internet. From the USITC home page, <http://www.usitc.gov>, select EDIS On-Line (EOL). From that page, click on Index Search. Enter the type of investigation, investigation number, and phase in the appropriate places. For document type enter the phrase "certificate of service." All service lists, APO and public, issued by the Secretary for that investigation will display in chronological order.

7. At a hearing, may I submit to the Commission BPI/CBI not previously submitted in my brief or elsewhere?

Any BPI/CBI to be discussed at a hearing must be filed with the Commission at least three working days before the day of the hearing, as stated in the rules governing the submission of BPI/CBI.²⁴ In the past, parties have often filed BPI/CBI intended for use at a hearing in their pre-hearing briefs.

²⁴ 19 C.F.R. § 201.6(b)(2).

8. Would the Commission grant a request that an entire AD/CVD hearing be held in camera?

The Commission would not likely grant such a request. Title VII of the Tariff Act provides that notice is to be published in the Federal Register prior to any AD/CVD hearing, and that a hearing transcript be prepared and made available to the public.²⁵ Accordingly, the Commission maintains a strong presumption in favor of public proceedings. In order to comply to the maximum extent possible with the principle of public disclosure, the Commission closes a portion of a hearing at a party's request only for good reason. Commission rule 207.24(d) describes the procedure for requesting an in camera session. The rule requires that a request be filed no later than seven days prior to a hearing and that the request justify in detail the need for a closed session. The Commission urges parties to file such requests as early as possible. Please note it may take several business days for the Commission to decide whether to grant the request.

9. When must I return or destroy BPI/CBI disclosed under APO?

Pursuant to Commission rules 206.17(c) and 207.7(c), the Secretary determines when BPI/CBI is to be returned or destroyed. Currently, the schedule for return or destruction of BPI/CBI disclosed under APO is the same whether the Commission makes an affirmative or a negative determination. Each authorized applicant normally must return or destroy such BPI/CBI within 60 days of the termination of the investigation, and file a certification that, to the best of the authorized applicant's knowledge and belief, the BPI/CBI has been returned or destroyed and that no BPI/CBI has been made available to unauthorized persons. The termination of the investigation means one of the following:

* The date of publication in the Federal Register of the Commission's preliminary negative, final negative, or final affirmative determination;
or

* The date of publication in the Federal Register of a Commerce Department final negative determination or determination to terminate the investigation.

In some instances, one or more interested parties may seek judicial review of the Commission's determination. In view of the deadlines for seeking judicial review set out in 19 U.S.C. § 1516(a), 60 days should give parties enough time to find out if review is being sought. If review is sought, the 60-day deadline for returning or destroying BPI is suspended. You may retain BPI disclosed to you under APO during

²⁵ 19 U.S.C. § 1677c(b).

judicial review proceedings, provided that you apply to the appropriate reviewing authority for a Judicial Protective Order or, in the cases before the U.S. Court of International Trade, file a BPI certification agreed to by the Commission within 150 days after the completion of the investigation. If you have not applied for a Judicial Protective Order or filed a BPI certification by the end of the 150 days, you must by that deadline return or destroy the BPI and promptly thereafter notify the Secretary.

If the Commission determination concerns imports from Canada or Mexico, you may retain BPI disclosed to you under APO during any binational panel review of the determination, subject to the additional terms and conditions in the then-current version of APO NAFTA Form C. A copy of APO NAFTA Form C is shown in Appendix F.

10. Does the Commission prefer that I destroy or return BPI/CBI disclosed under APO? To whom would I return BPI/CBI, the Commission or the submitter?

For reasons of convenience, the Commission would in most cases prefer that an authorized applicant destroy BPI/CBI disclosed under APO and certify that the BPI/CBI has been destroyed, although returning the material to the Commission is acceptable as well. However, at any time the Secretary may require the return of BPI/CBI to the Commission or to the submitter if deemed appropriate.

11. If I choose to store BPI/CBI on computer disk, does the APO's warning regarding the storage of BPI/CBI require that I use floppy disks rather than a hard disk?

No. The purpose of this warning is to caution authorized applicants that they will be held responsible for safeguarding the confidentiality of all BPI/CBI to which they are granted access, and to warn applicants about the potential hazards of storage on hard disk. In particular, applicants should understand that information supposedly deleted from a hard disk may be retrievable using a utilities program. As the Commission stated in a 1990 regulatory preamble, however, applicants are permitted "a certain amount of discretion in choosing the most appropriate method of safeguarding the confidentiality of the information."²⁶ While storage of BPI/CBI on floppy disks rather than a hard disk is advised, it is not mandatory. However, the authorized applicant is responsible if BPI/CBI is not adequately safeguarded.

12. If one party seeks judicial review of a Commission AD/CVD determination, and the party I represent does not intervene immediately in the litigation, may I maintain my files in case my client wishes to intervene at a later date?

²⁶ Preamble to notice of proposed rulemaking, 55 Fed. Reg. 24,100 (June 14, 1990).

Yes, you may retain the BPI disclosed under APO, but only for 150 days after the end of the investigation. If your client does not intervene and join in a proposed Judicial Protective Order or in the case of the Court of International Trade, file a BPI certification acceptable to the Commission within that time, you must promptly return or destroy the BPI by the end of the 150 days.

13. What should be done if either the authorized applicant or a clerical worker subject to the APO leaves the firm before the final determination, *e.g.*, between the preliminary and final phases, or when the authorized applicant or support person is transferred within the firm and is no longer participating in the investigation?

Under the APO, an authorized applicant must report any changes that affect the representations made in the application for access to APO. In this instance, the authorized applicant who ends participation in an investigation must notify the Commission in writing of that fact and certify that she/he no longer possesses any BPI/CBI disclosed under APO. Similarly, if a secretary, paralegal, or other clerical staff person is no longer participating in the investigation, the authorized applicant should notify the Commission in writing of that fact.

14. If I change law firms during the investigation but continue to represent the same interested party which is a party to the investigation, must I file a new application?

No, your initial application remains effective. However, you must inform the Secretary in writing of your new firm and address. In this letter you should provide the names of any persons transferring with you. You must make separate APO application for any new personnel. And, you should remain aware of APO amendment time limits.

15. If an interested party which is a party to the investigation substitutes entirely new counsel for its prior counsel during the investigation, can the former counsel transfer its BPI/CBI disclosed under APO to the new counsel?

Yes, if before the transfer is made the new attorney applies for and is granted disclosure of BPI/CBI under the APO by the Secretary, *i.e.*, the authorized applicant is added to the APO service list. However, the new attorney will not receive service of new BPI/CBI, because the former counsel is still designated lead authorized applicant. In order to receive service, the new attorney must file a written request with the Secretary to change the identity of the lead authorized applicant. In most cases of a change of attorneys, the Secretary will permit the former counsel to retain BPI/CBI until the new attorney has been granted access to BPI/CBI under the APO.

16. Why does the one-day rule not apply to petitions, supplements, and general written submissions?

The one-day rule (contained in 19 C.F.R. § 207.3(c) and 206.8(c)) applies only to filings subject to a Commission-imposed deadline. The Commission instituted the rule to minimize the number of errors parties made in bracketing BPI/CBI under the stress of trying to meet deadlines. That concern does not apply to the same extent to petitions and other filings not prepared under a Commission-imposed deadline.

17. Who is authorized to apply for disclosure of BPI/CBI under APO?

A person must meet a number of criteria in order to qualify as an "authorized applicant" who can apply for disclosure of BPI/CBI under APO. The person must:

- (1) Be (a) an attorney, (b) a consultant or expert under the direction and control of an attorney representing an interested party which is a party to the investigation, (c) a consultant or expert who appears regularly before the Commission, or (d) a representative of an interested party which is a party to the investigation, if such interested party is not represented by counsel;
- (2) Represent an interested party which is a party to the investigation;
and
- (3) Not be involved in competitive decision-making for an interested party which is a party to the investigation.

You should consult the APO and the rules for additional information about those requirements.

18. Can an attorney from a foreign country apply for disclosure of BPI/CBI under APO?

If an attorney is admitted to practice before the bar of any United States state or the District of Columbia, the attorney can apply, regardless of whether she or he is a U.S. citizen. If the attorney is not so admitted, the Commission may permit the attorney to gain access to BPI/CBI under the APO as a consultant or expert working under the supervision of an attorney admitted to practice in a United States state or the District of Columbia.

19. If a complaint is filed with the U.S. Court of International Trade after the end of an investigation, and a party wishes to retain new counsel, how would the new counsel obtain access to BPI?

The new counsel would need to submit a BPI certification or a motion to the Court for disclosure under a Judicial Protective Order pursuant to US CIT R.71. Normally, the new counsel should contact previous counsel for access to the BPI in the record.

20. What do I do if I discover BPI/CBI in a public document that I submitted?

If you discover BPI/CBI in a public document that you have submitted, you must notify the Secretary immediately. If the BPI/CBI is your client's information, it normally will remain in the public record. If the BPI/CBI is information received under the APO, copies of the document should be immediately retrieved from the parties served, the information should be removed from the public version, and the public version should be resubmitted and served. The Commission will initiate an APO Breach investigation; prompt recovery of the BPI/CBI information can be a mitigating factor in determining the appropriate warning or sanction for any breach found to have occurred.

21. What are the procedures for requesting exemption from disclosure of BPI/CBI under APO?

In some instances, a person may wish to submit information to the Commission that the submitter considers too sensitive to disclose to other party representatives under APO. Under 19 C.F.R. §§ 206.17(g) and 207.7(g), the submitter can lodge a copy of the sensitive information with the Secretary together with a request for exemption from disclosure under the APO. If possible, the request should be made at least two business days prior to any deadline for filing the information.

If the Secretary grants the request in an AD/CVD investigation, the submitter must file three versions of the filing containing the exempted information: a version with the exempted information included and properly marked and the warning "BPI EXEMPTED FROM DISCLOSURE UNDER APO ENCLOSED IN TRIPLE BRACKETS" on every page, and two versions omitting the exempted information and otherwise conforming with normal filing and service rules. If the request is denied, the sensitive information will be returned to the submitter.

If the Secretary grants the request in a safeguards investigations, DOUBLE brackets are used.

22. What special steps must a person take when filing or serving a submission containing BPI/CBI?

Under the APO, paragraph B(6), a person must, *inter alia* transmit each document containing BPI/CBI with a cover sheet identifying the document as containing BPI/CBI. If the document is to be mailed, the person must put the document in two envelopes, the inner one sealed and marked "Business Proprietary Information - To be opened only by [name of recipient]," and the outer one sealed and not marked as containing BPI/CBI. The Commission recommends that the two-envelope procedure be used whenever transmitting BPI/CBI, including by a messenger subject to the APO.

23. What are the most common mistakes in applying for APO?

The most common mistakes in applying for APO are mechanical errors related to filling out the APO application forms. These mistakes do not cause an application to be rejected but instead slow processing.

(a) You must both name the interested party represented as well as provide its category (e.g., domestic producer, importer) when completing the first page of the APO Form Application for Disclosure.

(b) The attorney name and signature must be provided on the first page of the APO Form Application for Disclosure when category (3) is checked.

(c) A descriptive job title is needed for clerical support personnel. Docket personnel use this title to determine whether the person has signed the proper form.

(d) To reduce errors in compiling the APO service list, it is suggested that clerical support personnel clearly print, or type, their name and title.

To assure timely processing, the original signed forms should be filed with a cover letter, clearly stating the nature of the attached forms, e.g. request for APO amendments to APO. Samples of properly filled out APO applications and amendment requests are found in Appendix G.

24. Is there any other information I should be aware of?

Guidance on the purpose and meaning of the rules may be found in the regulatory preambles that accompanied amendments to the rules. Such notices include:

- a. Notice of interim rulemaking, at 53 Fed. Reg. 33,039 (Aug. 29, 1988).
- b. Notice of interim rulemaking, at 54 Fed. Reg. 5220 (Feb. 2, 1989).
- c. Notice of interim rulemaking, at 55 Fed. Reg. 24,100 (June 14, 1990).

- d. Notice of final rulemaking, at 56 Fed. Reg. 11,918 (Mar. 21, 1991).
- e. Notice of proposed rulemaking, at 58 Fed. Reg. 19,638 (Apr. 15, 1993).
- f. Notice of final rulemaking, at 59 Fed. Reg. 66,719 (Dec. 28, 1994).
- g. Notice of proposed rulemaking, at 60 Fed. Reg. 51,748 (Oct. 3, 1995).
- h. Notice of final rulemaking, at 61 Fed. Reg. 37,818 (July 22, 1996).
- i. Notice of proposed rulemaking, at 62 Fed. Reg. 55,185 (Oct. 23, 1997).
- j. Notice of final rulemaking, at 63 Fed. Reg. 30,599 (June 5, 1998).

Relevant legislative history can be found at H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess., at 622 (1998), and H.R. Conf. Rep. No. 650, 101st Cong., 2d Sess., at 121 (1990) and H.R. Rep. No. 826, 103d Cong., 2d Sess., at 129 (1994).

VIII. Important Contacts and Addresses

Office of the Secretary, Room 112: (202) 205-2000

Docket Section, Office of the Secretary, Room 112A: (202) 205-1802

Hearing Section, Office of the Secretary, Room 112B: (202) 205-1806

TDD Terminal: (202) 205-1810

Office of the General Counsel: (202) 205-3061

USITC Web site <http://www.usitc.gov>

APO Forms on the Web site <http://www.usitc.gov/apo.htm>

EDIS On-Line (the USITC's electronic docket) on the Web site <http://dockets.usitc.gov/eol/public>

APPENDIX A
SELECTED STATUTORY PROVISIONS

19 U.S.C. § 1677. Definitions; special rules

For purposes of this subtitle --

* * * * *

(9) Interested party

The term "interested party" means --

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured or from which such merchandise is exported,

(C) a manufacturer, producer, or wholesaler in the United States of a domestic like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product, and

(G) in any investigation under this subtitle involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either -

(i) processors,

(ii) processors and producers, or

(iii) processors and growers,

but this subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

19 U.S.C. § 1677f. Access to information

(a) Information generally made available

(1) Public information function

There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies.

(2) Progress of investigation reports

The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) Ex parte meetings

The administering authority and the Commission shall maintain a record of any ex parte meeting between --

(A) interested parties or other persons providing factual information in connection with a proceeding, and

(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding, if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(4) Summaries; non-proprietary submissions

The administering authority and the Commission shall disclose --

(A) any proprietary information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

(b) Proprietary information

(1) Proprietary status maintained

(A) In general

Except as provided in subsection (a)(4)(A) of this section and subsection (c) of this section, information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than --

(i) to an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted or any review under this subtitle covering the same subject merchandise, or

(ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this subtitle.

(B) Additional requirements

The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by --

(i) either --

(I) a non-proprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(II) a statement that the information is not susceptible to summary accompanied by a statement of the reasons in support of the contention, and

(ii) either --

(I) a statement which permits the administering authority or the Commission to release under

administrative protective order, in accordance with subsection (c) of this section, the information submitted in confidence, or

(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

(2) Unwarranted designation

If the administering authority of the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.

(3) Section 1675 reviews

Notwithstanding the provisions of paragraph (1), information submitted to the administering authority or the Commission in connection with a review under section 1675(b) or 1675(c) of this title which is designated as proprietary by the person submitting the information may, if the review results in the revocation of an order or finding (or termination of a suspended investigation) under section 1675(d) of this title, be used by the agency to which the information was originally submitted in any investigation initiated within 2 years after the date of the revocation or termination pursuant to a petition covering the same subject merchandise.

(c) Limited disclosure of certain proprietary information under protective order

(1) Disclosure by administering authority or Commission

(A) In general

Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during a proceeding. Customer names obtained during any investigation which requires a determination under section 1671d(b) or 1673d(b) of this title may not be disclosed by the administering authority under protective order until either an order is published under section 1671e(a) or 1673e(a) of this title as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names under protective order during any such investigation until a reasonable time prior to any hearing provided under section 1677c of this title.

(B) Protective order

The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(C) Time limitation on determinations

The administering authority or the Commission, as the case may be, shall determine whether to make information available under this paragraph --

(i) not later than 14 days (7 days if the submission pertains to a proceeding under section 1671b(a) or 1673b(a) of this title) after the date on which the information is submitted, or

(ii) if --

(I) the person that submitted the information raises objection to its release, or

(II) the information is unusually voluminous or complex, not later than 30 days (10 days if the submission pertains to a proceeding under section 1671b(a) or 1673b(a) of this title) after the date on which the information is submitted.

(D) Availability after determination

If the determination under subparagraph (C) is affirmative, then --

(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date; and

(ii) the business proprietary information submitted to the administering authority or the Commission after the date of the determination shall be served as required by subsection (d) of this section.

(E) Failure to disclose

If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.

(2) Disclosure under court order

If the administering authority denies a request for information under paragraph (1), then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under

such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that --

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1) of this section,

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

(d) Service

Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order; however, a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

* * * * *

(g) Information relating to violations of protective orders and sanctions

The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c) or (d) of this section, and such information shall be treated as information described in section 552(b)(3) of title 5.

19 U.S.C. § 2252. Investigations, determinations, and recommendations by Commission

* * * * *

(i) Limited disclosure of confidential business information under protective order

The Commission shall promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties who are parties to an investigation under this section.

APPENDIX B

**SELECTED PROVISIONS OF THE COMMISSION'S RULES OF PRACTICE AND
PROCEDURE**

19 C.F.R. 201.2

Sec. 201.2 Definitions.

As used in this chapter--

- (a) Commission means the United States International Trade Commission;
- (b) Inspector General means the Inspector General of the Commission;
- (c) Tariff Act means the Tariff Act of 1930, 19 U.S.C. 1202-1677j;
- (d) Trade Expansion Act means the Trade Expansion Act of 1962, 19 U.S.C. 1801-1991;
- (e) Trade Act means the Trade Act of 1974, 19 U.S.C. 2101-2487;
- (f) Trade Agreements Act means the Trade Agreements Act of 1979, Public Law 96-39, 93 Stat. 144;
- (g) Rule means a section of the Commission Rules of Practice and Procedure (19 CFR chapter II);
- (h) Secretary means the Secretary of the Commission.
- (i) Except for adjudicative investigations under subchapter C of this chapter, party means any person who has filed a complaint or petition on the basis of which an investigation has been instituted, or any person whose entry of appearance has been accepted pursuant to Sec. 201.11 (a) or (c). Mere participation in an investigation without an accepted entry of appearance does not confer party status.
- (j) Person means an individual, partnership, corporation, association, or public or private organization.

19 C.F.R. 201.6

Sec. 201.6 Confidential business information.

(a) Definitions. (1) Confidential business information is information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. The term "confidential business information" includes "proprietary information" within the meaning of section 777(b) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)). Nonnumerical characterizations of numerical confidential business information (e.g., discussion of trends) will be treated as confidential business information only at the request of the submitter for good cause shown.

(2) Nondisclosable confidential business information is privileged information, classified information, or specific information (e.g., trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure. Special rules for the handling of such information are set out in Sec. 207.7 of this chapter.

(b) Procedure for submitting business information in confidence. (1) A request for confidential treatment of business information shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(2) In the absence of good cause shown, any request relating to material to be submitted during the course of a hearing shall be submitted at least three (3) working days prior to the commencement of such hearing.

(3) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential business information, under paragraph (a) of this section, the submitter shall provide the following, which may be disclosed to the public:

(i) A written description of the nature of the subject information;

(ii) A justification for the request for its confidential treatment;

(iii) A certification in writing under oath that substantially identical information is not available to the public;

(iv) A copy of the document

(A) Clearly marked on its cover as to the pages on which confidential information can be found;

(B) With information for which confidential treatment is requested clearly identified by means of brackets; and

(C) With information for which nondisclosable confidential treatment is requested clearly identified by means of triple brackets (except when submission of such document is withheld in accord with paragraph (b)(4) of this section); and

(v) A nonconfidential copy of the documents as required by Sec. 201.8(d).

(4) The submission of the documents itemized in paragraph (b)(3) of this section will provide the basis for rulings on the confidentiality of submissions, including rulings on the confidentiality of submissions offered to the Commission which have not yet been placed under the possession, control, or custody of the Commission. The submitter has the option of providing the business information for which confidential treatment is sought at the time the documents itemized in paragraph (b)(3) of this section are provided or of withholding them until a ruling on their confidentiality has been issued.

(c) Identification of business information submitted in confidence. Business information which a submitter desires to be treated as confidential shall be clearly labeled "confidential business information"

when submitted, and shall be segregated from other material being submitted.

(d) Approval or denial of requests for confidential treatment. Approval or denial of requests shall be made only by the Secretary or Acting Secretary. A denial shall be in writing, shall specify the reason therefor, and shall advise the submitter of the right to appeal to the Commission.

(e) Appeals from denial of confidential treatment. (1) For good cause shown, the Commission may grant an appeal from a denial by the Secretary of a request for confidential treatment of a submission. Any appeal filed shall be addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall clearly indicate that it is a confidential submission appeal. An appeal may be made within twenty (20) days of a denial or whenever the approval or denial has not been forthcoming within ten (10) days (excepting Saturdays, Sundays, and Federal legal holidays) of the receipt of a confidential treatment request, unless an extension notice in writing with the reasons therefor has been provided the person requesting confidential treatment.

(2) An appeal will be decided within twenty (20) days of its receipt (excepting Saturdays, Sundays, and Federal legal holidays) unless an extension notice in writing with the reasons therefor, has been provided the person making the appeal.

(3) The justification submitted to the Commission in connection with an appeal shall be limited to that presented to the Secretary with the original or amended request. When the Secretary or Acting Secretary has denied a request on the ground that the submitter failed to provide adequate justification, any such additional justification shall be submitted to the Secretary for his consideration as part of an amended request. For purposes of paragraph (e)(1) of this section, the twenty (20) day period for filing an appeal shall be tolled on the filing of an amended request and a new twenty (20) day period shall begin once the Secretary or Acting Secretary has denied the amended request, or the approval or denial has not been forthcoming within ten (10) days of the filing of the amended request. A denial of a request by the Secretary on the ground of inadequate justification shall not obligate a requester to furnish additional justification and shall not preclude a requester from filing an appeal with the Commission based on the justification earlier submitted to the Secretary.

(f) Appeals from approval of confidential treatment. (1) For good cause shown, the Commission may grant an appeal from an approval by the Secretary of a request for confidential treatment of a submission. Any appeal filed shall be addressed to the Chairman, United States International Trade Commission, 500 E Street, S.W., Washington, DC 20436, shall show that a copy thereof has been served upon the submitter, and shall clearly indicate that it is a confidential submission appeal. An appeal may be made within twenty (20) days of the approval by the Secretary of a request for confidential treatment or whenever the approval or denial has not been forthcoming within ten (10) days (excepting Saturdays, Sundays, and Federal legal holidays) of the receipt of a confidential treatment request, unless an extension notice in writing with the reasons therefor has been provided the person requesting confidential treatment.

(2) An appeal will be decided within twenty (20) days of its receipt (excepting Saturdays, Sundays, and Federal legal holidays) unless an extension notice, in writing with the reasons therefor, has been provided the person making the appeal.

(g) Granting confidential status to business information. Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings.

(h) Scope of provisions. The provisions of Secs. 201.6(b) and 201.6 (d) through (g) shall not apply to adjudicative investigations under Subchapter C, Part 210, of the Commission's rules of practice and procedure.

19 C.F.R. 201.8

Sec. 201.8 Filing of documents.

(a) Where to file; date of filing. Documents shall be filed at the office of the Secretary of the Commission in Washington, DC. Such documents, if properly filed, will be deemed to be filed on the date on which they are actually received in the Commission.

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

(c) Specifications for documents. Each document filed under this chapter shall be clear and legible.

(d) Number of copies. A signed original (or a copy designated as an original) and fourteen (14) copies of each document shall be filed. All submissions shall be on letter-sized paper (8-1/2 inches by 11 inches), except copies of documents prepared for another agency or a court (e.g. patent file wrappers or pleadings papers). The original and at least one copy of all submissions shall be printed on one side only and shall be unbound (although they may be stapled or held together by means of a clip). In the event that confidential treatment of the document is requested under Sec. 201.6, at least four (4) additional copies shall be filed, in which the confidential business information shall have been deleted and which shall have been conspicuously marked "nonconfidential" or "public inspection." The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(e) Identification of party filing document. Each document filed with the Commission for the purpose of initiating any investigation shall show on the first page thereof the name, address, and telephone number of the party or parties by whom or on whose behalf the document is filed and shall be signed by the party filing the document or by a duly authorized officer, attorney, or agent of such party. (Also, any attorney or agent filing the document shall give his address and telephone number.) The signature of the person signing such a document constitutes a certification that he had read the document, that to the best of his knowledge and belief the statements contained therein are true, and that the person signing the document was duly authorized to sign it.

19 C.F.R. 201.11

Sec. 201.11 Appearance in an investigation as a party.

(a) Who may appear as a party. Any person may apply to appear in an investigation as a party, either in person or by representative, by filing an entry of appearance with the Secretary. Each entry of appearance shall state briefly the nature of the person's reason for participating in the investigation and state the person's intent to file briefs with the Commission regarding the subject matter of the investigation. The Secretary shall promptly determine whether the person submitting the entry of appearance has a proper reason for participating in the investigation. In any investigation conducted under part 207 of this chapter, industrial users, and if the merchandise under investigation is sold at the retail level, representative consumer organizations, will be deemed to have a proper reason for participating in the investigation. If it is found that a person does not have a proper reason for participating in the investigation, that person shall be so notified by the Secretary and shall not be entitled to appear in the investigation as a party. A person found to have a proper reason for participating in the investigation shall be permitted to appear in the investigation as a party, and acceptance of such person's entry of appearance shall be signified by the Secretary's inclusion of such person on the service list established pursuant to paragraph (d) of this section.

(b) Time for filing. (1) Except in the case of investigations conducted under part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication of the Commission's notice of investigation in the Federal Register.

(2) In the case of investigations conducted under subpart B of part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than seven (7) days after publication of the Commission's notice of investigation in the Federal Register. A party that files a notice of appearance during such time need not file an additional notice of appearance during the portion of the investigation conducted under subpart C of part 207 of this chapter.

(3) Notwithstanding paragraph (b)(2) of this section, a party may file an entry of appearance during the final phase of an investigation conducted under part 207 of this chapter no later than twenty-one (21) days prior to the hearing date listed in the Federal Register notice published pursuant to Sec. 207.24(b) of this chapter.

(4) In the case of reviews conducted under subpart F of part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication in the Federal Register of the notice of institution described in Sec. 207.60(d) of this chapter.

(5) Notwithstanding paragraph (b)(4) of this section, a party may file an entry of appearance in a review conducted under subpart F of part 207 of this chapter within the period specified in the notice issued under Sec. 207.62(c) of this chapter. This period shall be at least 45 days.

(c) Late filing. Any entry of appearance filed with the Secretary after the filing date established in paragraph (b) of this section shall be referred to the Chairman, or other person designated to conduct the investigation, who shall promptly determine whether to accept such entry for good cause shown by the person desiring to file the notice. The Secretary shall promptly notify the submitter of a decision to deny the entry, or if the entry is accepted, include such person on the service list established pursuant to paragraph (d) of this section.

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

and address of the person whose notice has been accepted and shall promptly forward such notice to all parties to the investigation.

19 C.F.R. 206.8

Sec. 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 Sec. 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 Sec. 201.16 of this chapter, and, when appropriate, serve a copy of the confidential version of such document in the manner provided for in Sec. 206.17(f). If a document is filed before the Secretary's issuance of the service list provided for in Sec. 201.11 of this chapter or the administrative protective order list provided for in Sec. 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 Sec. 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 Sec. 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.

19 C.F.R. 206.17

Sec. 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 Sec. 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 Sec. 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 Sec. 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 is

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 Sec. 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 Sec. 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 Sec. 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 Sec. 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.

19 C.F.R. 207.3

Sec. 207.3 Service, filing, and certification of documents.

(a) Certification. Any person submitting factual information on behalf of the petitioner or any other interested party for inclusion in the record, and any person submitting a response to a Commission questionnaire, must certify that such information is accurate and complete to the best of the submitter's knowledge.

(b) Service. Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with Sec. 201.8 of this chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in Sec. 201.16 of this chapter. If a document is filed before the Secretary's issuance of the service list provided for in Sec. 201.11 of this chapter or the administrative protective order list provided for in Sec. 207.7, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding Sec. 201.16 of this chapter, petitions, briefs, and testimony filed by parties pursuant to Secs. 207.10, 207.15, 207.23, 207.24, 207.25, 207.65, 207.66, and 207.67 shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings, business proprietary information, privileged information, and information required to be served under this section, placed in the record of the investigation by the Commission.

(c) Filing. Documents to be filed with the Commission must comply with applicable rules, including Sec. 201.8 of this chapter. If the Commission establishes a deadline for the filing of a document, and the submitter includes business proprietary information in the document, the submitter is to file and, if the submitter is a party, serve the business proprietary version of the document on the deadline and may file and serve the nonbusiness proprietary version of the document no later than one business day after the deadline for filing the document. The business proprietary version shall enclose all business proprietary information in brackets and have the following warning marked on every page: "Bracketing of BPI not final for one business day after date of filing." The bracketing becomes final one business day after the date of filing of the document, i.e., at the same time as the nonbusiness proprietary version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the business proprietary document at the same time as the nonbusiness proprietary version is filed. No changes, including typographical changes, to the document other than bracketing and deletion of business proprietary information are permitted after the deadline unless an extension of time is granted to file an amended document pursuant to Sec. 201.14(b)(2) of this chapter. Failure to comply with this paragraph may result in the striking from the record of all or a portion of a submitter's document.

19 C.F.R. 207.7

Sec. 207.7 Limited disclosure of certain business proprietary information under administrative protective order.

(a)(1) Disclosure. Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for the request (e.g., all business proprietary information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all business proprietary information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except nondisclosable confidential business information) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term "business proprietary information" has the same meaning as the term "confidential business information" as defined in Sec. 201.6 of this chapter.

(2) Application. An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. An application on behalf of a petitioner, a respondent, or another party must be made no later than the time that entries of appearance are due pursuant to Sec. 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 business proprietary information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five (5) days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in the preliminary phase of an investigation, and shall not be served with business proprietary 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.).

(4) Forms and determinations. (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific business proprietary information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, or seven (7) days in the preliminary phase of an investigation, except if the submitter of the information

objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30) days from the filing of the information, or ten (10) days in the preliminary phase of an investigation. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final for purposes of review by the U.S. Court of International Trade under section 777(c)(2) of the Act.

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

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

(iv) An authorized applicant granted access to business proprietary information in the preliminary phase of an investigation may, subject to paragraph (c) of this section, retain such business proprietary information during any final phase of that investigation, provided that the authorized applicant has not lost his authorized applicant status (e.g., by terminating his representation of an interested party who is a party). When retaining business proprietary information pursuant to this paragraph, the authorized applicant need not file a new application in the final phase of the investigation.

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

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

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

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

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

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

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

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

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

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

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

(7) Comply with the provisions of this section;

(8) Make true and accurate representations in the authorized applicant's application and promptly

notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (e.g., change in personnel assigned to the investigation);

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

(10) Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions 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 business proprietary information, such as charts or notes based on any such information received under administrative protective order, and file with the Secretary a certificate attesting to his personal, good faith belief that all copies of such material have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized.

(d) 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 business proprietary 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 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 the completion of an investigation conducted under subpart B or C of this part, 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, the Secretary shall issue a letter informing such person of that determination and that the person has a reasonable opportunity to present his views on whether mitigating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has occurred. Once such person has been afforded a reasonable opportunity to present his views, the Commission shall determine what sanction if any to impose.

(2) Where the sanction imposed is a private letter of reprimand, the Secretary shall expunge the sanction from the recipient's record two (2) years from the date of issuance of the sanction, provided that

(i) The recipient has not received another unexpunged sanction pursuant to this section at any time prior to the end of the two year period, and

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

(f) Service. (1) Any party filing written submissions which include business proprietary information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and, except as provided in Sec. 207.3, a nonbusiness proprietary version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) If a party's request under paragraph (g) of this section is granted, the Secretary shall accept the nondisclosable confidential business information into the record. The party shall serve the submission containing such information in accordance with the requirements of Sec. 207.3(b) and paragraph (f)(1) of this section, with the information redacted from the copies served.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Business proprietary information in submissions must be dealt with as required by Sec. 207.3(c).

(g) Exemption from disclosure--(1) In general. Any person may request exemption from the disclosure of business proprietary information under administrative protective order, whether the person desires to include such information in a petition filed under Sec. 207.10, 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 nondisclosable confidential business information as defined in Sec. 201.6(a)(2) of this chapter. The request will be granted or denied not later than thirty (30) days (ten (10) days in a preliminary phase investigation) after the date on which the request is filed.

(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 business proprietary information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The business proprietary 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. If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester. Such a request shall only be granted if the Secretary finds that such information is privileged information, classified information, or specific information of a type for which there is a clear and compelling need to withhold from disclosure. 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 nondisclosable confidential business information in question. One version shall contain all business proprietary information, bracketed in accordance with Sec. 201.6 of this chapter and Sec. 207.3. The other two versions shall conform to and be filed in accordance with the requirements of Sec. 201.6 of this chapter and Sec. 207.3, except that the specific information as to which exemption from disclosure was granted shall be redacted from 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. The requester may file the submission in question without that information, in accordance with the requirements of Sec. 207.3.

19 C.F.R. 207.10

Sec. 207.10 Filing of petition with the Commission.

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

(b) Service of the petition. (1)(i) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under Sec. 207.7(a)(4), he or she approves an application under Sec. 207.7(a). When practicable, this notification shall be made by facsimile transmission. A copy of the petition including all business proprietary information shall then be served by petitioner on those approved applicants in accord with Sec. 207.3(b) within two (2) calendar days of the time notification is made by the Secretary.

(ii) The petitioner shall serve persons enumerated on the list established by the Secretary pursuant to Sec. 207.7(a)(4) that have not been served pursuant to paragraph (b)(1)(i) of this section within two (2) calendar days of the establishment of the Secretary's list.

(2) A copy of the petition omitting business proprietary information shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant to Sec. 201.11(d) of this chapter within two (2) calendar days of the establishment of the Secretary's list.

(3) Service of the petition shall be attested by filing a certificate of service with the Commission.

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

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

19 C.F.R. 207.24

Sec. 207.24 Hearing.

(a) In general. The Commission shall hold a hearing concerning an investigation before making a final determination under section 705(b) section 735(b) of the Act.

(b) Procedures. Any hearing shall be conducted after notice published in the Federal Register. The hearing shall not be subject to the provisions of 5 U.S.C. subchapter II, chapter 5, or to 5 U.S.C. 702. Each party shall limit its presentation at the hearing to a summary of the information and arguments contained in its prehearing brief, an analysis of the information and arguments contained in the prehearing briefs described in Sec. 207.23, and information not available at the time its prehearing brief was filed. Unless a portion of the hearing is closed, presentations at the hearing shall not include business proprietary information. Notwithstanding Sec. 201.13(f) of this chapter, in connection with its presentation a party may file witness testimony with the Secretary no later than three (3) business days before the hearing. In the case of testimony to be presented at a closed session held in response to a request under Sec. 207.24(d), confidential and non-confidential versions shall be filed in accordance with Sec. 207.3. Any person not a party may make a brief oral statement of information pertinent to the investigation.

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

(2) Revision of transcripts. Within ten (10) days of the completion of a hearing, but in any event at least one (1) day prior to the date for disclosure of information set pursuant to Sec. 207.30(a), any person who testified at the hearing may submit proposed revisions to the transcript of his or her testimony to the Secretary. No substantive revisions shall be permitted. If in the judgment of the Secretary a proposed revision does not alter the substance of the testimony in question, the Secretary shall incorporate the revision into a revised transcript.

(d) Closed sessions. Upon a request filed by a party to the investigation no later than seven (7) days prior to the date of the hearing that identifies the subjects to be discussed, specifies the amount of time requested, and justifies the need for a closed session with respect to each subject to be discussed, the Commission may close a portion of a hearing to persons not authorized under Sec. 207.7 to have access to business proprietary information in order to allow such party to address business proprietary information during the course of its presentation. In addition, during each hearing held in an investigation conducted under section 705(b) or section 735(b) of the Act, following the public presentation of the petitioner(s) and that of each panel of respondents, the Commission will, if it deems it appropriate, close the hearing to persons not authorized under section 207.7 to have access to business proprietary information in order to allow Commissioners to question parties and/or their representatives concerning matters involving business proprietary information.

APPENDIX C
SANCTIONS NOTICE

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission ("Commission") has issued an annual report on the status of its practice with respect to violations of its administrative protective orders ("APOs") in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than Title VII and violations of the Commission's rule on bracketing business proprietary information ("BPI") (the "24-hour rule"), 19 CFR 207.3(c). This notice provides a summary of investigations of breaches in Title VII investigations for the period ending December 31, 1999. There were no investigations of breaches for other Commission proceedings or for 24-hour rule violations during that period. The Commission intends that this report educate representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810. General information concerning the Commission can also be obtained by accessing its Internet server <http://www.usitc.gov>.

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations conducted under Title VII of the Tariff Act of 1930 may enter into APOs that permit them, under strict conditions, to obtain access to BPI of other parties. See 19 U.S.C. 1677f; 19 CFR 207.7. The discussion below describes APO breach investigations that the Commission has completed, including a description of actions taken in response to breaches. The discussion covers breach investigations completed during calendar year 1999.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. See 56 FR 4846 (Feb. 6, 1991); 57 FR 12,335 (Apr. 9, 1992); 58 FR 21,991 (Apr. 26, 1993); 59 FR 16,834 (Apr. 8, 1994); 60 FR 24,880 (May 10, 1995); 61 FR 21,203 (May 9, 1996); 62 FR 13,164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999). This report does not provide an exclusive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis. As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in April 1996 a revised edition of An Introduction to Administrative Protective Order Practice in Antidumping and Countervailing Duty Investigations (Pub. No. 2961). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, tel. (202) 205-2000.

I. In General

The current APO form for antidumping and countervailing duty investigations, which the Commission has used since March 1995, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI obtained under the APO 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 BPI was obtained,

(iii) a person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for the interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the Commission investigation [or for binational panel review of such Commission investigation or until superceded by a judicial protective order in a judicial review of the proceeding];

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials (e.g., documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit such document containing BPI disclosed under this APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked "Bracketing of BPI not final for one business day after date of filing," and

(iv) if by mail, within two envelopes, the inner one sealed and marked "Business Proprietary Information--To be opened only by [name of recipient]", and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(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 possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate including the administrative sanctions and actions set out in this APO. The APO further provides that breach of protective order may subject an applicant 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, such person or the party he represents; denial of further access to business proprietary 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. Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI, and face potentially severe penalties for noncompliance. See 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's rules relating to BPI is the "24-hour" rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes-- other than changes in bracketing--may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amendment document pursuant to section 201.14(b)(2) of the Commission's rules.

II. Investigations of Alleged APO Breaches

Upon finding evidence of a breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of General Counsel (OGC) begins to investigate the matter. The OGC prepares a letter of inquiry to be sent to the alleged breacher over the Secretary's signature to ascertain the alleged breacher's views on whether a breach has occurred. If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating or aggravating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission has determined that although a breach has occurred, sanctions are not warranted, and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. The Commission retains sole authority to determine whether a breach has occurred and, if so, the appropriate action to be taken.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, section 135(b) of the Customs and Trade Act of 1990, and 19 U.S.C. 1677f(g).

The breach most frequently investigated by the Commission involves the APO's prohibition on the dissemination of BPI to unauthorized persons. Such dissemination usually occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included: the failure to bracket properly BPI in proprietary documents filed with the Commission; the failure to report immediately known violations of an APO; and the failure to supervise adequately non-legal personnel in the handling of BPI.

Counsel participating in Title VII investigations have recently reported to the Commission two potential breaches involving the electronic transmission of public versions of documents. In both cases, the document transmitted appears to be a public document with BPI omitted from brackets. However, the BPI is actually retrievable by manipulating codes in the computer software programs. The Commission is currently conducting investigations of these potential breaches and has not made any determination at this time.

The Commission advised in the preamble to the notice of proposed rulemaking in 1990 that it will permit authorized applicants a certain amount of discretion in choosing the most appropriate method of safeguarding the confidentiality of the information. However, the Commission cautioned authorized applicants that they would be held responsible for safeguarding the confidentiality of all BPI to which they are granted access and warned applicants about the potential hazards of storage on hard disk. The caution in that preamble is restated here:

[T]he Commission suggests that certain safeguards would seem to be particularly useful. When storing business proprietary information on computer disks, for example, storage on floppy disks rather than hard disks is recommended, because deletion of information from a hard disk does not necessarily erase the information, which can often be retrieved using a utilities program. Further, use of business proprietary information on a computer with the capability to communicate with users outside the authorized applicant's office incurs the risk of unauthorized access to the information through such communication. If a computer malfunctions, all business proprietary information should be erased from the machine before it is removed from the authorized applicant's office for repair. While no safeguard program will insulate an authorized applicant from sanctions in the event of a breach of the administrative protective order, such a program may be a mitigating factor. Preamble to notice of proposed rulemaking, 55 Fed. Reg. 24,100, 21,103 (June 14, 1990).

Sanctions for APO violations serve two basic interests: (a) preserving the confidence of submitters of BPI in the Commission as a reliable protector of BPI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, "the effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation." H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI. The Commission considers whether there are prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit economists or consultants to obtain access to BPI under the APO if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C). Economists and consultants who obtain access to BPI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or

control over the economist or consultant may also be held responsible for the breach of the APO.

III. Specific Investigations in Which Breaches Were Found

The Commission presents the following case studies to educate users about the types of APO breaches found by the Commission. The case studies provide the factual background, the actions taken by the Commission, and the factors considered by the Commission in determining the appropriate actions. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure of such facts could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

Case 1. At the direction of the lead attorney in an investigation, a law firm secretary sent copies of a hearing transcript to three of the law firm's clients who were nonsignatories to the APO. The lead attorney became aware of a potential breach of the APO when one of the clients advised him that he had received the in camera version of the hearing transcript. The attorney made arrangements to have one transcript returned without being reviewed and a second returned without the envelope being opened. The attorney had Federal Express intercept the third copy before it was delivered; it was returned unopened. The attorney informed the Commission's Secretary ten days after becoming aware of the potential breach. The Commission determined that the lead attorney and a secretary had breached the APO by transmitting the in camera transcript of the Commission hearing to persons who were not signatories of the APO. In reaching its decision to issue warning letters to the attorney and the secretary, the Commission considered that this was the only breach in which they had been involved, the breach was unintentional, prompt action was taken to remedy the breach, and there was no information available to suggest that the BPI disclosed was actually reviewed by persons not already on the APO. In addition, the Commission noted in the warning letter to the secretary that she had been acting under the direction of an attorney. The 10-day delay in advising the Commission of the breach was mitigated by the fact that the attorney had been out of the country and prompt action had been taken to retrieve the documents. Noting that the breach arose from a systematic omission of procedures at the law firm for checking Commission documents for BPI, the Commission recommended that the attorney and the firm review their practices for handling Commission documents under the Commission's administrative protective order procedures in order to prevent a recurrence of this type of incident. The Commission determined that the other attorney in the law firm who was a signatory of the APO did not breach the APO.

Case 2. An attorney for a party to a Commission investigation informed the Commission by letter that a lead attorney representing another party to the investigation failed to comply with the return or destruction requirements of the APO. Specifically, the lead attorney failed to destroy the APO documents within 60 days after completion of the investigation; he failed to provide certification of destruction from all attorneys in his firm on the APO; and he provided a certificate for an attorney who was not on the APO. The lead attorney did file a certificate of destruction more than two years later than required by the APO.

In responding to the Commission's letter of inquiry, the attorney admitted that there had been a technical violation of the APO, but he explained that the material had been mistakenly retained during the period that the Department of Commerce investigation was under appeal. During that time the material had been secured in a locked file cabinet, no unauthorized persons viewed the material, and it was destroyed promptly at the conclusion of the Commerce appeal process. He also explained that one attorney had left the firm and was unavailable to provide a certificate of destruction. The non-APO attorney who had signed a certificate of destruction actually had no access to the APO materials.

The Commission determined that a breach had occurred for failing to meet the deadlines in the APO to return or destroy and for failing to certify to the destruction of the materials issued to him under the APO. The Commission noted that the deadlines in the APO are clearly stated and the waiver of the

60-day destruction or return deadline is provided for only in the case of an appeal of the Commission determination, not for an appeal of a Commerce determination. The Commission issued a private letter of reprimand to the attorney. The letter dictated additional restrictions and requirements with which the lead attorney must comply until the record of the breach is expunged, two years from the date of the private letter of reprimand. In reaching its decision on the sanction, the Commission considered that this was the third APO breach by this attorney within a short period of time and that this attorney appears before the Commission on a regular basis. Noting that the breach did not appear to have involved willful misbehavior or gross negligence, it was decided that a public letter of reprimand was not called for in that instance. The attorney was warned, however, that if he is found to have committed another APO breach before his prior breaches are expunged, the Commission would consider a more public form of sanction.

Case 3. Counsel in an investigation filed the public version of a document which contained BPI. The BPI had not been bracketed in the confidential version of the brief, and, therefore, was not redacted from the public version of the document. Once counsel became aware of the potential breach, they immediately contacted counsel identified on both the public and APO service lists and instructed them to destroy the pages containing the unredacted BPI. On the next business day, counsel notified the Commission's Secretary of the possible breach and filed corrected pages with the parties and with the Commission.

The Commission determined that two of the three attorneys who signed the document breached the APO by failing to redact BPI from a public version of the document. In making its determination to issue a private letter of reprimand to the lead attorney, the Commission considered that, although the breaches appeared to have been inadvertent and the attorney made prompt efforts to limit the possibility of disclosure to persons not already under the APO, the attorney was involved in multiple breaches over a relatively short period.

In determining not to sanction the second attorney, but instead to issue a letter of warning to that attorney, the Commission considered that this was the only breach in which this attorney had been involved, the breach was unintentional, and that prompt action was taken to remedy the breach.

The Commission determined that the third attorney whose name appeared on the document did not breach the APO because he did not have any responsibility in the preparation or filing of the document.

Case 4. Counsel representing a party to an investigation filed a public document which contained a page from which bracketed information had not been redacted. Counsel discovered the error, contacted the Commission's Office of the Secretary the morning after the filing, and corrected the public version of the document before it was placed on file for public inspection. Counsel stated in their affidavits that the error was discovered and corrected prior to service of the public version on the other parties to the investigation, so that no unauthorized person actually saw business proprietary information. In their response to the Commission inquiry, counsel contended that no breach occurred because, although the information in question was bracketed in the documents they cited, it was publicly available from other sources.

The Commission determined that three attorneys breached the APO. Two of the attorneys failed to redact certain bracketed information which contained specific statements not publicly available. They did not breach the APO with regard to their failure to redact information which was in the public domain at the time they filed their document with the Commission. The Commission determined that the third attorney, the lead attorney, breached the APO by failing to provide adequate supervision over the handling of BPI or to delegate supervisory authority in a reasonable manner. In determining to issue private letters of reprimand to the three attorneys, the Commission considered that the one of the attorneys was involved in three separate breaches and two of the attorneys were involved in two separate breaches of Commission APOs within a short period of time. Mitigating factors were that they reported and corrected the breach promptly and that the firm strengthened its APO procedures subsequent to the breaches. With regard to the lead attorney, the Commission considered that delegating final authority for

APO compliance to an attorney who had committed two breaches over a short period of time and a junior attorney who had recently committed an APO breach was not reasonable when there was another experienced attorney available who could have overseen their work. Because one of the attorneys had been involved in three separate breaches over a short period of time and other attorneys in his firm had also been involved in multiple breaches during the same period, the Commission required that the attorney, prior to his next appearance in a Commission investigation, prepare and conduct an APO compliance class for all firm attorneys and staff, and submit to the Commission any materials used in the class and certifications that the class occurred and that all such attorneys and staff attended. The Commission determined that an attorney and a law clerk who were not involved in the preparation of the document did not breach the APO.

Case 5. An attorney and an economic consultant representing a party in a Commission investigation filed a public document which contained unbracketed and undeleted BPI. The potential breach was discovered by both the Commission staff and the counsel on the day the document was filed, and counsel took immediate action to retrieve all of the service copies of the unbracketed document and destroy them. The error was discovered and remedial action was taken quickly enough that the document filed with the Commission was not made available to the public either as hard copy or through the electronic system.

The Commission determined that the attorney and the economic consultant employed by the law firm had breached the APO by not protecting BPI. They mislabeled the document containing BPI as public; they failed to place a warning on each page of the document that contained BPI; and they failed to bracket the BPI and remove it from a public version of the document. In reaching its breach determination, the Commission considered that failure to follow the APO rules and thereby leaving BPI unprotected and potentially available to be disclosed is sufficient to constitute a breach.

The Commission did not issue a sanction but instead issued warning letters to the attorney and economic consultant. In reaching its decision on sanctions, the Commission considered that the breach was unintentional, neither the attorney nor the economist had previously breached a Commission APO, and the law firm acted quickly to mitigate any harmful effects of the breach. The Commission determined that two attorneys, one of whom was the lead attorney, did not breach the APO because they were not involved in the preparation, review, signing or filing of the document. In its letter to the lead attorney, the Commission acknowledged his immediate action to mitigate the effects of the errors which led to the breach.

Case 6. An associate with a law firm representing a party to an investigation prepared an outline of testimony for a client/witness who was a nonsignatory to the APO and, although he had been advised earlier in the day by the lead attorney that the information was BPI, he included the BPI covered under the APO in the outline. The associate then sent an e-mail message to the client with the outline as an attachment. The potential breach was discovered by the lead attorney when he reviewed the outline the next day, and he immediately took steps to retrieve and replace the outline containing the BPI before it was read by the nonsignatory and to inform the Commission Secretary of the potential breach.

The Commission determined that the associate attorney breached the APO by transmitting to a client who was not a signatory to the APO a document which he prepared that contained BPI. In reaching its decision to issue a warning letter, the Commission considered that this was the only breach in which the attorney was involved, that the breach was unintentional, that prompt action was taken to remedy the breach, and that neither the client nor any other non-signatory of the APO actually read the document. The Commission determined that the other attorneys on the APO, including the lead attorney, did not breach the APO because they did not participate in the breach.

IV. Investigations in Which No Breach Was Found

During 1999, the Commission completed two investigations in which no breach was found.

Case 1. An attorney in an investigation filed a public version of a document which contained bracketed but unredacted information. The bracketed information consisted of citations to submissions by two parties to the investigation which were contained in a footnote of the document. The Commission determined that the attorney did not breach the APO by failing to redact the information because the information revealed was publicly available, and the only information which could be inferred from the citations was otherwise publicly available.

Case 2. An attorney in an investigation obtained under an APO release of documents a copy of a telephone note containing a summary of a conversation between a Commission employee and an employee of the Department of Commerce (Commerce). The attorney called the Commerce employee and discussed the contents of the note with him. The Commerce employee advised the Commission employee of his concern that the attorney's call involved a possible breach of the APO. The Commission determined that the attorney did not breach the APO because the Commerce employee was the person who provided the BPI to the Commission, and an attorney's discussion of information released under the APO with the person or agency from whom the BPI was obtained is permissible.

Issued: May 5, 2000.

By order of the Commission.
Donna R. Koehnke,
Secretary

APPENDIX D

FORM ADMINISTRATIVE PROTECTIVE ORDER

- D.1 Form Administrative Protective Order
- D.2 Form Application for Disclosure of Business Proprietary Information under Administrative Protective Order
- D.3 Form Acknowledgment for Clerical Personnel



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

ADMINISTRATIVE PROTECTIVE ORDER
Inv. No(s). 701-TA_____ and/or 731-TA-_____

(Name of Investigation)

A. Application

(1) To obtain disclosure of business proprietary information (BPI) under this Administrative Protective Order (APO), an authorized applicant, as defined in section 207.7(a)(3) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 207.7(a)(3), as amended), must comply with the terms of this APO.

(2) An application for disclosure must be made by an authorized applicant in the form attached hereto. The authorized applicant shall file an application with the Secretary of the Commission (the Secretary) within the deadlines provided in section 207.7(a)(2) of the Commission's rules. An authorized applicant need file only one application in order to obtain BPI in both the preliminary and the final phases of an investigation.

(3) In order to obtain disclosure of BPI under this APO from Commission personnel, an authorized applicant must present a copy of his application and personal identification satisfactory to the Secretary. If the authorized applicant wishes a person described in paragraph B(1)(iv) of this APO to act for him in obtaining disclosure, the person must present a copy of his Acknowledgment for Clerical Personnel and personal identification satisfactory to the Secretary.

B. Obligations of the authorized applicant

By filing an application, the authorized applicant shall agree to:

(1) Not divulge any of the BPI obtained under this APO 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 BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decision making for an interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with this APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials (e.g. documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of this APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked "Bracketing of BPI not final for one business day after date of filing," and

(iv) if by mail, within two envelopes, the inner one sealed and marked "Business Proprietary Information--To be opened only by [name of recipient]", and the outer one sealed and not marked as containing BPI;

(7) Comply with the provisions of this APO and section 207.7 of the Commission's rules;

(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 possible breach of this APO; and

(10) Acknowledge that breach of this APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

C. Return or destruction of BPI

(1) At any time, the Secretary may order the return, destruction, or transfer of any BPI disclosed under this APO, in which case the authorized applicant shall promptly return such BPI to the Secretary or to the submitter of the BPI or destroy the BPI or transfer the BPI to another authorized applicant, as the Secretary may direct. Unless otherwise directed, an authorized applicant to whom BPI was disclosed under this APO during the preliminary phase of the above-captioned investigation may retain possession of such BPI during the final phase of the investigation.

(2) Subject to paragraphs C(3) and C(4) below, within sixty (60) days after the completion of this investigation (e.g., after the publication in the *Federal Register* of a Commission preliminary negative determination, a Commerce Department final negative determination, a Commission final determination, or other final termination of this investigation), or at such other time as the Secretary may direct, the authorized applicant shall return or destroy all copies of BPI disclosed under this APO and all other materials containing such BPI, such as charts or notes based on such BPI. Whenever the authorized applicant returns or destroys BPI pursuant to this paragraph, he shall file a certificate attesting that to the applicant's knowledge and belief all copies of such BPI have been returned or destroyed and no copies of such BPI have been made available to any person to whom disclosure was not specifically authorized.

(3) In the event that judicial review of the Commission's determination in the above-captioned investigation is sought, the authorized applicant shall not be required to comply with paragraph C(2) above, provided that the authorized applicant applies to the appropriate reviewing authority for a protective order, or for proceedings at the Court of International Trade files a BPI certification, agreed to by the Commission within 150 days after the completion of the investigation. If by such date a protective order has not been applied for or a BPI certification has not been filed, the authorized applicant shall comply with paragraph C(2) above.

(4) Special rule applicable only to investigations involving imports from Canada or Mexico:

(i) An authorized applicant may retain BPI disclosed under this APO during any binational panel review of the Commission's determination in the above-captioned investigation, subject to the additional terms and conditions set forth in the current version of APO NAFTA Form C. By filing an application for disclosure of BPI under this APO, and by failing to return or destroy all copies of BPI disclosed under this APO on or before the fifteenth (15) day after a First Request for Panel Review has been filed with the NAFTA Secretariat, the authorized applicant agrees to be bound as of that date by the terms and conditions set forth in APO NAFTA Form C, and by the provisions in that form regarding sanctions for violations of those terms and conditions.

(ii) Persons described in paragraph B(1)(iv) of this APO who have filed a statement described in that paragraph shall become subject to the terms and conditions of APO NAFTA Form C on the same date as the authorized applicant, or as soon thereafter as they file a statement described in paragraph B(1)(iv).

D. Sanctions and other actions for breach of this APO.

The authorized applicant shall in the application acknowledge that, pursuant to section 207.7(d) of the Commission's rules, breach of this 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, such person or the party he represent, denial of further access to business proprietary 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.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

Attachments:

1. Form Application for Disclosure of Business Proprietary Information under Administrative Protective Order.
2. Form Acknowledgment for Clerical Personnel



ACCEPTED _____
REJECTED _____
DATE _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**APPLICATION FOR DISCLOSURE OF
BUSINESS PROPRIETARY INFORMATION
UNDER ADMINISTRATIVE PROTECTIVE ORDER**
Inv. No(s). 701-TA-_____ and/or 731-TA-_____

(Name of Investigation)

1. Authorized applicant status

I, the undersigned, am an authorized applicant, as defined in section 207.7(a)(3) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 207.7(a)(3), as amended), for the disclosure of business proprietary information (BPI) under the administrative protective order (APO) issued in the above-captioned investigation. I represent the following interested party, as defined in 19 U.S.C. § 1677(9), which is a party to the investigation:

(State the name of the interested party and its category, e.g., domestic producer, importer, etc.) I am (check one):

(1) An attorney, excepting in-house corporate counsel.

(2) An in-house corporate attorney. I am not involved in competitive decisionmaking for the interested party I represent. I have attached a written statement describing my job functions, disclosing all financial holdings I may have in my employer or its affiliates, and indicating whether I am involved in the formulation of my employer's pricing policies.

(3) A consultant or expert under the direction and control of an attorney under paragraph (1) or (2) above. That attorney has also signed this application to indicate that the attorney is held responsible for my compliance with the APO:

(Name of Attorney--Please Print)

(Signature of Attorney)

(4) A consultant or expert who appears regularly before the Commission and is not involved in competitive decision making for the interested party I represent. I have attached a written statement describing my job functions, disclosing all financial holdings I may have in the interested party I represent or its affiliates, and indicating whether I am involved in the formulation of the interested party's pricing policies.

(5) A representative of an interested party that is not presented by counsel. I am not involved in competitive decision making for that interested party. I have attached a written statement describing my job functions, disclosing all financial holdings I may have in the interested party I represent or its affiliates, and indicating whether I am involved in the formulation of the interested party's pricing policies.

Competitive decision making: As defined in section 207.7 of the Commission's rules, involvement in "competitive decision making" 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.).

II. Request for information

I hereby apply for disclosure to me, subject to the APO issued in the above-captioned investigation, all BPI properly disclosed pursuant to section 207.7 of the Commission's rules, for the purpose of representing an interested party in the investigation and filing comments on the BPI so disclosed. I agree to be bound by the provisions of the APO and section 207.7 of the Commission's Rules of Practice and Procedure.

III. Sanctions and other actions for breach of the APO

I acknowledge that, pursuant to section 207.7(d) of the Commission's rules, breach of the APO may subject me to:

(1) Disbarment from practice in any capacity before the Commission along with my 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, me or the party I represent, denial of further access to business proprietary 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.

IV. Oath

I declare under penalty of perjury that the foregoing is true and correct. Executed on this

_____ day of _____, _____, in _____
(month) (year) (city, state)

(Signature)

(Name--Please Print)

(Title--Please Print)

(Firm--Please Print)

ACCEPTED _____
REJECTED _____
DATE _____



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

ADMINISTRATIVE PROTECTIVE ORDER
ACKNOWLEDGMENT FOR CLERICAL PERSONNEL
Inv. No(s). 701-TA-_____ and/or 731-TA-_____

(Name of Investigation)

We, the undersigned, are persons described in paragraph B(1)(iv) of the Administrative Protective Order (APO) issued in the subject investigation. We hereby agree to be bound by the provisions of the APO. We acknowledge that we may be subject to the sanctions described in paragraph D of the APO. The authorized applicant exercising direction and control over us in the investigation has also signed this acknowledgment to indicate that the applicant is responsible for our compliance with the APO.

We declare under penalty of perjury that the foregoing is true and correct. Executed on this

_____ day of _____, _____, in _____
(month) (year) (city, state)

(Name--Please Print)	(Title)	(Signature)	(Date)
(Name--Please Print)	(Title)	(Signature)	(Date)
(Name--Please Print)	(Title)	(Signature)	(Date)
(Name--Please Print)	(Title)	(Signature)	(Date)
(Name--Please Print)	(Title)	(Signature)	(Date)

PERSON EXERCISING DIRECTION AND CONTROL:

(Signature)

(Name--Please Print)

APPENDIX E

SECTION 206 FORM ADMINISTRATIVE PROTECTIVE ORDER

- E.1 Form Administrative Protective Order
- E.2 Form Application for Disclosure of Business Proprietary Information Under Administrative Protective Order
- E.3 Form Acknowledgment for Clerical Personnel

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

ADMINISTRATIVE PROTECTIVE ORDER
Inv. No. TA-

A. Application

(1) To obtain disclosure of confidential business information (CBI) under this Administrative Protective Order (APO), an authorized applicant, as defined in section 206.17(a)(3) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 206.17(a)(3)), must comply with the terms of this APO.

(2) An application for disclosure must be made by an authorized applicant in the form attached hereto. The authorized applicant shall file an application with the Secretary to the Commission (the Secretary) within the deadlines provided in section 206.17(a)(2) of the Commission's rules.

(3) In order to obtain disclosure of CBI under this APO from Commission personnel, an authorized applicant must present a copy of his application and personal identification satisfactory to the Secretary. If the authorized applicant wishes a person described in paragraph B(1)(iv) of this APO to act for him in obtaining disclosure, the person must present a copy of his Acknowledgment for Clerical Personnel and personal identification satisfactory to the Secretary.

B. Obligations of the authorized applicant

By its application, the authorized applicant shall agree to:

(1) Not divulge any of the CBI obtained under this APO 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 CBI was obtained,
(iii) A person whose application for access to CBI under this APO has been granted by the Secretary, and
(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for an interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with this APO);

(2) Use such CBI solely for the purposes of the above-captioned Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning CBI disclosed under this APO without first having received the written consent of the Secretary and the party or the representative of the party from whom such CBI was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such CBI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of CBI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the CBI and may result in violation of paragraph C of this APO);

(5) Serve all materials containing CBI disclosed under this APO as directed by the Secretary and pursuant to section 206.17(f) of the Commission's rules;

(6) Transmit each document containing CBI disclosed under this APO:

- (i) with a cover sheet identifying the document as containing CBI,
- (ii) with all CBI enclosed in brackets and each page warning that the document contains CBI,
- (iii) if the document is to be filed by a deadline, with each page marked "Bracketing of CBI not final for one business day after date of filing," and
- (iv) if by mail, within two envelopes, the inner one sealed and marked "Confidential Business Information--To be opened only by [name of recipient]", and the outer one sealed and not marked as containing CBI;

(7) Comply with the provisions of this APO and section 206.17 of the Commission's rules;

(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 possible breach of this APO; and

(10) Acknowledge that breach of this APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

C. Return or destruction of CBI

(1) At any time, the Secretary may order the return, destruction, or transfer of any CBI disclosed under this APO, in which case the authorized applicant shall promptly return such CBI to the Secretary or to the submitter of the CBI or destroy the CBI or transfer the CBI to another authorized applicant, as the Secretary may direct.

(2) Within sixty (60) days after the completion of this investigation (*i.e.*, after the publication in the *Federal Register* of a Commission determination), or at such other time as the Secretary may direct, the authorized applicant shall return or destroy all copies of CBI disclosed under this APO and all other materials containing such CBI, such as charts or notes based on such CBI. Whenever the authorized applicant returns or destroys CBI pursuant to this paragraph, he shall file a certificate attesting that to his knowledge and belief all copies of such CBI have been returned or destroyed and no copies of such CBI have been made available to any person to whom disclosure was not specifically authorized.

D. Sanctions and other actions for breach of this APO.

The authorized applicant shall in an application acknowledge that, pursuant to section 206.17(d) of the Commission's rules, breach of this 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, such person and the party he represents, 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.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

Attachments:

1. Form Application for Disclosure of Confidential Business Information under Administrative Protective Order.
2. Form Acknowledgment for Clerical Personnel

ACCEPTED _____

REJECTED _____

DATE _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

APPLICATION FOR DISCLOSURE OF
CONFIDENTIAL BUSINESS INFORMATION
UNDER ADMINISTRATIVE PROTECTIVE ORDER
Inv. No. TA-

I. Authorized applicant status

I, the undersigned, am an authorized applicant, as defined in section 206.17(a)(3) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 206.17(a)(3)), for the disclosure of confidential business information (CBI) under the administrative protective order (APO) issued in the above-captioned investigation. I represent the following interested party, as defined in 19 CFR § 206.17(a)(3)(iii), which is a party to the investigation: _____
_____ (State the name of the interested party and its category, e.g., domestic producer, importer, etc.) I am (check one):

- (1) An attorney, excepting in-house corporate counsel.
- (2) An in-house corporate attorney. I am not involved in competitive decisionmaking for the interested party I represent. I have attached a written statement describing my job functions, disclosing all financial holdings I may have in my employer or its affiliates, and indicating whether I am involved in the formulation of my employer's pricing policies.
- (3) A consultant or expert under the direction and control of an attorney under paragraph (1) or (2) above. That attorney has also signed this application to indicate that the attorney is held responsible for my compliance with the APO:

(Name of Attorney--Please Print)

(Signature of Attorney)

- (4) A consultant or expert who appears regularly before the Commission and is not involved in competitive decisionmaking for the interested party I represent. I have attached a written statement describing my job functions, disclosing all financial holdings I may have in the interested party I represent or its affiliates, and indicating whether I am involved in the formulation of the interested party's pricing policies.
- (5) A representative of an interested party that is not represented by counsel. I am not involved in competitive decisionmaking for that interested party. I have attached a written statement describing my job functions, disclosing all financial holdings I may have in the interested party I represent or its affiliates, and indicating whether I am involved in the formulation of the interested party's pricing policies.

Competitive decisionmaking: As defined in section 206.17 of the Commission's rules, 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.).

II. Request for information

I hereby apply for disclosure to me, subject to the APO issued in the above-captioned investigation, all CBI properly disclosed pursuant to section 206.17 of the Commission's rules, for the purpose of representing an interested party in the investigation and filing comments on the CBI so disclosed. I agree to be bound by the provisions of the APO and section 206.17 of the Commission's Rules of Practice and Procedure.

III. Sanctions and other actions for breach of the APO

I acknowledge that, pursuant to section 206.17(d) of the Commission's rules, breach of the APO may subject me to:

(1) Disbarment from practice in any capacity before the Commission along with my 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, me or the party I represent, 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.

IV. Oath

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this ____ day of _____, _____, in _____
(month) (year) (city, state)

(Signature)

(Name--Please Print)

(Title--Please Print)

(Firm--Please Print)

ACCEPTED _____
REJECTED _____
DATE _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

ADMINISTRATIVE PROTECTIVE ORDER
ACKNOWLEDGMENT FOR CLERICAL PERSONNEL
Inv. No. TA

We, the undersigned, are persons described in paragraph B(1)(iv) of the Administrative Protective Order (APO) issued in the subject investigation. We hereby agree to be bound by the provisions of the APO. We acknowledge that we may be subject to the sanctions described in paragraph D of the APO. The authorized applicant exercising direction and control over us in the investigation has also signed this acknowledgment to indicate that he is responsible for our compliance with the APO.

We declare under penalty of perjury that the foregoing is true and correct.
Executed on this ___ day of _____, _____, in _____
(month) (year) (city, state)

_____	_____	_____	_____
(Name--Please Print)	(Title)	(Signature)	(Date)
_____	_____	_____	_____
(Name--Please Print)	(Title)	(Signature)	(Date)
_____	_____	_____	_____
(Name--Please Print)	(Title)	(Signature)	(Date)
_____	_____	_____	_____
(Name--Please Print)	(Title)	(Signature)	(Date)
_____	_____	_____	_____
(Name--Please Print)	(Title)	(Signature)	(Date)

PERSON EXERCISING DIRECTION AND CONTROL:

(Signature)

(Name--Please Print)

APPENDIX F
APO NAFTA FORM C

United States International Trade Commission
Washington, DC

FOR COUNSEL AND PROFESSIONALS

PROTECTIVE ORDER APPLICATION FOR PROPRIETARY INFORMATION
FOR BINATIONAL PANEL REVIEW UNDER ARTICLE 1904 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT

_____)	
Name of Panel Review)	Secretariat File No.
_____)	_____
_____ from _____)	
(_____ FR _____)	Application No.
_____)	_____
Date of First Request for Panel Review)	
_____)	

A. Instructions

An authorized applicant defined in 19 C.F.R. § 207.93(b)(2) requesting release of proprietary information, as defined in paragraph C.2 below, pursuant to protective order must complete and submit this application. Applicants may attach additional pages to this form if necessary. This application for release of proprietary information may be filed after a Notice of Request for Panel Review or a Notice of Request for Extraordinary Challenge Committee, if any, concerning a final determination of the United States International Trade Commission ("US ITC") has been filed with the Secretariat.

The applicant shall file and serve copies of this application in accordance with Rules of Procedure for Nafta Article 1904 Panel Reviews ("Art. 1904 Rules"), and The Rules of Practice and Procedure of the US International Trade Commission, (19 C.F.R. § 207 subpart G)(US ITC Rules). A copy of the completed application must be retained by the applicant in order that clerical persons (as defined in paragraph C.3.(d) below) may sign onto it in accordance with paragraph F below.

Additional information about release of proprietary information and definitions of terms not defined in this application are contained in the US ITC Rules.

B. Authorized Applicant

To obtain access to proprietary information contained in the administrative record of the determination by the US ITC which is the subject of the above-referenced binational panel ("panel") review, or subsequent extraordinary challenge committee ("committee") proceeding, if any, I, the Undersigned, _____,
[insert name]

submit this application for disclosure of proprietary information, but not including any information as to which privilege has been claimed, in the administrative record of the US ITC Investigation No. _____ or US ITC Review Investigation No. _____ pursuant to a protective order.

I represent _____ (state the name of the individual or entity) and I certify that I am (check one):

- () (1) An attorney, but not in-house corporate counsel, for an individual or an entity which plans to become a participant in the above-referenced panel review by filing a timely complaint or notice of appearance

(hereinafter "future participant") and that I do not participate in any competitive decision-making activity of the future participant or of any other individual or entity who would gain competitive advantage through knowledge of the proprietary information sought in this application.

List the jurisdictions in which you are admitted and are in good standing to practice: _____.

() (2) An attorney, but not in-house corporate counsel, for a participant in the above-referenced panel review, or subsequent committee proceeding, if any, and that I do not participate in any competitive decision-making activity of the participant or of any other individual or entity which would gain competitive advantage through knowledge of on sought in this application. List the jurisdictions in which you are admitted to practice: _____.

() (3) An in-house corporate counsel for a participant or a future participant in the above-referenced panel review, or subsequent committee proceeding, if any, but I do not participate in any competitive decision-making activity of the participant or future participant or of any individual or entity which would gain a competitive advantage through knowledge of the proprietary information requested in this application. I have attached a written justification for the statement that I am not involved in competitive decision-making. List the jurisdictions in which you are admitted to practice: _____.

() (4) A professional retained by, or under the control or direction of, a counsel of record for a participant in the above-referenced panel review, or subsequent committee proceeding, if any, and do not

participate in any competitive decision-making activity of the participant represented or of any individual or entity which would gain a competitive advantage through knowledge of the proprietary information requested in this application. This attorney has also signed this application to indicate that the attorney is held responsible for my compliance with the APO. Provide signature of counsel of record exercising direction and control and confirming position:

C. Obligations of the Applicant

As a condition for access to the requested proprietary information, I agree that, upon issuance of the protective order granting this application (hereinafter "requested protective order"), I shall:

1. Be bound by the applicable provisions of the Art. 1904 Rules, Rules of Procedure for Article 1904 Extraordinary Challenge Committees ("ECC Rules"), the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) ("the Act"), US ITC Rules, and any additional terms and conditions included in the requested protective order;

2. Treat all information which is

- a) defined by the US ITC to be proprietary information,
- b) contained in the administrative record of the US ITC determination which is the subject of the above-referenced panel review, and
- c) obtained pursuant to the requested protective order

(hereinafter "proprietary information") as confidential;

3. Not disclose any proprietary information, not otherwise available,

to any person other than:

- (a) personnel of the US ITC participating in the above-referenced panel review, or subsequent committee proceeding, if any, in which the proprietary information is part of the record,
- (b) the person from whom the information was obtained,
- (c) a person who, pursuant to a Commission protective order, is also authorized to have access to the same proprietary information in the record of the panel review, or
- (d) a clerical person retained or employed by and under the direction and control of a person described in 3(c) (hereinafter "clerical persons") if such clerical person has signed and dated a statement that he or she
 - i) will comply with the terms and conditions of the requested protective order issued granting the application of the person who employs or retains him or her, and
 - ii) does not participate in, or provide clerical support to anyone who participates in, the competitive decision-making activity of any participant in the above-referenced panel review, or committee proceeding, or any individual or entity that would gain a competitive advantage through knowledge of the proprietary information released pursuant to the protective order issued to the person who employs or retains him or her;

(NOTE: The examination of documents in transit between Canada or Mexico and the United States by customs authorities will not be considered to be

a protective order violation.)

4. Not use any of the proprietary information for purposes other than the above-referenced panel review, or subsequent committee proceeding, if any;

5. Not copy or otherwise reproduce any proprietary information obtained hereunder except in accordance with the terms of the requested protective order;

6. Not consult with any person not described in paragraph C(3) of this application concerning proprietary information disclosed under the requested protective order without first having received the written consent of the US ITC Secretary and the party or the attorney of the party from whom such proprietary information was obtained.

7. Transmit each document containing proprietary information disclosed under the requested protective order:

(i) with a cover sheet identifying the document as containing proprietary information;

(ii) with all proprietary information enclosed in brackets and each page warning that the document contains proprietary information;

(iii) if by mail, within two envelopes, the inner one sealed and marked "Proprietary Information - To be opened only by [name of recipient]", and the outer one sealed and not marked as containing proprietary information;

8. Whenever documents and materials (e.g., word processing or computer diskettes) containing such proprietary information are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container.

9. Not enter proprietary information onto a word-processing system or other computer device unless access to the database is restricted to persons

authorized to receive the proprietary information (N.B. storage of proprietary information on so-called hard disk computer media is to be avoided because mere erasure of data from such media may not irrecoverably destroy the proprietary information any may result in a prohibited act).

10. Comply with the provisions of the requested protective order and with all pertinent Commission Rules;

11. Make true and accurate representations in the authorized applicant's application and promptly notify the US ITC 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).

12. Report promptly to the US ITC any possible prohibited act as defined in 19 U.S.C. § 1677f(f)(3) or 19 CFR § 207.91.

D. Return of Materials

Following the issuance of the requested protective order and

(1) within ten (10) days of the effective date of the Notice of the Completion of Panel Review, as defined in Part VIII of the Art. 1904 Rules,

(2) within ten (10) days of my resignation or removal from the position described above, or

(3) pursuant to an order from the US ITC instructing me to return or destroy all such documents,

I shall

(1) return to the US ITC under seal all documents containing proprietary information and any copies made of such documents

including all materials created by or for me using the proprietary information, such as charts and notes, and any proprietary information that has been entered onto a data processing system,

(2) destroy such documents, or

(3) if subsection D.(2) applies, entrust such documents to the person who is replacing me in the panel review or committee proceedings and who is authorized to receive the proprietary information, if any.

At such time as I return or destroy the documents containing proprietary information pursuant to this paragraph, or entrust them to a person authorized to receive proprietary information, I shall file a statement with the Secretary of the US ITC attesting that to the best of my knowledge and belief all such documents have been returned, destroyed or entrusted pursuant to the terms of this application and that no copies of such documents have been made available to any person to whom disclosure was not specifically authorized under paragraph C.3 above. I shall also include a copy of this application with the list of signatures of clerical persons permitted access to proprietary information pursuant to paragraph F. below.

E. Sanctions for Breach of the Protective Order

I acknowledge that if I commit a prohibited act as defined in 19 U.S.C. § 1677f(f)(3) or 19 CFR § 207.91 I may be subject to sanctions under 19 U.S.C. § 1677f(f), 19 CFR § 207.100, as well as sanctions established under applicable Canadian or Mexican law. I further acknowledge that my partners, associates, employers, or employees may be disbarred from practicing before the Commission if I commit a prohibited act.

I acknowledge that I will be responsible for assuring compliance with the terms of the requested protective order by any persons retained or employed by me and under my direction and control who have signed onto this application for protective order.

F. Access by Clerical persons

I understand that I may permit access by my clerical persons, as defined in paragraph C.3.(d) above, to documents containing proprietary information if such access is necessary and if such clerical persons comply with the requirements set forth below and the limitations, either express or incorporated by reference, in this application. Such clerical persons need not apply separately for access but must sign and date a completed copy of this application before being given access to any proprietary information.

I acknowledge that, upon the filing of this application, I must include, in the space provided below, the signature of those of my clerical persons who will have access to proprietary information. If, at a future date, other clerical persons require access, I shall file an amended list with the Secretary of the US ITC. In addition, I acknowledge that I must return a copy of this application containing the signed and dated final list of all those granted access under this section when I certify to the US ITC that I have returned, destroyed, or entrusted all documents containing the proprietary information pursuant to the terms of the requested protective order.

I further acknowledge that I will be responsible for ensuring that all copies of proprietary information and any documents or materials containing such information in the possession of my clerical persons are destroyed, returned or entrusted pursuant to the terms of this application.

I understand that I am chargeable with the actions of each of my clerical persons who has signed and dated this application.

Any clerical person who signs this application acknowledges that a breach of any provision of a protective order may subject him or her to sanctions under 19 U.S.C. § 1677f(f), 19 C.F.R. § 207.100, as well as sanctions established under applicable Canadian or Mexican law.

Clerical Persons' Signatures

<u>Name</u>	<u>Signature</u>	<u>Title</u>	<u>Date of Signature</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

G. Modification and Revocation.

I acknowledge that the requested protective order may be modified or revoked in accordance with the provisions set forth in 19 U.S.C. § 1677f(f); 19 CFR §§ 207.93(g) and 207.100(a)(3).

Oath

I declare under penalty of perjury under the laws of the United States of America, Canada and Mexico, as applicable, that the foregoing is true and correct.

Executed on this _____ day of _____, _____, in _____
[month] [year] [city,

state or province or territory, country].

[print or type full name]

[signature]*

[title]

*NOTICE: 18 U.S.C. § 1001 and other laws of the United States provide severe penalties for the submission of false, fictitious, or fraudulent statements on this form. Similar provisions may also be applicable under Canadian or Mexican law.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Panel Review No. _____

(Panel Caption)

PROTECTIVE ORDER FOR RELEASE OF PROPRIETARY
INFORMATION TO COUNSEL AND PROFESSIONALS FOR
USE IN PANEL AND COMMITTEE PROCEEDINGS

A. Subject to (1) the terms and conditions in the foregoing application for protective order filed by _____ [Name of Applicant] on _____, [Date] and (2) any additional terms and conditions listed in Part B below, the U. S. International Trade Commission ("US ITC") hereby issues a protective order to said applicant permitting access to proprietary information in the administrative record of the US ITC Investigation. No. _____ or US ITC Review Investigation No. _____.

B. Additional terms and conditions on release of information:

This order may be modified or revoked by the US ITC in accordance with 19 U.S.C. § 1677f(f) and section 207, subpart G of the US ITC's Rules of Practice and Procedure. 19 C.F.R. § 207, subpart G.

By order of the US ITC.

Donna R. Koehnke
Secretary

Issued:

APPENDIX G

PROPERLY FILLED OUT APO FORMS

- G.1 Attorney Applications
- G.2 Consultant Applications
- G.3 Clerical Support Application



ACCEPTED _____
REJECTED _____
DATE _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

APPLICATION FOR DISCLOSURE OF
BUSINESS PROPRIETARY INFORMATION
UNDER ADMINISTRATIVE PROTECTIVE ORDER

Inv. No(s). 701-TA-911-(Preliminary) and/or 731-TA-890 (Preliminary)

(Name of Investigation)

STAINLESS STEEL PLATE FROM JAPAN AND KOREA

I. Authorized applicant status

I, the undersigned, am an authorized applicant, as defined in section 207.7(a)(3) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 207.7(a)(3), as amended), for the disclosure of business proprietary information (BPI) under the administrative protective order (APO) issued in the above-captioned investigation. I represent the following interested party, as defined in 19 U.S.C. § 1677(9), which is a party to the investigation:

Jamestown and Shannon (Domestic Producer)

(State the name of the interested party and its category, e.g., domestic producer, importer, etc.) I am (check one):

(1) An attorney, excepting in-house corporate counsel.

(2) An in-house corporate attorney. I am not involved in competitive decisionmaking for the interested party I represent. I have attached a written statement describing my job functions, disclosing all financial holdings I may have in my employer or its affiliates, and indicating whether I am involved in the formulation of my employer's pricing policies.

(3) A consultant or expert under the direction and control of an attorney under paragraph (1) or (2) above. That attorney has also signed this application to indicate that the attorney is held responsible for my compliance with the APO:

(Name of Attorney--Please Print)

(Signature of Attorney)

(4) A consultant or expert who appears regularly before the Commission and is not involved in competitive decision making for the interested party I represent. I have attached a written statement describing my job functions, disclosing all financial holdings I may have in the interested party I represent or its affiliates, and indicating whether I am involved in the formulation of the interested party's pricing policies.

(5) A representative of an interested party that is not presented by counsel. I am not involved in competitive decision making for that interested party. I have attached a written statement describing my job functions, disclosing all financial holdings I may have in the interested party I represent or its affiliates, and indicating whether I am involved in the formulation of the interested party's pricing policies.

Competitive decision making: As defined in section 207.7 of the Commission's rules, involvement in "competitive decision making" includes past, present, or likely future activities, associations, and relationships with an interested

any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).

II. Request for information

I hereby apply for disclosure to me, subject to the APO issued in the above-captioned investigation, all BPI properly disclosed pursuant to section 207.7 of the Commission's rules, for the purpose of representing an interested party in the investigation and filing comments on the BPI so disclosed. I agree to be bound by the provisions of the APO and section 207.7 of the Commission's Rules of Practice and Procedure.

III. Sanctions and other actions for breach of the APO

I acknowledge that, pursuant to section 207.7(d) of the Commission's rules, breach of the APO may subject me to:

(1) Disbarment from practice in any capacity before the Commission along with my 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;

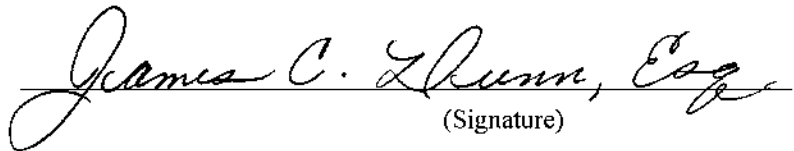
(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of, or striking from, the record any information or briefs submitted by, or on behalf of, me or the party I represent, denial of further access to business proprietary information in the current 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.

IV. Oath

I declare under penalty of perjury that the foregoing is true and correct. Executed on this

14 day of June, 2000, in Washington, DC
(month) (year) (city, state)


(Signature)

James C. Dunn

(Name--Please Print)

Associate

(Title--Please Print)

Mack and Mack

(Firm--Please Print)



ACCEPTED _____
REJECTED _____
DATE _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

APPLICATION FOR DISCLOSURE OF
BUSINESS PROPRIETARY INFORMATION
UNDER ADMINISTRATIVE PROTECTIVE ORDER

Inv. No(s) 701-TA- 911-(Preliminary) and/or 731-TA-890 (Preliminary)

(Name of Investigation)

STAINLESS STEEL PLATE FROM JAPAN AND KOREA

I. Authorized applicant status

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Jamestown and Shannon (Domestic Producer)

(State the name of the interested party and its category, e.g., domestic producer, importer, etc.) I am (check one):

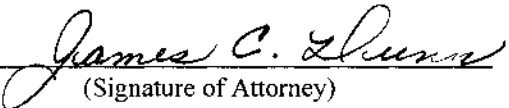
(1) An attorney, excepting in-house corporate counsel.

(2) An in-house corporate attorney. I am not involved in competitive decisionmaking for the interested party I represent. I have attached a written statement describing my job functions, disclosing all financial holdings I may have in my employer or its affiliates, and indicating whether I am involved in the formulation of my employer's pricing policies.

(3) A consultant or expert under the direction and control of an attorney under paragraph (1) or (2) above. That attorney has also signed this application to indicate that the attorney is held responsible for my compliance with the APO:

James C. Dunn

(Name of Attorney--Please Print)


(Signature of Attorney)

(4) A consultant or expert who appears regularly before the Commission and is not involved in competitive decision making for the interested party I represent. I have attached a written statement describing my job functions, disclosing all financial holdings I may have in the interested party I represent or its affiliates, and indicating whether I am involved in the formulation of the interested party's pricing policies.

(5) A representative of an interested party that is not presented by counsel. I am not involved in competitive decision making for that interested party. I have attached a written statement describing my job functions, disclosing all financial holdings I may have in the interested party I represent or its affiliates, and indicating whether I am involved in the formulation of the interested party's pricing policies.

Competitive decision making: As defined in section 207.7 of the Commission's rules, involvement in "competitive decision making" includes past, present, or likely future activities, associations, and relationships with an interested

any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).

II. Request for information

I hereby apply for disclosure to me, subject to the APO issued in the above-captioned investigation, all BPI properly disclosed pursuant to section 207.7 of the Commission's rules, for the purpose of representing an interested party in the investigation and filing comments on the BPI so disclosed. I agree to be bound by the provisions of the APO and section 207.7 of the Commission's Rules of Practice and Procedure.

III. Sanctions and other actions for breach of the APO

I acknowledge that, pursuant to section 207.7(d) of the Commission's rules, breach of the APO may subject me to:

(1) Disbarment from practice in any capacity before the Commission along with my 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, me or the party I represent, denial of further access to business proprietary 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.

IV. Oath

I declare under penalty of perjury that the foregoing is true and correct. Executed on this

14 day of June, 2000, in Washington, DC
(month) (year) (city, state)

Douglas K. Cannon
(Signature)

Douglas K. Cannon
(Name--Please Print)

Sr. Economist
(Title--Please Print)

Shannon and Shannon Consulting Firm
(Firm--Please Print)

ACCEPTED _____
 REJECTED _____
 DATE _____



UNITED STATES INTERNATIONAL TRADE COMMISSION
 Washington, DC 20436

ADMINISTRATIVE PROTECTIVE ORDER
 ACKNOWLEDGMENT FOR CLERICAL PERSONNEL

Inv. No(s). 731-TA-911 (Preliminary) and/or 701-TA-890 (Preliminary)

(Name of Investigation)

STAINLESS STEEL PLATE FROM JAPAN AND KOREA

We, the undersigned, are persons described in paragraph B(1)(iv) of the Administrative Protective Order (APO) issued in the subject investigation. We hereby agree to be bound by the provisions of the APO. We acknowledge that we may be subject to the sanctions described in paragraph D of the APO. The authorized applicant exercising direction and control over us in the investigation has also signed this acknowledgment to indicate that the applicant is responsible for our compliance with the APO.

We declare under penalty of perjury that the foregoing is true and correct. Executed on

this 14 day of June, 2000, in Washington, DC
 (month) (year) (city, state)

William Kelly (Name--Please Print)	Research Assistant (Title)	<i>William Kelly</i> (Signature)	6-14-00 (Date)
Sharon King (Name--Please Print)	Secretary (Title)	<i>Sharon King</i> (Signature)	6-14-00 (Date)
James Brown (Name--Please Print)	Legal Assistant (Title)	<i>James Brown</i> (Signature)	6-14-00 (Date)
Dawn Lee (Name--Please Print)	Office Services (Title)	<i>Dawn Lee</i> (Signature)	6-14-00 (Date)
Kim Chang (Name--Please Print)	Human Resources (Title)	<i>Kim Chang</i> (Signature)	6-14-00 (Date)

PERSON EXERCISING DIRECTION AND CONTROL:

James C. Dunn
 (Signature)

James C. Dunn
 (Name--Please Print)

