

**§ 210.57 Amendment of the motion.**

A motion for temporary relief may be amended at any time prior to the institution of an investigation. All material filed to amend the motion (or the complaint) must be served on all proposed respondents and on the embassies in Washington, DC, of the foreign governments that they represent, in accordance with §210.54. If the amendment expands the scope of the motion or changes the complainant's assertions on the issue of whether a bond is to be required as a prerequisite to the issuance of temporary relief or the appropriate amount of the bond, the 35-day period under §210.58 for determining whether to institute an investigation and provisionally accept the motion for temporary relief shall begin to run anew from the date the amendment is filed with the Commission. A motion for temporary relief may not be amended to expand the scope of the temporary relief inquiry after an investigation is instituted.

**§ 210.58 Provisional acceptance of the motion.**

The Commission shall determine whether to accept a motion for temporary relief at the same time it determines whether to institute an investigation on the basis of the complaint. That determination shall be made within 35 days after the complaint and motion for temporary relief are filed, unless the 35-day period is restarted pursuant to §210.53(a), 210.54, 210.55, or 210.57, or exceptional circumstances exist which preclude adherence to the prescribed deadline. (See §210.10(a)(1).) Before the Commission determines whether to provisionally accept a motion for temporary relief, the motion will be examined for sufficiency and compliance with §§210.52, 210.53(a) (if applicable), 210.54 through 210.56, as well as §§201.8, 210.4, and 210.5. The motion will be subject to the same type of preliminary investigatory activity as the complaint. (See §210.9(b).) Acceptance of a motion pursuant to this paragraph constitutes provisional acceptance for referral of the motion to the chief administrative law judge, who will assign the motion to a presiding administrative law judge for issuance of an initial determination under

§210.66(a). Commission rejection of an insufficient or improperly filed complaint will preclude acceptance of a motion for temporary relief. Commission rejection of a motion for temporary relief will not preclude institution of an investigation of the complaint.

**§ 210.59 Responses to the motion and the complaint.**

(a) Any party may file a response to a motion for temporary relief. Unless otherwise ordered by the administrative law judge, a response to a motion for temporary relief in an ordinary investigation must be filed not later than 10 days after service of the motion by the Commission. In a "more complicated" investigation, the response shall be due within 20 days after such service, unless otherwise ordered by the presiding administrative law judge.

(b) The response must comply with the requirements of §201.8 of this chapter, as well as §§210.4 and 210.5 of this part, and shall contain the following information:

(1) A statement that sets forth with particularity any objection to the motion for temporary relief;

(2) A statement of specific facts concerning the factors the U.S. Court of Appeals for the Federal Circuit would consider in determining whether to affirm lower court decisions granting or denying preliminary injunctions;

(3) A memorandum of points and authorities in support of the respondent's response to the motion;

(4) Affidavits, where possible, executed by persons with knowledge of the facts specified in the response. Each response to the motion must address, to the extent possible, the complainant's assertions regarding whether a bond should be required and the appropriate amount of the bond. Responses to the motion for temporary relief also may contain counter-proposals concerning the amount of the bond or the manner in which the bond amount should be calculated.

(c) Each response to the motion for temporary relief must also be accompanied by a response to the complaint and notice of investigation. Responses to the complaint and notice of investigation must comply with §201.8 of

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this chapter, §§210.4 and 210.5 of this part, and any protective order issued by the administrative law judge under §210.34 of this part.

### **§210.60 Designating an investigation “more complicated” for the purpose of adjudicating a motion for temporary relief.**

At the time the Commission determines to institute an investigation and provisionally accepts a motion for temporary relief pursuant to §210.58, the Commission may designate the investigation “more complicated” pursuant to §210.22(c) for the purpose of obtaining up to 60 additional days to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under §210.66(a), the administrative law judge may issue an order, sua sponte or on motion, designating the investigation “more complicated” for the purpose of obtaining additional time to adjudicate the motion for temporary relief. Such order shall constitute a final determination of the Commission, and notice of the order shall be published in the FEDERAL REGISTER. As required by section 337(e)(2) of the Tariff Act of 1930, the notice shall state the reasons that the temporary relief phase of the investigation was designated “more complicated.” The “more complicated” designation may be conferred by the Commission or the presiding administrative law judge pursuant to this paragraph on the basis of the complexity of the issues raised in the motion for temporary relief or the responses thereto, or for other good cause shown.

### **§210.61 Discovery and compulsory process.**

The presiding administrative law judge shall set all discovery deadlines. The administrative law judge’s authority to compel discovery includes discovery relating to the following issues:

- (a) Any matter relevant to the motion for temporary relief and the responses thereto, including the issues of bonding by the complainant; and
- (b) The issues the Commission considers pursuant to sections 337 (e)(1),

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(f)(1), and (j)(3) of the Tariff Act of 1930, viz.,

(1) The appropriate form of relief (notwithstanding the form requested in the motion for temporary relief),

(2) Whether the public interest precludes that form of relief, and

(3) The amount of the bond to be posted by the respondents to secure importations or sales of the subject imported merchandise while the temporary relief order is in effect. The administrative law judge may, but is not required to, make findings on the issues specified in sections 337 (e)(1), (f)(1), or (j)(3) of the Tariff Act of 1930. Evidence and information obtained through discovery on those issues will be used by the parties and considered by the Commission in the context of the parties’ written submissions on remedy, the public interest, and bonding by respondents, which are filed with the Commission pursuant to §210.67(b).

### **§210.62 Evidentiary hearing.**

An opportunity for a hearing in accordance with the Administrative Procedure Act and §210.36 of this part will be provided in connection with every motion for temporary relief. If a hearing is conducted, the presiding administrative law judge may, but is not required to, take evidence concerning the issues of remedy, the public interest, and bonding by respondents under section 337 (e)(1), (f)(1), and (j)(3) of the Tariff Act of 1930.

### **§210.63 Proposed findings and conclusions and briefs.**

The administrative law judge shall determine whether and, if so, to what extent the parties shall be permitted to file proposed findings of fact, proposed conclusions of law, or briefs under §210.40 concerning the issues involved in adjudication of the motion for temporary relief.

### **§210.64 Interlocutory appeals.**

There will be no interlocutory appeals to the Commission under §210.24 on any matter connected with a motion for temporary relief that is decided by an administrative law judge