

[Federal Register: December 30, 1994]

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INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Procedures for Investigations and Related Proceedings Concerning
Unfair Practices in Import Trade

AGENCY: U.S. International Trade Commission.

ACTION: Interim rules and request for comment.

SUMMARY: The Commission is amending certain rules of practice and procedure to implement amendments to section 337 of the Tariff Act of 1930 enacted by Congress as part of the Uruguay Round Agreements Act. By implementing the law, the rules bring U.S. procedures into conformity with national treatment obligations under GATT, while providing for the effective enforcement of intellectual property rights at the border.

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

These interim rules apply to section 337 complaints filed on or after the effective date.

Comments on these interim rules will be considered if received by March 30, 1995.

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

FOR FURTHER INFORMATION CONTACT: Paul A. Newhouse, Esq., Office of the Administrative Law Judges, U.S. International Trade Commission, telephone 202-205-2699. Hearing-impaired individuals can obtain information on the final rules by contacting the Commission's TDD terminal at 202-205-1810.

SUPPLEMENTARY INFORMATION:

Background

In 1989, the General Agreement on Tariffs and Trade (GATT) adopted a report finding that USITC procedures in investigations under section 337 of the Tariff Act of 1930 violated GATT ``national treatment'' rules. The report listed several ways in which imported goods are treated less favorably in Commission investigations than domestic goods

are treated in district court infringement cases. In the Uruguay Round Agreements Act, Congress amended section 337 to bring USITC procedures into compliance with the GATT ``national treatment'' rules. See H. Rep. No. 103-826, 103d Cong., 2d Sess. 140-142 (1994). The amendments, and the interim rule revisions that follow, focus on changes in four areas that respond to GATT criticisms:

time limits for concluding an investigation have been eliminated and a procedure for establishing a ``target date'' for completion has been adopted instead;

respondents are given the opportunity to stay parallel actions in district court while a Commission investigation is proceeding; the Commission's record may be used subsequently in the district court;

limitations are placed on the Commission's ability to issue ``general'' exclusion orders; and

respondents are permitted to file counterclaims at the Commission; these claims will be heard by a district court, but the same subject matter may be considered as part of an affirmative defense at the Commission.

Other amendments bring Commission practice into closer conformity with district court practice with respect to bonding requirements and the deference accorded to arbitration agreements.

The Procedure for Adopting Interim Rules

The URAA was enacted on December 8, 1994. This legislation contains provisions which, inter alia, amend section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The Commission's rules concerning Section 337 practice and procedure need to be amended to conform to the new legislation.

Commission rules to implement new legislation ordinarily are promulgated in accordance with the rulemaking provisions of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.), which entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. See 5 U.S.C. 553. That procedure could not be utilized in this instance because the new legislation was enacted on December 8, 1994, and will become effective, with respect to the amendments to section 337 of the Act, on January 1, 1995, the date on which the WTO Agreement enters into force with respect to the United States, unless the United States Trade Representative announces prior to that date that the WTO Agreement will not enter into force on that date. These interim rules apply to section 337 complaints filed on or after the effective date. It was consequently not possible to complete the section 553 rulemaking procedure prior to the effective date of the new legislation.

The Commission thus determined to adopt interim rules that will go into effect when the provisions of the URAA amending section 337 become effective and will remain in effect until the Commission can adopt final rules promulgated in accordance with the usual notice, comment, and advance publication procedure.

The Commission's authority to adopt interim rules without following all steps listed in section 553 of the APA is derived from three sources: (1) Section 335 of the Act (19 U.S.C. 1335); (2) section 103 of the URAA and the Statement of Administrative Action approved by the URAA; and (3) provisions of section 553 of the APA which allow an

agency to dispense with various steps in the prescribed rulemaking procedure under certain circumstances.

Section 335 of the Act authorizes the Commission ``to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.'' 19 U.S.C. 1335. Similarly, section 103(a) of the URAA authorizes federal agencies to ``issue such regulations as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date [of] any of the Uruguay Round Agreements entered into force with respect to the United States is appropriately implemented on such date,'' and section 103(b) of the URAA directs that ``[a]ny interim regulations necessary or appropriate to carry out any action proposed in the statement of administrative action approved under section 101 [of the URAA] to implement an agreement described in section 101(d) (7), (12), or (13) [of the URAA] be issued not later than 1 year after the date on which the agreement enters into force with respect to the United States.''

The Commission determined that the need for interim rules is clear in this instance. The Commission noted that the new legislation alters section 337 practice and procedure and that the existing Commission rules do not encompass certain procedures required by the new legislation. The Commission found that rulemaking was essential for the orderly administration of section 337 as amended by the new legislation. Furthermore, since the legislation was to become effective very shortly after enactment, the Commission concluded that it was imperative that implementing rules be in place on the effective date of the new statute.

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

In this instance, the Commission determined that the requisite circumstances existed for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rulemaking which solicits public comment, the Commission found that (1) the interim rules are ``agency rules of procedure or practice''; and (2) since the new legislation is projected to become effective very shortly after enactment, and the time or fact of enactment could not be predicted in advance, it clearly would be ``impracticable'' for the Commission to comply with the usual notice, comment, and advance publication procedure. For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim rules thirty days prior to their effective date, the Commission found that the fact that the new legislation is expected to become effective very shortly after enactment made such advance publication impossible and constituted ``good cause'' for the Commission not to comply with that requirement.

The Commission recognizes that interim regulations should not respond to anything more than the exigencies created by the new

legislation. Having been promulgated in response to exigencies created by the new legislation, each interim rule accordingly comes under one or more of the following categories: (1) Revision of a pre-existing rule that conflicted with the new legislation; (2) a technical amendment to make a pre-existing rule conform to the language of the new legislation; (3) rewording of a pre-existing rule to avoid confusion about how the rule is to be applied in light of the new legislation; or (4) a new rule covering a matter provided for in the new legislation but not covered by a pre-existing rule. More comprehensive final rules will be issued at a later date in accordance with the usual notice, public comment, and advance publication procedure.

Because the interim regulations merely respond to exigencies created by the new legislation, the Commission has further determined that they do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993), and thus do not constitute a significant regulatory action for purposes of the EO. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 note), the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the rules set forth in this notice are not likely to have a significant impact on a substantial number of small business entities. In any event, the Regulatory Flexibility Act is inapplicable to this rulemaking because it is not one in which a notice of proposed rulemaking is required under 5 U.S.C. 553(b).

Section-By-Section Analysis of the Interim Rules

Subpart A--Rules of General Applicability

Section 210.3

The definition of ``investigation'' is revised to eliminate a reference to designating the permanent relief phase of an investigation ``more complicated.'' See discussion of Sec. 210.22 below.

Section 210.4

Paragraph (d)(2)(iii)(B) has been revised to indicate that a termination based on an arbitration agreement joins terminations based on settlement agreements and consent order agreements in a category of cases in which monetary sanctions may be imposed on the initiative of the administrative law judge or the Commission.

Section 210.5

Paragraph (b) is revised to conform to amended 19 U.S.C. 1337(n)(2), which clarifies the list of government officers and employees who may have access to confidential business information. A new paragraph (c) is added to alert the reader to the possibility that confidential business information may be transmitted to a federal district court, subject to such protective order as the district court determines necessary. This result might occur in a limited class of cases because of newly-enacted 28 U.S.C. 1659. Past Commission practice has been to permit the transfer of confidential business information to another court only with permission of the supplier of the information. Particularly where the supplier is a third party who is involved in neither the Commission investigation nor the district court case, it is important that the supplier be made aware that treatment of confidential information would be governed by the district court's protective order and not that of the Commission following transmittal

of the record under this provision. It is expected that future protective orders will refer to this rule and the similar provision in Sec. 210.39(b) to assure that all suppliers of confidential business information are aware of this possibility.

The remaining two paragraphs of this section are redesignated (d) and (e).

Subpart C--Pleadings

Section 210.14

A new paragraph (e) is added to implement the amendment to 19 U.S.C. 1337(c) with regard to counterclaims. The rule requires that counterclaims be filed not later than ten business days before the commencement of the evidentiary hearing. This requirement should provide a respondent adequate discovery time to identify potential counterclaims while avoiding the distraction that might occur if counterclaims could be filed during (or after) the evidentiary hearing. For reasons of clarity, the rule requires counterclaims to be filed in a separate document.

The statutory amendment makes clear that the new procedures with respect to counterclaims do not affect the ability of a respondent to present all legal or equitable defenses that may be available to it in a section 337 investigation. Action on the counterclaim will not delay or affect the Commission's proceeding. The Commission is not precluded from considering judicial rulings on counterclaims as part of the Commission's consideration of the effect of a remedial order on the public interest. See H.R. Rep. No. 103-826, 103d Cong., 2d Sess. 141 (1994).

Subpart D--Motions

Section 210.16

Paragraph (c)(2) is revised to include by reference the requirements added to Sec. 210.50(c) below with regard to criteria that must be considered by the Commission before issuing a general exclusion order.

Section 210.21

A new paragraph (d) is added to implement the amendment to 19 U.S.C. 1337(c) that permits the Commission to terminate an investigation on the basis of an agreement between the private parties to present the matter for arbitration, as well as the traditional settlement agreement. The procedures to be followed with respect to a motion to terminate on the basis of an arbitration agreement are similar to those pertaining to settlement agreements under paragraph (b) of this section.

Paragraph (a)(2) is revised to include a reference to the new paragraph (d), and the previous paragraph (d) is redesignated (e).

Section 210.22

Amendments to 19 U.S.C. 1337(b) eliminated time limits for concluding the permanent relief phase of an investigation under section 337. The provision for a ``more complicated'' designation resulting in an 18-month deadline was eliminated. Instead, the Commission is directed to establish a ``target date'' in each investigation. The procedure for establishing a target date is discussed with respect to

Sec. 210.51 below.

This section is amended by deleting paragraph (b) with respect to a ``more complicated'' designation of the permanent relief phase of an investigation. The previous paragraph (c) is redesignated (b) and is otherwise unchanged. This paragraph deals with declaring the temporary relief phase of an investigation ``more complicated,'' a procedure that was unchanged by the statutory amendments.

Section 210.23

This section is revised to reflect amendments to 19 U.S.C. 1337(b)(1), which eliminate the authority of the Commission to suspend an investigation ``because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter'' of the investigation. The Commission retains the authority to suspend an investigation pending review by the Department of Commerce of possible antidumping or countervailing duty matters referred to the Department of Commerce by the Commission pursuant to 19 U.S.C. 1337(b)(3), and the rule is revised to reflect this retained authority.

The need for an investigation to be suspended no longer exists insofar as the statutory deadline for concluding the permanent relief phase has been eliminated. Circumstances that would have warranted suspension under the old rules may warrant an extension of the target date for completing the investigation under these amendments. With respect to the temporary relief phase of an investigation, however, the elimination of authority to suspend is significant, because the strict statutory deadlines for deciding petitions for temporary relief have been retained. Temporary relief proceedings now must proceed to completion regardless of concurrent parallel proceedings in other courts or agencies (except for the rare proceeding at the Department of Commerce, referred to in the preceding paragraph). If a complainant pursues a motion for temporary relief under circumstances that would have resulted in suspension under the Commission's prior practice, there may be a basis for requiring a more substantial bond from the complainant before temporary relief is ordered.

Section 210.24

Paragraph (a)(2) is deleted because ``more complicated'' designations have been eliminated with respect to permanent relief. Paragraph (a)(3) is redesignated (a)(2).

Paragraph (b)(2) is revised to reflect the renumbering of the paragraphs in Sec. 210.5.

Subpart F--Prehearing Conferences and Hearings

Section 210.39

A new paragraph (b) is added and the succeeding paragraphs are redesignated. The addition outlines the circumstances in which the Commission's record, including the in camera record, may be transmitted to a federal district court, subject to such protective order as the district court determines necessary. As in Sec. 210.5, discussed above, this rule alerts the reader that treatment of confidential business information would be governed by the district court's protective order following transmittal of the Commission's record to the court.

Subpart G--Determinations and Actions Taken

Section 210.41

This section is revised to conform the cross-references to amended Sec. 210.21.

Section 210.42

Paragraph (a)(1)(i) is revised to establish new time frames in which the initial determination on violation must be filed. If the target date for completing the permanent relief phase of the investigation is set at 15 months or less, the initial determination is to be filed three months before the target date. If the target date is more than 15 months, the initial determination is to be filed four months before the target date. (The procedure for establishing the target date is found in Sec. 210.51, discussed below.)

Paragraphs (b) and (c) are revised to reflect the amendment of Sec. 210.70 to include the return as well as possible forfeiture of a complainant's temporary relief bond. Paragraph (c) is further revised to include initial determinations that may be issued in two new situations: in granting a motion for forfeiture or return of respondents' bonds pursuant to Sec. 210.50(d) and in granting a motion to set a target date exceeding 15 months from the date of institution pursuant to Sec. 210.51(a).

Paragraph (h)(3) is revised to give initial determinations issued pursuant to Sec. 210.50(d)(3) the same status as those issued pursuant to Sec. 210.70(c). The effect of the exception expressed in this paragraph is to give a 45-day effective date rather than a 30-day effective date to initial determinations granting motions for forfeiture or return of either complainants' or respondents' bonds.

Section 210.43

Paragraphs (a)(1) and (d) are revised to refer to initial determinations issued under new Sec. 210.50(d) and to put these initial determinations on the same footing as those issued under Sec. 210.70(c).

Section 210.49

Paragraph (a) is revised to conform the cross-references to amended Sec. 210.21.

Section 210.50

Paragraph (a)(3) is revised to implement the specific statutory direction that the Commission determine the amount of a respondent's bond ``sufficient to protect the complainant from any injury.'' 19 U.S.C. 1337(e) and (j)(3). The Commission expects to construe this direction on a case-by-case basis. Language referring to past Commission practice in determining the amount of a respondent's bond has been deleted.

Paragraph (b)(2) is revised to conform the cross-references to amended Sec. 210.21.

Paragraph (c) is new and implements the statutory limitations on issuance of a general exclusion order found in 19 U.S.C. 1337(d)(2). These limitations are consonant with past Commission practice as articulated in *Certain Airless Paint Spray Pumps and Components Thereof*, Inv. No. 337-TA-90 (USITC Pub. 1199, Nov. 1981) and cases following it. The Commission expects the law in this area to continue to develop on a case-by-case basis in view of the new statutory language.

Paragraph (d) is new and implements the statutory requirement that the Commission prescribe terms and conditions under which bonds may be forfeited. 19 U.S.C. 1337(e)(4) and (j)(3). The terms of this rule are essentially similar to those in Sec. 210.70 relating to the forfeiture or return of a complainant's temporary relief bond. Both rules implement the Congressional mandate that the Commission be guided by practice under Rule 65 of the Federal Rules of Civil Procedure with respect to forfeiture of a complainant's bond. H.R. Rep. No. 103-826, 103d Cong., 2d Sess. 142 (1994). Although Federal Rule 65 literally applies to bonding by the proponent of temporary relief, its underlying rationale is equally applicable to respondents' bonds in section 337 investigations. ``Practice under Rule 65'' includes all sources of authority pertaining to Rule 65 that are generally relied on in the practice of law, including (but not limited to) judicial decisions and notes of the advisory committee on rules. Treatises and commentary also may be considered.

Section 210.51

Congress amended 19 U.S.C. 1337(b) to eliminate the time limit for completing an investigation, but directed that the Commission complete an investigation and make its determination ``at the earliest practicable time.'' Section 210.51(a) is revised to reflect this change and to implement the requirement that the Commission, within 45 days after an investigation is instituted, set a target date for completion of the investigation. The rule allows the administrative law judge to set (and modify) the target date in a final order not subject to review as long as the target date does not exceed 15 months from the date of institution. Target dates exceeding 15 months are set in initial determinations, reviewable by the Commission. The Commission expects that most investigations will be concluded within the traditional time frame of 12 months or less. Deadlines for various activities pertaining to section 337 investigations have been retained in the rules unless specifically amended herein.

Paragraph (c) is revised to reflect the elimination of the Commission's authority to suspend an investigation except as set forth in Sec. 210.23.

Subpart H--Temporary Relief

Section 210.52

Paragraph (c) is revised to indicate that the Commission will be guided by Rule 65 of the Federal Rules of Civil Procedure in determining whether to require a bond as a prerequisite to the issuance of temporary relief, as mandated by the legislative history of the statutory amendments. H.R. Rep. No. 103-826, 103d Cong., 2d Sess. 142 (1994). The factors relied upon by the Commission in its past practice are deleted from paragraphs (c) and (e), and paragraph (f) is redesignated as (e).

Section 210.70

Paragraph (a) is revised to reflect the statutory change authorizing forfeiture of the complainant's temporary relief bond to the respondent and to authorize the complainant to file a motion for the return of its bond when appropriate.

Paragraph (c) is revised to indicate that the Commission will be guided by practice under Rule 65 of the Federal Rules of Civil Procedure in determining whether to require a bond as a prerequisite to

the issuance of temporary relief, as mandated by the legislative history of the statutory amendments. H.R. Rep. No. 103-826, 103d Cong., 2d Sess. 142 (1994). ``Practice under Rule 65'' includes all sources of authority pertaining to Rule 65 that are generally relied on in the practice of law, including (but not limited to) judicial decisions and notes of the advisory committee on rules. Treatises and commentary also may be considered.

Because forfeiture of a bond posted by a complainant now will be to the respondent rather than the government, the provision in the prior rule allowing a motion for forfeiture to be made by the Commission investigative attorney or by the Commission is deleted. Consistent with practice under Rule 65 of the Federal Rules of Civil Procedure, a respondent seeking forfeiture would be required to show the costs and damages incurred as a result of the imposition of temporary relief. The respondent itself is in the best position to make this showing and should bear the responsibility of filing a motion for forfeiture of a bond when appropriate.

The former provision precluding a stay of forfeiture proceedings pending appeal of the Commission's determination on violation also is deleted in view of the statutory change. A stay may or may not be appropriate depending on the facts of each case, including the ability of a respondent to repay an amount forfeited to it in the event of a reversal on appeal.

List of Subjects in 19 CFR Part 210

Administrative practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations.

For the reasons set forth in the preamble, 19 CFR Part 210 is amended as set forth below.

PART 210--ADJUDICATION AND ENFORCEMENT

1. The authority citation for part 210 is revised to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

2. The definition of investigation in Sec. 210.3 is amended by revising the fourth sentence to read as follows:

Sec. 210.3 Definitions.

* * * * *

Investigation * * * An investigation can also involve the processing of one or more of the following: A motion to amend the complaint and notice of investigation; a motion for temporary relief; a motion to designate ``more complicated'' the temporary relief stage of the investigation; an interlocutory appeal of an administrative law judge's decision on a particular matter; a motion for sanctions for abuse of process, abuse of discovery, or failure to make or cooperate in discovery, which if granted, would have an impact on the adjudication of the merits of the complaint; a petition for reconsideration of a final Commission determination; a motion for termination of the investigation in whole or part; and procedures undertaken in response to a judgment or judicial order issued in an appeal of a Commission determination or remedial order issued under section 337 of the Tariff Act of 1930. * * *

* * * * *

3. Section 210.4(d)(2)(iii) is revised to read as follows:

Sec. 210.4 Written submissions; representations; sanctions.

* * * * *

(d) * * *

(2) * * *

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

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

(B) such termination is the result of--

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

(2) A settlement agreement;

(3) A consent order agreement; or

(4) An arbitration agreement.

* * * * *

4. Section 210.5 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), revising paragraphs (b)(2) and (b)(4) and adding new paragraph (c) to read as follows:

Sec. 210.5 Confidential business information.

* * * * *

(b) * * *

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

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

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

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

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

* * * * *

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

(c) Transmission of certain records to district court.

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

* * * * *

5. Section 210.14 is amended by revising the section heading and by adding paragraph (e) to read as follows:

Sec. 210.14 Amendments to pleadings and notice; supplemental submissions; counterclaims.

* * * * *

(e) Counterclaims. At any time after institution of the investigation, but not later than ten business days before the commencement of the evidentiary hearing, a respondent may file a counterclaim at the Commission in accordance with section 337(c) of the Tariff Act of 1930. Counterclaims shall be filed in a separate document. A respondent who files such a counterclaim shall immediately file a notice of removal with a United States district court in which venue for any of the counterclaims raised by the respondent would exist under 28 U.S.C. 1391.

6. Section 210.16(c)(2) is amended by revising the last sentence to read as follows:

Sec. 210.16 Default.

* * * * *

(c) * * *

(2) * * * The Commission may issue a general exclusion order pursuant to section 337(g)(2) of the Tariff Act of 1930, regardless of the source or importer of the articles concerned, provided that a violation of section 337 of the Tariff Act of 1930 is established by substantial, reliable, and probative evidence, and only after considering the aforementioned public interest factors and the requirements of Sec. 210.50(c).

7. Section 210.21 is amended by redesignating paragraph (d) as paragraph (e), by revising paragraph (a)(2) and by adding a new paragraph (d), to read as follows:

Sec. 210.21 Termination of investigations.

(a) * * *

(2) Any party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement, including an agreement to present the matter for arbitration, or a consent order, as provided in paragraphs (b), (c) and (d) of this section.

* * * * *

(d) Termination based upon arbitration agreement. Upon filing of a motion for termination to the administrative law judge or the Commission, a section 337 investigation may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of an agreement between complainant and one or more of the respondents to present the matter for arbitration. The motion and a copy of the arbitration agreement shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission with the confidential versions of such documents. The Commission shall publish a notice in the Federal Register stating that an initial determination has been received, that nonconfidential versions of the initial determination and the agreement are available for inspection in the Office of the Secretary, and that interested

persons may submit written comments concerning termination of the respondents in question within 10 days of the date of publication of the notice in the Federal Register. An order of termination based on an arbitration agreement does not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

* * * * *

8. Section 210.22 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

9. Section 210.23 is amended by revising the first sentence to read as follows:

Sec. 210.23 Suspension of investigation.

Any party may move to suspend an investigation under this part, because of the pendency of proceedings before the Secretary of Commerce or the administering authority pursuant to section 337(b)(3) of the Tariff Act of 1930. * * *

10. Section 210.24 is amended by removing paragraph (a)(2), redesignating paragraph (a)(3) as (a)(2), and revising paragraphs (a)(1) and (b)(2) to read as follows:

Sec. 210.24 Interlocutory appeals.

* * * * *

(a) * * *

(1) Requires the disclosure of Commission records or requires the appearance of Government officials pursuant to Sec. 210.32(c)(2); or

* * * * *

(b) * * *

(2) Applications for review of a ruling by an administrative law judge under Sec. 210.5(e)(1) as to whether information designated confidential by the supplier is entitled to confidential treatment under Sec. 210.5(b) may be allowed only upon request made to the administrative law judge and upon determination by the administrative law judge in writing, with justification in support thereof.

* * * * *

11. Section 210.39 is amended by redesignating paragraphs (b) through (d) as paragraphs (c) through (e) and adding a new paragraph b to read as follows:

Sec. 210.39 In camera treatment of confidential information.

* * * * *

(b) Transmission of certain Commission records to district court. In a civil action involving parties that are also parties to a proceeding before the Commission under section 337 of the Tariff Act of 1930, at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court may stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission under certain conditions. If such a stay is in effect, after the determination of the Commission becomes final, the Commission shall certify to the district court such portions of the record of its proceeding as the district court may request. Notwithstanding paragraph (a) of this section, the in camera record may be transmitted to a district court and be admissible in a civil action, subject to such

protective order as the district court determines necessary, pursuant to 28 U.S.C. 1659.

* * * * *

12. Section 210.41 is revised to read as follows:

Sec. 210.41 Termination of investigation.

Except as provided in Sec. 210.21(b)(2), (c) and (d), an order of termination issued by the Commission shall constitute a determination of the Commission under Sec. 210.45(c).

13. Section 210.42 is amended by revising paragraphs (a)(1)(i), (b), (c), and (h)(3) to read as follows:

Sec. 210.42 Initial determinations.

(a)(1)(i) On issues concerning violation of section 337. Unless otherwise ordered by the Commission, the administrative law judge shall certify the record to the Commission and shall file an initial determination on whether there is a violation of section 337 of the Tariff Act of 1930 no later than 3 months before the target date set pursuant to Sec. 210.51(a) if the target date is 15 months or less from the date of institution, and no later than 4 months before the target date if the target date is more than 15 months from the date of institution.

* * * * *

(b) On issues concerning temporary relief or forfeiture of temporary relief bonds. Certification of the record and the disposition of an initial determination concerning a motion for temporary relief are governed by Secs. 210.65 and 210.66. The disposition of an initial determination concerning possible forfeiture or return of a complainant's temporary relief bond, in whole or in part, is governed by Sec. 210.70.

(c) On other matters. The administrative law judge shall grant the following types of motions by issuing an initial determination or shall deny them by issuing an order: a motion to amend the complaint or notice of investigation pursuant to Sec. 210.14(b); a motion for a finding of default pursuant to Sec. 210.16; a motion for summary determination pursuant to Sec. 210.18; a motion for intervention pursuant to Sec. 210.19; a motion for termination pursuant to Sec. 210.21; a motion to suspend an investigation pursuant to Sec. 210.23; a motion for forfeiture or return of respondents' bonds pursuant to Sec. 210.50(d); a motion to set a target date exceeding 15 months pursuant to Sec. 210.51(a); or a motion for forfeiture or return of a complainant's temporary relief bond pursuant to Sec. 210.70.

* * * * *

(h) * * *

(3) An initial determination filed pursuant to Sec. 210.42(c) shall become the determination of the Commission 30 days after the date of service of the initial determination, except as provided in paragraph (h)(5) of this section, Sec. 210.50(d)(3) and Sec. 210.70(c), unless the Commission, within 30 days after the date of such service shall have ordered review of the initial determination or certain issues therein or by order has changed the effective date of the initial determination.

* * * * *

14. Section 210.43 is amended by revising the first and last sentences of paragraph (a)(1) and the first sentence of paragraph (d)(1) to read as follows:

Sec. 210.43 Petitions for review of initial determinations on matters other than temporary relief.

(a) Filing of the petition. (1) Except as provided in paragraph (a)(2) of this section, any party to an investigation may request Commission review of an initial determination issued under Sec. 210.42(a)(1) or (c), Sec. 210.50(d)(3) or Sec. 210.70(c) by filing a petition with the Secretary. * * * A petition for review of an initial determination issued under Sec. 210.50(d)(3) or Sec. 210.70(c) must be filed within 10 days after issuance of the initial determination.

* * * * *

(d) Grant or denial of review. (1) The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to Sec. 210.42(a)(1), Sec. 210.50(d)(3) or Sec. 210.70(c) within 45 days of the service of the initial determination on the parties, or by such other time as the Commission may order. * * *

* * * * *

15. Section 210.49 is amended by revising paragraph (a) to read as follows:

Sec. 210.49 Implementation of Commission action.

(a) Service of Commission determination upon the parties. A Commission determination pursuant to Sec. 210.45(c) or a termination on the basis of a licensing or other agreement, a consent order or an arbitration agreement pursuant to Sec. 210.21(b), (c) or (d), respectively, shall be served upon each party to the investigation.

* * * * *

16. Section 210.50 is amended by revising paragraph (a)(3) and the first sentence of paragraph (b)(2), and by adding paragraphs (c) and (d), to read as follows:

Sec. 210.50 Commission action, the public interest, and bonding by respondents.

(a) * * *

(3) Determine the amount of the bond to be posted by a respondent pursuant to section 337(j)(3) of the Tariff Act of 1930 following the issuance of temporary or permanent relief under section 337(d), (e), (f), or (g) of the Tariff Act of 1930, taking into account the requirement of section 337(e) and (j)(3) that the amount of the bond be sufficient to protect the complainant from any injury.

* * *

(b)* * *

(2) Regarding terminations by settlement agreement, consent order, or arbitration agreement under Sec. 210.21 (b), (c) or (d), the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. * * *

(c) No general exclusion from entry of articles shall be ordered under paragraph (a)(1) of this section unless the Commission determines that--

(1) Such exclusion is necessary to prevent circumvention of an

exclusion order limited to products of named persons; or

(2) There is a pattern of violation of section 337 of the Tariff Act of 1930 and it is difficult to identify the source of infringing products.

(d) Forfeiture or return of respondents' bonds. (1)(i) If one or more respondents posts a bond pursuant to 19 U.S.C. 1337(e)(1) or 1337(j)(3), proceedings to determine whether a respondent's bond should be forfeited to a complainant in whole or part may be initiated upon the filing of a motion by a complainant within 30 days after expiration of the Presidential review period under 19 U.S.C. 1337(j).

(ii) A respondent may file a motion for the return of its bond.

(2) Any nonmoving party may file a response to a motion filed under paragraph (d)(1) of this section within 15 days after filing of the motion, unless otherwise ordered by the administrative law judge.

(3) A motion for forfeiture or return of a respondent's bond in whole or part will be adjudicated by the administrative law judge in an initial determination with a 45-day effective date, which shall be subject to review under the provisions of Secs. 210.42 through 210.45. In determining whether to grant the motion, the administrative law judge and the Commission will be guided by practice under Rule 65 of the Federal Rules of Civil Procedure (taking into account that the roles of the parties are reversed in this instance).

(4) If the Commission determines that a respondent's bond should be forfeited to a complainant, and if the bond is being held by the Secretary of the Treasury, the Commission Secretary shall promptly notify the Secretary of the Treasury of the Commission's determination.

17. Section 210.51 is amended by revising paragraphs (a) and (c) to read as follows:

Sec. 210.51 Period for concluding investigation.

(a) Permanent relief. Within 45 days after institution of the investigation, the administrative law judge shall issue an order setting a target date for completion of the investigation. If the target date does not exceed 15 months from the date of institution of the investigation, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds 15 months, the order of the administrative law judge shall constitute an initial determination. After the target date has been set, it can be modified by the administrative law judge for good cause shown before the case is certified to the Commission or by the Commission after the case is certified to the Commission.

* * * * *

(c) Computation of time. In computing the deadlines imposed in paragraph (b) of this section, there shall be excluded any period during which the investigation is suspended pursuant to Sec. 210.23.

18. Section 210.52 is amended by removing paragraph (e), redesignating paragraph (f) as paragraph (e), and revising paragraph (c) to read as follows:

Sec. 210.52 Motions for temporary relief.

* * * * *

(c) In determining whether to require a bond as a prerequisite to the issuance of temporary relief, the Commission will be guided by practice under Rule 65 of the Federal Rules of Civil Procedure.

* * * * *

19. Section 210.70 is revised to read as follows:

Sec. 210.70 Forfeiture or return of complainant's temporary relief bond.

(a)(1) If the Commission determines that one or more of the respondents whose merchandise was covered by the temporary relief order has not violated section 337 of the Tariff Act of 1930 to the extent alleged in the motion for temporary relief and provided for in the temporary relief order, proceedings to determine whether the complainant's bond should be forfeited to one or more respondents in whole or part may be initiated upon the filing of a motion by a respondent within 30 days after filing of the aforesaid Commission determination on violation.

(2) A complainant may file a motion for the return of its bond.

(b) Any nonmoving party may file a response to a motion filed under paragraph (a) of this section within 15 days after filing of the motion, unless otherwise ordered by the administrative law judge.

(c) A motion for forfeiture or return of a complainant's temporary relief bond in whole or part will be adjudicated by the administrative law judge in an initial determination with a 45-day effective date, which shall be subject to review under the provisions of Secs. 210.42 through 210.45. In determining whether to grant the motion, the administrative law judge and the Commission will be guided by practice under Rule 65 of the Federal Rules of Civil Procedure.

Issued: December 23, 1994.

By Order of the Commission.

Donna R. Koehnke,
Secretary.

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