

International Trade Commission

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19 CFR Parts 201, 206, 207 et al.

Practice and Procedure: Rules of General Application, Safeguards, Antidumping and Countervailing Duty, and Adjudication and Enforcement; Filing Procedures; Final Rule

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INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201, 206, 207, and 210

Practice and Procedure: Rules of General Application, Safeguards, Antidumping and Countervailing Duty, and Adjudication and Enforcement

AGENCY: International Trade Commission.

ACTION: Final rule.

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SUMMARY: The United States International Trade Commission ("Commission") is amending its rules of practice and procedure concerning rules of general application, safeguards, antidumping and countervailing duty, and adjudication and enforcement. The amendments are necessary to implement a new Commission requirement for electronic filing of most documents with the agency. The intended effects of the amendments are to increase efficiency in processing documents filed with the Commission, reduce Commission expenditures, and conform agency processes to Federal Government initiatives.

DATES: Effective [INSERT DATE 30 DAYS AFTER PUBLICATION]..

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary, telephone (202) 205-2000 or Gracemary Roth-Roffy, telephone (202) 205-3117, Office of the General Counsel, United States International Trade Commission. 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 may also be obtained by accessing its Internet server at <http://www.usitc.gov>.

SUPPLEMENTARY INFORMATION: On July 6, 2011, the Commission published a notice of proposed rulemaking concerning the filing of documents with the agency. 76 FR 39750, Jul. 6, 2011. This notice of final rulemaking is based on that notice. On the same day, the Commission published a notice seeking public comment on a draft Handbook on Electronic Filing Procedures. 76 FR 39757, Jul. 6, 2011. The preamble below is designed to assist readers in understanding these amendments to the Commission's Rules. This preamble provides background information, a regulatory analysis of the amendments, a discussion of the comments received from the public, and a section-by-section explanation of the amendments.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This

rulemaking seeks to improve provisions of the Commission's existing Rules of Practice and Procedure. The Commission is amending its rules covering proceedings such as investigations and reviews conducted under title VII and section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, 1671 et seq.), sections 202, 406, 421, 422 of the Trade Act of 1974 (19 U.S.C. 2252, 2436, 2451, 2451a), and sections 302 and 312 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3352, 3372).

Consistent with its ordinary practice, the Commission is issuing these amendments in accordance with provisions of section 553 of the APA (5 U.S.C. 553), although not all provisions apply to this rulemaking. The APA procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

The Commission will now require that most filings with the agency be made by electronic means. The electronic version will constitute the official record document and any paper form of the document must be a true copy and identical to the electronic version. The Commission's Electronic Document Information System (EDIS) already accepts electronic filing of certain documents, and will be the mechanism by which participants in Commission proceedings electronically file their documents in the future. Previously, submitters have been permitted to file only public documents into EDIS. The new rules provide for the electronic filing of documents containing confidential business information and business proprietary information into EDIS. A new Handbook on Filing Procedures will supersede the Commission's current Handbook on Electronic Filing Procedures, and will provide more detailed information on the filing process. The Commission has sought public comment concerning the new handbook in a separate notice. Persons seeking to file documents will be required to comply with the revised rules and the Handbook on Filing Procedures.

The Commission estimates that electronic filing of most documents will significantly reduce the cost to the agency of processing documents. These costs include labor costs for scanning paper documents into EDIS, storage costs for paper documents, and costs for continuity of operations. Electronic filing also is expected to improve the efficiency and effectiveness of the filing process because documents will be entered into EDIS more rapidly. Electronic filing also accords with government-wide initiatives encouraging agencies to do business electronically.

Although the Commission intends to require electronic filing of most documents, documents generally will also be submitted in paper form. The agency will allow some documents to be filed in paper form by noon on the next business day. Moreover, witness testimony and hearing materials in import injury investigations and reviews will be submitted only in paper form, and public versions of testimony will be accepted at the relevant conference or hearing. The rules will provide the Secretary to the Commission with the authority to establish exceptions and modifications to the requirement to electronically file documents, as more fully described in the Handbook on Filing Procedures.

The changes to the filing process are not intended to affect the current practice with respect to the filing of responses to Commission questionnaires in import injury investigations and reviews.

#### Regulatory Analysis

The Commission has determined that the final rules 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 Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is inapplicable to this rulemaking because it is not one for which a notice of final rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission chose to publish a notice of proposed rulemaking, these regulations are “agency rules of procedure and practice,” and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) because the rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104-121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), because the amendments would impose no new collection of information under the statute.

## Comments

The Commission received 10 sets of comments on the notice of proposed rulemaking. Commenters generally made comments both on that notice and on the related notice concerning the Handbook. Comments were received from Adduci, Mastriani, & Schaumberg LLP (AMS); the American Bar Association Section of Intellectual Property (ABA); the American Intellectual Property Law Association (AIPLA); the Customs and International Trade Bar Association (CITBA); Hughes Hubbard & Reed LLP (Hughes Hubbard); the ITC Trial Lawyers Association (ITC TLA); Kelley Drye & Warren (Kelley Drye); Stewart and Stewart; Wiley Rein LLP, on behalf of Nucor Corporation (Wiley Rein); and Williams Mullen. Issues raised in the comments will be addressed in this section. The section first addresses comments made by two or more commenters on the same issue, then addresses unique comments made by one commenter. The Commission appreciates the comments received, and the thoughtful and thorough analysis on which they are based.

### Comments on Paper Filing Requirement

AMS, the CITBA, Hughes Hubbard, the ITC TLA, Kelley Drye, Wiley Rein, and Williams Mullen oppose requiring the submission of paper copies of documents in addition to their electronic filing. Several commenters pointed to government-wide initiatives that support moving to electronic filing. CITBA contends that the Commission’s new procedure will increase the burden on submitters. CITBA, among others, cites as examples that entries of appearance and public versions of confidential filings, that in the past could have been filed electronically, will now have to be filed both electronically and in paper form. Hughes Hubbard, Kelley Drye, and Wiley Rein submit that the Commission will incur storage costs for paper copies. Hughes Hubbard suggests that, if the paper filing requirement is retained, the number of required copies should be reduced from eight to four. AMS suggests requiring one paper copy, and setting an end date for the requirement.

AMS suggests that the new policy may result in increased costs and reduced efficiency for the Commission. Kelley Drye and Wiley Rein warn that the Commission will need to verify that electronic and paper submissions are correct, and deal with problems arising from improper filings. Wiley Rein expresses the

concern that the requirement to simultaneously file electronically and submit paper copies will lead to an increase in filing problems such as administrative protective order violations. Wiley Rein expresses the concern that the proposed rules and Handbook did not explain (1) the status of a filing where the paper version is timely received but not the electronic version, or vice versa; (2) the process to follow where there are differences between the versions, and (3) whether a special process will be used if business proprietary information is redacted in one version but not the other. Wiley Rein notes that, although electronic filing of business proprietary data appears to be required, it is not explicitly stated, and the Commission has not explained whether proprietary data must be marked and controlled to ensure against unauthorized access.

In developing its new filing policy, the Commission seeks to meet its needs for filings in particular formats without unduly burdening submitters. As a preliminary matter, the Commission confirms that the electronic filing requirement covers documents containing business proprietary or confidential business information. EDIS currently provides for specifying whether a document contains confidential information, and blocks access by members of the public to such documents. Language is being added to the Handbook to more fully address the filing of confidential material.

The Commission recognizes the arguments for moving fully to electronic filing. However, after careful consideration, the Commission has decided that the paper copies it will require are currently necessary for carrying out the agency's functions. At the present time, eight paper copies – a reduction from fourteen -- are needed. The copies are provided to each Commissioner's office as well as relevant staff offices. Commission proceedings operate under very short deadlines and filings are voluminous. Paper copies are needed to ensure that staff and decision-makers can efficiently and fully review and analyze submissions in such short time periods. It is not practicable for the agency to print out paper copies of complicated documents for Commissioners and staff as rapidly as they are needed. Such documents often include tabbed sections, appendices, and color graphics, and the parties are in a better position to present the paper versions of their filings in the manner they intend them to be presented. Storage costs should not be substantial, because the Commission's records disposition schedule allows for prompt destruction of paper copies after the proceeding is completed. To the extent that the requirement to simultaneously file electronically and submit paper copies poses a problem for submitters, the Commission urges submitters to consult with the Secretary to help ensure that filings are accomplished correctly.

However, in the interests of reducing the burden on submitters, the Commission will not require certain documents, such as entries of appearance, to be filed in paper form. In addition, as the Commission periodically reviews its regulations, it may revisit the filing requirement after it has had a chance to function for a time, and may make further changes to the requirement as warranted by experience. However, the Commission cannot yet specify a schedule for this review.

The Commission wishes to emphasize that all of the requirements relating to filing of documents will be enforced. In particular, the failure to redact business proprietary information from the electronic version of a document may constitute a breach of the administrative protective order whether or not the redaction was done properly in the paper copies; the same would be true if the problem appeared in the paper copies.

#### Comments on the Filing of Petitions

Hughes Hubbard, Kelley Drye, and Williams Mullen suggest that the Commission require that petitions in import injury proceedings be filed electronically. Kelley Drye indicates that the proposed rulemaking did not make clear whether exhibits and attachments would need to be in paper form as well as on electronic media. They also believe that it was not clear whether eight paper copies of the petition are required.

Because of the special handling that petitions require, electronic filing of such documents would not meet the agency's needs at this time. However, with respect to exhibits, appendices, and attachments to petitions, the Commission requires these documents to be filed only on electronic media and not in paper form. The

Commission requires that the original plus eight paper copies of the confidential version of the petition and four paper copies of the public version of the petition must be filed.

#### Comments on the “One-Day Rule”

AMS, the CITBA, Hughes Hubbard, Kelley Drye, Wiley Rein, and Williams Mullen urge the Commission to retain the one-day rule on the filing of public versions of confidential documents in import injury proceedings. The Commission did not intend to eliminate this rule, which the agency agrees serves a valuable function. The Commission is clarifying in its Handbook that the one-day rule has been retained.

#### Comments on Filing Requirements in Section 337 proceedings

The AIPLA and the ABA suggest that the Commission clarify the filing requirements in section 337 proceedings by setting out those requirements in section 210.4(f), rather than employing cross-references among several rules. The final rules adopt the suggested approach to address this concern.

AMS, the AIPLA and the ABA express the concern that the proposed rules imply the creation of a same-day rule for filing the public version of a confidential submission. In a similar vein, the ITC TLA urges the Commission to not require the filing of public versions of all confidential documents. The Commission did not intend to create such a general requirement. However, the rules already provide for the filing of public versions of some confidential filings.

The AIPLA and the ABA suggest replacing in section 210.4(f) “submissions pursuant to an order of the presiding” ALJ with “submissions filed with the Secretary pursuant to an order of the presiding ALJ.” The ITC TLA makes a similar comment. The ABA suggests making a similar revision to section II(C) of the Handbook. The Commission has adopted this suggestion.

The AIPLA, the ABA, and the ITC TLA suggest clarifying whether the Commission is removing the requirement to submit copies of the complaint for service on parties and embassies. The Commission does not intend to remove this requirement, and is reflecting this clarification in its rules.

The AIPLA and the ABA suggest deleting new section II(J)(3) of the Handbook as unnecessarily onerous. The ITC TLA suggests that the requirement is particularly difficult for counsel not resident in Washington, D.C. The Commission has modified that section to simplify the procedure.

The ABA suggests clarifying in section 210.8 whether the Commission intends to remove procedures for the separation of confidential and nonconfidential versions of documents such as complaints, and for submitting multiple copies of exhibits, appendices, and attachments. The ITC TLA similarly indicates that the proposed rules appear to eliminate the requirement to separate the public and confidential versions of the complaint. The Commission does not intend to remove the requirement to separate the public and confidential versions of documents, and is clarifying this point in its rules.

#### Comments Relating to Service

The AIPLA and the ABA suggest removing the requirement in section II(K) of the Handbook that parties obtain approval of the presiding administrative law judge in order to effect electronic service. The AIPLA offers a proposed amendment to section 201.16(f) to streamline service. The ABA suggests adding electronic service on lead counsel as a default method of service. Stewart and Stewart urges the Commission to consider allowing parties to serve public documents electronically if other parties consent to such service, and requesting that parties include in their entries of appearance a statement on whether they consent. The ITC TLA urges the Commission to clarify the discussion of service in the Handbook with respect to whether permission is required for electronic service during the Commission review phase of a section 337

proceeding, and whether such service requires the consent of both the presiding administrative law judge and the relevant party.

The Commission has determined to amend its rule on service to remove the requirement for obtaining the consent of the Secretary or the presiding administrative law judge in order to effect service electronically. A party will be able to opt out of being served electronically by notifying the Secretary or the administrative law judge, and the other parties to a proceeding.

#### Comment Relating to Agency Closure

The ABA suggests that section II(C)(4) of the Handbook be revised to adopt a default filing date of the next business day in the event of a closure of the Commission, regardless of whether the electronic docketing system is operational. The ITC TLA makes a similar comment. The Commission has adopted the suggestion.

#### Adduci, Mastriani, & Schaumberg LLP

AMS notes that the reproduction of items on EDIS beyond fair use requires the registered user's permission. Paragraph L of the Handbook addresses copyright issues.

#### The American Intellectual Property Law Association

The AIPLA proposes to replace "copies" with "a copy" in section 201.16. The Commission has adopted this suggestion.

The AIPLA suggests replacing the term "true copies." The Commission believes that the term is clearer than the proposed alternative, but has added clarifying language to its rules.

The AIPLA suggests clarifying in section II(c)(4) of the Handbook how a submitter is to notify the Secretary of a technical failure at a time when the agency is closed but EDIS is operational. The Commission believes that this clarification is not needed in view of the fact that the Commission will extend electronic filing deadlines to the next business day after the agency closure.

#### The American Bar Association Section of Intellectual Property

The ABA suggests adding a provision to section II(C) of the Handbook stating that, in case of a conflict between the Handbook and the instructions issued by the presiding administrative law judge, the latter controls. The Commission is including such a provision in the Handbook, but notes that if the conflict is between the administrative law judge's ground rules and the Commission's rules, the latter control.

#### Hughes Hubbard & Reed LLP

Hughes Hubbard urges the Commission to set the deadline for electronic filing at midnight on the relevant day, rather than at 5:15 p.m. The Commission needs to retain the existing deadline in order to ensure proper receipt and tracking of electronic filings.

Hughes Hubbard recommends that the Commission extend the procedure for reporting an EDIS failure to the reporting of a technical failure in the submitter's system. The Commission is not adopting this change, because of the difficulty of determining whether a submitter's system has failed.

Hughes Hubbard suggests that the Commission develop a standard e-filing declaration concerning technical failures. The Commission considers that such a form may not be practical, because of the variety of circumstances that may arise.

Hughes Hubbard suggests that the Commission add “(unless otherwise authorized by the Commission)” to the rule on posthearing briefs. The Commission does not believe that this addition is necessary, because the Commission, pursuant to section 201.4, has the authority to modify its page limit requirements where a particular instance so warrants.

#### The ITC Trial Lawyers Association

The ITC TLA urges the Commission to make clear whether and how confidential business information is to be filed electronically. The Commission confirms that the electronic filing requirement covers documents containing business proprietary or confidential business information. EDIS currently provides for specifying whether a document contains confidential information, and blocks access by members of the public to such documents. Language is being added to the Handbook to more fully address the filing of confidential material.

The ITC TLA requests clarification of the relationship between copies provided for in sections 201.14 and 210.4 and copies required under the ground rules of the presiding administrative law judge. The copies provided for in the Commission rules are distinct and in addition to any copies required in ground rules.

The ITC TLA suggests specifying how many copies are required of the exhibits, appendices, and attachments to a complaint. The Commission will only require a single copy of such documents on CD-ROM or other approved media. If the documents contain confidential business information, however, a public version shall be filed on separate media.

The ITC TLA recommends that the Handbook specify that the Commission rules control in any conflict between the Handbook and the rules. The Handbook contains such a statement.

The ITC TLA suggests specifying in section H(1) of the Handbook whether a submitter is required to perform optical character recognition prior to submitting a document. The Commission does not require submitters to perform such a process.

The ITC TLA suggests clarifying the term “attestation” as used in the Handbook. To avoid confusion, the term “attest” is being replaced by “certify,” a term that is already used in the rules, such as in 19 CFR 201.6.

The ITC TLA suggests clarifying the Appendix to the Handbook by specifying that certain categories do not refer to section 337 documents. The Appendix has been revised to clearly distinguish between instructions for filing section 337 documents and instructions for other filings.

#### Wiley Rein LLP

Wiley Rein urges the Commission to not adopt the proposed regulations and Handbook in their present form. Instead, Wiley Rein suggests that the Commission (1) undertake additional review and then publish a new proposal for public comment, (2) revise its rules to permit electronic-only filing, or (3) permit electronic filing one day after all paper submissions. As discussed above, the Commission has decided that it must require electronic filing and the submission of paper copies of certain documents at this time. The Commission considers that these processes must be simultaneous in import injury proceedings due to the short timeframe and to facilitate review by the Commissioners and staff in these proceedings. The Commission is issuing this notice of final rulemaking rather than a new proposal for comment because it wishes to implement its new requirement as soon as possible, with the attendant benefits described in the notice of proposed rulemaking.

Wiley Rein suggests that the Commission provide more detail concerning the filing of voluminous documents, such as by emulating the Commerce Department, which provides for special handling of documents over 500 pages in length. The Commission does not believe that further guidance is necessary, because EDIS is capable of handling voluminous documents such as documents containing 500 pages.

List of Subjects in 19 CFR Parts 201, 206, 207, and 210

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

For the reasons stated in the preamble, the United States International Trade Commission amends 19 CFR parts 201, 206, 207, and 210 as follows:

#### PART 201--RULES OF GENERAL APPLICATION

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

#### Subpart B--Initiation and Conduct of Investigations

2. Amend § 201.8 by revising paragraphs (a), (c), (d), and (f) to read as follows:

#### Sec. 201.8 Filing of documents.

(a) Applicability; where to file; date of filing. This section applies to all Commission proceedings except, notwithstanding any other section of this chapter, those conducted under 19 U.S.C. 1337, which are covered by requirements set out in part 210 of this chapter. Documents shall be filed at the office of the Secretary of the Commission in Washington, DC. Such documents, if properly filed within the hours of operation specified in §201.3(c), will be deemed to be filed on the date on which they are actually received in the Commission.

\* \* \* \* \*

(c) Specifications for documents. Each document filed under this chapter shall be signed, double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced. All submissions shall be in letter-sized format (8.5 x 11 inches), except copies of documents prepared for another agency or a court (e.g. pleadings papers), and single sided. The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(d) Filing. (1) Except as provided in paragraphs (d)(2) through (6) and (f) of this section, all documents filed with the Commission shall be filed electronically. Completion of filing requires the submission of paper copies by 12 noon, eastern time, on the next business day. A paper copy provided for in this section must be a true copy of the electronic version of the document, i.e., a copy that is identical in all possible respects. All filings shall comply with the procedures set forth in the Commission's Handbook on Filing Procedures, which is available from the Secretary and on the Commission's Electronic Document Information System Web site at <https://edis.usitc.gov>. Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures that apply to the filing of a document may result in the rejection of the document as improperly filed.



(2) Briefs, statements, responses, comments, and requests filed pursuant to § 201.12, § 201.14, § 206.8, § 207.15, § 207.23, § 207.25, § 207.28, § 207.30, § 207.61, § 207.62, § 207.65, § 207.67, or § 207.68 of this chapter shall be filed electronically and the requisite number of true paper copies of these documents shall be submitted to the Commission in accordance with the provisions of the applicable section.

(3) Petitions and requests filed under § 206.2 or § 207.10 of this chapter shall be filed in paper form and exhibits, appendices, and attachments to the documents shall be filed in electronic form on CD-ROM, DVD or other portable electronic media approved by the Secretary in accordance with the provisions of the applicable section. Submitted media will be retained by the Commission, except that media may be returned to the submitter if a document is not accepted for filing.

(4) Supplementary material and witness testimony provided for under § 201.13, § 207.15, or § 207.24 of this chapter shall be filed in paper form in accordance with the provisions of the applicable section.

(5) Certain documents filed under § 201.4 of this chapter and applications for administrative protective orders filed under §§ 206.17 and 207.7 of this chapter shall only be filed electronically; no paper copies will be required.

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

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

\* \* \* \* \*

(f) Nonconfidential copies. In the event that confidential treatment of a document is requested under § 201.6(b), a nonconfidential version of the document 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 nonconfidential version shall be filed electronically, and four (4) true paper copies shall be submitted on the same business day as this electronic filing, except as provided in § 206.8 or § 207.3 of this chapter. In the event that confidential treatment is not requested for a document under § 201.6(b), the document shall be conspicuously marked "No confidential version filed," and the document shall be filed in accordance with paragraph (d) of this section. The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

3. Revise § 201.12 to read as follows:

Sec. 201.12 Requests.

Any party to a nonadjudicative investigation may request the Commission to take particular action with respect to that investigation. Such requests shall be made by letter addressed to the Secretary, shall be placed by him in the record, and shall be served on all other parties. Such request shall be filed electronically and two (2) true paper copies shall be submitted on the same business day. The Commission shall take such action or make such response as it deems appropriate.

4. Amend Sec. 201.14 by revising paragraph (b)(3) to read as follows:

Sec. 201.14 Computation of time, additional hearings, postponements, continuances, and extensions of time.

\* \* \* \* \*

(b) \* \* \*

(3) A request that the Commission take any of the actions described in this section shall be filed with the Secretary and served on all parties to the investigation. Such request shall be filed electronically and two (2) true paper copies shall be submitted on the same business day.

5. Amend Sec. 201.16 by revising paragraphs (b) and (f) to read as follows:

Sec. 201.16 Service of process and other documents.

\* \* \* \* \*

(b) By a party other than the Commission. Except when service by another method shall be specifically ordered by the Commission, the service of a document of a party shall be effected:

(1) By mailing or delivering a copy of a nonconfidential version of the document to each party, or, if the party is represented by an attorney before the Commission, by mailing or delivering a nonconfidential version thereof to such attorney; or

(2) By leaving a copy thereof at the principal office of each other party, or, if a party is represented by an attorney before the Commission, by leaving a copy at the office of such attorney.

(3) When service is by mail, it is complete upon mailing of the document.

(4) When service is by mail, it shall be by first class mail, postage prepaid. In the event the addressee is outside the United States, service shall be by first class airmail, postage prepaid.

\* \* \* \* \*

(f) Electronic service. Parties may serve documents by electronic means in all matters before the Commission. Parties may effect such service on any party, unless that party has, upon notice to the Secretary and to all parties, stated that it does not consent to electronic service. If electronic service is used, paragraphs (b), (d), and (e) of this section shall not apply. However, any dispute that arises among parties regarding electronic service must be resolved by the parties themselves, without the Commission's involvement.

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#### PART 206--INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS

6. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2251-2254, 2451-2451a, 3351-3382; secs. 103, 301-302, Pub. L. 103-465, 108 Stat. 4809.

7. Revise Sec. 206.2 to read as follows:

Sec. 206.2 Identification of type of petition or request and petition filing procedures.

An investigation under this part 206 may be commenced on the basis of a petition, request, resolution, or motion as provided in section 202(a)(1), 204(c)(1), 406(a)(1), 421(b) or (o), or 422(b) of the Trade Act of 1974 or section 302(a)(1) or 312(c)(1) of the North American Free Trade Agreement Implementation Act. Each petition or request, as the case may be, filed by an entity representative of a domestic industry under this part 206 shall state clearly on the first page thereof "This is a [petition or request] under section [202, 204(c), 406, 421(b) or (o), or 422(b) of the Trade Act of 1974, or section 302 or 312(c) of the North American Free Trade Agreement Implementation Act] and Subpart [B, C, D, E, F, or G] of part 206 of the rules of practice and procedure of the United States International Trade Commission." A paper original and eight (8) true paper copies of a petition, request, resolution, or motion shall be filed. One copy of any exhibits,

appendices, and attachments to the document shall be filed in electronic form on CD-ROM, DVD, or other portable electronic format approved by the Secretary.

8. Amend Sec. 206.8 by adding paragraph (d) to read as follows:

Sec. 206.8 Service, filing, and certification of documents.

\* \* \* \* \*

(d) Briefs. All briefs filed in proceedings subject to this part shall be filed electronically, and eight (8) true paper copies shall be filed on the same business day.

9. Amend Sec. 206.17 by revising paragraph (a)(2) to read as follows:

Sec. 206.17 Limited disclosure of certain confidential business information under administrative protective order.

(a) \* \* \*

(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. A signed application shall be filed electronically. An application on behalf of an authorized applicant must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with confidential business information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, and shall not be served with confidential business information.

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PART 207--INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES  
RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM  
SUBSIDIZED EXPORTS TO THE UNITED STATES

10. The authority citation for part 207 continues to read as follows:

Authority: 19 U.S.C. 1336, 1671-1677n, 2482, 3513.

11. Amend Sec. 207.7 by revising paragraph (a)(2) to read as follows:

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

(a) \* \* \*

(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. A signed application shall be filed electronically. 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 § 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 days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in the preliminary phase of an investigation, or the deadline for filing submissions in a remanded investigation, and shall not be served with business proprietary information.

\* \* \* \* \*

12. Amend Sec. 207.10 by revising paragraph (a) to read as follows:

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 and all exhibits, appendices, and attachments thereto, pursuant to 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. A paper original and eight (8) true paper copies of a petition shall be filed. One copy of all exhibits, appendices, and attachments to the petition shall be filed in electronic form on CD-ROM, DVD, or other portable electronic format approved by the Secretary. If the petition complies with the provisions of § 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, provided that, if the petition is filed with the Secretary after 12:00 noon, eastern time, the petition shall be deemed filed on the next business day. The Secretary shall notify the administering authority of that date. Notwithstanding § 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.

\* \* \* \* \*

13. Revise Sec. 207.15 to read as follows:

Sec. 207.15 Written briefs and conference.

Each party may submit to the Commission on or before a date specified in the notice of investigation issued pursuant to 207.12 a written brief containing information and arguments pertinent to the subject matter of the investigation. Briefs shall be signed, shall include a table of contents, and shall contain no more than fifty (50) double-spaced and single-sided pages of textual material, and shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day (on paper measuring 8.5 x 11 inches, double-spaced and single-sided). Any person not a party may submit a brief written statement of information pertinent to the investigation within the time specified and the same manner specified for the filing of briefs. In addition, the presiding official may permit persons to file within a specified time answers to questions or requests made by the Commission's staff. If he deems it appropriate, the Director shall hold a conference. The conference, if any, shall be held in accordance with the procedures in § 201.13 of this chapter, except that in connection with its presentation a party may provide written witness testimony at the conference; if written testimony is provided, eight (8) true paper copies shall be submitted. The Director may request the appearance of witnesses, take testimony, and administer oaths.

14. Revise Sec. 207.23 to read as follows:

Sec. 207.23 Prehearing brief.

Each party who is an interested party shall submit to the Commission, no later than five (5) business days prior to the date of the hearing specified in the notice of scheduling, a prehearing brief. Prehearing briefs shall be signed and shall include a table of contents and shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 705(b) or section 735(b) of the Act. Any person not an interested party may submit a brief written statement of information pertinent to the investigation within the time specified and the same manner specified for filing of prehearing briefs.

15. Amend Sec. 207.24 by revising paragraph (b) to read as follows:

Sec. 207.24 Hearing.

\* \* \* \* \*

(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 § 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 § 201.13(f) of this chapter, in connection with its presentation, a party may provide written witness testimony at the hearing; if written testimony is provided, eight (8) true paper copies shall be submitted. In the case of testimony to be presented at a closed session held in response to a request under § 207.24(d), confidential and non-confidential versions shall be filed in accordance with § 207.3. Any person not a party may make a brief oral statement of information pertinent to the investigation.

\* \* \* \* \*

16. Revise Sec. 207.25 to read as follows:

Sec. 207.25 Posthearing briefs.

Any party may file a posthearing brief concerning the information adduced at or after the hearing with the Secretary within a time specified in the notice of scheduling or by the presiding official at the hearing. A posthearing brief shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. No such posthearing brief shall exceed fifteen (15) pages of textual material, double-spaced and single-sided, when printed out on paper measuring 8.5 x 11 inches. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

17. Revise Sec. 207.28 to read as follows:

Sec. 207.28 Anticircumvention.

Prior to providing advice to the administering authority pursuant to section 781(e)(3) of the Act, the Commission shall publish in the Federal Register a notice that such advice is contemplated. Any person may file one written submission concerning the matter described in the notice no later than fourteen (14) days after publication of the notice. Such a statement shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. The statement shall contain no more than fifty (50) double-spaced and single-sided pages of textual material, when printed out on paper measuring 8.5 x 11 inches. The Commission shall by notice provide for additional statements as it deems necessary.

18. Amend Sec. 207.30 by revising paragraph (b) to read as follows:

Sec. 207.30 Comment on information.

\* \* \* \* \*

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.25. A comment shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double-spaced and single-sided, when printed out on paper measuring 8.5 x 11 inches. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to investigations subject to the provisions of section 771(7)(G)(iii) of the Act, and with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

19. Amend Sec. 207.61 by adding paragraph (e) to read as follows:

Sec. 207.61 Responses to notice of institution.

\* \* \* \* \*

(e) A document filed under this section shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day.

20. Amend Sec. 207.62 by revising paragraph (b)(2) to read as follows:

Sec. 207.62 Rulings on adequacy and nature of Commission review.

\* \* \* \* \*

(b) \* \* \*

(2) Comments shall be submitted within the time specified in the notice of institution. In a grouped review, only one set of comments shall be filed per party. Comments shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. Comments shall not exceed fifteen (15) pages of textual material, double spaced and single sided, when printed out on paper measuring 8.5 x 11 inches. Comments containing new factual information shall be disregarded.

\* \* \* \* \*

21. Revise Sec. 207.65 to read as follows:

Sec. 207.65 Prehearing briefs.

Each party to a five-year review may submit a prehearing brief to the Commission on the date specified in the scheduling notice. A prehearing brief shall be signed and shall include a table of contents. A prehearing brief shall be filed electronically, and eight (8) true paper copies shall be submitted (on paper measuring 8.5 x 11 inches and single-sided) on the same business day. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination.

22. Amend Sec. 207.67 by revising paragraph (a) to read as follows:

Sec. 207.67 Posthearing briefs and statements.

(a) Briefs from parties. Any party to a five-year review may file with the Secretary a posthearing brief concerning the information adduced at or after the hearing within a time specified in the scheduling notice or by the presiding official at the hearing. A posthearing brief shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. No such posthearing brief shall exceed fifteen (15) pages of textual material, double spaced and single sided, when printed out on paper measuring 8.5 x 11 inches and single-sided. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

\* \* \* \* \*

23. Amend Sec. 207.68 by revising paragraph (b) to read as follows:

Sec. 207.68 Final comments on information.

\* \* \* \* \*

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.67. Comments shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double spaced and single-sided, when printed out on paper measuring 8.5 x 11 inches and single-sided. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

PART 210--ADJUDICATION AND ENFORCEMENT

24. The authority citation for part 210 continues to read as follows:

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

25. Amend Sec. 210.4 by revising paragraphs (f)-(g) and adding paragraphs (h)-(i) to read as follows:

Sec. 210.4 Written submissions; representations; sanctions.

\* \* \* \* \*

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

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

(3) Responses to a complaint, briefs, comments and responses thereto, compliance reports, motions and responses or replies thereto, petitions and replies thereto, prehearing statements, and proposed findings of fact and conclusions of law and responses thereto provided for under §§ 210.4(d), 210.13, 210.8, 210.14, 210.15, 210.16, 210.17, 210.18, 210.19, 210.20, 210.21, 210.23, 210.24, 210.25, 210.26, 210.33, 210.34, 210.35, 210.36, 210.40, 210.43, 210.45, 210.46, 210.47, 210.50, 210.52, 210.53, 210.57, 210.59, or 210.71; and submissions filed with the Secretary pursuant to an order of the presiding administrative law judge shall be filed electronically, and true paper copies of such submissions shall be filed by 12 noon, eastern time, on the next business day.

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

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

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

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

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

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

(ii) Persons who file the following submissions that contain confidential business information covered by an administrative protective order, or that are the subject of a request for confidential treatment, must file nonconfidential copies and serve them on the other parties to the investigation or related proceeding within 10 calendar days after filing the confidential version with the Commission:

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

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

(C) All submissions addressed to the Commission.

Other sections of this part may require, or the Commission or the administrative law judge may order, the filing and service of nonconfidential copies of other kinds of confidential submissions. If the submitter's ability to prepare a nonconfidential copy is dependent upon receipt of the nonconfidential version of an initial determination, or a Commission order or opinion, or a ruling by the administrative law judge or the



Commission as to whether some or all of the information at issue is entitled to confidential treatment, the nonconfidential copies of the submission must be filed within 10 calendar days after service of the Commission or administrative law judge document in question. The time periods for filing specified in this paragraph apply unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

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

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

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

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

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

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

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

(i) Service. Unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise, every written submission filed by a party or proposed party shall be served on all other parties in the manner specified in §201.16(b) of this chapter.

26. Amend Sec. 210.8 by revising paragraphs (a)(1) and (a)(2) to read as follows:

Sec. 210.8 Commencement of preinstitution proceedings.

\* \* \* \* \*

(a)(1) A complaint filed under this section shall be filed in paper form with the Secretary as follows.

(i) An original and eight (8) true paper copies of the nonconfidential version of the complaint shall be filed. All exhibits, appendices, and attachments to this version of the complaint shall be filed in electronic form on CD-ROM, DVD, or other portable electronic media approved by the Secretary.

(ii) An original and eight (8) true paper copies of the confidential version of the complaint shall be filed. All exhibits, appendices, and attachments to this version of the complaint shall be filed in electronic form on CD-ROM, DVD, or other portable electronic media approved by the Secretary.

(iii) For each proposed respondent, one true copy of the nonconfidential version of the complaint and one true copy of the confidential version of the complaint, if any, along with one true copy of the nonconfidential exhibits and one true copy of the confidential exhibits shall be filed, and

(iv) For the government of the foreign country in which each proposed respondent is located as indicated in the Complaint, one true copy of the nonconfidential version of the complaint shall be filed.

Note to paragraph (a)(1):

The same requirements apply for the filing of a supplement or amendment to the complaint.

(2) If the complainant is seeking temporary relief, the complainant must also file:

(i) an original and eight true paper (8) copies of the nonconfidential version of the motion for temporary relief. All exhibits, appendices, and attachments to this version of the motion shall be filed in electronic form on CD-ROM, DVD, or other portable electronic media approved by the Secretary.

(ii) an original and eight true paper (8) copies of the confidential version of the motion for temporary relief. All exhibits, appendices, and attachments to this version of the motion shall be filed in electronic form on CD-ROM, DVD, or other portable electronic media approved by the Secretary; and

(iii) For each proposed respondent, one true copy of the nonconfidential version of the motion and one true copy of the confidential version of the motion along with one true copy of the nonconfidential exhibits and one true copy of the confidential exhibits filed with the motion.

Note to paragraph (a)(2):

The same requirements apply for the filing of a supplement or amendment to the complaint or a supplement to the motion for temporary relief.

\* \* \* \* \*

By order of the Commission.

/s/  
James R. Holbein  
Secretary to the Commission

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