



7020-02

## INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201 and 210

Rules of General Application, Adjudication, and Enforcement

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States International Trade Commission (“Commission”) proposes to amend its Rules of Practice and Procedure concerning rules of general application, adjudication, and enforcement. The amendments are necessary to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission’s rules, and to address concerns that have arisen in Commission practice. The intended effect of the proposed amendments is to facilitate compliance with the Commission’s Rules and improve the administration of agency proceedings.

DATES: To be assured of consideration, written comments must be received by 5:15 p.m. on [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION].

ADDRESSES: You may submit comments, identified by docket number MISC-040, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site: <http://www.usitc.gov>. Follow the instructions for submitting comments on the web site at <http://www.usitc.gov/secretary/edis.htm>.

- E-mail: [james.worth@usitc.gov](mailto:james.worth@usitc.gov). Include docket number MISC–040 in the subject line of the message.

- Mail: For paper submission. U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436.

- Hand Delivery/Courier: U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436. From the hours of 8:45 a.m. to 5:15 p.m.

Instructions: All submissions received must include the agency name and docket number (MISC–040), along with a cover letter stating the nature of the commenter’s interest in the proposed rulemaking. All comments received will be posted without change to <http://www.usitc.gov>, including any personal information provided. For paper copies, a signed original and 14 copies of each set of comments should be submitted to Lisa R. Barton, Acting Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, DC 20436.

Docket: For access to the docket to read background documents or comments received, go to <http://www.usitc.gov> and/or the U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: James Worth, telephone 202-205-3065, 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: The preamble below is designed to assist readers in understanding these proposed amendments to the Commission Rules. This preamble provides background information, a regulatory analysis of the proposed amendments, a section-by-section explanation of the proposed amendments to parts 201 and 210, and a description of the proposed amendments to the rules. The Commission encourages members of the public to comment on whether the language of the proposed amendments is sufficiently clear for users to understand, in addition to any other comments they wish to make on the proposed amendments.

If the Commission decides to proceed with this rulemaking after reviewing the comments filed in response to this notice, the proposed rule revisions will be promulgated in accordance with the applicable requirements of the Administrative Procedure Act (“APA”) (5 U.S.C. 553), and will be codified in 19 CFR Parts 201 and 210.

#### 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 proposes amendments to its rules covering investigations under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) (“section 337”) in order to increase the efficiency of its section 337 investigations.

This rulemaking was undertaken to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission’s rules, and to address

concerns that have arisen in Commission practice. The intended effect of the proposed amendments is to facilitate compliance with the Commission's Rules and improve the administration of agency proceedings.

On February 14, 2012, at 77 FR 8114, the Commission published a Plan for Retrospective Analysis of Existing Rules. This plan was issued in response to Executive Order 13579 of July 11, 2011, and established a process under which the Commission will periodically review its significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives. During the two years following the publication of the plan, the Commission expects to review a number of aspects of its rules. This includes a general review of existing regulations in 19 CFR Parts 201, 207, and 210. The current notice of proposed rulemaking is consistent with the plan to ensure that the Commission's rules are effective, although it should be noted that many of the amendments proposed in this notice have been under consideration since before the plan was established.

The Commission invites the public to comment on all of these proposed rules amendments. In any comments, please consider addressing whether the language of the proposed amendments is sufficiently clear for users to understand. In addition please consider addressing how the proposed rules amendments could be improved, and offering specific constructive alternatives where appropriate.

Consistent with its ordinary practice, the Commission is issuing these proposed amendments in accordance with the applicable requirements of section 553 of the APA.

This 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.

#### Regulatory Analysis of Proposed Amendments to the Commission's Rules

The Commission has determined that the proposed 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 has chosen to publish a notice of proposed rulemaking, these proposed 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 proposed 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 proposed rules will not result in expenditure in the aggregate by State, local, and tribal governments, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments, as defined in 5 U.S.C. 601(5).

The proposed 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. 3504(h)).

## Part 201

### Subpart B—Initiation and Conduct of Investigations

#### Section 201.16(a)

Section 201.16(a) generally provides means to serve documents on parties. Section 201.16(b)(3) indicates that “When service is by mail, it is complete upon mailing of the document” for service by the parties. To eliminate confusion, the proposed rule would indicate that this is equally applicable to service by the Commission. Further, the proposed rule would clarify that overnight delivery is an option for service by the Commission. In this connection, the proposed rule would indicate that when service is by overnight delivery, it is complete upon placing/submitting the document in overnight delivery.

#### Section 201.16(c)

Section 201.16(c) generally provides for a certificate of service. The Commission proposes to amend § 201.16(c) to refer to other applicable requirements for service in § 210.4(i), in addition to the current reference to § 201.8.

#### Section 201.16(e)

Section 201.16(e) generally provides for additional days to be added to the response times when service is by overnight delivery. For example, § 201.16(e) provides ten additional days when service is by mail to a foreign country, but only provides one day for overnight delivery service regardless of when delivery occurs. The reality of overnight delivery service is that it often takes more than one day to reach certain foreign countries. The proposed rule would add five additional calendar days to the response time when overnight delivery service is to a foreign country.

#### Section 201.16(f)

Section 201.16(f) generally provides for electronic service of documents in matters before the Commission with the appropriate prior consent. Section 201.16(e) provides additional time to be added to the response times when service is by mail or overnight mail. The proposed rule would clarify that no additional time is added to the response times when service is by electronic means. The Commission expects the parties or the judges to establish a time of day by which email will be sent.

### Part 210

#### Subpart A—Rules of General Applicability

#### Section 210.3

Section 210.3 provides definitions for certain terms used in Part 210. The proposed rule would supply “ancillary proceeding” as a synonym for the term “related proceeding,” using the same definition.

#### Section 210.4

Section 210.4 generally provides the requirements for written submissions. Section 210.4(f)(3) sets forth a list of submissions which must be filed electronically, with true paper copies filed by noon on the next business day. The proposed rule would amend § 210.4(f)(3) by adding filings under §§ 210.38, 210.66, and 210.70 to this list.

#### Section 210.5

Section 210.5 generally provides for special treatment of confidential business information in section 337 investigations. Where the Commission or the administrative law judge issues a confidential version of an order, initial determination, opinion, or other document, the time to issuance of the public version may vary. The Commission proposes to provide that the Commission (or the presiding administrative law judge, if the administrative law judge has issued the document) will issue the public version of the document within 30 days of issuance of the confidential version, unless good cause exists for extending this deadline. The administrative law judge or the Commission may extend this time by order.

#### Section 210.6

Section 210.6 generally provides for the computation of time in section 337 investigations, and supplements §§ 201.14 and 201.16, which provide the general rules for computation of time in proceedings before the Commission. The current rule mistakenly refers to §§ 210.14 and 210.16. The proposed rule revises § 210.6 to refer to

the appropriate subsections of §§ 201.14 and 201.16. Further, the proposed rule would amend § 210.6(c) to refer to the proposed rule for § 201.16(e) to provide that the response time is enlarged by a total of 5 calendar days when service is by overnight delivery to a foreign country. In addition, the proposed rule would remove § 210.6(d) which is redundant in light of § 201.16(e).

#### Section 210.7

Section 210.7 generally provides for service of process and publication of notices. The current rule mistakenly refers to § 210.6 rather than § 201.6, the rule on confidential business information. The proposed rule revises § 210.7 to refer to § 201.6 instead of § 210.6. In addition, the proposed rule puts “§ 201.6” closer in the sentence to “confidential business information” to clarify that confidential business information is defined in § 201.6. Further, the proposed rule provides for overnight service of cease and desist orders.

The current rule also mistakenly refers to § 210.7(b)(2) and (b)(1), which do not exist. The proposed rule refers instead to § 210.7(c)(2) and (c)(1), and to § 201.10 which provide for publication of notices.

#### Section 210.8

Section 210.8 generally provides for the filing of the complaint and for filings by the complainant, respondents, and members of the public on the public interest issues raised by the complaint. The Commission proposes to provide that if a complainant, proposed respondent, or member of the public files a confidential submission, it shall file a public version of the submission at the same time.

#### Subpart C—Pleadings

### Section 210.12(a)

Section 210.12(a) generally provides the requirements for the contents of a complaint and references § 201.8. Section 201.8, however, has been amended such that it does not apply to section 337 investigations. The Commission proposes to eliminate reference to § 201.8.

19 U.S.C. 1337(a)(1)(B)-(E) prohibit the importation, sale for importation, or sale after importation of articles covered by a valid and enforceable patent, copyright, trademark, mask work, or boat hull design related to an industry that exists or is in the process of being established within the meaning of 19 U.S.C. 1337(a)(2)-(3). 19 U.S.C. 1337(a)(1)(A)(i)-(ii) prohibit unfair methods of competition, or unfair acts in the importation or sale of articles in the United States, the effect of which is to destroy or substantially injure an industry in the United States or prevent the establishment of such an industry. The Commission proposes to amend paragraphs (a)(6)(i) and (ii) to require the complainant to plead with particularity whether it alleges a domestic industry that exists or a domestic industry that is in the process of being established. The amendment is in keeping with the Commission's fact pleading requirements and serves to provide the Commission and the public with notice of the manner in which the complainant believes it satisfies the requirements of section 337.

In addition, the Commission proposes to amend paragraph (11) to require the complainant to specify if it is requesting a general exclusion order, a limited exclusion order, and/or cease and desist orders under 19 U.S.C. 1337(d), (f), or (g). The Commission believes that this amendment serves a public notice function. The requested relief will be stated in the notice requesting public interest comments to facilitate public

comment specific to the requested relief, and in the notice of investigation for public notice purposes. *See* 75 FR 60671 (Oct. 1, 2010); 76 FR 64803 (Oct. 19, 2011).

The Commission further proposes to add a paragraph (12) to require the complainant to identify the accused products with a clear statement in plain English in order to put the public on notice of the type of products involved. For example, the caption of the investigation might refer to “certain electronic devices,” but the complaint would provide a further statement to identify the type of products involved in plain English as mobile devices, tablets, or computers. The description of the accused product will be included in the FEDERAL REGISTER notice requesting public interest comments as well as the notice of investigation.

#### Section 210.13(b)

Section 210.13(b) generally sets forth the requirements for the contents of the response to the complaint, and references § 201.8. Section 201.8, however, has been amended such that it does not apply to section 337 investigations. The proposed rule would eliminate any reference to § 201.8.

#### Section 210.14

Section 210.14 generally provides for amendments to the pleadings and notice of investigation. The Commission proposes to make uniform and codify its practice concerning consolidating related investigations. The proposed rule would add a new paragraph (f) to provide that the Commission may consolidate investigations, that the presiding administrative law judge may consolidate the investigations if both investigations are before the same administrative law judge, and the chief administrative law judge may consolidate investigations if the investigations are before different

administrative law judges and both administrative law judges agree that consolidation is appropriate. The caption and investigation number of the consolidated investigation would be a combination of the caption and numbers of the investigations being combined. The investigation number of the lead investigation would be the first investigation number named in the consolidated caption. For example, Investigation Nos. 337-TA-xxxx and 337-TA-yyyy would be combined as 337-TA-xxxx/yyyy where xxxx is the lead investigation. The heading of § 210.14 would be amended to include consolidation of investigations.

The Commission further proposes to address the filing of substantial amendments to complaints during the pre-institution review period, a practice which has become increasingly common. Many of these amendments have attempted to significantly change the scope of the requested investigation either by naming additional proposed respondents or asserting infringement of additional patents or patent claims. Substantial amendments to complaints during the pre-institution review period complicate the Commission's ability to solicit and obtain comments concerning the public interest implications of the complaint in a timely manner, place additional demands on Commission resources to assess the amendments and/or process extensions before the conclusion of the original institution period, and can effectively reduce the 30-day period that proposed respondents normally have to review the allegations against them. The proposed rule change, which would add a new sentence at the end of rule 210.14(a), would alleviate these concerns by providing that if a complainant significantly amends a complaint prior to institution, the amendment will restart the normal 30-day process for determining whether to institute the investigation.

#### Sections 210.14(b)(1) and 210.15(a)(2)

Section 210.14(b)(1) provides for motions to amend the complaint after an investigation has been instituted. Section 210.15 sets forth the general requirements for a motion, and § 210.15(a)(2) contains the more specific requirement that a motion to amend the complaint and notice of investigation to add proposed respondents must be served on each proposed respondent. The proposed rule would move the requirement for service on proposed respondents from § 210.15(a)(2) to § 210.14(b)(1).

#### Subpart D—Motions

##### Section 210.16(b)

Section 210.16 generally provides for default in section 337 proceedings. Section 210.16(b)(1) provides a two-step process for finding a respondent in default where the respondent has failed to appear. First, the complainant may move for an order to show cause why the respondent should not be found in default (or the administrative law judge may issue an order to show cause *sua sponte*). Second, if the respondent fails to make the necessary showing, the administrative law judge may issue an order finding the respondent in default. In certain recent investigations, the complainant has failed to observe the two-part process outlined in § 210.16(b), and has erroneously made a motion for a finding of default, skipping the motion for an order to show cause. In order to clarify the process, the Commission proposes to separate § 210.16(b)(1) into two parts, § 210.16(b)(1)(i) and § 210.16(b)(1)(ii), directed to the show cause step and the default step, respectively.

##### Section 210.16(c)

Section 210.16(c) generally provides the means of relief against a respondent in default. Where the complainant seeks a general exclusion order, § 210.16(c)(2) requires the complainant to put notice in the motion for default or termination of the last remaining respondent that it is seeking a general exclusion order. In certain recent investigations, the complainant has failed to state at the time of requesting relief against the last remaining respondent that it was seeking a general exclusion order. In order to highlight this requirement, the Commission proposes to add headings to indicate that § 210.16(c)(1) is directed to the type of relief available and § 210.16(c)(2) is directed to general exclusion orders. The Commission further proposes to set forth the statutory requirements for a general exclusion order in a statutory default case in § 210.16(c)(2).

#### Section 210.17

Section 210.17 generally addresses failures to act other than failure to appear to answer the complaint and notice of investigation pursuant to § 210.16 and 19 U.S.C. 1337(g)(1)(C). Section 210.17 provides that the administrative law judge or the Commission may draw adverse inferences for these other failures to act. The Commission proposes to provide that a respondent who appears but who later wishes to default may subsequently file a notice of its intention to default. This subsequent default will be treated the same as other failures to act in this section, and the administrative law judge or Commission may draw adverse inferences in the same manner. The Commission further proposes to retitle the section “Other Failure to Act and Default.”

#### Section 210.21

Section 210.21 generally provides for termination of the investigation prior to a finding of violation of section 337 by withdrawal of the complaint, settlement agreement,

or consent order. Section 210.21(b) provides that a motion for termination by reason of a settlement agreement shall contain copies of the settlement agreement, any supplemental agreements, and a statement that there are no other agreements. In certain recent investigations, the complainant has failed to supply the Commission with all the documents referenced in the settlement agreements. In order to clarify this aspect of § 210.21(b), the Commission proposes to add that the parties must provide a copy of any documents referenced in the settlement agreements because these documents are considered part of the settlement agreement.

With respect to § 210.21(c) on termination by consent order, the Commission proposes to clarify § 210.21(c)(3) by providing that consent order stipulations include a statement identifying the asserted intellectual property right or unfair trade practice that is the basis for the alleged violation of Section 337, and whether the stipulation calls for cessation of importation, distribution, sale, or other transfers (other than exportation) of subject articles in the United States and/or specific terms relating to the disposition of existing U.S. inventories of subject articles. The Commission proposes to replace the third sentence of paragraph (c)(1)(ii) to indicate that the consent order stipulation must comply with the requirements of paragraph (c)(3). The Commission further proposes to list the terms in a consent order in a new paragraph (c)(4). The Commission clarifies that, although the consent order stipulations may contain additional terms, the proposed consent order itself cannot add terms beyond what is provided for in this section, and that the Commission will not enforce any terms beyond those provided for in § 210.21(c). In addition, the Commission proposes to require that a party moving to terminate an

investigation by consent order must submit a copy of any agreements with any other party, *i.e.*, a copy of any settlement or licensing agreements.

#### Subpart E–Discovery and Compulsory Process

##### Section 210.28

Section 210.28 generally provides for depositions in section 337 investigations. Federal Rule of Civil Procedure 30(b)(6) provides that in its notice of deposition or subpoena, a party may name as the deponent a public or private corporation, partnership, association, government agency, or other entity and must describe with particularity the matters for examination. The organization must then designate one or more officers, directors, or managing agents or other persons who consent to testify on its behalf, and it may set out the matters on which each will testify. There is no Commission rule that requires a party to respond to a notice of deposition, *e.g.*, of a corporate designee, within any particular period of time. This leads to last minute disputes among the parties about the scope of topics upon which the corporate designee will testify. By comparison, other discovery rules, such as § 210.30(b)(2) regarding production of documents and things, § 210.29(b)(2) regarding interrogatories, and § 210.32, as well as the ALJ Ground Rules on subpoenas duces tecum, provide for a ten day period for parties to respond and submit objections. In this connection, the Commission proposes to create a ten-day period in which parties may respond to and make objections to a notice of deposition.

In keeping with the Federal Rules of Civil Procedure, the Commission further proposes to place a limit on the number of depositions that the parties may take. Federal Rule of Civil Procedure 30(a)(2)(A)(i) provides that a maximum of 10 depositions may be taken by the plaintiffs, or by the defendants, or by the third-party defendants unless the

parties have stipulated otherwise. This is the general rule for civil cases. Because Commission investigations may involve multiple parties and multiple patent claims, the Commission proposes to limit the number of fact depositions taken. Specifically, the Commission proposes to limit the complainants as a group to a maximum of five fact depositions per respondent or no more than 20 fact depositions, whichever is greater, to limit the respondents as a group to a maximum of 20 fact depositions total, and if the Commission investigative attorney is a party, to limit him or her to taking a maximum of 10 fact depositions and he or she is permitted to participate in all depositions taken by any parties in the investigation. The number of depositions may be increased on written motion to the presiding administrative law judge for good cause shown.

#### Section 210.29

Section 210.29 generally provides for interrogatories in section 337 investigations. In keeping with the ground rules of several of the administrative law judges, the Commission proposes to limit the number of interrogatories. Specifically, each party would be allowed to serve any other party with a maximum of 175 interrogatories, including subparts, absent stipulation by the parties or grant of a written motion by a party to the presiding administrative law judge for good cause shown.

#### Section 210.34(b) and (c)

Section 210.34(b) generally provides the steps that a person must take if he finds that he has made an unauthorized disclosure of information. The Commission proposes to amend § 210.34(b) to clarify that the rule also encompasses loss or theft of information.

Section 210.34(c) generally provides for sanctions for violation of a protective order. When a determination on sanctions is pending before the Commission, it is currently unclear from the rules whether the Commission may consider only the recommended determination on sanctions from the administrative law judge or also the orders related to the recommended determination on sanctions. The Commission proposes to clarify that the Commission may consider both the recommended determination on sanctions and also any orders related thereto. To comply with the requirements of the Office of the Federal Register, the Commission would move the text of the Note to Paragraph (c) into the body of paragraph (c). The Commission would thus redesignate the text of the Note as paragraphs (c)(1) and (c)(2). The Commission would redesignate the current body of paragraph (c), which has subparagraphs (1)-(5), as paragraph (c)(3) with subparagraphs (i)-(v).

#### Subpart G—Determinations and Actions Taken

##### Section 210.42(a) and (c)

Section 210.42 generally provides for initial determinations. Under § 210.51, an administrative law judge may set a target date for completion of an original investigation at 16 months or less by order rather than by initial determination. 73 FR 38,322 (July 7, 2008). The Commission proposes to amend section 210.42(c) to conform to § 210.51. In addition, the Commission proposes to amend section 210.42(a)(1)(i) to conform to the proposed amendment to § 210.51, which divides § 210.51(a) into subparagraphs (a)(1) and (a)(2).

The Commission further proposes to amend section 210.42(c) by dividing it into a paragraph (c)(1) for motions which may be granted by initial determination and a

paragraph (c)(2) for motions which may be granted or denied by initial determination. In this connection, the Commission proposes to provide that decisions by an administrative law judge on motions for forfeiture or return of respondents' bond pursuant to section 210.50(d) or for forfeiture or return of complainant's temporary relief bond pursuant to section 210.70 shall be made as an initial determination regardless of whether the motion is granted or denied.

#### Section 210.43

Section 210.43 generally provides the timing and contents of a petition for review of an initial determination of the administrative law judge to the Commission. Section 210.43(a) provides that petitions for review of initial determinations issued under § 210.42(c) that would terminate the investigation in its entirety on summary determination must be filed within 10 business days after service of the initial determination. The Commission proposes to correct a technical error. In this connection, the proposed rule would provide 10 days (*i.e.*, 10 calendar days) rather than 10 business days. (Under § 201.14, 10 days means 10 calendar days, unless otherwise specified.)

The Commission further proposes to include a reference in § 210.43(a) and (c) to § 210.75(b)(3), in order to provide that petitions for review of enforcement initial determinations in formal enforcement proceedings are due 10 days after the service of the enforcement initial determination, and responses thereto are due 5 business days after the service of the petitions for review. *See* § 210.75, *infra*.

The Commission proposes a further amendment that relates to attempts by parties to evade the page limits for petitions for review and responses thereto. The Commission proposes to add an express statement prohibiting such attempts to evade the page limit

through reference to previously filed pleadings. The Commission notes that this does not represent a change in the substance of the rule. As such, the Commission would reiterate that all arguments not contained within the petition for review, or response thereto, are waived. Even considering the fact that investigations often include multiple patent claims and multiple parties, the Commission considers its 100 page limit to be generous, especially considering that the U.S. Court of Appeals for the Federal Circuit limits opening briefs to 14,000 words or 1,300 lines of monospaced type (approximately 60 pages of 14-point type). Federal Rule of Appellate Procedure 32(a)(7)(B)(i).

#### Section 210.50

Section 210.50 generally provides for the issuance of a limited exclusion order, a general exclusion order, and/or a cease and desist order, and the posting of a bond by the respondents in the case of the issuance of an exclusion order. Section 210.50(a)(4) provides that the Commission may receive submission from the parties, interested persons, and other government agencies regarding the possible issuance of a remedy. The Commission proposes to require that if a party, interested person, or agency files a confidential version of its submission, it shall file a public version of the submission at the same time. Section 210.50(a)(4) also provides that the parties are requested to provide information relating to the statutory public interest factors within 30 days of service of the administrative law judge's recommended determination on remedy and bonding. The Commission proposes to clarify that the limit of 5 pages applies only to submissions under this paragraph, in response to the recommended determination, rather than to all submissions under this section.

Section 210.50(d) states that a motion for return or forfeiture of a bond may be made within 90 days of the expiration of the period of Presidential review. The Commission proposes to add that a motion for return or forfeiture of a bond may be made, if an appeal is taken from the Commission determination, within 30 days of the resolution of the appeal. The Commission further proposes to amend the rule to provide that, if the administrative law judge is no longer employed by the Commission, the motion shall be addressed to the chief administrative law judge, rather than to the Commission.

#### Section 210.51

Section 210.51 generally provides that the administrative law judge shall set a target date for completion of an investigation. The Commission proposes to separate paragraph (a) into paragraph (a)(1) pertaining to original investigations and paragraph (a)(2) pertaining to formal enforcement proceedings. With respect to formal enforcement proceedings, the Commission proposes to provide that an administrative law judge may set a target date of 12 months or less by order, and a target date greater than 12 months for completion of a formal enforcement proceeding by initial determination.

#### Subpart H—Temporary Relief

#### Section 210.54

Section 210.54 generally provides for service of information that supplements a complaint and pre-institution motions. The revision which became effective August 6, 2008, 73 FR 38,322 (July 7, 2008), omitted a specific reference to a motion for temporary relief, which would provide antecedent basis to the provision that the “complainant must serve non-confidential copies of both documents....” The proposed rule contains an

amendment to include a motion for temporary relief in that sentence in order to provide antecedent basis for the phrase “both documents.”

#### Section 210.56(a)

Section 210.56(a) generally provides for the notice that is required to accompany service copies of complaints and motions for temporary relief, and references § 201.8. Section 201.8, however, has been amended such that it does not apply to section 337 investigations. In this connection, the proposed rule would eliminate reference to § 201.8.

#### Section 210.58

Section 210.58 generally provides for provisional acceptance of a motion for temporary relief filed with a complaint, and references § 201.8. Section 201.8, however, has been amended such that it does not apply to section 337 investigations. In this connection, the proposed rule would eliminate reference to § 201.8.

#### Section 210.59(b) and (c)

Section 210.59(b) and (c) generally provide for a response to a motion for temporary relief, and reference § 201.8. Section 201.8, however, has been amended such that it does not apply to section 337 investigations. In this connection, the proposed rule would eliminate reference to § 201.8.

#### Section 210.60

Section 210.60 generally provides, with respect to investigations where temporary relief is sought, a designation of a more complicated temporary relief phase of the investigation. The Commission proposes to add a definition of “more complicated,” formerly codified at § 210.22, which had previously been deleted. The designation of

“more complicated” no longer applies in most section 337 investigations, but may still be applicable where temporary relief is sought. The Commission further proposes to clarify that it is the temporary relief phase, and not the investigation, which is given the designation “more complicated.”

#### Subpart I—Enforcement Proceedings and Advisory Opinions

##### Section 210.75(b)

Section 210.75(b) generally provides for formal enforcement proceedings. In *Vastfame Camera, Ltd. v. ITC*, 386 F.3d 1108 (Fed. Cir. 2004), the U.S. Court of Appeals for the Federal Circuit explained that enforcement proceedings are authorized under section 337(b) in the same manner as original investigations for violation of section 337. The Commission proposes to add a sentence to § 210.75(b)(1), and to remove contrary language from § 210.75(b)(3), to clarify that formal enforcement proceedings are conducted in accordance with the laws for original investigations as set forth in 19 U.S.C. § 1337 and 5 U.S.C. § 554 et seq. and the rules of this Part. The Commission further proposes to provide that the administrative law judge shall issue an enforcement initial determination no later than three months before the target date for formal enforcement proceedings.

There is a parallel proposal in § 210.51 providing that a presiding administrative law judge may set a target date for completion of a formal enforcement proceeding of 12 months or less by order, or greater than 12 months by initial determination. In this connection, the Commission proposes to amend § 210.75(b)(3) to change the length of time for the Commission to determine whether to review of enforcement initial determinations from 90 days to 45 days (from service of the enforcement initial

determination). The Commission further proposes to include a reference to § 210.43. There is a parallel proposal in § 210.43, revising § 210.43 to provide that petitions for review of enforcement initial determinations are due within 10 days of service of the enforcement initial determination, and responses thereto are due within 5 business days of service of petitions for review.

#### Section 210.76

Section 210.76 provides for modification and rescission proceedings. The Commission proposes to codify the practice by which parties comment on the recommended determination of the administrative law judge. The Commission proposes that parties may submit comments within 10 days of service of the recommended determination, and may submit responses thereto within 5 business days from service of any comments.

#### Appendix A to Part 210—Adjudication and Enforcement

The appendix provides a summary of the filing dates for petitions for review of an initial determination, the filing dates for responses thereto, and the Commission deadline for determining whether to review an initial determination. The Commission proposes to update the appendix pursuant to the proposed rules for this Part, *i.e.*, the timing of petitions of enforcement initial determinations and responses thereto in formal enforcement proceedings, and the deadline for whether to review an enforcement initial determination. The Commission further proposes to organize the contents of the Appendix by the numerical order of the rules referred to.

#### Appendix B to Part 210—Adjudication and Enforcement

The Commission proposes to add an Appendix B to summarize the deadlines for comments on recommended determinations for modification and rescission proceedings under § 210.76, and responses thereto.

### List of Subjects

#### 19 CFR Part 201

Administration practice and procedure, Reporting and record keeping requirements.

#### 19 CFR Part 210

Administration 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 proposes to amend 19 CFR parts 201 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 § 201.16 by:
  - a. Adding paragraphs (a)(3) and (4);
  - b. Revising paragraph (c)(1);
  - c. Revising paragraph (e); and
  - d. Revising the third sentence of paragraph (f).

The additions and revisions read as follows:

**§ 201.16 Service of process and other documents.**

(a) \* \* \*

(3) By using an overnight delivery service to send a copy of the document to the principal office of such person, partnership, corporation, association, or other organization, or, if an attorney represents any of the above before the Commission, by leaving a copy at the office of such attorney.

(4) When service is by mail, it is complete upon mailing of the document. When service is by an overnight delivery service, service is complete upon submitting the document to the overnight delivery service or depositing it in the appropriate container for pick-up by the overnight delivery service.

\* \* \* \* \*

(c) \* \* \*

(1) Each document filed with the Secretary to the Commission by a party in the course of an investigation (as provided in § 201.8 of this part) shall be served on each other party to the investigation (as provided in § 210.4(i) of this chapter).

\* \* \* \* \*

(e) *Additional time after service by overnight delivery.* Whenever a party or Federal Agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served by overnight delivery, one (1) day shall be added to the prescribed period if the service is to a destination in the United States, and five (5) days shall be added to the prescribed period if the service is to a destination outside the United States.

“Service by overnight delivery” is defined as a method that would provide delivery by the next business day within the United States.

(f) \* \* \* If electronic service is used, no additional time is added to the prescribed period after the service of the document to respond or take action. \* \* \*

## **PART 210–ADJUDICATION AND ENFORCEMENT**

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

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

### **Subpart A–Rules of General Applicability**

4. Amend § 210.3 adding a definition of Ancillary *proceeding* in alphabetical order to read as follows:

#### **§ 210.3 Definitions.**

\* \* \* \* \*

*Ancillary proceeding* has the same meaning as *related proceeding*.

\* \* \* \* \*

5. Amend § 210.4 by revising paragraph (f)(3) to read as follows:

#### **§ 210.4 Written submissions; representations; sanctions.**

\* \* \* \* \*

(f) \* \* \*

(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, 210.38, 210.40, 210.43, 210.45, 210.46, 210.47, 210.50, 210.52, 210.53, 210.57, 210.59, 210.66, 210.70, 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.

\* \* \* \* \*

6. Amend § 210.5 by adding paragraph (f) to read as follows:

**§ 210.5 Confidential business information.**

\* \* \* \* \*

(f) When the Commission or the administrative law judge issues a confidential version of an order, initial determination, opinion, or other document, the Commission, or the presiding administrative law judge if the administrative law judge has issued the confidential version, shall issue a public version of the document within 30 days, unless good cause exists to extend the deadline. An administrative law judge or the Commission may extend this time by order.

7. Revise § 210.6 to read as follows:

**§ 210.6 Computation of time, additional hearings, postponements, continuances, and extensions of time.**

(a) Unless the Commission, the administrative law judge, or this or another section of this part specifically provides otherwise, the computation of time and the granting of additional hearings, postponements, continuances, and extensions of time shall be in accordance with §§ 201.14 and 201.16(d) and (e) of this chapter.

(b) Whenever a party has the right or is required to perform some act or to take some action within a prescribed period after service of a document upon it, and the document was served by mail, the deadline shall be computed by adding to the end of the prescribed period the additional time allotted under § 201.16(d), unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(c) Whenever a party has the right or is required to perform some act or to take some action within a prescribed period after service of a Commission document upon it, and the document was served by overnight delivery, the deadline shall be computed by adding to the end of the prescribed period the additional time allotted under § 201.16(e), unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

8. Amend § 210.7 by:

- a. Revising paragraph (a)(2); and
- b. Revising paragraph (c).

The revisions read as follows:

**§ 210.7 Service of process and other documents; publication of notices.**

(a) \* \* \*

(2) The service of all initial determinations as defined in § 210.42, all cease and desist orders as set forth in § 210.50(a)(1), and all documents containing confidential business information as defined in § 201.6(d), issued by or on behalf of the Commission or the administrative law judge on a private party, shall be effected by serving a copy of the document by overnight delivery on the person to be served, on a member of the partnership to be served, on the president, secretary, other executive officer, or member of the board of directors of the corporation, association, or other organization to be served, or, if an attorney represents any of the above in connection with an investigation under this subtitle, by serving a copy by overnight delivery on such attorney.

\* \* \* \* \*

(c) *Publication of notices.* (1) Notice of action by the Commission or an administrative law judge will be published in the FEDERAL REGISTER only as specifically provided in § 201.10, paragraph (c)(2) of this section, by another section in this chapter, or by order of an administrative law judge or the Commission.

(2) When an administrative law judge or the Commission determines to amend or supplement a notice published in accordance with paragraph (c)(1) of this section, notice of the amendment will be published in the FEDERAL REGISTER.

9. Amend § 210.8 by:

a. Adding a sentence after the second sentence of paragraph (b) introductory text;

b. Adding a sentence after the fourth sentence of paragraph (c)(1) introductory text; and

c. Adding a sentence after the first sentence of paragraph (c)(2).

The additions read as follows:

**§ 210.8 Commencement of preinstitution proceedings.**

\* \* \* \* \*

(b) \* \* \* If the complainant files a confidential version of its submission, it shall file a public version of the submission at the same time. \* \* \*

\* \* \* \* \*

(c) \* \* \* (1) \* \* \* If a member of the public or proposed respondent files a confidential version of its submission, it shall file a public version of the submission at the same time. \* \* \*

\* \* \* \* \*

(2) \* \* \* If the complainant files a confidential version of its submission, it shall file a public version of the submission at the same time.

\* \* \* \* \*

**Subpart C—Pleadings**

10. Amend § 210.12 by:

a. Revising paragraph (a) introductory text;

b. Revising the first sentence of paragraph (a)(6)(i);

- c. Revising paragraph (a)(6)(ii);
- d. Revising paragraph (a)(11); and
- e. Adding paragraph (a)(12).

The revisions and addition read as follows:

**§ 210.12 The complaint.**

(a) *Contents of the complaint.* In addition to conforming with the requirements of §§210.4 and 210.5 of this part, the complaint shall—

\* \* \* \*

(6)(i) If the complaint alleges a violation of section 337 based on infringement of a U.S. patent, or a federally registered copyright, trademark, mask work, or vessel hull design, under section 337(a)(1) (B), (C), (D), or (E) of the Tariff Act of 1930, include a statement as to whether an alleged domestic industry exists or is in the process of being established as defined in section 337(a)(2), and include a detailed description of the relevant domestic industry as defined in section 337(a)(3) that allegedly exists or is in the process of being established (*i.e.*, for the latter, facts showing complainant is actively engaged in the steps leading to the exploitation of its intellectual property rights, and that there is a significant likelihood that an industry will be established in the future), and including the relevant operations of any licensees.\* \* \*

(ii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition and unfair acts in the importation or sale of articles in the United States that have the threat or effect of destroying or substantially

injuring an industry in the United States or preventing the establishment of such an industry under section 337(a)(1)(A) (i) or (ii), include a detailed statement as to whether an alleged domestic industry exists or is in the process of being established (*i.e.*, for the latter, facts showing that there is a significant likelihood that an industry will be established in the future), and include a detailed description of the domestic industry affected, including the relevant operations of any licensees; or

\* \* \* \* \*

(11) Contain a request for relief, including a statement as to whether a limited exclusion order, general exclusion order, and/or cease and desist orders are being requested, and if temporary relief is requested under section 337 (e) and/or (f) of the Tariff Act of 1930, a motion for such relief shall accompany the complaint as provided in § 210.52(a) or may follow the complaint as provided in § 210.53(a).

(12) Contain a clear statement in plain English of the category of products accused. For example, the caption of the investigation might refer to “certain electronic devices,” but the complaint would provide a further statement to identify the type of products involved in plain English as mobile devices, tablets, or computers.

\* \* \* \* \*

11. Amend § 210.13 by revising the first sentence of paragraph (b) to read as follows:

**§ 210.13 The response.**

\* \* \* \* \*

(b) \* \* \* In addition to conforming to the requirements of §§210.4 and 210.5 of this part, each response shall be under oath and signed by respondent or his duly authorized officer, attorney, or agent with the name, address, and telephone number of the respondent and any such officer, attorney, or agent given on the first page of the response.\* \* \*

\* \* \* \* \*

12. Amend § 210.14 by:

- a. Revising the section heading;
- b. Adding a sentence at the end of paragraph (a);
- c. Adding a sentence after the second sentence of paragraph (b)(1); and
- d. Adding paragraph (g).

The revision and additions read as follows:

**§ 210.14 Amendments to pleadings and notice; supplemental submissions; counterclaims; consolidation of investigations.**

(a) \* \* \* If, prior to institution, the complainant seeks to amend a complaint to add a respondent or to assert an additional unfair act not in the original complaint, including asserting a new patent or patent claim, then the complaint shall be treated as if it had been filed on the date the amendment is filed for purposes of §§ 210.8(b) and (c), 210.9, and 210.10(a).

(b) \* \* \*

(1) \* \* \* A motion to amend the complaint and notice of investigation to name an additional respondent after institution shall be served on the proposed respondent.\* \* \*

\* \* \* \* \*

(g) *Consolidation of investigations.* The Commission may consolidate two or more investigations. If the investigations are currently before the same presiding administrative law judge, he or she may consolidate the investigations. If the investigations are currently before different administrative law judges, the chief administrative law judge may consolidate the investigations if the administrative law judges to whom the cases are assigned agree that consolidation is appropriate. The investigation number in the caption of the consolidated investigation will include the investigation numbers of the investigations being consolidated. The investigation number in which the matter will be proceeding (the lead investigation) will be the first investigation number named in the consolidated caption.

#### **Subpart D–Motions**

#### **§ 210.15 [Amended]**

13. Amend § 210.15 by removing the second sentence in paragraph (a)(2).
14. Amend 210.16 by:
  - a. Revising paragraph (b)(1);
  - b. Adding italic headings at the beginning of paragraphs (c)(1) and (2); and

c. Revising the last sentence of paragraph (c)(2).

The additions and revisions read as follows:

§ 210.16 Default.

\* \* \* \*

(b) \* \* \*

(1)(i) If a respondent has failed to respond or appear in the manner described in paragraph (a)(1) of this section, a party may file a motion for, or the administrative law judge may issue upon his own initiative, an order directing respondent to show cause why it should not be found in default.

(ii) If the respondent fails to make the necessary showing pursuant to paragraph (b)(1)(i) of this section, the administrative law judge shall issue an initial determination finding the respondent in default. An administrative law judge's decision denying a motion for a finding of default under paragraph (a)(1) of this section shall be in the form of an order.

\* \* \* \*

(c) \* \* \*

(1) *Types of relief available.* \* \* \*

(2) *General exclusion orders.* \* \* \* 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 that

the other requirements of 19 U.S.C. 1337(d)(2), and only after considering the  
aforementioned public interest factors and the requirements of §210.50(c).

15. Amend § 210.17 by:

- a. Revising the section heading;
- b. Revising paragraph (f);
- c. Removing paragraph (g);
- d. Redesignating paragraph (h) as paragraph (g); and
- e. Adding paragraph (h).

The revisions and addition read as follows:

**§ 210.17 Other failure to act and default.**

\* \* \* \* \*

(f) Failure to respond to a petition for review of an initial determination, a petition for reconsideration of an initial determination, or an application for interlocutory review of an administrative law judge's order; and

\* \* \* \* \*

(h) *Default by notice.* A respondent may at any time before the filing of the final initial determination file a notice of intent to default with the presiding administrative law judge. Such default will be treated in the same manner as any failure to act under this section.

\* \* \* \* \*

16. Amend § 210.21 by:

- a. Revising the second sentence of paragraph (b)(1);
- b. Adding three sentences to the end of paragraph (c) introductory text;
- c. Revising the third sentence of paragraph (c)(1)(ii);
- d. Revising paragraph (c)(3); and
- e. Adding paragraphs (c)(4) and (5).

The revisions and additions read as follows:

**§ 210.21 Termination of investigations.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* The motion for termination by settlement shall contain copies of any documents referenced in the motion or attached agreements. \* \* \*

\* \* \* \* \*

(c) \* \* \* A motion for termination by consent order shall contain copies of the licensing or other settlement agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of §201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion. If there are no additional agreements, the moving parties shall certify that there are no additional agreements.

(1) \* \* \*

(ii) \* \* \* The stipulation shall comply with the requirements of paragraph (c)(3) of this section. \* \* \*

\* \* \* \* \*

(3) *Contents of consent order stipulation* —(i) Every consent order stipulation shall contain, in addition to the proposed consent order, the following:

(A) An admission of all jurisdictional facts;

(B) A statement identifying the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice, and whether the stipulation calls for cessation of importation, distribution, sale, or other transfers (other than exportation) of subject articles in the United States and/or specific terms relating to the disposition of existing U.S. inventories of subject articles.

(C) An express waiver of all rights to seek judicial review or otherwise challenge or contest the validity of the consent order;

(D) A statement that the signatories to the consent order stipulation will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of this part; and

(E) A statement that the enforcement, modification, and revocation of the consent order will be carried out pursuant to subpart I of this part, incorporating by reference the Commission's Rules of Practice and Procedure.

(ii) In the case of an intellectual property-based investigation, the consent order stipulation shall also contain—

(A) A statement that the consent order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable; and

(B) A statement that each signatory to the stipulation who was a respondent in the investigation will not seek to challenge the validity of the intellectual property right(s), in any administrative or judicial proceeding to enforce the consent order.

(C) The consent order stipulation may contain a statement that the signing thereof is for settlement purposes only and does not constitute admission by any respondent that an unfair act has been committed.

(D) The consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and this part for other Commission actions. The Commission may require periodic compliance reports pursuant to subpart I of this part to be submitted by the person entering into the consent order stipulation.

(4) *Contents of consent order.* The Commission will not issue consent orders with terms beyond those provided for in this section, and will not issue consent orders that are inconsistent with this section. The consent order shall contain:

- (i) A statement of the complainant, the respondent, the subject articles, and any allegation that the respondents sell for importation, import, or sell after importation the subject articles in violation of section 337 by reason of asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice;
- (ii) A statement that the parties have executed a consent order stipulation (but the consent order shall not contain the terms of the stipulation);
- (iii) A statement that the respondent shall not sell for importation, import, or sell after importation the subject articles, directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation;
- (iv) A statement that respondent and its agents will not sell for importation, import, or sell after importation the subject articles except under consent, license from the complainant, or to the extent permitted by the settlement agreement between complainant and respondent;
- (v) A statement, if applicable, regarding the disposition of existing U.S. inventories of the subject articles.
- (vi) A statement, if applicable, whether the respondent would be ordered to cease and desist from importing and distributing articles covered by the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice;
- (vii) A statement that respondent shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of the Consent Order;

(viii) A statement that respondent shall cooperate with and shall not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210;

(ix) A statement that Respondent and its officers, directors, employees, agents, and any entity or individual acting on its behalf and with its authority shall not seek to challenge the validity or enforceability of the claims of the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice in any administrative or judicial proceeding to enforce the Consent Order;

(x) A statement that when the patent, copyright, trademark, mask work, boat hull design, or unfair trade practice expires the Consent Order shall become null and void as to such;

(xi) A statement that if any claim of the patent, copyright, trademark, mask work, boat hull design, or other unfair trade practice is held invalid or unenforceable by a court or agency of competent jurisdiction or as to any articles that has been found or adjudicated not to infringe the asserted right in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such invalid or unenforceable claim; and

(xii) A statement that the investigation is hereby terminated with respect to the respondent; provided, however, that enforcement, modification, or revocation of the Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

(5) *Effect, interpretation, and reporting.* The consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and this part for other Commission actions. The

Commission will not enforce consent order terms beyond those provided for in this section. The Commission may require periodic compliance reports pursuant to subpart I of this part to be submitted by the person entering into the consent order stipulation.

\* \* \* \* \*

**Subpart E–Discovery and Compulsory Process**

17. Amend § 210.28 by:

- a. Adding two sentences at the end of paragraph (a); and
- b. Adding a sentence after the second sentence of paragraph (c).

The additions read as follows:

**§ 210.28 Depositions.**

(a)\* \* \* Without stipulation of the parties, the complainants as a group may take a maximum of five fact depositions per respondent or no more than 20 fact depositions whichever is greater, the respondents as a group may take a maximum of 20 fact depositions total, and if the Commission investigative attorney is a party, he or she may take a maximum of 10 fact depositions and is permitted to participate in all depositions taken by any parties in the investigation. The presiding administrative law judge may increase the number of depositions on written motion for good cause shown.

\* \* \* \* \*

(c)\* \* \* A party upon whom a notice of deposition is served may respond to and make objections to a notice of deposition within ten days of service of the notice of deposition.\* \* \*

\* \* \* \* \*

18. Amend § 210.29 by adding a sentence to the end of paragraph (a) to read as follows:

**§ 210.29 Interrogatories.**

(a)\* \* \* Any party may serve upon any other party written interrogatories not exceeding 175 in number including all discrete subparts, unless the parties stipulate otherwise or the presiding administrative law judge increases the number of interrogatories on written motion for good cause shown.

\* \* \* \* \*

19. Amend § 210.34 by:

- a. Revising paragraph (b);
- b. Revising paragraph (c); and
- c. Removing the Note to Paragraph (c).

The revisions read as follows:

**§ 210.34 Protective orders; reporting requirements; sanctions and other actions.**

\* \* \* \* \*

(b) *Unauthorized disclosure, loss, or theft of information.* If confidential business information submitted in accordance with the terms of a protective order is disclosed to any person other than in a manner authorized by the protective order, lost, or stolen, the party responsible for the disclosure, or subject to the loss or theft, must immediately bring

all pertinent facts relating to such incident to the attention of the submitter of the information and the administrative law judge or the Commission, and, without prejudice to other rights and remedies of the submitter of the information, make every effort to prevent further mishandling of such information by the party or the recipient of such information.

(c) *Violation of protective order.* (1) The issue of whether sanctions should be imposed may be raised on a motion by a party, the administrative law judge's own motion, or the Commission's own initiative in accordance with §210.25(a)(2). Parties, including the party that identifies an alleged breach or makes a motion for sanctions, and the Commission shall treat the identity of the alleged breacher as confidential business information unless the Commission issues a public sanction. The identity of the alleged breacher means the name of any individual against whom allegations are made. The Commission or administrative law judge shall allow the parties to make written submissions and, if warranted, to present oral argument bearing on the issues of violation of a protective order and sanctions therefor.

(2) If the breach occurs while the investigation is before an administrative law judge, any determination on sanctions of the type enumerated in paragraphs (c)(3)(i) through (iv) of this section shall be in the form of a recommended determination. The Commission may then consider both the recommended determination and any related orders in making a determination on sanctions. When the motion is addressed to the administrative law judge for sanctions of the type enumerated in paragraph (c)(3)(v) of this section, he shall grant or deny a motion by issuing an order.

(3) Any individual who has agreed to be bound by the terms of a protective order issued pursuant to paragraph (a) of this section, and who is determined to have violated the terms of the protective order, may be subject to one or more of the following:

- (i) An official reprimand by the Commission;
- (ii) Disqualification from or limitation of further participation in a pending investigation;
- (iii) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to § 201.15(a) of this chapter;
- (iv) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction in which the individual is licensed to practice;
- (v) Sanctions of the sort enumerated in § 210.33(b), or such other action as may be appropriate.

\* \* \* \* \*

#### **Subpart G – Determinations and Actions Taken**

20. Amend § 210.42 by:

- a. Revising the second sentence in paragraph (a)(1)(i); and
- b. Revising revising paragraph (c).

The revisions read as follows:

#### **§ 210.42 Initial determinations.**

(a)(1)(i) \* \* \* 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 in an original investigation no later than 4 months before the target date set pursuant to § 210.51(a)(1).

\* \* \* \* \*

(c) *On other matters.* (1) 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 § 210.14(b); a motion for a finding of default pursuant to §§ 210.16 and 210.17; a motion for summary determination pursuant to § 210.18; a motion for intervention pursuant to § 210.19; a motion for termination pursuant to § 210.21; a motion to suspend an investigation pursuant to § 210.23; or a motion to set a target date for an original investigation exceeding 16 months pursuant to § 210.51(a)(1); or a motion to set a target date for a formal enforcement proceeding exceeding 12 months pursuant to § 210.51(a)(2).

(2) The administrative law judge shall grant or deny the following types of motions by issuing an initial determination: a motion for forfeiture or return of respondents' bonds pursuant to § 210.50(d) or a motion for forfeiture or return of a complainant's temporary relief bond pursuant to § 210.70.

\* \* \* \* \*

21. Amend § 210.43 by:

- a. Revising the first and third sentences of paragraph (a)(1);
- b. Removing the Note to Paragraph (b)(1);

- c. Revising paragraph (b)(2); and
- d. Revising paragraph (c).

The revisions read as follows:

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

(a) \* \* \*

(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 §210.42(a)(1) or (c), §210.50(d)(3), §210.70(c), §210.75(b)(3) by filing a petition with the Secretary.\* \* \* A petition for review of an initial determination issued under §210.42(c) that terminates the investigation in its entirety on summary determination, or an initial determination issued under §210.50(d)(3), §210.70(c) or §210.75(b)(3), must be filed within 10 days after service of the initial determination.

\* \* \* \*

(b)\* \* \*

(2) The petition for review must set forth a concise statement of the facts material to the consideration of the stated issues, and must present a concise argument providing the reasons that review by the Commission is necessary or appropriate to resolve an important issue of fact, law, or policy. If a petition filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the petition not to exceed ten pages. Petitions for review may not exceed 100 pages in length, exclusive of the

summary and any exhibits. Petitions for review may not incorporate statements, issues, or arguments by reference. Any issue not raised in a petition for review will be deemed to have been abandoned by the petitioning party and may be disregarded by the Commission in reviewing the initial determination (unless the Commission chooses to review the issue on its own initiative under § 210.44), and any argument not relied on in a petition for review will be deemed to have been abandoned and may be disregarded by the Commission.

\* \* \* \* \*

(c) *Responses to the petition.* Any party may file a response within eight (8) days after service of a petition of a final initial determination under § 210.42(a)(1), and within five (5) business days after service of all other types of petitions, except that a party who has been found to be in default may not file a response to any issue as to which the party has defaulted. If a response to a petition for review filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the response not to exceed ten pages. Responses to petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits. Responses to petitions for review may not incorporate statements, issues, or arguments by reference. Any argument not relied on in a response will be deemed to have been abandoned and may be disregarded by the Commission.

\* \* \* \* \*

22. Amend § 210.50 by:

- a. Revising the third sentence of paragraph (a)(4) introductory text;
- b. Adding a sentence at the end of paragraph (a)(4)(iii);

- c. Revising the first and last sentences of paragraph (d)(1)(i); and
- d. Revising the first and last sentences of paragraph (d)(1)(ii).

The revisions and addition read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \* Submissions by the parties under this paragraph in response to the recommended determination are limited to 5 pages, inclusive of attachments.

\* \* \* \* \*

(iii) \* \* \* If a party, interested person, or agency files a confidential version of its submission, it shall file a public version of the submission at the same time.

(d) \* \* \*

(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, addressed to the administrative law judge who last presided over the investigation, by a complainant within 90 days after the expiration of the period of Presidential review under 19 U.S.C. 1337(j), or if an appeal is taken from the determination of the Commission, within 30 days after the resolution of the appeal. \* \* \* If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the chief administrative law judge.

(ii) A respondent may file a motion addressed to the administrative law judge who last presided over the investigation for the return of its bond within 90 days after the expiration of the Presidential review period under 19 U.S.C. 1337(j), or if an appeal is taken from the determination of the Commission, within 30 days after the resolution of the appeal. \* \* \* If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the chief administrative law judge.

\* \* \* \* \*

23. Amend § 210.51 by revising paragraph (a) to read as follows:

**§ 210.51 Period for concluding investigation.**

(a) *Permanent relief.* Within 45 days after institution of an original investigation on whether there is a violation of section 337, or an investigation which is a formal enforcement proceeding, the administrative law judge shall issue an order setting a target date for completion of the investigation. After the target date has been set, it can be modified by the administrative law judge for good cause shown before the investigation is certified to the Commission or by the Commission after the investigation is certified to the Commission.

(1) *Original investigations.* If the target date does not exceed 16 months from the date of institution of an original investigation, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds 16 months, the order of the administrative law judge shall constitute an initial determination. Any extension of the target date beyond 16 months, before the investigation is certified to the Commission, shall be by initial determination.

(2) *Formal enforcement proceedings.* If the target date does not exceed 12 months from the date of institution of the formal enforcement proceeding, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds 12 months, the order of the administrative law judge shall constitute an initial determination. Any extension of the target date beyond 12 months, before the formal enforcement proceeding is certified to the Commission, shall be by initial determination.

\* \* \* \* \*

#### **Subpart H—Temporary Relief**

24. Amend § 210.54 by revising the first sentence to read as follows:

##### **§ 210.54 Service of motion by the complainant.**

Notwithstanding the provisions of § 210.11 regarding service of the complaint by the Commission upon institution of an investigation, on the day the complainant files a complaint and motion for temporary relief, if any, with the Commission (see § 210.8(a)(1) and (a)(2) of subpart B of this part), the complainant must serve non-confidential copies of both documents (as well as non-confidential copies of all materials or documents attached thereto) on all proposed respondents and on the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the Complaint.\* \* \*

25. Amend § 210.56 by revising the third sentence of paragraph (a) to read as follows:

##### **§ 210.56 Notice accompanying service copies.**

(a) \* \* \* Upon receipt of the complaint, the Commission will examine the complaint for sufficiency and compliance with 19 CFR 210.4, 210.5, 210.8, and 210.12.

\* \* \*

\* \* \* \* \*

26. Amend § 210.58 by revising the third sentence to read as follows:

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

\* \* \* Before the Commission determines whether to provisionally accept a motion for temporary relief, the motion will be examined for sufficiency and compliance with §§210.52, 210.53(a) (if applicable), 210.54 through 210.56, as well as §§ 210.4, and 210.5. \* \* \*

27. Amend § 210.59 by:

- a. Revising the introductory text to paragraph (b); and
- b. Revising paragraph (c).

The revisions read as follows:

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

\* \* \* \* \*

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

\* \* \* \* \*

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

notice of investigation must comply with §§ 210.4 and 210.5 of this part, and any protective order issued by the administrative law judge under § 210.34 of this part.

28. Amend § 210.60 by:

- a. Revising the section heading;
- b. Designating the existing text as paragraph (a) and revising its first two sentences; and
- c. Adding paragraph (b).

The revision and addition read as follows:

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

(a) At the time the Commission determines to institute an investigation and provisionally accepts a motion for temporary relief pursuant to § 210.58, or at any time thereafter, the Commission may designate the temporary relief phase of an investigation “more complicated” pursuant to § 210.60(b) for the purpose of obtaining up to 60 additional days to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under §210.66(a), the administrative law judge may issue an order, sua sponte or on motion, designating the temporary relief phase of the investigation “more complicated” for the purpose of obtaining additional time to adjudicate the motion for temporary relief. \* \* \*

(b) A temporary relief phase is designated more complicated owing to the subject matter, difficulty in obtaining information, the large number of parties involved, or other significant factors.

**Subpart I—Enforcement Procedures and Advisory Opinions**

29. Amend § 210.75 by:

- a. Adding a sentence at the end of paragraph (b)(1); and
- b. Revising paragraph (b)(3).

The revisions read as follows:

**§ 210.75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* These proceedings are authorized under section 337(b) as investigations on whether there is a violation of section 337 in the same manner as original investigations, and are conducted in accordance with the laws for original investigations as set forth in section 1337 of title 19 and sections 554, 555, 556, 557, and 702 of title 5 of the United States Code and the rules of this part.

\* \* \* \* \*

(3) The Commission, in the course of a formal enforcement proceeding under this section, may hold a public hearing and afford the parties to the enforcement proceeding the opportunity to appear and be heard. The Commission may delegate the hearing to the chief administrative law judge for designation of a presiding administrative

law judge, who shall certify an initial determination to the Commission. A presiding administrative law judge shall certify the record and issue the enforcement initial determination to the Commission no later than three months before the target date for completion of a formal enforcement proceeding. Parties may file petitions for review, and responses thereto, in accordance with § 210.43 of this part. The enforcement initial determination shall become the determination of the Commission 45 days after the date of service of the enforcement initial determination, unless the Commission, within 45 days after the date of such service, shall have ordered review of the enforcement initial determination on certain issues therein, or by order shall have changed the effective date of the enforcement initial determination.

\* \* \* \* \*

30. Amend § 210.76 by adding paragraph (c) to read as follows:

**§ 210.76 Modification or rescission of exclusion orders, cease and desist orders, and consent orders.**

\* \* \* \* \*

(c) *Comments.* Parties may submit comments on the recommended determination within 10 days from the service of the recommended determination. Parties may submit responses thereto within 5 business days from service of any comments.

31. Revise appendix A to read as follows:

**Appendix A to Part 210—Adjudication and Enforcement**

| Initial Determination concerning:                                                                                                     | Petitions for Review Due:                                     | Response to Petitions Due:                   | Commission Deadline for Determining Whether to Review the Initial Determination:   |
|---------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|----------------------------------------------|------------------------------------------------------------------------------------|
| 1. Violation § 210.42(a)(1)                                                                                                           | 12 days from service of the initial determination             | 8 days from service of any petition          | 60 days from service of the initial determination (on private parties)             |
| 2. Summary initial determination that would terminate the investigation if it became the Commission's final determination § 210.42(c) | 10 days from service of the initial determination             | 5 business days from service of any petition | 45 days from service of the initial determination (on private parties)             |
| 3. Other matters § 210.42(c)                                                                                                          | 5 business days from service of the initial determination     | 5 business days from service of any petition | 30 days from service of the initial determination (on private parties)             |
| 4. Forfeiture or return of respondents' bond § 210.50(d)(3)                                                                           | 10 days from service of the initial determination             | 5 business days from service of any petition | 45 days from service of the initial determination (on private parties)             |
| 5. Forfeiture or return of complainant's temporary relief bond § 210.70(c)                                                            | 10 days from service of the initial determination             | 5 business days from service of any petition | 45 days from service of the initial determination (on private parties)             |
| 6. Formal enforcement proceedings § 210.75(b)                                                                                         | 10 days from service of the enforcement initial determination | 5 business days from service of any petition | 45 days from service of the enforcement initial determination (on private parties) |

32. Add appendix B to read as follows:

**Appendix B to Part 210—Adjudication and Enforcement**

| Recommended Determination concerning:     | Comments Due:                                         | Response to Comments Due:                    |
|-------------------------------------------|-------------------------------------------------------|----------------------------------------------|
| Modification or Rescission § 210.76(a)(1) | 10 days from service of the recommended determination | 5 business days from service of any comments |

By Order of the Commission.

Lisa R. Barton  
Acting Secretary to the Commission

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