

with its views pursuant to section 301(e)(3) as to the probable impact on the economy of the United States of imposing retaliatory restrictions on imports into the United States from countries or foreign instrumentalities which maintain restrictions against U.S. exports.

(b) *Institution and notice of investigation.* An investigation to which this subpart B relates will be instituted promptly after the receipt from the President of a request for the views of the Commission with regard to the matters indicated in paragraph (a) of this section.

(c) *Public hearings.* If, in the judgment of the Commission, there is good and sufficient reason therefor, the Commission, in the course of its investigation, will hold a public hearing and afford interested parties opportunity to appear and be heard at such hearing. If no notice of public hearing issues concurrently with a notice of investigation, any interested party who believes that a public hearing should be held may, within thirty (30) days after the date of publication in the FEDERAL REGISTER of the notice of investigation, submit a request in writing to the Secretary of the Commission that a public hearing be held, stating the reasons for such request.

(d) *Written statements.* Any interested party may submit to the Commission a written statement of information pertinent to the subject matter of such investigation not later than thirty (30) days after a notice of investigation under paragraph (b) of this section is published in the FEDERAL REGISTER. If a public hearing is held in the investigation, a statement may be received in lieu of or in addition to appearance at the hearing. Statements shall conform with the requirements for documents set forth in §§ 201.6 and 201.8 of this chapter.

(e) *Report to the President.* After the completion of its investigation, the Commission will incorporate its views in a report which will be transmitted promptly to the President.

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

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AUTHORITY: 19 U.S.C. 1335, 2112 note, 2251–2254, 2436, 2451–2451a, 3351–3382, 3805 note, 4051–4065, and 4101.

SOURCE: 59 FR 5091, Feb. 3, 1994, unless otherwise noted.

§ 206.1 Applicability of part.

Part 206 applies to proceedings of the Commission under sections 201–202, 204, 406, and 421–422 of the Trade Act of 1974, as amended (2251–2252, 2254, 2436, 2451–2451a), sections 301–317 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3351–3382) (hereinafter NAFTA Implementation

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Act), and the statutory provisions listed in § 206.31 of this part 206 that implement bilateral safeguard provisions in other free trade agreements into which the United States has entered.

[77 FR 37805, June 25, 2012]

Subpart A—General

SOURCE: 60 FR 10, Jan. 3, 1995, unless otherwise noted.

§ 206.2 Identification of type of petition or request.

An investigation under this part may be commenced on the basis of a petition, request, resolution, or motion as provided for in the statutory provisions listed in §§ 206.1 and 206.31. Each petition or request, as the case maybe, filed by an entity representative of a domestic industry under this part shall state clearly on the first page thereof “This is a [petition or request] under section [citing the statutory provision] 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.

[80 FR 39380, July 9, 2015]

§ 206.3 Institution of investigations; publication of notice; and availability for public inspection.

(a) *Institution of investigation and publication of notice.* Except as provided in § 206.15(b), the Commission, after receipt of a petition or request under part 206, properly filed, will promptly institute an appropriate investigation and publish notice thereof in the FEDERAL REGISTER. The Commission also will institute an investigation and publish a notice following receipt of a resolution or on the Commission’s own motion under part 206.

(b) *Contents of notice.* The notice will identify the petitioner or other requestor, the imported article that is the subject of the investigation and its

tariff subheading, the nature and timing of the determination to be made, the time and place of any public hearing, dates of deadlines for filing briefs, statements, and other documents, limits on page lengths for posthearing briefs, the place at which the petition or request and any other documents filed in the course of the investigation may be inspected, and the name, address, and telephone number of the office that may be contacted for more information. The Commission will provide the same sort of information in its notice when the investigation was instituted following receipt of a resolution or on the Commission's own motion.

(c) *Availability for public inspection.* The Commission will promptly make each petition, request, resolution, or Commission motion available for public inspection (with the exception of confidential business information).

[60 FR 10, Jan. 3, 1995, as amended at 67 FR 8190, Feb. 22, 2002; 68 FR 32977, June 3, 2003]

§ 206.4 Notification of other agencies.

For each investigation subject to provisions of part 206, the Commission will transmit copies of the petition, request, resolution, or Commission motion as required by the relevant statute, along with a copy of the notice of investigation.

[67 FR 8190, Feb. 22, 2002]

§ 206.5 Public hearing.

(a) *Investigations under subpart B of this part.* A public hearing on the question of injury and a second public hearing on remedy (if necessary) will be held in connection with each investigation instituted under subpart B of this part after reasonable notice thereof has been caused to be published in the FEDERAL REGISTER. A hearing on remedy is not necessary if the Commission has made a negative determination on the question of injury.

(b) *Investigations under subpart C, D, E, or G of this part.* A public hearing on the subject of injury and remedy will be held in connection with each investigation instituted under subpart C or D of this part or section 406(a) of the Trade Act and subpart E of this part, after reasonable notice thereof has

been published in the FEDERAL REGISTER. The Commission also will conduct a public hearing in each investigation instituted under section 421(b) or (o) of the Trade Act and subpart E of this part or section 422(b) of the Act and subpart G. The FEDERAL REGISTER notice announcing the institution of such an investigation will list the date, time, and location of the hearing, the subjects to be addressed, and the procedures to be followed.

(c) *Investigations under subpart F of this part.* A public hearing on the subject of whether an action taken under section 203 of the Trade Act of 1974 should be extended will be held in connection with each investigation instituted under subpart F of this part after reasonable notice thereof has been published in the FEDERAL REGISTER.

(d) *Opportunity to appear and to cross-question.* All interested parties and consumers, including any association representing the interests of consumers, will be afforded an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted in the case of an investigation under section 202(b) of the Trade Act of 1974, and to be heard at such hearings. All interested parties and consumers, including any association representing the interests of consumers, will be afforded an opportunity to cross-question interested parties making presentations at the hearing.

[60 FR 10, Jan. 3, 1995, as amended at 67 FR 8190, Feb. 22, 2002]

§ 206.6 Report to the President.

(a) *In general.* The Commission will include in its report to the President the following:

(1) The determination made and an explanation of the basis for the determination;

(2) If the determination is affirmative or if the Commission is equally divided in its determination, such remedy recommendation or proposal as may be appropriate under the statute and an explanation of the basis for each recommendation or proposal.

(3) Any dissenting or separate views by members of the Commission regarding the determination and any recommendations;

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(b) *Additional findings and information.* (1) In the case of a determination made under section 202(b) of the Trade Act, the Commission will also include in its report the following:

(i) The findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry;

(ii) A copy of the adjustment plan, if any, submitted by the petitioner;

(iii) Commitments submitted and information obtained by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition;

(iv) A description of the short- and long-term effects that implementation of the action recommended is likely to have on the petitioning domestic industry, other domestic industries, and consumers; and

(v) A description of the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and communities where production facilities of such industry are located, and other domestic industries.

(2) In the case of a determination made under section 302(b) of the NAFTA Implementation Act, the Commission will also include in its report the findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry.

(3) In the case of a determination made under section 421(b) or 422(b) of the Trade Act, the Commission will also include in its report a description of—

(i) The short- and long-term effects that implementation of the action recommended is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and

(ii) The short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers, and the communities where production facilities of such in-

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dustry are located, and on other domestic industries.

[60 FR 10, Jan. 3, 1995, as amended at 67 FR 8190, Feb. 22, 2002; 77 FR 3925, Jan. 26, 2012]

§ 206.7 Confidential business information; furnishing of nonconfidential summaries thereof.

(a) *Nonrelease of information.* Except as provided for in § 206.17, in the case of an investigation under subpart B, C, D, F, or G of this part or an investigation under section 422 of the Trade Act and subpart E of this part, the Commission will not release information which the Commission considers to be confidential business information within the meaning of § 201.6 of this chapter unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. When appropriate, the Commission will include confidential business information in reports transmitted to the President and the Trade Representative; such reports will be marked as containing confidential business information, and a nonconfidential version of such report will be made available to the public.

(b) *Nonconfidential summaries.* Except as the Commission may otherwise provide, a party submitting confidential business information shall also submit to the Commission, at the time it submits such information, a nonconfidential summary of the information. If a party indicates that the confidential business information cannot be summarized, it shall state in writing the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

[60 FR 10, Jan. 3, 1995, as amended at 67 FR 8190, Feb. 22, 2002]

§ 206.8 Service, filing, and certification of documents.

(a) *Certification.* Any person submitting factual information on behalf of

the petitioner or any other interested party for the consideration of the Commission in the course of an investigation to which this part pertains, and any person submitting a response to a Commission questionnaire issued in connection with an investigation to which this part pertains, must certify that such information is accurate and complete to the best of the submitter's knowledge.

(b) *Service.* Any party submitting a document for the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with § 201.8 of this chapter, serve a copy of the public version of such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter, and, when appropriate, serve a copy of the confidential version of such document in the manner provided for in § 206.17(f). The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 206.17(a)(4), an application under § 206.17(a) is approved. When practicable, this notification shall be made by facsimile transmission. A copy of the petition including all confidential business information shall then be served by petitioner on those approved applicants in accordance with this section within two (2) calendar days of the time notification is made by the Secretary. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 206.17, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, and testimony filed by parties shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available, upon request, to all parties to the investigation a copy of each document, except

transcripts of hearings, confidential business information, privileged information, and information required to be served under this section, placed in the docket file of the investigation by the Commission.

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

(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.

[59 FR 5091, Feb. 3, 1994, as amended at 68 FR 32977, June 3, 2003; 76 FR 61942, Oct. 6, 2011]

Subpart B—Investigations Relating to Global Safeguard Actions

SOURCE: 60 FR 12, Jan. 3, 1995, unless otherwise noted.

§ 206.11 Applicability of subpart.

This subpart B applies specifically to investigations under section 202(b) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.12 Definitions applicable to subpart B of this part.

For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

(a) *Adjustment plan* means a plan to facilitate positive adjustment to import competition submitted by a petitioner to the Commission and USTR either with the petition or at any time within 120 days after the date of filing of the petition.

(b) *Commitment* means commitments that a firm in the domestic industry, a certified or recognized union or group of workers in the domestic industry, a local community, a trade association representing the domestic industry, or any other person or group of persons submits to the Commission regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

§ 206.13 Who may file a petition.

A petition under this subpart B may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article like or directly competitive with a foreign article that is allegedly being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 206.14 Contents of petition.

A petition under this subpart B shall include specific information in support of the claim that an article is being imported into the United States in such increased quantities as to be a

substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. Such petition shall state whether provisional relief is sought because *critical circumstances* exist or because the imported article is a *perishable agricultural product*. In addition, such petition shall include the following information, to the extent that such information is available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) *Product description*. The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness*. (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(2) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(3) The names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data*. Import data for at least each of the most recent 5 full years which form the basis of the claim that the article concerned is being imported in increased quantities, either actual or relative to domestic production;

(d) *Domestic production data*. Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury*. Quantitative data indicating the nature and extent of injury to the domestic industry concerned;

(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Imports from NAFTA countries.* Quantitative data indicating the share of imports accounted for by imports from each NAFTA country (Canada and Mexico), and petitioner's view on the extent to which imports from such NAFTA country or countries are contributing importantly to the serious injury, or threat thereof, caused by total imports of such article.

(j) *Critical circumstances.* If the petition alleges the existence of critical circumstances, a statement setting forth the basis for the belief that there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and that delay in taking action would cause damage to that industry that would be difficult to repair, and a statement concerning the provisional relief requested and the basis therefor.

§ 206.15 Institution of investigation.

(a) *In general.* Except as provided in paragraph (b) of this section, the Commission, after receipt of a petition under this subpart B, properly filed, will promptly institute an appropriate investigation and will cause a notice thereof to be published in the FEDERAL REGISTER.

(b) *Exceptions—(1) Reinvestigation within one (1) year.* Except for good cause determined by the Commission to exist, no new investigation will be made under section 202 of the Trade Act with respect to the same subject matter as a previous investigation under section 202 unless one (1) year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) *Articles subject to prior action.* No new investigation will be made under section 202 of the Trade Act with respect to an article that is or has been the subject of an action under section 203(a) (3)(A), (B), (C), or (E) of the Trade Act if the last day on which the

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President could take action under section 203 of the Trade Act in the new investigation is a date earlier than that permitted under section 203(e)(7) of the Trade Act.

(3) *Articles subject to the Textiles Agreement.* No investigation will be made under section 202 of the Trade Act with respect to an article that is the subject of the WTO Agreement on Textiles and Clothing unless the United States has integrated the article into GATT 1994 and the Secretary of Commerce has published notice to such effect in the FEDERAL REGISTER.

(4) *Perishable agricultural product.* An entity of the type described in §206.13 that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to such product only if such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

§ 206.16 Industry adjustment plan and commitments.

(a) *Adjustment plan.* A petitioner may submit to the Commission, either with the petition or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(b) *Commitments.* If the Commission makes an affirmative injury determination, any firm in the domestic industry, certified or recognized union or group of workers in the domestic industry, local community, trade association representing the domestic industry, or any other person or group of persons may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

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

(a)(1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for

the request (*e.g.*, all confidential business information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure, *e.g.*, trade secrets) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term “confidential business information” is defined in §201.6 of this chapter.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. 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.

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(A) An attorney for an interested party which is a party to the investigation;

(B) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i)(A) of this section;

(C) A consultant or expert who appears regularly before the Commission and who represents an interested party which is a party to the investigation; or

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

(ii) In addition, an authorized applicant must not be involved in competitive decisionmaking for an interested party which is a party to the investigation. Involvement in "competitive decisionmaking" includes past, present, or likely future activities, associations, and relationships with an interested party which is a party to the investigation that involve the prospective authorized applicant's advice or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).

(iii) For purposes of this §206.17, the term *interested party* means:

(A) A foreign manufacturer, producer, or exporter, or the United States importer, of an article which is the subject of an investigation under this section or a trade or business association a majority of the members of which are producers, exporters, or importers of such article;

(B) The government of a country in which such article is produced or manufactured;

(C) A manufacturer, producer, or wholesaler in the United States of a like or directly competitive article;

(D) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale of a like or directly competitive article in the United States;

(E) A trade or business association a majority of whose members manufacture, produce, or wholesale a like or directly competitive article in the United States; and

(F) An association, a majority of whose members is composed of inter-

ested parties described in paragraphs (a)(3)(iii) (C), (D), or (E) of this section with respect to a like or directly competitive article.

(4) *Forms and determinations.* (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific confidential business information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30) days from the filing of the information. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final.

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

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

(b) *Administrative protective order.* The administrative protective order under which information is made available to the authorized applicant shall require the applicant to submit to the Secretary a personal sworn statement

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that, in addition to such other conditions as the Secretary may require, the applicant shall:

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

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

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

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

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

(2) Use such confidential business information solely for the purposes of representing an interested party in the Commission investigation then in progress;

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

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

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

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

(7) Comply with the provisions of this section;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

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

(10) Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions or other actions as the Commission deems appropriate.

(c) *Final disposition of material released under administrative protective order.* At such date as the Secretary may determine appropriate for particular data, each authorized applicant shall return or destroy all copies of materials released to authorized applicants pursuant to this section and all other materials containing confidential business information, such as charts or notes based on any such information received under administrative protective order, and file with the Secretary a certificate attesting to his personal, good faith belief that all copies of such material have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized.

(d) *Commission responses to a breach of administrative protective order.* A breach of an administrative protective order may subject an offender to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, denial of further access to confidential business information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

(e) *Breach investigation procedure.* (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions or other actions in accordance with paragraph (d) of this section. At any time within sixty (60) days of the later of

(i) The date on which the alleged violation occurred or, as determined by the Commission, could have been discovered through the exercise of reasonable and ordinary care; or

(ii) The completion of an investigation conducted under this subpart, the Commission may commence an investigation of any breach of an administrative protective order alleged to have occurred at any time during the pendency of the investigation, including all appeals, remands, and subsequent appeals. Whenever the Commission has reason to believe that a person may have breached an administrative protective order issued pursuant to this section, the Secretary shall issue a letter informing such person that the Commission has reason to believe a breach has occurred and that the person has a reasonable opportunity to present his views on whether a breach has occurred. If subsequently the Commission determines that a breach has occurred and that further investigation is warranted, then the Secretary shall issue a letter informing such person of that determination and that the person has a reasonable opportunity to present his views on whether miti-

gating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has occurred. Once such person has been afforded a reasonable opportunity to present his views, the Commission shall determine what sanction if any to impose.

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

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

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

(f) *Service.* (1) Any party filing written submissions which include confidential business information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and, except as provided in §206.8(c), a non-confidential version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) A party may seek an exemption from the service requirement of paragraph (f)(1) of this section for particular confidential business information by filing a request for exemption from disclosure in accordance with

paragraph (g) of this section. The Secretary shall promptly respond to the request. If a request is granted, the Secretary shall accept the information. The party shall file three versions of the submission containing the information in accordance with paragraph (g) of this section, and serve the submission in accordance with the requirements of §206.8(b) and paragraph (f)(1) of this section, with the specific information as to which exemption from disclosure under administrative protective order has been granted redacted from the copies served. If a request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Confidential business information in submissions must be clearly marked as such when submitted, and must be segregated from other material being submitted.

(g) *Exemption from disclosure*—(1) *In general.* Any person may request exemption from the disclosure of confidential business information under administrative protective order, whether the person desires to include such information in a petition filed under this subpart B, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is nondisclosable confidential business information. As defined in §201.6(a)(2) of this chapter, nondisclosable confidential business information is privileged information, classified information, or specific information (*e.g.*, trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure.

(2) *Request for exemption.* A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the confidential business information in question must be lodged with the Secretary solely for the purpose of ob-

taining a determination as to the request. The confidential business information for which exemption from disclosure is sought shall remain the property of the requester, and shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the nondisclosable confidential business information in question. One version shall contain all confidential business information, bracketed in accordance with §201.6 of this chapter and §206.8(c), with the specific information as to which exemption from disclosure was granted enclosed in triple brackets. This version shall have the following warning marked on every page: “CBI exempted from disclosure under APO enclosed in triple brackets.” The other two versions shall conform to and be filed in accordance with the requirements of §201.6 of this chapter and §206.8(c), except that the specific information as to which exemption from disclosure was granted shall be redacted from those versions of the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

[60 FR 12, Jan. 3, 1995, as amended at 68 FR 32977, June 3, 2003; 70 FR 8511, Feb. 22, 2005; 76 FR 61942, Oct. 6, 2011]

§ 206.18 Time for determinations, reporting.

(a) *In general.* The Commission will make its determination with respect to injury within 120 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be, except that—

(1) If the Commission determines before the 100th day that the investigation is extraordinarily complicated,

the Commission will make its determination within 150 days; or

(2) If critical circumstances are alleged, the Commission will make its determination within 120 days after completion of its investigation with respect to critical circumstances. The Commission will make its report to the President at the earliest practicable time, but not later than 180 days (240 days if critical circumstances are alleged) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(b) *Perishable agricultural product.* In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days after the date on which the request for provisional relief is received.

(c) *Critical circumstances.* If petitioner alleges the existence of critical circumstances in the petition, the Commission will report its determination regarding such allegation and any finding on or before the 60th day after such filing date.

§ 206.19 Public report.

Upon making a report to the President of the results of an investigation to which this subpart B relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

Subpart C—Investigations Relating to a Surge in Imports From a NAFTA Country

§ 206.21 Applicability of subpart.

This subpart C applies specifically to investigations under section 312(c) of the NAFTA Implementation Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.22 Definition applicable to subpart C.

For the purposes of this subpart, the term *surge* means a significant increase

in imports over the trend for a recent representative base period.

§ 206.23 Who may file a request.

If the President, under section 312(b) of the NAFTA Implementation Act, has excluded imports from a NAFTA country or countries from an action under chapter 1 of title II of the Trade Act of 1974, any entity that is representative of an industry for which such action is being taken may request the Commission to conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the action.

§ 206.24 Contents of request.

The request for an investigation shall include the following information:

(a) The identity of the entity submitting the request; a description of the relief action the effectiveness of which is allegedly being undermined; and a description of the imported article, identifying the United States tariff provision under which it is classified, and the name of the country or countries from which the surge in imports is alleged to be coming;

(b) The information required in § 206.14(b) of this subpart concerning representativeness of the entity filing the request;

(c) Data concerning imports from the NAFTA country or countries that form the basis of requestor's claim that a surge in imports has occurred;

(d) Information supporting the claim that such surge in imports undermines the effectiveness of the relief action.

§ 206.25 Time for reporting.

The Commission will submit the findings of its investigation to the President no later than 30 days after the request is received.

§ 206.26 Public report.

Upon making a report to the President of the results of an investigation to which this subpart C relates, the Commission will make such report public (with the exception of any confidential business information) and cause a summary thereof to be published in the FEDERAL REGISTER.

Subpart D—Investigations Relating to Bilateral Safeguard Actions

§ 206.31 Applicability of subpart.

This subpart D applies specifically to investigations under section 311(b) of the United States-Australia Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Bahrain Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Chile Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Colombia Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (19 U.S.C. 4061(b)), section 211(b) of the United States-Jordan Free Trade Area Implementation Act (19 U.S.C. 2112 note), section 311(b) of the United States-Korea Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Morocco Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 302(b) of the NAFTA Implementation Act (19 U.S.C. 3352(b)), section 311(b) of the United States-Oman Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Panama Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Peru Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), and section 311(b) of the United States-Singapore Free Trade Agreement Implementation Act (19 U.S.C. 3805 note). For other applicable rules, see subpart A of this part and part 201 of this chapter.

[77 FR 3926, Jan. 26, 2012]

§ 206.32 Definitions applicable to subpart D.

For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

(a) The term *substantial cause* has the same meaning as in section 202(b)(1)(B) of the Trade Act.

(b) The terms *domestic industry*, *serious injury*, and *threat of serious injury*

have the same meanings as in section 202(c)(6) of the Trade Act.

(c) *Critical circumstances* mean such circumstances as are described in section 202(d) of the Trade Act;

(d) *Perishable agricultural product* means any agricultural product or citrus product, including livestock, which is the subject of monitoring pursuant to section 202(d) of the Trade Act.

(e) *Korean motor vehicle article* means a good provided for in heading 8703 or 8704 of the U.S. Harmonized Tariff Schedule that qualifies as an originating good under section 202(b) of the United States-Korea Free Trade Agreement Implementation Act.

[77 FR 3926, Jan. 26, 2012, as amended at 77 FR 37805, June 25, 2012]

§ 206.33 Who may file a petition.

(a) *In general.* A petition under this subpart D may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article that is like or directly competitive with an article that is allegedly, as a result of the reduction or elimination of a duty provided for under a free trade agreement listed in paragraph (b) of this section, being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the article constitute a substantial cause of serious injury, or (except in the case of a Canadian article) threat thereof, to such domestic industry. Unless the implementation statute provides otherwise, a petition may be filed only during the transition period of the particular free trade agreement.

(b) *List of free trade agreements.* The free trade agreements referred to in paragraph (a) of this section include the United States-Australia Free Trade Agreement, the United States-Bahrain Free Trade Agreement, the United States-Chile Free Trade Agreement, the United States-Colombia Trade Promotion Agreement, the Dominican Republic-Central America-United States Free Trade Agreement, the United States-Jordan Free Trade Area Agreement, the United States-Korea Free Trade Agreement, the United States-

Morocco Free Trade Agreement, the North American Free Trade Agreement (NAFTA), the United States-Oman Free Trade Agreement, the United States-Panama Trade Promotion Agreement, the United States-Peru Trade Promotion Agreement, and the United States-Singapore Free Trade Agreement, to the extent that such agreements have entered into force.

(c) *Critical circumstances.* An entity of the type described in paragraph (a) of this section that represents a domestic industry may allege that critical circumstances exist and petition for provisional relief with respect to imports if such product is from Australia, Canada, Jordan, Korea, Mexico, Morocco, or Singapore.

(d) *Perishable agricultural product.* An entity of the type described in paragraph (a) of this section that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to imports of such product from Australia, Canada, Jordan, Korea, Mexico, Morocco, or Singapore, but only if such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

(e) *Korean motor vehicle article.* An entity of the type described in paragraph (a) of this section that is filing a petition with respect to a product from Korea shall state whether it represents a domestic industry producing an article that is like or directly competitive with a Korean motor vehicle article.

[77 FR 3926, Jan. 26, 2012]

§ 206.34 Contents of petition.

A petition under this subpart D shall include specific information in support of the claim that, as a result of the reduction or elimination of a duty provided for under a free trade agreement listed in § 206.33(b), an article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the article constitute a substantial cause of serious injury, or (except in the case of a Canadian article) threat thereof, to the domestic industry producing an article that is like or

directly competitive with the imported article. If provisional relief is requested in a petition concerning an article from Australia, Canada, Jordan, Korea, Mexico, Morocco, or Singapore, the petition shall state whether provisional relief is sought because *critical circumstances* exist or because the imported article is a *perishable agricultural product*. In addition, a petition filed under this subpart D shall include the following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(2) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(3) The names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years that form the basis of the claim that the article concerned is being imported in increased quantities in absolute terms;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data for each of the most recent 5 full years indicating the nature and extent of injury to the domestic industry concerned:

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(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury*. An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports of the subject article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof*. A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete*. A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Critical circumstances*. If the petition alleges the existence of critical circumstances, a statement setting forth the basis for the belief that there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and that delay in taking action would cause damage to that industry that would be difficult to repair, and a statement concerning the provisional relief requested and the basis therefor.

[77 FR 3926, Jan. 26, 2012]

§ 206.35 Time for determinations, reporting.

(a) *In general*. The Commission will make its determination with respect to injury within 120 days (180 days if critical circumstances are alleged) after the date on which the investigation is initiated. The Commission will make its report to the President no later than 30 days after the date on which its determination is made.

(b) *Perishable agricultural product*. In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days after the date on which the request for provisional relief is received.

(c) *Critical circumstances*. If petitioner alleges the existence of critical circumstances in the petition, the Commission will report its determination regarding such allegation and any finding on or before the 60th day after such filing date.

[77 FR 3927, Jan. 26, 2012]

§ 206.36 Public report.

Upon making a report to the President of the results of an investigation to which this subpart D relates, the Commission will make such report public (with the exception of information which the Commission determines to

be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

§ 206.37 Limited disclosure of certain confidential business information under administrative protective order.

Except in the case of an investigation under the United States-Jordan Free Trade Area Implementation Act or the NAFTA, the Secretary shall make available to authorized applicants, in accordance with the provisions of § 206.17, confidential business information obtained in an investigation under this subpart.

[77 FR 3927, Jan. 26, 2012]

Subpart E—Investigations for Relief From Market Disruption

§ 206.41 Applicability of subpart.

This subpart E applies specifically to investigations under section 406(a) or 421(b) or (o) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

[59 FR 5091, Feb. 3, 1994, as amended at 67 FR 8190, Feb. 22, 2002]

§ 206.42 Who may file a petition.

(a) A petition under section 406(a) of the Trade Act may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article with respect to which there are imports of a like or directly competitive article which is the product of a Communist country, which imports, allegedly, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of material injury, or the threat thereof, to such domestic industry.

(b) A petition under section 421(b) or (o) of the Trade Act may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

[67 FR 8191, Feb. 22, 2002]

§ 206.43 Contents of a petition under section 406(a) of the Trade Act.

A petition for relief under section 406(a) of the Trade Act shall include specific information in support of the claim that imports of an article that are the product of a Communist country which are like or directly competitive with an article produced by a domestic industry, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of material injury, or the threat thereof, to such domestic industry. In addition, such petition shall, to the extent practicable, include the following information:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced; (2) the percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and (3) the names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that imports from a Communist country of an article like or directly competitive with the article produced by the domestic industry concerned are increasing rapidly, either absolutely or relative to domestic production;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

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(1) With respect to material injury, data indicating:

(i) An idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Unemployment or underemployment within the industry; and/or

(2) With respect to the threat of material injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development; and

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets;

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the material injury, or threat thereof, described in paragraph (e) of this section; information relating to the effect of imports of the subject merchandise on prices in the United States for like or directly competitive articles; evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns; and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought.

[59 FR 5091, Feb. 3, 1994, as amended at 67 FR 8191, Feb. 22, 2002]

§ 206.44 Contents of a petition under section 421(b) or (o) of the Trade Act.

(a) *Petitions under section 421(b).* (1) A petition for relief under section 421(b) of the Trade Act shall provide specific information in support of the claim that products of the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. In addition, such petition shall include the information described in paragraphs (b) through (j) of this section. The petition shall provide the information required by this paragraph and paragraphs (b) through (j) of this section to the extent that such information is reasonably available to the petitioner with due diligence.

(2) If the petition fails to provide any item of information specified in paragraphs (b) through (j) of this section, the petition shall include a certification that such information was not reasonably available to the petitioner.

(b) *Product description.* Each petition shall include the name and description of the imported product concerned, specifying the United States tariff provision under which such product is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic product concerned.

(c) *Representativeness.* Each petition shall include:

(1) The names and street addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition, the locations of the establishments in which each such firm produces the domestic product, and the telephone number and contact person(s) for each such firm;

(2) The percentage of domestic production of the like or directly competitive domestic product that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and

(3) The names and street addresses of all other producers of the domestic product known to the petitioner, and

the telephone number and contact person(s) for each such producer.

(d) *Import data.* Each petition shall include import data for at least each of the most recent 5 full years which form the basis of the claim that imports from the People's Republic of China of a product like or directly competitive with the product produced by the domestic industry concerned are increasing rapidly, either absolutely or relatively.

(e) *Domestic production data.* Each petition shall include data on total U.S. production of the domestic product for each full year for which data are provided pursuant to paragraph (d) of this section.

(f) *Data showing injury and/or threat of injury.* Each petition shall include the following quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to material injury, information, including data on production, capacity, capacity utilization, shipments, net sales, profits, employment, productivity, inventories, and expenditures on capital and research and development, indicating:

(i) An idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Unemployment or underemployment within the industry; and/or

(2) With respect to the threat of material injury, data relating to:

(i) Declines in sales or market share, increases in inventory (whether maintained by domestic producers, importers, wholesalers, retailers, or producers or exporters in the People's Republic of China), and/or a downward trend in production, profits, wages, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(iv) Data regarding productive capacity in the People's Republic of China, any unused productive capacity, and any potential for product shifting in the People's Republic of China.

(g) *Cause of injury.* Each petition shall enumerate and describe the causes believed to be resulting in the material injury, or threat thereof, described in paragraph (f) of this section. The petition shall provide information relating to the effect of imports of the subject merchandise on prices in the United States for like or directly competitive articles. The petition shall also include a statement regarding the extent to which increased imports, either actual or relative, of the imported product are believed to be such a cause, supported by pertinent data.

(h) *Critical circumstances.* If the petition alleges that critical circumstances exist within the meaning of section 421(i)(1) of the Trade Act, the petition shall provide detailed information supporting that claim as well as detailed information demonstrating that delay in taking action under section 421 of the Act would cause damage to the relevant domestic industry that would be difficult to repair.

(i) *Relief sought and purpose thereof.* The petition shall include a statement describing the import relief sought under section 421(i)(4) and/or section 421(a) of the Trade Act and the purpose thereof.

(j) *Additional information.* The petition shall include:

(1) The names of all U.S. importers and all producers in China of the subject merchandise known to petitioner, and the street address, telephone and fax number, and primary contact person(s) for each such importer and producer in China;

(2) A detailed description of each product for which the petitioner requests the Commission to seek pricing information in its questionnaires, and an explanation of why the petitioner believes the Commission should collect

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pricing information for each such product;

(3) For each domestic producer represented by petitioner, the company names of its 10 largest purchasers, and the street address, telephone number, and primary contact person(s) for each such purchaser;

(4) For each allegation of lost sales and/or lost revenues, supporting information with regard to each such alleged loss, including the name of the company represented by petitioner that lost the sale or revenue, the name of the company that captured the sale or whose competition resulted in lost revenue (including company street address, company contact person, and telephone and fax numbers for each contact person), the date and total value of the lost sale or lost revenue, and the total quantity of product involved (by weight or number of units).

(k) *Petitions under section 421(o)*. A petition under section 421(o) of the Trade Act shall include evidence of representativeness, as described in paragraph (b) of this section, as well as specific information in support of the claim that action under section 421 of the Act continues to be necessary to prevent or remedy market disruption. The information provided in support of that claim should take into account factors such as those specified in paragraphs (c) through (g) of this section. To comply with this paragraph, the petition should contain all relevant information that is reasonably available to the petitioner with due diligence.

[67 FR 8191, Feb. 22, 2002, as amended at 68 FR 65167, Nov. 19, 2003]

§ 206.44a Special rules for conducting investigations under section 421(b) of the Trade Act.

(a) *Service of the petition*. (1)(i) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 206.17(a)(4) of this part, he or she approves an application under § 206.17(a)(2) of this part pursuant to § 206.47. When practicable, this notification shall be made by facsimile transmission. The petitioner shall then serve a copy of the petition, including all confidential business information, on the approved lead authorized applicants in accord with

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§ 206.17(f) within 2 calendar days of the time notification is made by the Secretary.

(ii) Upon establishment and issuance of the service list, the petitioner shall serve the lead authorized applicants enumerated on the list established by the Secretary pursuant to § 206.17(a)(4) that have not been served pursuant to paragraph (a)(1)(i) of this section within 2 calendar days of the establishment and issuance of the Secretary's list.

(2) As the Secretary adds new authorized applicants to the service list described in paragraph (a)(1) of this section, the Secretary shall notify the petitioner and issue an amended list, and the petitioner shall serve new lead authorized applicants with a copy of the petition in the same manner as under paragraph (a)(1)(i) of this section.

(3) The petitioner shall serve a copy of the non-confidential version of the petition on those persons enumerated on the list established by the Secretary pursuant to § 201.11(d) of this chapter within 2 calendar days of the establishment and issuance of the Secretary's list, and on any additional persons within 2 calendar days of receiving notification from the Secretary of an amended list.

(4) The petitioner shall attest service of the petition by filing a certificate of service with the Commission.

(b) *Comment on information*. The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief. Comments shall concern only such information, and shall not exceed 15 pages of textual material, double-spaced and on single-sided stationery measuring 8½ × 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. New factual information and arguments based on that 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. The record shall close

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on the date such comments are due, except with respect to changes in bracketing of confidential business information permitted by §206.8(c) of this part.

[68 FR 65168, Nov. 19, 2003]

§ 206.45 Time for reporting.

(a) In an investigation under section 406(a) of the Trade Act, the Commission will make its report to the President at the earliest practical time, but not later than 3 months after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(b) In an investigation under section 421(b) of the Trade Act, the Commission will transmit to the President and the United States Trade Representative its determination at the earliest practicable time, but in no case later than 60 days (or 90 days in the case of a petition requesting provisional relief under section 421(i) of the Act) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted. The Commission will transmit its report to the President and the Trade Representative no later than 20 days after the transmittal of the determination.

(c) In an investigation under section 421(b) of the Trade Act in which the petition requests provisional relief under section 421(i) of the Act, the Commission will transmit to the President and the Trade Representative its determination and report with respect to section 421(i) of the Act no later than 45 days after the petition is filed.

(d) In an investigation under section 421(o) of the Trade Act, the Commission shall transmit to the President a report on its investigation and determination not later than 60 days before the action under section 421(m) of the Trade Act is to terminate.

(e) *Date of filing.* Any petition under this subpart E that is filed after 12:00 noon shall be deemed to be filed on the next business day.

[67 FR 8192, Feb. 22, 2002, as amended at 70 FR 8511, Feb. 22, 2005]

§ 206.46 Public report.

Upon making a report to the President of the results of an investigation to which this subpart E relates, the

Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

[59 FR 5091, Feb. 3, 1994. Redesignated at 67 FR 8191, Feb. 22, 2002]

§ 206.47 Limited disclosure of certain confidential business information under administrative protective order.

In an investigation under section 421(b) or (o) of the Trade Act, the Secretary shall make confidential business information available to authorized applicants, subject to the provisions of §206.17.

[67 FR 8192, Feb. 22, 2002]

Subpart F—Monitoring; Advice As to Effect of Extension, Reduction, Modification, or Termination of Relief Action

SOURCE: 60 FR 10, Jan. 3, 1995, unless otherwise noted.

§ 206.51 Applicability of subpart.

This subpart F applies specifically to investigations under section 204 of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.52 Monitoring.

(a) *In general.* As long as any import relief imposed by the President pursuant to section 203 of the Trade Act remains in effect, the Commission will monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the industry to make a positive adjustment to import competition.

(b) *Reports.* Whenever the initial period of import relief, or any extension thereof, exceeds three (3) years, the Commission will submit a report on the results of such monitoring to the President and the Congress. Such report will be submitted not later than the date which is the mid-point of the initial period of import relief, or any

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extension thereof. In the course of preparing each such report, the Commission will hold a hearing at which interested persons will be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(c) Limited disclosure of certain confidential business information under administrative protective order. Upon receipt of a timely application filed by an authorized applicant, the Secretary shall make available to an authorized applicant under administrative protective order all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during an investigation under this section with respect to an article that was the subject of an affirmative Commission determination under section 202 of the Trade Act (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure). Such disclosure shall be made in the manner provided for and in accordance with the procedures set forth in § 206.17. The provisions in paragraphs (d) and (e) of § 206.17 relating to Commission responses to a breach of an administrative protective order and breach procedure shall apply with respect to orders issued under this paragraph.

[60 FR 10, Jan. 3, 1995, as amended at 66 FR 32218, June 14, 2001]

§ 206.53 Investigations to advise the President as to the probable economic effect of reduction, modification, or termination of action.

Upon the request of the President, the Commission will conduct an investigation for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the industry concerned of any reduction, modification, or termination of the action taken under section 203 of the Trade Act which is under consideration.

§ 206.54 Investigations with respect to extension of action.

(a) *Institution of investigations.* Upon the request of the President, or upon

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petition on behalf of the industry concerned, the Commission will investigate to determine whether an action taken under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(b) *Who may file a petition.* A petition under this § 206.54 may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of the industry producing the domestic article concerned in the investigation of the Commission which resulted in the imposition by the President of the import relief action.

(c) *Time for filing.* Any petition filed on behalf of an industry for a determination under this § 206.54 must be filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under section 203 of the Trade Act is to terminate.

(d) *Contents of petition.* A petition under this § 206.54 shall include the following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(1) *Identification of relief action.* An identification of the action under section 203, or portion of such action, for which a determination under this § 206.54 is sought;

(2) *Representativeness.* (i) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(ii) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(iii) The names and locations of all other producers of the domestic article known to the petitioner;

(3) *Import data.* Import data on the foreign article concerned for each full

year since action was taken under section 203 of the Trade Act, starting with the year in which action was taken;

(4) *Domestic production data.* Data on total U.S. production of the domestic article concerned for each year for which data are provided pursuant to paragraph (d)(3) of this section;

(5) *Efforts to adjust.* Specific information in support of the claim that action under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is making a positive adjustment to import competition.

(e) *Limited disclosure of certain confidential business information under administrative protective order.* Upon receipt of a timely application filed by an authorized applicant, the Secretary shall make available to an authorized applicant under administrative protective order all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during an investigation under this section with respect to an article that was the subject of an affirmative Commission determination under section 202 of the Trade Act (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure). Such disclosure shall be made in the manner provided for and in accordance with the procedures set forth in § 206.17. The provisions in paragraphs (d) and (e) of § 206.17 relating to Commission responses to a breach of an administrative protective order and breach procedure shall apply with respect to orders issued under this paragraph.

(f) *Time for reporting.* The Commission will make its report to the President at the earliest practical time, but not later than 60 days before the action under section 203 of the Trade Act is to terminate, unless the President specifies a different date.

(g) *Public report.* Upon making a report to the President of the results of an investigation to which this § 206.54 relates, the Commission will make such report public (with the exception of information which the Commission

determines to be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

§ 206.55 Investigations to evaluate the effectiveness of relief.

(a) *Investigation.* After any action taken under section 203 has terminated, the Commission will conduct an investigation for the purpose of evaluating the effectiveness of the relief action in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b) of the Trade Act.

(b) *Hearing.* In the course of such investigation, the Commission will hold a hearing at which interested persons will be given an opportunity to be present, to produce evidence, and to be heard.

(c) *Time for reporting.* The Commission will submit its report to the President and to the Congress by no later than the 180th day after the day on which the action terminated.

Subpart G—Investigations For Action in Response to Trade Diversion; Reviews of Action Taken

SOURCE: 67 FR 8192, Feb. 22, 2002, unless otherwise noted.

§ 206.61 Applicability of subpart.

The provisions of this subpart G apply to investigations under section 422(b) and/or reviews under section 422(j) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.62 Who may file a petition.

A petition for an investigation under section 422(b) of the Trade Act may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

§ 206.63 Contents of petition.

A petition under section 422(b) of the Trade Act shall include specific information in support of the claim that an action described in section 422(c) of the

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Trade Act has caused, or threatens to cause, a significant diversion of trade into the domestic market of the United States. To comply with that requirement and the requirements in paragraphs (a) through (f) of this section, the petition shall include all relevant information that is reasonably available to the petitioner with due diligence. The petition shall include the following information:

(a) *Product description.* The name and description of the imported product concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the domestic product concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic product is produced;

(2) The percentage of domestic production of the domestic product that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and

(3) The names and locations of all other producers of the domestic product known to the petitioner;

(c) *Description of the action.* A description of the action or actions, as defined in section 422(c) of the Trade Act, that allegedly has caused or threatens to cause a significant diversion of trade into the domestic market of the United States;

(d) *Trade diversion data.* (1) The actual or imminent increase in United States market share held by such imports from the People's Republic of China;

(2) The actual or imminent increase in volume of such imports into the United States;

(3) The nature and extent of the action taken or proposed by the WTO member concerned;

(4) The extent of exports from the People's Republic of China to that WTO member and to the United States;

(5) The actual or imminent changes in exports to that WTO member due to the action taken or proposed;

(6) The actual or imminent diversion of exports from the People's Republic of China to countries other than the United States;

(7) Cyclical or seasonal trends in import volumes into the United States of the products at issue; and

(8) Conditions of demand and supply in the United States market for the products at issue;

(e) *Import data.* Any import data available to the petitioner that will aid the Commission in examining, pursuant to section 422(d)(2) of the Trade Act, the changes in imports into the United States from the People's Republic of China since the time that the WTO member commenced the investigation that led to a request for consultations described in section 422(a) of the Act; and

(f) *Relief sought and purpose thereof.* A statement describing the import relief sought under section 422(h) of the Trade Act and the purpose thereof.

§ 206.64 Institution of investigation or review; publication of notice; and availability for public inspection.

(a) Paragraphs (a) and (b) in § 206.3 govern the institution of an investigation under section 422(b) of the Act and the publication of a FEDERAL REGISTER notice concerning the investigation. Following receipt of notification that the WTO member or members involved have notified the Committee on Safeguards of the WTO of a modification in the action taken by them against the People's Republic of China pursuant to consultation referred to in section 422(a) of the Act, the Commission will promptly conduct a review under section 422(j) of the Act regarding the continued need for action taken under section 422(h) of the Act. The Commission also will publish notice of the review in the FEDERAL REGISTER.

(b) The Commission will make available for public inspection the notification document that prompted a review under paragraph (a) of this section, excluding any confidential business information in the document. Paragraph (c) in § 206.3 governs the availability for public inspection of a petition, request, resolution, or motion that prompted the Commission to institute an investigation under section 422(b) of the Act.

§ 206.65 Public hearing.

Public hearings in investigations under section 422(b) of the Act are provided for in § 206.5(b).

§ 206.66 Limited disclosure of certain confidential business information under administrative protective order.

In an investigation under section 422(b) of the Trade Act, the Secretary shall make confidential business information available to authorized applicants, subject to the provisions of § 206.17.

§ 206.67 Time for determination and report.

(a) In an investigation under section 422(b) of the Trade Act, the Commission will transmit its determination under that section of the Act to the President and the Trade Representative at the earliest practical time, but not later than 45 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be. The Commission shall issue and transmit its report on the determination not later than 10 days after the determination is issued.

(b) In a review under section 422(j) of the Trade Act, the Commission will report its determination to the President not later than 60 days after the notification described in that section of the Act.

§ 206.68 Public report.

Upon making a report to the President of the results of an investigation under section 422(b) or a review under section 422(j) of the Trade Act, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

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

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