

§210.51

19 CFR Ch. II (4–1–10 Edition)

interested persons on the issues of appropriate Commission action, the public interest, and bonding by the respondents for purposes of an initial determination on temporary relief, see §§210.61, 210.62, and 210.66(a). For purposes of the recommended determination required by §210.42(a)(1)(ii), an administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons on the issues of appropriate Commission action and bonding by the respondents. Unless the Commission orders otherwise, and except as provided in paragraph (b)(2) of this section, an administrative law judge shall not address the issue of the public interest for purposes of an initial determination on violation of section 337 of the Tariff Act under §210.42(a)(1)(i).

(2) Regarding terminations by settlement agreement, consent order, or arbitration agreement under §210.21 (b), (c) or (d), the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

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

(1) Such exclusion is necessary to prevent circumvention of an exclusion order limited to products of named persons; or

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

(d) *Forfeiture or return of respondents' bonds.* (1)(i) If one or more respondents posts a bond pursuant to 19 U.S.C. 1337(e)(1) or 1337(j)(3), proceedings to determine whether a respondent's bond

should be forfeited to a complainant in whole or part may be initiated upon the filing of a motion, addressed to the administrative law judge who last presided over the investigation, by a complainant within 90 days after the expiration of the period of Presidential review under 19 U.S.C. 1337(j). If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the Commission.

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

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

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

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

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67628, Dec. 30, 1994; 73 FR 38326, July 7, 2008]

§210.51 Period for concluding investigation.

(a) *Permanent relief.* Within 45 days after institution of the investigation, the administrative law judge shall issue an order setting a target date for

completion of the investigation. If the target date does not exceed 16 months from the date of institution of the investigation, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds 16 months, the order of the administrative law judge shall constitute an initial determination. After the target date has been set, it can be modified by the administrative law judge for good cause shown before the investigation is certified to the Commission or by the Commission after the investigation is certified to the Commission. Any extension of the target date beyond 16 months, before the investigation is certified to the Commission, shall be by initial determination.

(b) *Temporary relief.* The temporary relief phase of an investigation shall be concluded and a final order issued no later than 90 days after publication of the notice of investigation in the FEDERAL REGISTER, unless the temporary relief phase of the investigation has been designated “more complicated” by the Commission or the presiding administrative law judge pursuant to §210.22(c) and §210.60. If that designation has been made, the temporary relief phase of the investigation shall be concluded and a final order issued no later than 150 days after publication of the notice of investigation in the FEDERAL REGISTER.

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

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67629, Dec. 30, 1994; 61 FR 43432, Aug. 23, 1996; 73 FR 38326, July 7, 2008]

Subpart H—Temporary Relief

§ 210.52 Motions for temporary relief.

Requests for temporary relief under section 337 (e) or (f) of the Tariff Act of 1930 shall be made through a motion filed in accordance with the following provisions:

(a) A complaint requesting temporary relief shall be accompanied by a motion setting forth the complainant’s request for such relief. In determining whether to grant temporary relief, the

Commission will apply the standards the U.S. Court of Appeals for the Federal Circuit uses in determining whether to affirm lower court decisions granting preliminary injunctions. The motion for temporary relief accordingly must contain a detailed statement of specific facts bearing on the factors the Federal Circuit has stated that a U.S. District Court must consider in granting a preliminary injunction.

(b) The motion must also contain a detailed statement of facts bearing on:

(1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of temporary relief; and

(2) The appropriate amount of the bond, if the Commission determines that a bond will be required.

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

(d) The following documents and information also shall be filed along with the motion for temporary relief:

(1) A memorandum of points and authorities in support of the motion;

(2) Affidavits executed by persons with knowledge of the facts asserted in the motion; and

(3) All documents, information, and other evidence in complainant’s possession that complainant intends to submit in support of the motion.

(e) If the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief contains confidential business information as defined in §201.6(a) of this chapter, the complainant must follow the procedure outlined in §§210.4(a), 210.5(a), 201.6 (a) and (c), 210.8(a), and 210.55 of this part.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67629, Dec. 30, 1994; 60 FR 32444, June 22, 1995]

§ 210.53 Motion filed after complaint.

(a) A motion for temporary relief may be filed after the complaint, but must be filed prior to the Commission determination under §210.10 on whether to institute an investigation. A motion filed after the complaint shall contain