

§210.74

investigation as it deems necessary to insure compliance with its orders.

(b) *Extension of time.* The Director of the Office of Unfair Import Investigations may, for good cause shown, extend the time in which reports required by exclusion orders, cease and desist orders, and consent orders may be filed. An extension of time within which a report may be filed, or the filing of a report that does not evidence full compliance with the order, does not in any circumstances suspend or relieve a respondent from its obligation under the law with respect to compliance with such order.

§210.74 Modification of reporting requirements.

(a) *Exclusion and cease and desist orders.* The Commission may modify reporting requirements of exclusion and cease and desist orders as necessary:

(1) To help the Commission assist the U.S. Customs Service in ascertaining that there has been compliance with an outstanding exclusion order;

(2) To help the Commission ascertain that there has been compliance with a cease and desist order;

(3) To take account of changed circumstances; or

(4) To minimize the burden of reporting or informational access.

An order to modify reporting requirements shall identify the reports involved and state the reason or reasons for modification. No reporting requirement will be suspended during the pendency of such a modification unless the Commission so orders. The Commission may, if the public interest warrants, announce that a modification of reporting is under consideration and ask for comment, but it may also modify any reporting requirement at any time without notice, consistent with the standards of this section.

(b) *Consent orders.* Consistent with the standards set forth in paragraph (a) of this section, the Commission may modify reporting requirements of consent orders. The Commission shall serve notice of any proposed change, together with the reporting requirements to be modified and the reasons therefor, on each party subject to the consent order. Such parties shall be given the opportunity to submit briefs

19 CFR Ch. II (4-1-10 Edition)

to the Commission, and the Commission may hold a hearing on the matter. Notice of any proposed change in the reporting requirements will be published in the FEDERAL REGISTER if the Commission determines to solicit public comment on the proposed change.

[59 FR 39039, Aug. 1, 1994, as amended at 60 FR 53121, Oct. 12, 1995]

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

(a) *Informal enforcement proceedings.* Informal enforcement proceedings may be conducted by the Commission, through the Office of Unfair Import Investigations, with respect to any act or omission by any person in possible violation of any provision of an exclusion order, cease and desist order, or consent order. Such matters may be handled by the Commission through correspondence or conference or in any other way that the Commission deems appropriate. The Commission may issue such orders as it deems appropriate to implement and insure compliance with the terms of an exclusion order, cease and desist order, or consent order, or any part thereof. Any matter not disposed of informally may be made the subject of a formal proceeding pursuant to this subpart.

(b) *Formal enforcement proceedings.* (1) The Commission may institute an enforcement proceeding at the Commission level upon the filing by the complainant in the original investigation or his successor in interest, by the Office of Unfair Import Investigations, or by the Commission of a complaint setting forth alleged violations of any exclusion order, cease and desist order, or consent order. If a proceeding is instituted, the complaint shall be served upon the alleged violator and a notice of institution published in the FEDERAL REGISTER. Within 15 days after the date of service of such a complaint, the named respondent shall file a response to it. Responses shall fully advise the Commission as to the nature of any defense and shall admit or deny each allegation of the complaint specifically and in detail unless the respondent is without knowledge, in which case its

answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted may be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered.

(2) Upon the failure of a respondent to file and serve a response within the time and in the manner prescribed herein the Commission, in its discretion, may find the facts alleged in the complaint to be true and take such action as may be appropriate without notice or hearing, or, in its discretion, proceed without notice to take evidence on the allegations set forth in the complaint, provided that the Commission (or administrative law judge, if one is appointed) may permit late filings of an answer for good cause shown.

(3) The Commission, in the course of a formal enforcement proceeding under this section may hold a public hearing and afford the parties to the enforcement proceeding the opportunity to appear and be heard. The hearing will not be subject to sections 554, 555, 556, 557, and 702 of title 5 of the United States Code. The Commission may delegate the hearing to the chief administrative law judge for designation of a presiding administrative law judge, who shall certify an initial determination to the Commission. That initial determination shall become the determination of the Commission 90 days after the date of service of the initial determination, unless the Commission, within 90 days after the date of such service shall have ordered review of the initial determination on certain issues therein, or by order shall have changed the effective date of the initial determination.

(4) Upon conclusion of a formal enforcement proceeding under this section, the Commission may:

(i) Modify a cease and desist order, consent order, and/or exclusion order in any manner necessary to prevent the unfair practices that were originally the basis for issuing such order;

(ii) Bring civil actions in a United States district court pursuant to paragraph (c) of this section (and section 337(f)(2) of the Tariff Act of 1930) to recover for the United States the civil penalty accruing to the United States under that section for the breach of a

cease and desist order or a consent order, and to obtain a mandatory injunction incorporating the relief the Commission deems appropriate for enforcement of the cease and desist order or consent order; or

(iii) Revoke the cease and desist order or consent order and direct that the articles concerned be excluded from entry into the United States.

(5) Prior to effecting any modification, revocation, or exclusion under this section, the Commission shall consider the effect of such action upon 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.

(6) In lieu of or in addition to taking the action provided for in paragraph (b)(1) of this section, the Commission may issue, pursuant to section 337(i) of the Tariff Act of 1930, an order providing that any article imported in violation of the provisions of section 337 of the Tariff Act of 1930 and an outstanding final exclusion order issued pursuant to section 337(d) of the Tariff Act of 1930 be seized and forfeited to the United States, if the following conditions are satisfied:

(i) The owner, importer, or consignee of the article (or the agent of such person) previously attempted to import the article into the United States;

(ii) The article previously was denied entry into the United States by reason of a final exclusion order; and

(iii) Upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article (or the agent of such person) with written notice of the aforesaid exclusion order and the fact that seizure and forfeiture would result from any further attempt to import the article into the United States.

(c) *Court enforcement.* To obtain judicial enforcement of an exclusion order, a cease and desist order, a consent order, or a sanctions order, the Commission may initiate a civil action in the U.S. district court. In a civil action under section 337(f)(2) of the Tariff Act of 1930, the Commission may seek to recover for the United States the civil penalty accruing to the United States under that section for the breach of a

§210.76

cease and desist order or a consent order, and may ask the court to issue a mandatory injunction incorporating the relief the Commission deems appropriate for enforcement of the cease and desist order or consent order. The Commission may initiate a proceeding to obtain judicial enforcement without any other type of proceeding otherwise available under section 337 or this subpart or without prior notice to any person, except as required by the court in which the civil action is initiated.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38327, July 7, 2008]

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

(a) *Petitions for modification or rescission of exclusion orders, cease and desist orders, and consent orders.* (1) Whenever any person believes that changed conditions of fact or law, or the public interest, require that an exclusion order, cease and desist order, or consent order be modified or set aside, in whole or in part, such person may file with the Commission a petition requesting such relief. The Commission may also on its own initiative consider such action. The petition shall state the changes desired and the changed circumstances warranting such action, shall include materials and argument in support thereof, and shall be served on all parties to the investigation in which the exclusion order, cease and desist order, or consent order was issued. Any person may file an opposition to the petition within 10 days of service of the petition.

(2) If the petitioner previously has been found by the Commission to be in violation of section 337 of the Tariff Act of 1930 and if its petition requests a Commission determination that the petitioner is no longer in violation of that section or requests modification or rescission of an order issued pursuant to section 337 (d), (e), (f), (g), or (i) of the Tariff Act of 1930, the burden of proof in any proceeding initiated in response to the petition pursuant to paragraph (b) of this section shall be on the petitioner. In accordance with section 337(k)(2) of the Tariff Act, relief may be granted by the Commission with respect to such petition on the

19 CFR Ch. II (4–1–10 Edition)

basis of new evidence or evidence that could not have been presented at the prior proceeding or on grounds that would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

(b) *Commission action upon receipt of petition.* The Commission may thereafter institute a proceeding to modify or rescind the exclusion order, cease and desist order, or consent order by issuing a notice. The Commission may hold a public hearing and afford interested persons the opportunity to appear and be heard. After consideration of the petition, any responses thereto, and any information placed on the record at a public hearing or otherwise, the Commission shall take such action as it deems appropriate. The Commission may delegate any hearing under this section to the chief administrative law judge for designation of a presiding administrative law judge, who shall certify a recommended determination to the Commission.

[59 FR 39039, Aug. 1, 1994, as amended at 61 FR 43433, Aug. 23, 1996]

§210.77 Temporary emergency action.

(a) Whenever the Commission determines, pending a formal enforcement proceeding under §210.75(b), that without immediate action a violation of an exclusion order, cease and desist order, or consent order will occur and that subsequent action by the Commission would not adequately repair substantial harm caused by such violation, the Commission may immediately and without hearing or notice modify or revoke such order and, if it is revoked, replace the order with an appropriate exclusion order.

(b) Prior to taking any action under this section, the Commission shall consider the effect of such action upon 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. The Commission shall, if it has not already done so, institute a formal enforcement proceeding under §210.75(b) at the time of taking action