United States International Trade Commission

§ 210.8

Subpart B—Commencement of Preinstitution Proceedings and Investigations

§ 210.8 Commencement of preinstitution proceedings.

A preinstitution proceeding is commenced by filing with the Secretary a signed original complaint and the requisite number of true copies.

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

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

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

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

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

NOTE TO PARAGRAPH (a)(1): The same requirements apply for the filing of a supplement or amendment to the complaint.

(b) Designation of a single attorney or representative for service of process. The service list prepared by the Secretary for each investigation will contain the name and address of no more than one attorney or other representative for each party to the investigation. In the event that two or more attorneys or other persons represent one party to the investigation, the party must select one of their number to be the lead attorney or representative for service of process. The lead attorney or representative for service of process shall state, at the time of the filing of its entry of appearance with the Secretary, that it has been so designated by the party it represents. (Only those persons authorized to receive confidential business information under a protective order issued pursuant to §210.34(a) are eligible to be included on the service list for documents containing confidential business information.)

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

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

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

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

NOTE TO PARAGRAPH (a)(2): The same requirements apply for the filing of a supplement or amendment to the complaint or a supplement to the motion for temporary relief.

(b) Provide specific information regarding the public interest. Complainant must file, concurrently with the complaint, a separate statement of public interest, not to exceed five pages, inclusive of attachments, addressing how issuance of the requested relief, i.e., a general exclusion order, a limited exclusion order, and/or a cease and desist order, in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. In particular, the submission should:

1. Explain how the articles potentially subject to the requested remedial orders are used in the United States;
2. Identify any public health, safety, or welfare concerns relating to the requested remedial orders;
3. Identify like or directly competitive articles that complainant, its licensees, or third parties make which could replace the subject articles if they were to be excluded;
4. Indicate whether the complainant, its licensees, and/or third parties have the capacity to replace the volume of articles subject to the requested remedial orders in a commercially reasonable time in the United States; and
5. State how the requested remedial orders would impact consumers.

(c) Publication of notice of filing. (1) When a complaint is filed, the Secretary to the Commission will publish a notice in the Federal Register inviting comments from the public and proposed respondents on any public interest issues arising from the complaint and potential exclusion and/or cease and desist orders. In response to the notice, members of the public and proposed respondents may provide specific information regarding the public interest in a written submission not to exceed five pages, inclusive of attachments, to the Secretary to the Commission within five (5) calendar days of publication of notice of the filing of a complaint. Comments that substantially address allegations made in the complaint will not be considered. Members of the public and proposed respondents may address how issuance of the requested exclusion order and/or a cease and desist order in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. Submissions should:

1. Explain how the articles potentially subject to the requested remedial orders are used in the United States;
2. Identify any public health, safety, or welfare concerns relating to the requested remedial orders;
3. Identify like or directly competitive articles that complainant, its licensees, or third parties make which could replace the subject articles if they were to be excluded;
4. Indicate whether the complainant, its licensees, and/or third parties have the capacity to replace the volume of articles subject to the requested remedial orders in a commercially reasonable time in the United States; and
5. State how the requested remedial orders would impact consumers.

(2) Complainant may file a reply to any submissions received under paragraph (c)(1) of this section not to exceed five pages, inclusive of attachments, to the Secretary to the Commission within three (3) calendar days following the filing of the submissions.
(d) **Upon the initiative of the Commission.** The Commission may upon its initiative commence a preinstitution proceeding based upon any alleged violation of section 337 of the Tariff Act of 1930.

§ 210.9 **Action of Commission upon receipt of complaint.**

Upon receipt of a complaint alleging violation of section 337 of the Tariff Act of 1930, the Commission shall take the following actions:

(a) *Examination of complaint.* The Commission shall examine the complaint for sufficiency and compliance with the applicable sections of this chapter.

(b) *Informal investigatory activity.* The Commission shall identify sources of relevant information, assure itself of the availability thereof, and, if deemed necessary, prepare subpoenas therefore, and give attention to other preliminary matters.

§ 210.10 **Institution of investigation.**

(a)(1) The Commission shall determine whether the complaint is properly filed and whether an investigation should be instituted on the basis of the complaint. That determination shall be made within 30 days after the complaint is filed, unless—

(i) Exceptional circumstances preclude adherence to a 30-day deadline;

(ii) Additional time is allotted under other sections of this part in connection with the preinstitution processing of a motion by the complainant for temporary relief;

(iii) The complainant requests that the Commission postpone the determination on whether to institute an investigation; or

(iv) The complainant withdraws the complaint.

(2) If exceptional circumstances preclude Commission adherence to the 30-day deadline for determining whether to institute an investigation on the basis of the complaint, the determination will be made as soon after that deadline as possible.

(3) If additional time is allotted in connection with the preinstitution processing of a motion by the complainant for temporary relief, the Commission will determine whether to institute an investigation and provisionally accept the motion within 35 days after the filing of the complaint or by a subsequent deadline computed in accordance with §210.53(a), §210.54, §210.55(b), §210.57, or §210.58 as applicable.

(b) An investigation shall be instituted by the publication of a notice in the Federal Register. The notice will define the scope of the investigation and may be amended as provided in §210.14(b) and (c). The Commission may order the administrative law judge to take evidence and to issue a recommended determination on the public interest based generally on the submissions of the parties and the public under §210.8(b) and (c). If the Commission orders the administrative law judge to take evidence with respect to the public interest, the administrative law judge will limit public interest discovery appropriately, with particular consideration for third parties, and will ensure that such discovery will not delay the investigation or be used improperly. Public interest issues will not be within the scope of discovery unless