

from the 6-mile radius to 15.3 miles northwest of the airport and within a 6-mile radius of the Offutt AFB and within 4.3 miles each side of the Offutt ILS localizer course extending from the 6-mile radius to 7.4 miles southeast of the AFB and within a 6.3 mile radius of Council Bluffs Municipal Airport excluding that portion which lies within the Eppley Airfield and the Offutt AFB Class E5 airspace.

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Issued in Kansas City, MO, on September 11, 1995.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

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## INTERNATIONAL TRADE COMMISSION

### 19 CFR Parts 201 and 207

#### Notice of Proposed Amendments to Rules of Practice and Procedure

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States International Trade Commission (the Commission) proposes to amend its Rules of Practice and Procedure concerning antidumping and countervailing duty investigations and reviews in 19 CFR parts 201 and 207. The proposed amendments have two purposes. First, they will conform the Commission's rules, on a permanent basis, to the requirements of the Uruguay Round Agreements Act (URAA). Second, the amendments will improve the effectiveness and efficiency of the Commission's procedures in conducting antidumping and countervailing duty investigations and reviews.

**DATES:** To be assured of consideration, written comments must be received not later than December 18, 1995.

**ADDRESSES:** A signed original and 14 copies of each set of comments, along with a cover letter, should be submitted to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436.

**FOR FURTHER INFORMATION CONTACT:** Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, telephone 202-205-3087, or Vera A. Libeau, Office of Investigations, U.S. International Trade Commission, telephone 202-205-3176. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

#### SUPPLEMENTARY INFORMATION:

##### Background

The URAA was enacted on December 8, 1994. It contains provisions which, *inter alia*, amend Title VII of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671 *et seq.*), concerning antidumping and countervailing duty investigations and reviews. Enactment of the URAA necessitated that the Commission amend its rules concerning Title VII practice and procedure.

Commission rules to implement new legislation ordinarily are promulgated in accordance with the rulemaking provisions of § 553 of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), which entails the following steps: (1) publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. See 5 U.S.C. 553. That procedure could not be utilized in this instance because the new legislation was enacted on December 8, 1994, and became effective on January 1, 1995. Because it was not possible to complete the § 553 rulemaking procedure prior to the effective date of the new legislation, the Commission adopted interim rules that came into effect at the same time as the URAA. These interim amendments to part 207 of the Commission's Rules of Practice and Procedure were published in the Federal Register on January 3, 1995, 60 FR 18 (Jan. 3, 1995). The Commission additionally requested comment on the interim rules.

As the Commission stated in its January 3, 1995, Federal Register notice, its interim rules were not intended to "respond to anything more than the exigencies created by the new legislation." The notice explained that any final rules that the Commission would adopt could be more comprehensive than the interim rules. Moreover, in the notice the Commission solicited comment on whether more extensive changes to its rules were necessary or desirable. 60 FR at 19-20. Comments were submitted by the Royal Thai Government ("Thailand"), the law firm of Stewart and Stewart ("S&S") on its own behalf, the law firm of Pepper, Hamilton & Scheetz on behalf of Gouvernement de Quebec ("Quebec"), the law firm of Collier, Shannon, Rill & Scott on behalf of the Specialty Steel Industry of North America ("SSINA"), the law firms of Dewey Ballantine and Skadden, Arps, Slate, Meagher & Flom on behalf of seven U.S. producers of flat-rolled steel ("Flat-Rolled Steel"),

and the law firm of Aitken, Irvin & Lewin on behalf of the Pro Trade Group ("Pro Trade"). The nature of these comments, to the extent that they are pertinent to the subjects addressed in this notice of proposed rulemaking, and the Commission's response thereto is provided below in the explanation of the proposed rules.

Both as a result of comments received in response to the notice of interim rulemaking and as a result of the Commission's own independent examination of its procedures in antidumping and countervailing duty investigations and reviews, the Commission is proposing changes to its procedures involving such investigations and reviews. Some of these changes are intended to implement the new requirements of the URAA, while others are intended generally to improve the efficiency and effectiveness of the Commission's investigative procedures.<sup>1 2</sup>

Several of these changes require amendments to the Commission's rules. Accordingly, the Commission is proposing and submitting for public comment amendments to its part 201 and 207 rules. Additionally, the Commission is proposing to issue as final rules all but one of the interim rules that were published in the January 3, 1995, Federal Register notice. As explained below, the Commission has proposed revisions to some of these

<sup>1</sup> Chairman Watson and Commissioner Crawford are optimistic that most proposals contained herein will provide efficiencies as well as improve the process for the private and the public sector. Some proposals have more potential for cost savings than others; some will benefit primarily the private sector, others primarily the Commission. Only one, the proposal to initiate an issues conference, which is designed to improve and focus the investigative process, may create no significant net efficiencies in the process. Chairman Watson and Commissioner Crawford value and will carefully consider all comments on each proposal.

<sup>2</sup> Commissioner Newquist's and Commissioner Bragg's approval of this notice of proposed rulemaking is solely for the administrative purpose of soliciting public comment on the proposed rules herein. Their approval should not be construed as a concurrence with the proposed rules.

While Commissioner Newquist and Commissioner Bragg generally support any effort to reduce costs to and burdens on parties and the Commission, they are concerned that these proposed rules, if adopted, may have the contrary effect, particularly with regard to the parties and other interested persons.

Commissioner Newquist and Commissioner Bragg strongly encourage public comment on these proposed rules, whether in support or opposition.

Finally, Commissioner Newquist and Commissioner Bragg note that Commission staff prepared rough estimates of the costs and benefits of many of the proposed rules herein. These estimates, contained in memo INV-S-109, dated August 14, 1995, is available from the Secretary's office. Commissioner Newquist and Commissioner Bragg welcome public comment on these staff estimates.

rules either in responses to comments received or as a result of its independent examination of investigative procedures. Other aspects of its independent examination, which are also described in this notice, address internal agency procedures which do not require rulemaking to implement.

The Commission has determined that these proposed rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) (EO) and thus do not constitute a significant regulatory action for purposes of the EO. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 note), the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the rules set forth in this notice are not likely to have a significant impact on a substantial number of small business entities.

#### Petition Requirements

##### *Sections 207.10 and 207.11*

The Commission is proposing to amend §§ 207.10 and 207.11 concerning the filing and content of antidumping and countervailing duty petitions. Section 207.10 is proposed to be revised to require petitioners to serve the confidential version of the petition on a party representative as soon as a petitioner is notified that that representative has had its application for administrative protective order (APO) granted. Trade practitioners have expressed the concern that party representatives whose APO applications have already been approved do not gain access to business proprietary information (BPI), and especially the confidential version of the petition, quickly enough to prepare for the staff conference and the postconference briefs. The proposed amendment would obligate petitioners to serve the confidential version of the petition more rapidly than under current practice.

Two other changes that have been proposed to § 207.10 are discussed in more detail below. The first modifies a reference to the Commission "preliminary investigation," consistent with the general change in terminology discussed below in the section concerning investigative activity between the Commission preliminary determination and the Department of Commerce ("Commerce") preliminary determination. The second, which deletes the current requirement that petitioners file entries of appearance in a final investigation, is discussed below in the section concerning entries of appearance.

The Commission also has proposed extensive amendments to § 207.11

concerning the content of antidumping and countervailing duty petitions. The first sentence of the current rule, which requires a petition to be signed and to identify the petitioner and its representatives, will be retained with one grammatical change and will be designated § 207.11(a).

The second sentence of the rule, which requires that a petition allege the elements necessary for imposition of antidumping and countervailing duty rules and contain information reasonably available to the petitioner supporting the allegation, will be designated § 207.11(b)(1). The Commission is proposing that the change made to this portion of § 207.11 as a result of the interim rulemaking—deleting a reference to former section 303—be made permanent.

Paragraph (b)(2) of § 207.11 contains new provisions specifying particular information to be included within petitions to the extent reasonably available to petitioner. These requirements are not currently set forth in either the regulations of the Commission or those of Commerce. Each of the provisions is designed to facilitate the Commission's ability to conduct investigations under sections 703(a) and 733(a) of the Act.

Several of the provisions are designed to facilitate the preparation and dissemination of questionnaires. The requirements that the petition identify the proposed domestic like product(s) and identify each product on which the Commission should seek information in its questionnaires are designed to aid the Commission in preparing questionnaires. The requirements that the petition provide complete listings of both U.S. producers of the proposed domestic like product(s) and U.S. importers of the subject merchandise, including information concerning street addresses, phone numbers, and market shares (which are not currently required under Commerce's regulations) are designed to facilitate prompt dissemination of questionnaires and preparation of mailing lists by the Commission staff. (Commission staff intends to encourage petitioners additionally to provide such information electronically where feasible.) The requirement that the petition include a table providing empirical data on factors pertinent to the condition of the domestic industry during a period of time prior to the filing of the petition, which will encompass three or three and one-half calendar years, is designed to enable the Commission to consult with Commerce as to the accuracy and adequacy of the allegations in the petition concerning

material injury by reason of allegedly dumped or subsidized imports.

Other provisions in proposed § 207.11(b)(2) are designed to reduce the amount of data that will be requested in questionnaires. Because information concerning each petitioner's ten largest U.S. customers and lost sales and revenues will now be contained in the petition, the Commission will no longer need to request such information in the questionnaires it sends to petitioners. U.S. producers of the proposed domestic like product who are not petitioners will still be requested to provide lost sales and revenue information in questionnaires.

The Commission emphasizes that, consistent with statutory requirements, petitioners will only be required to provide information that is reasonably available to them. The Commission realizes that, in some instances, petitions are filed on behalf of U.S. industries, such as those producing agricultural products, that contain so many producers that providing a complete listing of U.S. producers would be impossible. In other instances, petitioners may not have access to financial or trade data concerning every domestic producer. The Commission does not intend to require petitioners to provide the types of data specified in proposed § 207.11(b)(2) when such data are not reasonably available to them. Proposed § 207.11(b)(3) does require, however, that when a petitioner is unable to provide a type of information specified in § 207.11(b)(2), it certify that that type of information is not reasonably available to it.

#### Investigative Activity Between Commission Preliminary Determination and Commerce Preliminary Determination

##### *Sections 207.12, 207.13, 207.14, 207.18 and 207.20*

Several of the comments filed in response to the January 3, 1995, Federal Register notice endorsed the proposition that the Commission should begin its final antidumping and countervailing duty investigations at an earlier date. S&S suggested that the Commission begin preparation of its questionnaires for use in the final investigation before Commerce issues its preliminary determination, and distribute them shortly after the Commerce preliminary determination is issued. SSINA proposed that draft questionnaires be circulated to the parties two weeks prior to the issuance of the Commerce preliminary determination, and that the questionnaires be issued on the date of

the Commerce preliminary determination. Flat-Rolled Steel indicated that the Commission should institute its final investigation 30 days prior to the date that Commerce is scheduled to issue its preliminary determination. Pro Trade also endorsed the Commission beginning its final investigation before Commerce issued its preliminary determination, early issuance of questionnaires, and establishment of a period at the outset of the final investigation for the parties to identify arguments they intend to raise concerning the appropriate domestic like product(s).

In light of these comments, and as a result of its own internal review of antidumping and countervailing duty procedures, the Commission is proposing major changes in the way it conducts investigative activity between issuance of its preliminary determination and the issuance of the Commerce preliminary determination. Although section 207.18 currently provides the Commission's Director of Operations with the authority to conduct investigative activity during this period, the Commission staff does not ordinarily engage in extensive investigative activity between the time the Commission issues its preliminary determination and the time it institutes its final investigation.

Under the proposed revisions, however, the Commission will continue to engage in investigative activity immediately following its preliminary determination unless that determination is negative or one of negligible imports, in which event the investigation is terminated by operation of law. Therefore, section 207.18 is proposed to be revised to indicate that, if the Commission's preliminary determination is affirmative, it will state in the notice of its determination that it publishes in the Federal Register that it will continue its investigation to reach a final determination under section 705(b) or 735(b). This is in contrast to current practice, in which the Commission does not ordinarily institute a "final investigation" until it receives notice of a preliminary affirmative determination by Commerce. (Other proposed changes to section 207.18 delete a reference to former section 303, make clear that the investigation will terminate in the event of a preliminary determination of negligible imports, as well as in the event of a negative preliminary determination, and delete the last three sentences of the rule, which are superseded by proposed §§ 207.20 and 207.21.)

Because the Commission will be conducting a continuous investigation, it proposes amending its regulations so that they no longer refer to discrete "preliminary" and "final" investigations. Of course, the Commission will continue to render discrete preliminary and final determinations, as required by statute. The portion of the investigation made in connection with the preliminary determination will be known as the "preliminary phase" of the Commission investigation, and the portion of the investigation made in connection with the final determination will be known as the "final phase" of the Commission investigation. The Commission has proposed wording changes in §§ 207.12, 207.13, and 207.14 to reflect this. (Sections 207.12 and 207.14 will also be revised to delete references to former section 303 of the Act.)

The nature of the investigative activity that the Commission will conduct between the time it issues its preliminary determination and the time that Commerce issues its preliminary determination is specified in proposed § 207.20. (As explained further below, current section 207.20 will be renumbered § 207.21 and the succeeding sections will be renumbered accordingly.) Under proposed § 207.20(a), the Director of Operations will publish in the Federal Register a schedule of investigative activities that will take place under § 207.20 between the time of the Commission preliminary determination and the time of the Commerce preliminary determination. The remaining portions of proposed § 207.20 identify the three major aspects of this investigative activity.

First, under proposed § 207.20(b), the Director of Operations will circulate to the parties draft questionnaires for the phase that the Commission will conduct in connection with its final determination no later than 14 days after the Commission transmits its opinion(s) in connection with its preliminary determination to Commerce pursuant to section 703(f) or 733(f) of the Act. Although the Commission investigative staff currently circulates draft final questionnaires to the parties for comment, the proposed regulation will formalize this process and move it to an earlier point in the investigation.

Second, under proposed § 207.20(c), the parties will file an issues brief with the Commission at the date specified in the Federal Register notice, which is to be no later than 28 days before the date on which Commerce is scheduled to issue its preliminary determination. (The Commission solicits comment on whether the filing of this brief should

instead be scheduled in relation to the time that the Commission transmits its preliminary determination opinion(s) to Commerce, i.e., that the brief must be filed no later than 75 days after transmission of the Commission preliminary opinion(s).) Although the issues brief should contain comments on the draft questionnaires, the Commission envisions this brief as being considerably more thorough than the informal comments that parties currently file addressing draft questionnaires. In the proposed issues brief parties would state their position on certain threshold issues (e.g., domestic like product, domestic industry, cumulation, negligible imports) and additionally identify all issues on which they maintain that the Commission should collect data through the questionnaire process and provide a supporting rationale indicating why such data are necessary to the investigation. The brief should also identify any known sources of information that the Commission should consult in connection with such issues. For example, if a party intends to argue that the Commission should designate multiple domestic like products, or domestic like products that differ from those designated by the Commission in its preliminary determination, it will be required in its issues brief to identify each domestic like product on which the Commission should collect data, and to provide the legal and factual basis for its position that such domestic like product(s) should be designated.

Requests for data collection that are not made in the issues brief may not be raised subsequently by parties in the investigation. To continue the example above, a party that does not request in its issues brief that the Commission should designate multiple domestic like products and seek information concerning each proposed domestic like product in questionnaires may not assert such a request for the first time after the Commission has issued its questionnaires. The reason for this provision is to ensure that the Commission receives data collection requests from parties early enough in an investigation to accord it sufficient time to collect data concerning those requests it deems appropriate. Particularly in light of the new responsibilities the URAA imposes on the Commission to disclose all information to parties before the record closes prior to issuance of a final determination, Commission staff will generally not have sufficient time to generate data when a party does not assert an argument relating to or implicating data collection for the first

time until a late stage of the investigation such as at the hearing or in a prehearing brief.

Third, under proposed § 207.20(c)(4), within five business days of the filing of issues briefs, the Director of Operations will conduct a conference concerning the issues raised in the brief. The purpose of the conference is to provide a vehicle for the parties to identify and discuss, and where possible, agree on threshold issues, such as domestic like product, domestic industry, cumulation and negligible imports. The conference also should help identify issues that may need more specific or different data collection than that contemplated in the draft questionnaires. The Commission will retain authority to resolve all threshold and data collection issues. These matters, of course, will not be formally resolved by the Commission at the time of the conference. However, the Commission will give full consideration to the outcome of the conference and, to the extent practicable, provide guidance to the parties to permit them to focus their attention and resources on the significant issues outstanding in the investigation.

The Commission anticipates that the new procedures proposed in § 207.20 will permit it to mail questionnaires within a week of issuance of an affirmative preliminary dumping or subsidy determination by Commerce. In investigations in which Commerce's preliminary determination modifies the scope of the investigation from that stated in its notice of initiation, the date of mailing may be delayed.

#### Notice of Scheduling of Final Phase Investigation

*§§ 201.13 and Renumbered §§ 207.21, 207.23, 207.24, 207.25, and 207.29*

As previously stated, under the Commission's "continuous investigation" proposal, the Commission will institute its final phase investigation at the same time it publishes notice of its preliminary determination. Neither the Commission's notice of institution nor the Director of Operation's scheduling notice under proposed § 207.20(a) will be able to contain a complete schedule of activities for the final phase investigation. The Commission will not be able to schedule dates for all activities until it is aware of the date on which its final determination is due. It will not know this date, however, before Commerce issues its preliminary determination.

Accordingly, the Commission is proposing to revise and retitle current § 207.20, which is to be renumbered

§ 207.21. (Because the Commission is proposing issuance of a new § 207.20, current §§ 207.20 through 207.29 will be renumbered §§ 207.21 through 207.30, respectively). Under the revised rule, upon receipt of an affirmative preliminary determination from Commerce, the Commission will issue a Final Phase Notice of Scheduling. This notice will contain scheduling information equivalent to that provided by the notice of institution of a final investigation currently issued under § 207.20(b). The Commission is proposing to amend proposed renumbered §§ 207.23 and 207.25 (corresponding respectively to current §§ 207.22 and 207.24) to reference this notice of scheduling in lieu of the current references to the notice of institution. (An additional amendment proposed for renumbered § 207.23 with respect to page limits is discussed separately below.)

Proposed § 207.21(c) carries forward two provisions in the current rules. The first, which now appears in § 207.18, authorizes the Director of Operations to continue investigative activity as appropriate should Commerce issue a negative preliminary determination. The second carries forward a provision currently in § 207.20(b) indicating that the Commission investigation shall be terminated if Commerce should make a negative final determination.

Additionally, the Commission is proposing amendments to renumbered §§ 207.21, 207.24, and 207.29 (corresponding respectively to current §§ 207.20, 207.23, and 207.28) to delete references to former § 303 of the Act. Further amendments are proposed to § 201.13(m) and to renumbered § 207.24 to change cross-references to other renumbered sections.

#### Single Entry of Appearance

##### *Sections 201.11 and 207.10*

To implement its "continuous investigation" proposal, the Commission is proposing to amend § 201.11(b) governing the filing of notices of appearance in antidumping and countervailing duty investigations. Under proposed § 201.11(b)(2), a party that files a timely notice of appearance during the preliminary phase of an investigation need not file any further notices of appearance before the Commission in that antidumping or countervailing duty investigation. A corresponding change is proposed to § 207.10(a) to eliminate the requirement that petitioners file an entry of appearance during the final phase of an investigation.

Additionally, under proposed § 201.11(b)(4) a party will still be able to file a notice of appearance as late as 21 days after publication in the Federal Register of the Final Phase Notice of Scheduling. Nevertheless, a party that does not enter an appearance within 60 days after issuance of the Commission's notice of Preliminary Determination will be precluded by proposed § 207.20(c)(3) from raising issues requiring collection of further data by the Commission subsequently in the investigation.

#### Page Limits

##### *Renumbered Section 207.23*

The current Commission rules impose page limits on postconference briefs and posthearing briefs. Interim rule § 207.29(b) promulgated on January 3, 1995, imposes page limits for final comments on factual information. Additionally, proposed § 207.20(c)(3) would impose a 50-page limit on issues briefs.

The one brief that is not currently subject to page limits in Commission antidumping and countervailing duty investigations is the prehearing brief.

The Commission proposes that renumbered § 207.23 (corresponding to current § 207.22) be amended to impose a 50-page limit on prehearing briefs. The 50-page limit would encompass all textual material, including attachments that contain textual material. The page limit would not apply to nontextual material in briefs (such as a table of contents) or exhibits (such as an illustration of a product). The Commission's objective in proposing a page limit is to encourage parties to present arguments concisely, and to limit argument to those issues central to a case. The Commission believes that the new issues brief to be submitted pursuant to proposed § 207.20(c)(3) will reduce the number of arguments—particularly pertaining to domestic like product—that must be presented in the prehearing brief and consequently will permit such briefs to be much shorter. The Commission also desires to discourage parties from submitting lengthy attachments to briefs that merely reiterate the arguments presented in the main brief.

The Commission invites commenters to address whether its proposed amendment to renumbered § 207.23 will accomplish these objectives while permitting parties ample opportunity to present evidence and argument to the Commission. Commenters may further address whether they believe that page limits for prehearing briefs should be established at a level different from the

50-page limit proposed, or whether the Commission should continue not to impose page limits on prehearing briefs. The Commission also solicits comments on whether practitioners perceive the existing 50-page limit on postconference briefs and the proposed 50-page limit on issues briefs to be helpful and/or useful, whether these limits should be modified or eliminated, and whether elimination of the page limit on postconference briefs would be likely materially to change the length and/or nature of the briefs filed with the Commission.

The Commission is also proposing to amend the page limit contained in current interim rule § 207.29(b). This is described further below in the section addressing proposed renumbered § 207.30.

#### Final Comments

##### *Renumbered Section 207.30*

In the January 3, 1995, interim rulemaking notice, the Commission promulgated interim rule § 207.29, a new provision implementing § 782(g) of the Act, which was added to the Act by the URAA. Section 782(g) requires that the Commission, before making a final determination in antidumping or countervailing duty investigations or review proceedings, cease collecting information and provide parties to the proceeding with a final opportunity to comment upon all information on which they had not previously had an opportunity to comment. The rule states that the Commission will specify a date in final antidumping and countervailing duty investigations after the filing of posthearing briefs on which it will make available to all parties to the investigation all information on which parties have not had an opportunity to comment. It further states that the parties will be accorded an opportunity to comment on this information, that any comments can concern only such information, and that comments may not exceed 10 double-spaced pages.

After consideration of the comments on the interim rule, the Commission has decided to propose issuance of interim rule § 207.29 as a final rule, to be renumbered § 207.30, with two substantive changes. The first change simply clarifies that the "24-hour rule" governing final bracketing of BPI pertains to comments filed under rule 207.30. The second change pertains to the page limits on the comments to be submitted under § 207.30(b).

Additionally, the cross-references in the rule to other provisions that have been renumbered will be revised.

Comments on the interim rule focused on three areas. First, several

commenters addressed the type of material that they believe the Commission should release in the disclosure process required by interim rule § 207.29(a). Pro Trade, SSINA, Quebec and S&S all asserted that final versions of the staff report, the economic memorandum, and other non-privileged memoranda that staff prepare for the Commission or individual Commissioners should be released to the parties.

The Commission currently contemplates that a final version of the staff report, which will incorporate material that is currently presented in other non-privileged staff memoranda such as the economics memorandum and the financial memorandum on variance analysis, will be released to the parties under APO approximately five days before final comments under subsection (b) of the interim rule will be due, which will be approximately four days before the Commission's public briefing and vote. (The Commission is also continuing to explore release of a public version of the staff report prior to the time that final comments are due, as sought by S&S and SSINA. The Commission does not contemplate that this will be feasible in all investigations, however, depending on unresolved issues of data confidentiality.) Although the five-day period is shorter than that requested by commenters Quebec and SSINA, the Commission believes that earlier release of the staff report will not provide it sufficient time to investigate information obtained at the hearing, and that establishing the deadline for comments at a later time would not provide it sufficient time to analyze the comments and the record prior to the vote or to prepare its determination. Moreover, the Commission does not believe that promulgating regulations requiring release of the staff report to the parties at a specific point in the investigation is appropriate or necessary, particularly before it has developed experience in implementing the requirements of section 782(g) of the Act.

Several comments also responded to the inquiry posed by the Commission in the preamble to its January 3, 1995, interim rulemaking notice as to whether the Commission should adopt a procedure for multiple-stage comments. Those commenters who addressed the issue—Pro Trade, SSINA, and S&S—uniformly opposed such a procedure. The Commission agrees that there is insufficient time in antidumping and countervailing duty investigations for a multiple-stage comment process. The proposed rule consequently retains the

single-stage comment procedure of the current interim rule.

The third area addressed by commenters concerns the 10-page limit for final comments specified in interim rule § 207.29(b). Flat-Rolled Steel contended that this limit was too restrictive and should be set at 25 pages; SSINA proposed that all respondents be required to submit a single joint brief of the same length as the petitioner's. The Commission does not believe that SSINA's proposal is workable in light of the short deadlines involved.

In response to Flat-Rolled Steel's comment, the Commission emphasizes that the final comments will be very limited in scope. The Commission intends to release factual information under APO very promptly after receipt. (It does not agree with Flat-Rolled Steel, however, that the timing of APO releases is an appropriate subject for rulemaking.) Consequently, the Commission anticipates that the parties will receive a limited amount of new factual information subsequent to filing of the posthearing brief which may be discussed in the final comments. The Commission therefore contemplates that such comments will be quite concise. Nevertheless, the Commission is concerned that the 10-page limit established in the interim rule may be too restrictive. It is therefore proposing that this page limit be set at 15 pages.

#### Proprietary Information

##### *Sections 201.6 and 207.7*

The Commission is proposing amendments to some of its regulations pertaining to submission and disclosure of proprietary information. Section 201.6 is proposed to be revised expressly to allow parties and the Commission publicly to discuss confidential statistics in nonquantitative characterizations unless the submitter provides good cause for confidential treatment of such characterizations. In particular, the revision would permit the discussion of trends in such statistics, e.g., whether the difference between two confidential figures shows an increase or a decrease. This revision would apply only to confidential business information (CBI) and BPI submitted in numerical form; textual CBI and BPI would not be disclosed in any form. Moreover, if the submitter makes a claim for confidential treatment of trend information, such information must be treated as confidential until or unless the Secretary rejects the claim of confidentiality pursuant to section 201.6.

The proposed revision would address a concern expressed by practitioners

that the Commission's definition of CBI and BPI may overly restrict use of such information. The Commission requests comment concerning the practical effects of the proposed revision in circumstances where some but not all firms request that their trend data be kept confidential.

The Commission is additionally proposing to revise the procedure in § 201.6(f) for filing and handling appeals from approval by the Secretary of requests for confidential treatment. Section 201.6(f) as currently in effect requires that an appeal must comply with certain rules applicable to requests under the Freedom of Information Act (FOIA). This connection with the FOIA rules creates an unnecessary step, inasmuch as the Secretary has already acted upon the matter. The proposed amendment to § 201.6(f) would establish a procedure for appeals from approvals of requests for confidential treatment that essentially parallels the procedure now specified in § 201.6(e) for appeals from denials of such requests.

Another proposed revision to section 201.6 would use the term "nondisclosable confidential business information" to describe BPI not subject to disclosure under APO pursuant to section 777(c)(1)(A) of the Act. Corresponding revisions to § 207.7(a)(1), (f)(2), and (g) would clarify the procedure for submitting such information.

Another proposed change to § 207.7 relates to the proposed amendment to § 201.11 discussed above. Section 207.7(a)(2) currently states that, when an APO application has been approved with respect to applicants representing an interested party, additional applicants representing that party may file applications after the deadline for entries of appearance but no later than five days before the deadline for filing posthearing briefs in the investigation, or before the deadline for filing briefs in a preliminary investigation. The purpose of the five day deadline(s) is to finalize service lists before interested parties must file and serve their briefs. Accordingly, the proposed amendment to § 207.7(a)(2) indicates that APO applications for additional applicants must also be filed no later than five days before the deadline for filing issues briefs pursuant to proposed rule § 207.20(c)(3). Additionally, § 207.7(b)(2) and (b)(4) will be amended to refer to "the preliminary phase of an investigation" in lieu of "preliminary investigation."

## "24-Hour" Rule

### Section 207.3

The Commission is proposing to amend the "24-hour" rule governing final bracketing of BPI, to clarify absolutely that the only changes that may be made in the 24-hour BPI version of documents are changes in bracketing and deletion of BPI. Any other changes, including typographical changes, are not allowed unless the Commission grants an extension of time to file an amended document pursuant to rule § 201.14(b)(2). In several instances, parties have made changes other than those affecting bracketing and deletion of BPI in the briefs filed under this rule, in some instances triggering an investigation into whether there was a violation of the 24-hour rule. The proposed amended language to § 207.3(c) is intended to obviate similar misinterpretations of the rule. An additional amendment is proposed to § 207.3(b) to revise a cross-reference to a renumbered regulation.

## Opportunity for Nonparty Participation

### Section 207.9

The URAA added a new section 777(h) to the Act, which requires the Commission to provide an opportunity for industrial users of subject merchandise, and, if the merchandise is sold at the retail level, representative consumer organizations, to submit relevant information concerning material injury by reason of subject imports. The Commission is proposing to add a new § 207.9 to the Commission rules to implement the requirement of section 777(h) that industrial users and consumer organizations be provided an opportunity to participate in Commission antidumping and countervailing duty investigations. Proposed § 207.9, like section 777(h), does not, however, confer interested party status on industrial users and consumer organizations. Unless such entities qualify as interested parties under section 771(9) of the Act, they do not have the rights that the Act and the Commission rules afford to interested parties.

## Other Conforming Changes

### Sections 207.1, 207.2, 207.8, and 207.40

In its January 3, 1995, notice of interim rulemaking, the Commission made amendments to §§ 207.1, 207.2(e), 207.8, 207.10, 207.11, and 207.40 to conform these provisions with the URAA. The only one of these amendments which was the subject of comment was the amendment to section 207.8, which states that the Commission

may use "facts otherwise available" whenever any party or any other person fails to respond adequately to a subpoena or refuses or is unable to produce information in a timely manner and in the form required, or otherwise significantly impedes an investigation. Pro Trade suggested the Commission amend the regulation to limit the instances in which the Commission would use "facts otherwise available." The Commission believes, however, that the interim regulation conforms to the statute as drafted.

Accordingly, the Commission proposes issuance in final form of §§ 207.1, 207.2(e), 207.8, and 207.40, as these provisions were amended in the January 3, 1995, notice of interim rulemaking. As discussed above, the Commission has proposed further amendments to sections 207.10 and 207.11.

In the January 3, 1995, notice of interim rulemaking, the Commission additionally promulgated a new § 207.46 for investigations under section 753 of the Act. Several comments concerning this interim rule address matters which also implicate the type of procedures the Commission should establish for "sunset" reviews under section 751(c) of the Act. The instant rulemaking has focused primarily on implementing changes to procedures in final Commission antidumping and countervailing duty investigations required by the URAA, and the Commission is not prepared to address the question of "sunset" reviews at this time. Consequently, the Commission is not proposing in the instant rulemaking proceeding to issue § 207.46 in final form. Section 207.46 will remain in effect as an interim rule.

## Comments

The Commission solicits comments on the proposed amendments to its part 201 and 207 rules, as well as the proposed changes to its internal procedures concerning antidumping and countervailing duty investigations described above. Such comments should be filed within 75 days of publication of this notice in the Federal Register.

The Commission also solicits comments on several proposed changes to its procedures in antidumping and countervailing duty investigations that it is contemplating which do not require, and are not related to, changes in the Commission's rules. The Commission is particularly interested in commenters' views concerning whether the proposals serve the objectives of: (1) promoting transparency; (2) promoting consistent, well-supported and legally

defensible determinations; (3) minimizing burdens to all participants; and (4) minimizing cost of process to the Commission. These changes are as follows:

1. Preliminary phase investigation conferences. As in hearings held in conjunction with final phase investigations, allow questioning by opposing parties; the time spent on questions (but not responses) and rebuttal/closing statements would come out of overall time allocations.

2. Questionnaires. Adopt a new format for and revise the basic content of Commission questionnaires to reduce respondent burden and better tailor questions to investigative issues. Copies of the proposed new generic producer, importer, and purchaser questionnaires may be obtained for comment from the Commission's Office of Investigations (202-205-3160). Representative of the changes being proposed, the new producer questionnaire is about half the length of the current one and incorporates the following changes:

a. The questionnaire would be in two parts, the first consisting of general instructions/definitions, and the second consisting of the data requests (a transmittal letter, a "fact sheet" on Title VII investigations, and the Commission's institution notice would also accompany each questionnaire);

b. Questions on capacity, production, shipments, inventories, channels of distribution, and employment are combined onto one page;

c. Current questions seeking employment and financial data on overall establishment operations are eliminated (certain overall establishment financial data requests may be added if deemed necessary by the Commission, or if respondents are unable to provide product-line data);

d. Only the total quantity and value of sales are requested for questions seeking pricing data for particular products, as opposed to that information plus largest sale value, quantity, and shipping costs in current questionnaires (this proposal initially applies to questionnaires for preliminary phase investigations; it may be appropriate to request more information in final phase investigations if deemed necessary by the Commission); and

e. The current requests for lost sales and revenue allegations are eliminated in questionnaires sent in preliminary phase investigations to petitioners, and eliminated altogether in questionnaires for final phase investigations. As explained above, petitioners would be required to furnish their allegations in the petition, thus allowing the

Commission more time to investigate them.

The new producer questionnaire for use in preliminary phase investigations contains provisions for providing certain information to Commerce, on its request, if it has questions concerning domestic industry support for the petition. Questionnaires for final phase investigations would not contain those provisions.

The Commission also solicits comments on other possible changes to questionnaires, such as: (1) requesting only half-year "interim-period" data as opposed to the current practice of requesting quarterly interim-period data; (2) electronic transmission, preparation, and submission of questionnaires; (3) a mechanism that would allow firms to not repeat information provided in preliminary questionnaires in final questionnaires if the questions are the same and the information originally provided was correct; and (4) increased use of sampling in developing mailing lists of questionnaire recipients in appropriate circumstances (i.e., agricultural domestic industry with multiple producers).

Finally, the Commission will endeavor to increase coordination and cooperation with the Department of Commerce with respect to data collection, such as exploring the possibility of "piggy-backing" on Commerce's questionnaire to collect foreign-industry data directly from the exporting companies investigated by Commerce, and using joint telegrams to U.S. embassies.

3. Briefing. The Commission solicits comments on its proposed plans to reduce by two days the period between the Commission hearing and the submission of posthearing briefs in order to provide the Commission more time to consider these briefs, prior to the closing of the record. In particular, the Commission solicits comments on how significantly this scheduling change will affect the parties' ability to prepare their posthearing briefs, including responding to Commissioners' and Commission staff's questions from the hearing.

4. Reports. Eliminate the separate financial memorandum on variance analysis and incorporate the analysis into staff reports when appropriate.

Eliminate the separate economics memorandum and incorporate the analysis into staff reports.

Release the public version of the staff report to parties at the conclusion of the investigation but publish only the Commission's determination and Commissioners' opinions.

Determinations and opinions are

currently made available electronically on the Internet. As soon as certain technical problems related to the transmission of graphic presentations are resolved, the Commission would make public versions of reports similarly available.

The Commission also solicits comments on whether or not it is useful to parties and/or the public to include its own and Commerce's Federal Register notices and conference/hearing witness lists in staff reports, and whether the public version of the staff report should continue to be included in its published report.

5. Verification policies. The Commission solicits comments on the following policies related to on-site verification of data received during the course of investigations:

a. General—Verifications will normally be conducted in final phase investigations. In preliminary phase Title VII investigations, no on-site verifications will be attempted except under exceptional circumstances.

b. Questionnaire type—The extent and scope of the on-site verification efforts will focus mainly on producer questionnaire responses, with verifications of importer, purchaser, and foreign producer questionnaire responses as appropriate.

c. Company selection—The guidelines for the selection of companies to be verified is documented in the updated Verification Handbook. The criteria include such factors as inclusion of the petitioner(s), market share, data discrepancies, and submissions from APO parties.

d. Scheduling of the verification—Best efforts will be made to complete producer questionnaire verifications and formally release Verification Reports to APO parties and the Commission prior to the hearing date.

e. Procedures—The verification covers all questionnaire data, including trade, production, employment, pricing, and financial data. The Verification Handbook covers the detailed procedures for the on-site verification of companies.

f. Verification report—A detailed verification report will be prepared after verification. The report, which will be signed and dated, will indicate both the verification procedures utilized as well as the results. Additional information collected at verification may be included in the report. Dating and initialing the Verification Handbook is not necessary, but may be done in verifications involving new Commission auditors.

g. Documentation—The collection of company documents will only be

undertaken when such documents are believed necessary to document contested, complex, or questionable information submitted to the Commission. Supporting documentation will not be obtained solely for the purpose of documenting a data check. All documents obtained at verification will become exhibits to the verification report.

h. Commerce—In cases where Commerce has verified data submitted by an importer which is also the subject of a Commission verification, Commerce's verification report will be reviewed for information that may be useful.

i. Participants—Verifications will be conducted by auditors. Other team members or Commission staffers also may participate.

#### List of Subjects

##### 19 CFR Part 201

Administrative practice and procedure, Investigations, Imports.

##### 19 CFR Part 207

Administrative practice and procedure, Antidumping, Countervailing duties, Investigations.

For the reasons stated in the preamble, 19 CFR parts 201 and 207 are proposed to be amended as set forth below:

#### **PART 201—[AMENDED]**

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335) and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. Paragraphs (a), (b), and (f) of § 201.6 are revised to read as follows:

##### **§ 201.6 Confidential business information.**

(a) *Definitions.* (1) Confidential business information is information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the

information was obtained, unless the Commission is required by law to disclose such information. The term "confidential business information" includes "proprietary information" within the meaning of § 777(b) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)). Nonnumerical characterizations of numerical confidential business information (e.g. discussion of trends) will be treated as confidential business information only at the request of the submitter for good cause shown.

(2) Nondisclosable confidential business information is privileged information, classified information, or specific information of a type for which there is a clear and compelling need to withhold from disclosure. Special rules for the handling of such information are set out in § 207.7 of this chapter.

(b) *Procedure for submitting business information in confidence.* (1) A request for confidential treatment of business information shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(2) In the absence of good cause shown, any request relating to material to be submitted during the course of a hearing shall be submitted at least three (3) working days prior to the commencement of such hearing.

(3) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential business information, under paragraph (a) of this section, the submitter shall provide the following, which may be disclosed to the public:

(i) A written description of the nature of the subject information;

(ii) A justification for the request for its confidential treatment;

(iii) A certification in writing under oath that substantially identical information is not available to the public;

(iv) A copy of the document:

(A) Clearly marked on its cover as to the pages on which confidential information can be found;

(B) With information for which confidential treatment is requested clearly identified by means of brackets; and

(C) With information for which nondisclosable confidential treatment is requested clearly identified by means of double brackets (except when submission of such document is withheld in accord with paragraph (b)(4) of this section); and

(v) A nonconfidential copy of the documents as required by § 201.8(d).

(4) The submission of the documents itemized in paragraph (b)(3) of this section will provide the basis for rulings on the confidentiality of submissions, including rulings on the confidentiality of submissions offered to the Commission which have not yet been placed under the possession, control, or custody of the Commission. The submitter has the option of providing the business information for which confidential treatment is sought at the time the documents itemized in paragraph (b)(3) of this section are provided or of withholding them until a ruling on their confidentiality has been issued.

\* \* \* \* \*

(f) *Appeals from approval of confidential treatment.* (1) For good cause shown, the Commission may grant an appeal from an approval by the Secretary of a request for confidential treatment of a submission. Any appeal filed shall be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, shall show that a copy thereof has been served upon the submitter, and shall clearly indicate that it is a confidential submission appeal. An appeal may be made within twenty (20) days of the approval by the Secretary of a request for confidential treatment or whenever the approval or denial has not been forthcoming within ten (10) days (excepting Saturdays, Sundays, and Federal legal holidays) of the receipt of a confidential treatment request, unless an extension notice in writing with the reasons therefor has been provided the person requesting confidential treatment.

(2) An appeal will be decided within twenty (20) days of its receipt (excepting Saturdays, Sundays, and Federal legal holidays) unless an extension notice, in writing with the reasons therefor, has been provided the person making the appeal.

\* \* \* \* \*

3. Paragraph (b) of § 201.11 is revised to read as follows:

##### **§ 201.11 Appearance in an investigation as a party**

\* \* \* \* \*

(b) *Time for filing.* (1) Except in the case of investigations conducted under part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication of the Commission's notice of investigation in the Federal Register.

(2) In the case of investigations conducted under Subpart B of part 207 of this chapter, each entry of appearance shall be filed with the Secretary not

later than seven (7) days after publication of the Commission's notice of investigation in the Federal Register. A party that files a notice of appearance during such time need not file an additional notice of appearance during the investigation conducted under subpart C of part 207 of this chapter.

(3) In the case of investigations conducted under subpart C of part 207 of this chapter, a party may file an entry of appearance within sixty (60) days of issuance of the notice of preliminary determination in the Federal Register. A party that does not file a notice of appearance by such time will be precluded pursuant to § 207.20(c)(3) from raising issues requiring collection of further data by the Commission subsequently in the investigation.

(4) Notwithstanding paragraphs (b)(2) and (b)(3) of this section, a party may file an entry of appearance in the investigation conducted under subpart C of part 207 of this chapter during the twenty-one (21) days following publication in the Federal Register of the Final Phase Notice of Scheduling described in § 207.21 of this chapter.

\* \* \* \* \*

4. Paragraph (m) of § 201.13 is revised to read as follows:

**§ 201.13 Conduct of nonadjudicative hearings.**

\* \* \* \* \*

(m) *Closed sessions.* (1) Upon a request filed by a party to the investigation no later than seven (7) days prior to the date of the hearing (or three (3) days prior to the date of a conference conducted under § 207.15 of this chapter) that:

(i) Identifies the subjects to be discussed;

(ii) Specifies the amount of time requested; and

(iii) Justifies the need for a closed session with respect to each subject to be discussed, the Commission (or the Director, as defined in § 207.2(c) of this chapter, for a conference under § 207.15 of this chapter) may close a portion of a hearing (or conference under § 207.15 of this chapter) held in any investigation in order to allow such party to address confidential business information, as defined in § 201.6, during the course of its presentation.

(2) In addition, during each hearing held in an investigation conducted under § 202 of the Trade Act, as amended, or in an investigation under title VII of the Tariff Act as provided in § 207.24 of this chapter, following the public presentation of the petitioner(s) and that of each panel of respondents, the Commission will, if it deems it appropriate, close the hearing in order

to allow Commissioners to question parties and/or their representatives concerning matters involving confidential business information.

**PART 207—[AMENDED]**

5. The authority citation for part 207 is revised to read as follows:

Authority: 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

6. Paragraphs (b) and (c) of § 207.3 are revised to read as follows:

**§ 207.3 Service, filing, and certification of documents.**

\* \* \* \* \*

(b) *Service.* Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8 of this chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter. 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 § 207.7, 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 pursuant to §§ 207.10, 207.15, 207.23, 207.24, and 207.25 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 to all parties to the investigation a copy of each document, except transcripts of conferences and hearings, business proprietary information, privileged information, and information required to be served under this section, placed in the record 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 business proprietary information in the document, the submitter is to file and, if the submitter is a party, serve the business proprietary version of the document on the deadline and may file and serve the nonbusiness proprietary version of the document no later than one business day after the deadline for filing the document. The business

proprietary version shall enclose all business proprietary information in brackets and have the following warning marked on every page: "Bracketing of BPI 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 nonbusiness proprietary 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 business proprietary document at the same time as the nonbusiness proprietary version is filed. No changes to the document other than bracketing and deletion of business proprietary information, including typographical changes, are permitted after the deadline unless an extension of time is granted to file an amended document pursuant to section 201.14(b)(2). Failure to comply with this paragraph may result in the striking from the record of all or a portion of a submitter's document.

7. Paragraphs (a), (f)(2), (f)(3), and (g) of § 207.7 are revised to read as follows:

**§ 207.7 Limited disclosure of certain business proprietary 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 business proprietary 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 business proprietary information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except nondisclosable confidential business information) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term "business proprietary information" has the same meaning as the term "confidential business information" as 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. An application on behalf of a petitioner, a respondent, or another party 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 business proprietary 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 (5) days before the deadline for filing posthearing briefs in the investigation, the deadline for filing the brief required by § 207.20(c), or the deadline for filing briefs in the preliminary phase of an investigation, and shall not be served with business proprietary 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.).

(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 business proprietary information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, or seven (7) days in the preliminary phase of an investigation, 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, or ten (10) days in the preliminary phase of an investigation. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final for purposes of review by the U.S. Court of International Trade under § 777(c)(2) of the Act.

(ii) Should the Secretary determine pursuant to this section that materials sought to be protected from public disclosure by a person do not constitute business proprietary 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 business proprietary 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.

(iv) An authorized applicant granted access to business proprietary information in the preliminary phase of an investigation may, subject to paragraph (c) of this section, retain such business proprietary information during any final phase of that investigation, provided that the authorized applicant has not lost his authorized applicant status (e.g., by terminating his representation of an interested party who is a party). When retaining business proprietary information pursuant to this paragraph, the authorized applicant need not file a new application in the final phase of the investigation, but shall list in a submission to the Commission in the final phase of the investigation the authorized applicants in the same firm and the persons employed or supervised by the authorized applicant who

continue to participate in the investigation.

\* \* \* \* \*

(f) *Service.* \* \* \*

(2) If a party's request under paragraph (g) of this section is granted, the Secretary shall accept the information exempt from disclosure into the record. The party shall serve the submission containing such information in accordance with the requirements of § 207.3(b) and paragraph (f)(1) of this section, with the information redacted from the copies served.

(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. Business proprietary information in submissions must be dealt with as required by § 207.3(c).

(g) *Exemption from disclosure.* (1) *In general.* Any person may request exemption from the disclosure of business proprietary information under administrative protective order, whether the person desires to include such information in a petition filed under § 207.10 of this chapter, 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. The request will be granted or denied not later than thirty (30) days (ten (10) days in a preliminary phase investigation) after the date on which the request is filed.

(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 business proprietary information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The business proprietary 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. If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester. Such a request shall only

be granted if the Secretary finds that such information is privileged information, classified information, or specific information of a type for which there is a clear and compelling need to withhold from disclosure. 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 business proprietary information, bracketed in accordance with §§ 201.6 and 207.3 of this chapter. The other two versions shall conform to and be filed in accordance with the requirements of §§ 201.6 and 207.3 of this chapter, except that the specific information as to which exemption from disclosure was granted shall be redacted from 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. The requester may file the submission in question without that information, in accordance with the requirements of § 207.3.

8. A new § 207.9 is added to subpart A to read as follows:

**§ 207.9 Opportunity for nonparty participation.**

In any investigation conducted under this part, the Commission shall provide an opportunity for industrial users, and, if the merchandise is sold at the retail level, for representative consumer organizations, to submit relevant information to the Commission concerning material injury by reason of dumped or subsidized imports. Each notice published in the Federal Register in connection with an investigation conducted under this Part shall include a statement informing industrial users and consumer organizations of the opportunity to participate in the investigation.

9. Section 207.12 is revised to read as follows:

**§ 207.12 Notice of preliminary phase of investigation.**

Upon receipt by the Commission of a petition under § 207.10 or receipt of notice that the administering authority has commenced an investigation under section 702(a) or section 732(a) of the Act, the Director shall, as soon as practicable after consultation with the administering authority, institute an investigation and commence the preliminary phase of the investigation

under section 703(a) or section 733(a) of the Act and shall publish a notice to that effect in the Federal Register.

10. Section 207.13 is revised to read as follows:

**§ 207.13 Cooperation with administering authority; preliminary phase of investigation.**

Subsequent to institution of an investigation pursuant to § 207.12, the Director shall conduct such investigation as he deems appropriate. Information adduced in the investigation shall be placed on the record. The Director shall cooperate with the administering authority in its determination of the sufficiency of a petition and in its decision whether to permit any proposed amendment to a petition. Notwithstanding §§ 201.11(c) and 201.14(b) of this chapter, late filings in the preliminary phase of an investigation shall be referred to the Director, who shall determine whether to accept such filing for good cause shown by the person making the filing.

11. Section 207.14 is revised to read as follows:

**§ 207.14 Negative petition determination.**

Upon receipt by the Commission of notice from the administering authority under section 702(d) or section 732(d) of the Act that the administering authority has made a negative petition determination under section 702(c)(3) or section 732(c)(3) of the Act, the investigation begun pursuant to § 207.12 shall terminate. The Director shall notify all persons who have received requests for information from him of the termination.

12. Section 207.18 is revised to read as follows:

**§ 207.18 Notice of preliminary determination.**

Whenever the Commission makes a preliminary determination, the Secretary shall serve copies of the determination and a public version of the staff report on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish a notice of such determination in the Federal Register. If the Commission's determination is negative, or that imports are negligible, the investigation shall be terminated. If the Commission's determination is affirmative, the notice shall announce commencement of the final phase of the investigation.

13. Sections 207.20 through 207.29 are redesignated as follows:

Old section	New section
207.20 .....	207.21

Old section	New section
207.21 .....	207.22
207.22 .....	207.23
207.23 .....	207.24
207.24 .....	207.25
207.25 .....	207.26
207.26 .....	207.27
207.27 .....	207.28
207.28 .....	207.29
207.29 .....	207.30

14. A new § 207.20 is added to read as follows:

**§ 207.20 Investigative activity following preliminary determination.**

(a) If the Commission's preliminary determination is affirmative, the Director shall continue investigative activities pending notice by the administering authority of its preliminary determination under section 703(b) or section 733(b) of the Act. The Director shall publish in the Federal Register a schedule for the investigative activities to be conducted pursuant to this section.

(b) The Director shall serve on each party who is a party to the investigation draft questionnaires for use in any final phase Commission investigation no later than 14 days after the date on which the Commission transmits the facts and conclusions on which its preliminary determination is based to the administering authority pursuant to section 703(f) or section 733(f) of the Act.

(c) Each party who is a party to the investigation shall submit to the Commission on a date to be specified in the schedule to be published pursuant to paragraph (a) of this section, which shall be no later than 28 days before the date on which the administering authority is scheduled to issue its preliminary determination in the investigation, a brief including the following:

(1) Comments on the draft questionnaire circulated pursuant to paragraph (b) of this section;

(2) Identification of the party's position on the issues in the investigation;

(3) Identification of issues on which data collection through questionnaires is requested. The brief shall include a supporting rationale for those issues, and shall identify any known sources of information that Commission staff should consult in connection with such issues. A party will not be permitted to raise subsequently in the investigation arguments concerning data collection not identified in the brief. The brief shall not exceed fifty (50) pages of textual material, double spaced and

single-sided, on stationery measuring 8½x11 inches; and

(4) Within five (5) business days of the filing of the briefs referred to in paragraph (c)(3) of this section, the Director shall hold a conference concerning the issues raised in the briefs.

15. Redesignated § 207.21 is revised to read as follows:

**§ 207.21 Final Phase Notice of Scheduling**

(a) Notice from the administering authority of an affirmative preliminary determination under section 703(b) or section 733(b) of the Act and notice from the administering authority of an affirmative final determination under section 705(a) or section 735(a) of the Act shall be deemed to occur on the date on which the transmittal letter of such determination is received by the Secretary from the administering authority or the date on which notice of such determination is published in the Federal Register, whichever shall first occur.

(b) Upon receipt of notice from the administering authority of an affirmative preliminary determination under section 703(b) or section 733(b) of the Act or, if the administering authority's preliminary determination is negative, notice of an affirmative final determination under section 705(a) or section 735(a) of the Act, the Commission shall publish in the Federal Register a Final Phase Notice of Scheduling.

(c) If the administering authority's preliminary determination is negative, the Director shall continue such investigative activities as he deems appropriate pending a final determination by the administering authority under section 705(a) or section 735(a) of the Act. Upon receipt by the Commission of notice from the administering authority of its final negative determination under section 705(a) or section 735(a) of the Act, the corresponding Commission investigation shall be terminated.

16. Redesignated § 207.23 is revised to read as follows:

**§ 207.23 Prehearing brief.**

Each party who is an interested party shall submit to the Commission, no later than four (4) business days prior to the date of the hearing specified in the notice of scheduling, a prehearing brief. Prehearing briefs shall be signed, shall include a table of contents, and shall not exceed fifty (50) pages of textual material, double spaced and single-sided, on stationery measuring 8½x11 inches. The prehearing brief should present a party's case concisely and

shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 705(b) or section 735(b) of the Act. Any person not an interested party may submit a brief written statement of information pertinent to the investigation within the time specified for filing of prehearing briefs.

17. Redesignated § 207.25 is revised to read as follows:

**§ 207.25 Posthearing briefs.**

Any party may file a posthearing brief concerning the information adduced at or after the hearing with the Secretary within a time specified in the notice of scheduling or by the presiding official at the hearing. No such posthearing brief shall exceed fifteen (15) pages of textual material, double spaced and single sided, on stationery measuring 8½x11 inches. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

18. Redesignated § 207.29 is revised to read as follows:

**§ 207.29 Publication of notice of determination.**

Whenever the Commission makes a final determination, the Secretary shall serve copies of the determination and the nonbusiness proprietary version of the final staff report on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish notice of such determination in the Federal Register.

19. Except for § 207.46, the interim rules amending part 207 published in the Federal Register issue of January 3, 1995 at 60 FR 18 are proposed to be adopted as final, with the following changes:

a. Section 207.10 is revised to read as follows:

**§ 207.10 Filing of petition with the Commission.**

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or section 732(b) of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition, pursuant to § 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. If the petition complies with

the provisions of § 207.11, it shall be deemed to be properly filed on the date on which the requisite number of copies of the petition is received by the Secretary. The Secretary shall notify the administering authority of that date. Notwithstanding § 201.11 of this chapter, a petitioner need not file an entry of appearance in the preliminary phase of the investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance.

(b) *Service of the petition.* (1) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 207.7(a)(4), he or she approves an application under § 207.7(a). When practicable, this notification shall be made by facsimile transmission. A copy of the petition including all business proprietary information shall then be served by petitioner on those approved applicants in accord with § 207.3(b) within two (2) calendar days. The petitioner shall serve persons enumerated on the list established by the Secretary pursuant to § 207.7(a)(4) (not already served) within two (2) calendar days of the establishment of the Secretary's list. Service shall be attested by a certificate of service as required in § 201.16(c)(2) of this chapter.

(2) A copy of the petition omitting business proprietary information shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant to § 201.11(d) of this chapter within two (2) calendar days of the establishment of the Secretary's list.

(c) *Amendments and withdrawals; critical circumstances.* (1) Any amendment or withdrawal of a petition shall be filed on the same day with both the Secretary and the administering authority, without regard to whether the requester seeks action only by one agency.

(2) When not made in the petition, any allegations of critical circumstances under section 703 or section 733 of the Act shall be made in an amendment to the petition and shall be filed as early as possible. Critical circumstances allegations, whether made in the petition or in an amendment thereto, shall contain information reasonably available to petitioner concerning the factors enumerated in sections 705(b)(4)(A) and 735(b)(4)(A) of the Act.

b. Section 207.11 is revised to read as follows:

**§ 207.11 Contents of petition.**

(a) The petition shall be signed by the petitioner or its duly authorized officer, attorney, or agent, and shall set forth the

name, address, and telephone number of the petitioner and any such officer, attorney, or agent, and the names of all representatives of petitioner who will appear in the investigation.

(b) (1) The petition shall allege the elements necessary for the imposition of a duty under section 701(a) or section 731(a) of the Act and contain information reasonably available to the petitioner supporting the allegations.

(2) The petition shall also include the following specific information, to the extent reasonably available to the petitioner:

(i) Identification of the domestic like product(s) proposed by petitioner.

(ii) A listing of all U.S. producers of the proposed domestic like product(s), including a street address, phone number, contact person(s), and estimated share of U.S. production for each producer.

(iii) A listing of all U.S. importers of the subject merchandise, including street addresses, phone numbers, and estimated share of U.S. imports for each importer.

(iv) A table summarizing the proposed domestic industry's production, domestic shipments, share of domestic consumption, capacity, capacity utilization, inventories, employment levels, operating income, research and development expenses, and capital expenses for the three most recent calendar years preceding the filing of the petition for which data are available. If the most recent calendar year preceding the filing of the petition for which data are available concluded over eight months prior to the filing of the petition, the table should also include data for the first six months of both the calendar year in which the petition was filed and the preceding calendar year.

(v) Identification of each product on which the petitioner requests the Commission to seek pricing information in its questionnaires.

(vi) A listing of each petitioning firm's ten largest U.S. customers for each proposed domestic like product, including a street address, phone number, contact person(s), and share of the petitioning firm's total sales for each customer.

(vii) A listing of all sales or revenues lost by each petitioning firm by reason of the subject merchandise during the three years preceding filing of the petition.

(3) The petition shall contain a certification that each item of information specified in paragraph (b)(2) of this section that the petition does not provide was not reasonably available to the petitioner.

(4) Petitioners are also advised to refer to the administering authority's regulations concerning the contents of petitions.

c. Paragraphs (a), (b), and (c) of redesignated § 207.24 are revised to read as follows:

#### § 207.24 Hearing.

(a) *In general.* The Commission shall hold a hearing concerning an investigation before making a final determination under section 705(b) or section 735(b) of the Act.

(b) *Procedures.* Any hearing shall be conducted after notice published in the Federal Register. The hearing shall not be subject to the provisions of 5 U.S.C. subchapter II, chapter 5, or to 5 U.S.C. 702. Each party shall limit its presentation at the hearing to a summary of the information and arguments contained in its prehearing brief, an analysis of the information and arguments contained in the prehearing briefs described in § 207.23, and information not available at the time its prehearing brief was filed. Unless a portion of the hearing is closed, presentations at the hearing shall not include business proprietary information. Notwithstanding § 201.13(f) of this chapter, in connection with its presentation a party may file witness testimony with the Secretary no later than three (3) business days before the hearing. In the case of testimony to be presented at a closed session held in response to a request under § 207.24(d), confidential and non-confidential versions shall be filed in accordance with § 207.3 of this chapter. Any person not a party may make a brief oral statement of information pertinent to the investigation.

(c) *Hearing Transcripts—(1) In general.* A verbatim transcript shall be made of all hearings or conferences held in connection with Commission investigations conducted under this part.

(2) *Revision of transcripts.* Within ten (10) days of the completion of a hearing, but in any event at least one (1) day prior to the date for disclosure of information set pursuant to § 207.30(a), any person who testified at the hearing may submit proposed revisions to the transcript of his testimony to the Secretary. No substantive revisions shall be permitted. If in the judgment of the Secretary a proposed revision does not alter the substance of the testimony in question, he shall incorporate the revision into a revised transcript.

\* \* \* \* \*

d. Redesignated § 207.30 is revised to read as follows:

#### § 207.30 Comment on information.

(a) In any final phase of an investigation under section 705 or section 735 of the Act, the Commission shall specify a date on which it will disclose to all parties to the investigation all information it has obtained on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 207.7. The date on which disclosure is made will occur after the filing of posthearing briefs pursuant to § 207.25.

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.25. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double spaced and single-sided, on 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. Comments containing new factual information or comments on information disclosed prior to the filing of the posthearing brief 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 pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to investigations subject to the provisions of section 771(7)(G)(iii) of the Act, and with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3. By Order of the Commission:

Issued: September 21, 1995.

Donna R. Koehnke,  
Secretary.

[FR Doc. 95-24573 Filed 10-2-95; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF STATE

### 22 CFR Part 51

[Public Notice 2262]

### Bureau of Consular Affairs; Passports for Minors

AGENCY: Department of State.

ACTION: Notice of proposed rule.

SUMMARY: This Notice proposes to amend regulations regarding the basis