(Dec. 29, 2008) (*NSK II*). Accordingly, on February 6, 2009, the Commission published a notice that it was resuming its remand proceeding. The Commission provided parties with an opportunity to file comments on the Court's remand instructions and the evidence obtained on remand, and directed that they be filed by March 23, 2009. 74 FR 6174.

The Commission also prepared a supplemental staff report regarding non-subject producer questionnaire information gathered in the remand proceeding. On March 23, 2009, comments on the remand were filed by petitioner The Timken Company, and the Japanese and United Kingdom respondents JTEKT Corp., Koyo Corp. of U.S.A., NSK Corporation, NSK Ltd., and NSK Europe Ltd. On May 4, 2009, the Commission issued its remand determinations in *Ball Bearings from Japan and the United Kingdom,* 731–TA–394A & 399A, (Second Review) (Remand), USITC Pub. 4082 (May 2009). By unanimous vote, the Commission again determined that revocation of the antidumping duty orders on ball bearings from France, Germany, Italy, Japan, and the United Kingdom would likely result in continuation or recurrence of material injury within a reasonably foreseeable time.

On August 31, 2009, the CIT issued an opinion in *NSK Corp. et al.* v. *United States,* Slip Op. 09–91 (*NSK III*), again remanding the Commission's affirmative determinations in *Certain Bearings and Parts Thereof from Japan and the United Kingdom,* Inv. Nos. 731–TA–394–A & 399–A (Second Review) (Remand), USITC Pub. 4082 (May 2009). In *NSK III,* the Court has remanded the same three issues which it previously remanded for further explanation in *NSK I* and *NSK II.* First, the Court remanded the Commission's analysis of non-subject imports, with instructions to ''to determine whether, in light of the significant presence of non-subject imports, the subject imports are more than a mere minimal or tangential factor in the material injury to the domestic industry that is likely to continue or recur in the absence of the antidumping duty order.'' *NSK III* at 29. Second, the Court directed the Commission to ''provide a more careful and reasoned explanation of (1) the large scale restructuring within the ball bearing industry and (2) the significant rise in non-subject imports in the U.S. market'' as part of its cumulation analysis of the subject imports from the United Kingdom. *Id.* Third, the Court directed the Commission to ''revisit its determination on the vulnerability of the domestic market and the likely impact of subject imports on the domestic market.'' *Id.* at 30.

The Court has ordered the Commission to file its remand determination with the Court by January 5, 2010.

Participation in the proceeding.—Only those persons who were interested parties to the reviews (*i.e.,* persons listed on the Commission Secretary's service list) and parties to the appeal may participate in the remand proceeding. Such persons need not make any additional filings with the Commission to participate in the remand proceeding, unless they are adding new individuals to the list of persons entitled to receive business proprietary information under administrative protective order. Business proprietary information (''BPI'') referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the reviews.

Written submissions.—The Commission is not re-opening the record in this remand proceeding. The Commission will permit the parties to file comments pertaining to the specific issues that are the subject of the Court's remand instructions and, in this regard, may comment on the new information obtained on remand. Comments should be limited to no more than fifteen (15) double-spaced and single-sided pages of textual material. No appendices or other attachments are allowed. The parties may not themselves submit any new factual information in their comments and may not address any issue other than those that are the subject of the Court's remand instructions. Any such comments must be filed with the Commission no later than October 23, 2009.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Issued: October 14, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–25244 Filed 10–20–09; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission (''Commission'') has issued an annual report on the status of its practice with respect to violations of its administrative protective orders (''APOs'') in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under Title VII and violations of the Commission's rules including the rule on bracketing business proprietary information (''BPI'') (the ''24-hour rule''), 19 CFR 207.3(c). This notice provides a summary of investigations completed during calendar year 2008 of breaches in proceedings under Title VII, section 337 of the Tariff Act of 1930 and section 421 of the Trade Act of 1974. In addition, there is a summary of rules violation investigations completed in 2008. The Commission intends that this report inform representatives of parties to Commission proceedings as to some specific types of APO breaches and rules violations encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals

are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Representatives of parties to investigations or other proceedings conducted under Title VII of the Tariff Act of 1930, sections 202 and 204 of the Trade Act of 1974, section 421 of the Trade Act of 1974, section 337 of the Tariff Act of 1930, and North American Free Trade Agreement (NAFTA) Article 1904.13, 19 U.S.C. 1516a(g)(7)(A) may enter into APOs that permit them, under strict conditions, to obtain access to BPI (Title VII) or confidential business information (''CBI'') (section 421, sections 201–204, and section 337) of other parties. See 19 U.S.C. 1677f; 19 CFR 207.7; 19 CFR 207.100, *et seq.;* 19 U.S.C. 2252(i); 19 U.S.C. 2451a(b)(3); 19 CFR 206.17; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34. The discussion below describes APO breach investigations and rules violation investigations that the Commission has completed during calendar year 2008, including a description of actions taken in response to these breaches and rules violations.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. *See* 56 FR 4846 (Feb. 6, 1991); 57 FR 12335 (Apr. 9, 1992); 58 FR 21991 (Apr. 26, 1993); 59 FR 16834 (Apr. 8, 1994); 60 FR 24880 (May 10, 1995); 61 FR 21203 (May 9, 1996); 62 FR 13164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999); 65 FR 30434 (May 11, 2000); 66 FR 27685 (May 18, 2001); 67 FR 39425 (June 7, 2002); 68 FR 28256 (May 23, 2003); 69 FR 29972 (May 26, 2004); 70 FR 42382 (July 25, 2005); 71 FR 39355 (July 12, 2006); 72 FR 50119 (August 30, 2007); and 73 FR 51843 (Sept. 5, 2008). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2005 a fourth edition of *An Introduction to Administrative Protective Order Practice in Import Injury Investigations* (Pub. No. 3755). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, tel. (202) 205–2000 and on the Commission's Web site at *http://www.usitc.gov.*

I. In General

The current APO form for antidumping and countervailing duty investigations, which was revised in March 2005, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI disclosed under this APO or otherwise obtained in this investigation and not otherwise available to him or her, to any person other than—

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

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for an interested party which is a party to the investigation; and (d) have signed the acknowledgment for clerical personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with this APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO or otherwise obtained in this investigation without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials *e.g.,* documents, computer disks, *etc.* containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of this APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) With a cover sheet identifying the document as containing BPI,

(ii) With all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) If the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) If by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

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

(9) Report promptly and confirm in writing to the Secretary any possible breach of this APO; and

(10) Acknowledge that breach of this APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of an APO may subject an applicant to:

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

(2) Referral to the United States Attorney;

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

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

(5) Such other actions, including but not limited to, a warning letter, as the

Commission determines to be appropriate.

APOs in investigations other than those under Title VII contain similar, though not identical, provisions.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of CBI and BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI and CBI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's Title VII and safeguard rules relating to BPI/CBI is the ''24-hour'' rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI/CBI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes—other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI/CBI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amended document pursuant to section 201.14(b)(2) of the Commission's rules.

II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation has commenced and that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of the General Counsel (OGC) prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the possible breacher's views on whether a breach has occurred.[11] If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that although a breach has occurred, sanctions are not warranted, and therefore finds it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction.

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI/CBI that the Commission is a reliable protector of BPI/CBI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''[T]he effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI/CBI. The Commission considers whether there are prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit an economist or consultant to obtain access to BPI/CBI under the APO in a Title VII or safeguard investigation if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C); 19 CFR 206.17(a)(3)(B) and (C). Economists and consultants who obtain access to BPI/CBI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, and section 135(b) of the Customs and Trade Act of 1990, 19 U.S.C. 1677f(g). *See also* 19 U.S.C. 1333(h).

The two types of breaches most frequently investigated by the Commission involve the APO's prohibition on the dissemination of BPI or CBI to unauthorized persons and the APO's requirement that the materials received under the APO be returned or destroyed and that a certificate be filed indicating which action was taken after the termination of the investigation or any subsequent appeals of the Commission's determination. The dissemination of BPI/CBI usually occurs as the result of failure to delete BPI/CBI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included: the failure to bracket properly BPI/CBI in proprietary documents filed with the Commission; the failure to report immediately known violations of an APO; and the failure to adequately supervise non-legal personnel in the handling of BPI/CBI.

In the past several years, the Commission completed APOB investigations that involved members of a law firm or consultants working with a firm who were granted access to APO materials by the firm although they were not APO signatories. In these cases, the firm and the person using the BPI

[11] Procedures for inquiries to determine whether a prohibited act such as a breach has occurred and for imposing sanctions for violation of the provisions of a protective order issued during NAFTA panel or committee proceedings are set out in 19 CFR 207.100–207.120. Those investigations are initially conducted by the Commission's Office of Unfair Import Investigations.

mistakenly believed an APO application had been filed for that person. The Commission determined in all of these cases that the person who was a non-signatory, and therefore did not agree to be bound by the APO, could not be found to have breached the APO. Action could be taken against these persons, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all cases in which action was taken, the Commission decided that the non-signatory was a person who appeared regularly before the Commission and was aware of the requirements and limitations related to APO access and should have verified his or her APO status before obtaining access to and using the BPI. The Commission notes that section 201.15 may also be available to issue sanctions to attorneys or agents in different factual circumstances where they did not technically breach the APO but where their actions or inactions did not demonstrate diligent care of the APO materials even though they appeared regularly before the Commission and were aware of the importance the Commission placed on the care of APO materials.

The Commission's Secretary has provided clarification to counsel representing parties in investigations relating to global safeguard actions, section 202(b) of the Trade Act of 1974, investigations for relief from market disruption, section 421(b) or (o) of the Trade Act of 1974, and investigations for action in response to trade diversion, section 422(b) of the Trade Act of 1974, and investigations concerning dumping and subsidies under section 516A and title VII of the Tariff Act of 1930 (19 U.S.C. 1303, 1516A and 1671–1677n). The clarification concerns the requirement to return or destroy CBI/BPI that was obtained under a Commission APO.

A letter was sent to all counsel on active service lists in mid-March 2007. Counsel were cautioned to be certain that each authorized applicant files within 60 days of the completion of an investigation or at the conclusion of judicial or binational review of the Commission's determination a certificate that to his or her knowledge and belief all copies of BPI/CBI have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized. This requirement applies to each attorney, consultant, or expert in a firm who has been granted access to BPI/CBI. One firm-wide certificate is insufficient. This same information is also being added to notifications sent to new APO applicants.

In addition, attorneys who are signatories to the APO representing clients in a section 337 investigation should send a notice to the Commission if they stop participating in the investigation or the subsequent appeal of the Commission's determination. The notice should inform the Commission about the disposition of CBI obtained under the APO that was in their possession or they could be held responsible for any failure of their former firm to return or destroy the CBI in an appropriate manner.

III. Specific Investigations

APO Breach Investigations

Case 1: The Commission determined that an attorney breached an APO when he served pleadings containing CBI upon Department of Justice (''DOJ'') attorneys during an appeal in the Court of International Trade of actions taken by U.S. Customs and Border Protection (''Customs'') to enforce the Commission's exclusion order issued in a section 337 investigation. The attorney erroneously assumed that because Customs officials who were directly involved in administering a section 337 exclusion order were permitted access to CBI by statute, he could provide CBI to the Customs officials' DOJ attorneys and the court officials in this appeal of Customs' actions. When the attorney was informed by the opposing counsel that his pleadings violated the APO, he informed the Commission of the possible violation. The DOJ attorneys were not able to return the documents containing CBI, because they were lost or destroyed, but the CIT successfully returned the pleadings containing CBI.

The mitigating factor noted by the Commission was that the attorney had not committed an APO breach in the past two years. The Commission also noted as a partially mitigating factor the fact that the attorney promptly notified an assistant general counsel at the Commission of the breach, although he failed to notify the Secretary of the breach until one week after it occurred. The aggravating factors that the Commission took into account were the fact that the attorney failed to seek guidance from the Commission as to whether his actions would constitute a breach of the APO, the fact that sixteen months passed between the time when the potential breach was identified and the time when the attorney took steps to retrieve the documents containing CBI, and the fact that it took the attorney almost four years to cure the breach, which made it likely that unauthorized persons saw the CBI. The Commission issued a private letter of reprimand to the attorney.

Case 2: The Commission determined that a lead attorney and a computer trade analyst violated an APO, by causing a computer disk containing CBI from a Commission investigation to be transmitted to a coordinator at a training seminar and seminar attendees. The information was put on the disk by the trade analyst at the direction of the lead attorney and it was transmitted to the coordinator of the seminar by a secretary at the attorney's firm. The secretary was not found to have breached the APO. The breach was discovered by an attorney attending the seminar, a non-signatory of the APO. The lead attorney made immediate efforts to cure the breach and retrieve the CBI but not all the documents containing the CBI were retrieved. The Commission considered the lead attorney and trade analyst's lack of prior breaches, the fact that the breach was unintentional, and the prompt and strenuous efforts made by the firm to cure the breach as mitigating factors.

The Commission declined to view the absence of claims of injury by the parties whose CBI was disclosed as a mitigating factor, stating that it considers the viewing of APO material by unauthorized persons to be an aggravating factor, regardless of whether evidence proves that a firm was injured by such a breach of the APO. The Commission also rejected the lead attorney's argument that his reliance on the trade analyst was reasonable because the trade analyst had significant experience. The Commission noted that the trade analyst lacked significant experience in Commission practice, having come from another type of work approximately one year before the breach.

The Commission viewed as aggravating the fact that the CBI was viewed by at least one unauthorized person and the breach was discovered by someone other than the lead attorney or a member of his firm. The Commission sent private letters of reprimand to the trade analyst and the lead attorney.

Case 3: The Commission determined that an economic analyst breached an APO when she lost a package containing BPI. The analyst signed for the package when it arrived at her firm, although it was not addressed to her. When the attorney to whom the package was intended inquired about its location, the economic analyst was unable to find it. She thought it may have been destroyed with other materials containing BPI which were located in her office. The

package was never found and the law firm called the Secretary to report the breach nine days after the analyst realized that she had signed for the package but could not locate it.

The Commission viewed as mitigating factors the fact that the breach was unintentional and that the analyst had not committed a breach in the past two years. The aggravating factors in this case were that the package was never found, and the fact that the firm failed to promptly notify the Commission Secretary of the breach as required by Commission rule 207.7(b)(9). The Commission sent a private letter of reprimand to the analyst.

The Commission also sent a letter to two attorneys and a legal secretary from the firm informing them that the Commission determined that they were not responsible for the breach of the APO. However, the letter also stated that the Commission did not believe that the firm had taken adequate measures to prevent similar breaches and it requested that they review their firm's procedures to ensure that a similar loss of BPI by firm personnel would not reoccur.

Case 4: The Commission found that two attorneys and a paralegal breached an APO when the public version of the firm's final comments, which contained BPI, was filed with the Commission. The BPI was contained on three pages that the paralegal inadvertently attached to the comments. The attorney primarily responsible for preparing the public version of the final comments for filing did not notice the addition of the BPI when he reviewed the submission and he gave it to the lead attorney for signing. The lead attorney signed on a page containing BPI. The document was then filed with the Commission.

The Commission determined to hold the lead attorney responsible for the breach because he was aware or should have been aware of the other attorney's previous breach of the APO. Consequently, the lead attorney should have engaged in at least a cursory review of the page he was signing. That page contained a conspicuous header stating that it contained BPI and there was unredacted BPI just two lines above the signature block. The Commission's decision to send warning letters to the paralegal and the lead attorney took into account the mitigating factors that the breach was unintentional, no BPI was read by any person not subject to the APO, the breach was remedied expeditiously by the firm, and neither the paralegal nor the lead attorney had committed APO breaches in the past two years.

In evaluating the filing attorney's conduct, the Commission viewed as an aggravating factor the fact that this was his second APO breach in 13 months and that he had been issued a warning letter for his prior breach. The Commission noted that the breach was caused by the attorney's carelessness in inadequately reviewing the comments before obtaining the lead attorney's signature and filing them. The Commission viewed as mitigating factors the facts that the breach was unintentional, the attorney's law firm acted expeditiously to remedy the breach, and the BPI was not read by any individuals who were not signatories to the APO. The Commission decided to send a private letter of reprimand to the attorney.

Case 5: The Commission found that an attorney had breached an APO when, after the completion of a section 337 investigation, he provided documents containing CBI to a non-signatory associate attorney at a law firm that was representing his client in an unrelated law suit. The associate attorney sought documents twice from the breaching attorney. For the first request the associate attorney provided a letter from an attorney for the party from which the CBI was originally obtained, and which was a respondent in the section 337 investigation, permitting the release of the information to the associate attorney. A second request for the release of information was made, but that time the associate attorney did not provide a letter permitting the release. He merely made a verbal assertion that he had approval to receive the information just as he had for the first request. The breaching attorney accepted his statement and provided the second set of information containing CBI originally obtained from the same section 337 respondent.

The breaching attorney learned from an attorney for the section 337 respondent that the associate attorney was not authorized to receive the second set of information. The breaching attorney contacted a partner at the associate's law firm about the matter and learned that the materials were destroyed and had never been copied, they had not been distributed to counsel or parties in the unrelated litigation, and no one at the firm including the associate attorney had substantively reviewed the materials prior to their destruction.

The Commission determined to issue a warning letter to the breaching attorney. It viewed as an aggravating factor that an unauthorized person briefly viewed the CBI, although no substantive review occurred. It also found several mitigating factors. The breach was unintentional and was based on an inaccurate representation by the associate attorney that he had the authority to receive the information containing CBI; the attorney expeditiously sought to remedy the breach and to notify the Commission of the breach, after being informed by respondent's counsel; and this was the only breach in which the attorney had been involved in the two-year period generally examined by the Commission for the purpose of determining sanctions.

The Commission also found that the attorney had not committed a second breach by retaining the information obtained under the APO after the Commission investigation had ended. The attorney and the lead counsel for respondents had agreed to retain the documents for purposes of a separate litigation. The attorney destroyed the documents containing CBI once the litigation terminated.

Case 6: The Commission found that an attorney had breached an APO in a section 337 investigation when he transmitted an administrative law judge-issued order containing CBI to an unauthorized person. The breach was discovered by a non-signatory to the APO, counsel in a different section 337 investigation, who alerted another non-signatory counsel from whom he had obtained a copy of the order. That attorney then notified the breaching attorney.

In deciding to sanction the attorney by issuing a private letter of reprimand, the Commission considered the mitigating circumstances that the breach was unintentional, that the attorney acted quickly to cure the breach, and that the attorney had not committed a breach in the past two years, the period generally examined by the Commission for the purpose of determining sanctions. The Commission also considered the aggravating circumstances that the CBI was viewed by at least one unauthorized person and that the breach was not discovered by the attorney or his firm.

The Commission denied the attorney's request that it consider an alleged lack of harm caused by the unauthorized disclosure of the CBI to be a mitigating circumstance. The Commission informed the breaching attorney that it has an established practice and policy of providing strong protection to CBI. Consistent with this, the Commission considers the viewing of APO material by unauthorized persons to be an aggravating factor, regardless of whether evidence proves

that a firm was injured by such a breach of the APO.

Case 7: The Commission found that an attorney breached an APO by failing to redact from the public version of his firm's final comments the name of a subscription service and information obtained from the subscription service under the Commission's APO. The Commission has consistently treated this type of information as BPI and the information had clearly been marked as BPI. A paralegal and a legal secretary who were involved in the matter were found not liable for the breach because they acted under the direction of the attorney.

The Commission viewed as mitigating factors that the attorney had not been found liable for a breach within the previous two years, the time period the Commission usually considers for the purpose of sanctions, no non-signatory read the BPI, and prompt action was taken to remedy the breach once the attorney was notified of the breach. The Commission also considered two aggravating circumstances. First, the Commission staff, not the attorney, discovered the breach. Second, the breach was not inadvertent, but rather, the attorney substituted his own judgment for the Commission's in treating the BPI in question as public information despite clear markings to the contrary. The Commission issued a private letter of reprimand to the breaching attorney.

Rules Violation Investigations

Case 1: The Commission found that two attorneys had violated Commission rule 207.3(b), 19 CFR 207.3(b), in a five-year review, when they served a brief, which was public because no BPI was used, by first class mail instead of by hand or overnight mail as required by the rules. The certificate of service, which stated that the brief would be sent by first class mail, was signed by the lead attorney after he had been reassured by the second attorney that, in the past, the firm had served public documents in Commission investigations by first class mail. The use of first class service resulted in a one day delay in receipt of the document.

The Commission decided to issue a warning letter to the lead attorney who had signed the certificate of service, in view of the fact that he had no violations in the past two years, the violation was unintentional, and the firm took measures to make sure that this kind of violation would not occur again.

The Commission issued to the second attorney a private letter of reprimand with two restrictions on his practice before the Commission. For a period of 18 months he was not permitted to serve as the final decisionmaker in any matter relating to proceedings before the Commission and all Commission submissions prepared by the attorney must be reviewed by another attorney before filing with the Commission. In determining to sanction the attorney in this manner, the Commission considered the mitigating circumstances that the breach was unintentional and the fact that other parties were not unduly prejudiced as a result of the improper service. The Commission also considered the aggravating circumstance that he had received two previous sanctions, the most recent of which included a restriction on his practice, for breaches of the APO in other Commission investigations within two years of the violation of the service rule. The Commission did take into account that the first of the underlying APO breaches had occurred more than four years prior to the issuance of the sanction in this rules violation proceeding.

There was one rules violation investigation in which no violation was found:

Case 1: The Commission determined that sanctions were unwarranted but cautioned three attorneys to ensure that their guidance to employees and clients in the future respects the Commission's need for accurate questionnaire responses to maintain the integrity of Commission investigations. A rules violation investigation had been conducted pursuant to Commission rule 201.15(a), 19 CFR 201.15(a), when comments on their client's completed questionnaire made it appear that the three attorneys had advised their clients to answer a question in a potentially misleading manner. In response to the letter of inquiry, the attorneys explained that the comments were inadvertently left on the questionnaire and were never transmitted to the client. They were, instead, intended for staff at the law firm to encourage them to seek more accurate information from the client. The firm's staff to whom the comments were sent recognized them as encouragement to obtain additional accurate information from the client and, in response to the comments, initiated follow-up contacts with the client to obtain additional, accurate information. This was confirmed by e-mail communications between the attorneys and the staff demonstrating a recognition of the need for accurate reporting.

Issued: October 15, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Consistent with Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on October 9, 2009, the United States lodged a Consent Decree with the City of South Lake Tahoe, California (''the City'') in *United States of America* v. *El Dorado County, California, et al.,* Civil No. S–01–1520 MCE GGH (E.D. Cal.), with respect to the Meyers Landfill Site, located in Meyers, El Dorado County, California (the ''Site'').

On August 3, 2001, Plaintiff United States of America (''United States''), on behalf of the United States Department of Agriculture, Forest Service (''Forest Service''), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, against Defendants, El Dorado County, California (the ''County'') and the City. The complaint filed by the United States seeks recovery of environmental response costs incurred by the Forest Service related to the release or threatened release and/or disposal of hazardous substances at or from the Meyers Landfill Site, a former municipal waste disposal facility located on National Forest Service System lands administered by the Lake Tahoe Basin Management Unit of the Forest Service, with accrued interest, and a declaration of the County's and the City's liability for future response costs incurred by the United States related to the Site. The City filed counterclaims against the United States pursuant to CERCLA. The proposed Consent Decree resolves the United States' CERCLA claims against the City and the City's CERCLA claims against the United States.

Under the proposed Consent Decree the City will pay $1.6 million, a portion of which will be deposited into a Forest Service Special account to fund future response actions at the Site and a portion of which will go to the Forest Service to fund response actions related