Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Dated: February 4, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–02535 Filed 2–7–20; 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 published in the **Federal Register** reports on the status of its practice with respect to breaches of its administrative protective orders (''APOs'') 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 (the ''24-hour rule''). This notice provides a summary of APO breach investigations completed during fiscal years 2018 and 2019. The Commission intends for this report to inform representatives of parties to Commission proceedings of the specific types of APO breaches before the Commission and the corresponding types of actions that the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Caitlin Stephens, Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–2076. We advise hearing-impaired individuals that they may obtain information on this matter by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission is available by accessing its website (*https://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: Statutory authorities for investigations conducted by the Commission provide for the release of business proprietary information (''BPI'') or confidential business information (''CBI'') to certain authorized representatives in accordance with requirements set forth in Commission regulations. Such statutory and regulatory authorities include: 19 U.S.C. 1677f; 19 CFR 207.7; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34; 19 U.S.C. 2252(i); 19 CFR 206.17; 19 U.S.C. 1516a(g)(7)(A); and 19 CFR 207.100–207.120. 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 (the ''24-hour rule'') under 19 CFR 207.3(c). The discussion below describes APO breach investigations that the Commission completed during fiscal years 2018 and 2019, including descriptions of actions taken in response to any breaches. This summary addresses APO breach investigations related to proceedings under both title VII and section 337 of the Tariff Act of 1930.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and rule violations. *See* 83 FR 42140 (Aug. 20, 2018), 83 FR 17843 (Apr. 24, 2018), 82 FR 29322 (June 28, 2017), 81 FR 17200 (Mar. 28, 2016), 80 FR 1664 (Jan. 13, 2015), 78 FR 79481 (Dec. 30, 2013), 77 FR 76518 (Dec. 28, 2012), 76 FR 78945 (Dec. 20, 2011), 75 FR 66127 (Oct. 27, 2010), 74 FR 54071 (Oct. 21, 2009), 73 FR 51843 (Sept. 5, 2008); 72 FR 50119 (Aug. 30, 2007); 71 FR 39355 (July 12, 2006); 70 FR 42382 (July 22, 2005); 69 FR 29972 (May 26, 2004); 68 FR 28256 (May 23, 2003); 67 FR 39425 (June 7, 2002); 66 FR 27685 (May 18, 2001); 65 FR 30434 (May 11, 2000); 64 FR 23355 (Apr. 30, 1999); 63 FR 25064 (May 6, 1998); 62 FR 13164 (Mar. 19, 1997); 61 FR 21203 (May 9, 1996); 60 FR 24880 (May 10, 1995); 59 FR 16834 (Apr. 8, 1994); 58 FR 21991 (Apr. 26, 1993); 57 FR 12335 (Apr. 26, 1992); and 56 FR 4846 (Feb. 6, 1991). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. The Commission considers APO breach investigations on a case-by-case basis.

As part of its effort to educate practitioners about the Commission's current APO practice, the Secretary to the Commission issued An Introduction to Administrative Protective Order Practice in Import Injury Investigations, 4th edition (Pub. No. 3755, March 2005). This document is available on the Commission's website at *https://www.usitc.gov.*

I. In General

A. Antidumping and Countervailing Duty Investigations

The current APO form for antidumping and countervailing duty investigations, which the Commission 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

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

(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 decision making 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 form for antidumping and countervailing duty investigations also provides for the return or destruction of the BPI obtained under the APO on the order of the Secretary, at the conclusion of the investigation, or at the completion of Judicial Review. The BPI disclosed to an authorized applicant under an APO during the preliminary phase of the investigation generally may remain in the applicant's possession during the final phase of the investigation.

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 safeguard investigations contain similar (though not identical) provisions.

B. Section 337 Investigations

The APOs in section 337 investigations differ from those in title VII investigations as there is no set form and provisions may differ depending on the investigation and the presiding administrative law judge. However, in practice, the provisions are often quite similar. Any person seeking access to CBI during a section 337 investigation (including outside counsel for parties to the investigation, secretarial and support personnel assisting such counsel, and technical experts and their staff who are employed for the purposes of the investigation) is required to read the APO, agree to its terms by letter filed with the Secretary of the Commission indicating that he or she agrees to be bound by the terms of the Order, agree not to reveal CBI to anyone other than another person permitted access by the Order, and agree to utilize the CBI solely for the purposes of that investigation.

In general, an APO in a section 337 investigation will define what kind of information is CBI and direct how CBI is to be designated and protected. The APO will state which persons will have access to the CBI and which of those persons must sign onto the APO. The APO will provide instructions on how CBI is to be maintained and protected by labeling documents and filing transcripts under seal. It will provide protections for the suppliers of CBI by notifying them of a Freedom of Information Act request for the CBI and providing a procedure for the supplier to seek to prevent the release of the information. There are provisions for disputing the designation of CBI and a procedure for resolving such disputes. Under the APO, suppliers of CBI are given the opportunity to object to the release of the CBI to a proposed expert. The APO requires a person who discloses CBI, other than in a manner authorized by the APO, to provide all pertinent facts to the supplier of the CBI and to the administrative law judge and to make every effort to prevent further disclosure. The APO requires all parties to the APO to either return to the suppliers or destroy the originals and all copies of the CBI obtained during the investigation.

The Commission's regulations provide for certain sanctions to be imposed if the APO is violated by a person subject to its restrictions. The names of the persons being investigated for violating an APO are kept confidential unless the sanction imposed is a public letter of reprimand. 19 CFR 210.34(c)(1). The possible sanctions are:

(1) An official reprimand by the Commission.

(2) Disqualification from or limitation of further participation in a pending investigation.

(3) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to 19 CFR 201.15(a).

(4) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction in which the individual is licensed to practice.

(5) Making adverse inferences and rulings against a party involved in the violation of the APO or such other action that may be appropriate. 19 CFR 210.34(c)(3).

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI or CBI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of BPI and CBI. 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.

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 Secretary to the Commission (''Secretary'') notifies relevant Commission offices that the Secretary has opened an APO breach file, and the Commission has commenced an APO breach investigation. Upon receiving notification from the Secretary, the Office of the General Counsel (''OGC'') prepares a letter of inquiry that the Commission sends to the possible breacher under the Secretary's signature to ascertain the facts and obtain the possible breacher's views on whether a breach has in fact occurred.[1] 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. However, a warning letter is considered in a subsequent APO breach investigation.

Sanctions for APO violations serve three basic interests: (a) Preserving the confidence of submitters of BPI/CBI that the Commission is a reliable protector of BPI/CBI; (b) disciplining breachers; and (c) 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 [APO] depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. 100–576, at 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 viewed the BPI/CBI. The Commission considers whether there have been 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 Commission may hold the attorney exercising direction or control over the economist or consultant responsible for the breach of the APO. In section 337 investigations, technical experts and their staff who are employed for the purposes of the investigation are required to sign onto the APO and agree to comply with its provisions.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases, section 337 investigations, and safeguard investigations are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. *See* 19 U.S.C. 1677f(g); 19 U.S.C. 1333(h); 19 CFR 210.34(c).

The two types of breaches most frequently investigated by the Commission involve (1) the APO's prohibition on the dissemination of BPI or CBI to unauthorized persons, and (2) the APO's requirement that the materials received under the APO be returned or destroyed, and that a certificate be filed with the Commission indicating what actions were 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 or suspected violations of an APO, and the failure to adequately supervise non-lawyers in the handling of BPI/CBI.

Occasionally, the Commission conducts APO breach investigations that involve 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 many of these cases, the firm and the person using the BPI/CBI mistakenly believed an APO application had been filed for that person. The Commission has 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.

[1] Procedures for investigations 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 a NAFTA panel or committee proceedings are set out in 19 CFR 207.100–207.120. The Commission's Office of Unfair Import Investigations conducts those investigations initially.

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 the Commission took action, it decided that the non-signatory was a person who appeared regularly before the Commission, who was aware of the requirements and limitations related to APO access, and who should have verified his or her APO status before obtaining access to and using the BPI/CBI. The Commission notes that section 201.15 may also be available to issue sanctions to attorneys or agents in different factual circumstances in which they did not technically breach the APO, but when 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.

Counsel participating in Commission investigations have reported to the Commission potential breaches involving the electronic transmission of public versions of documents. In these cases, the document transmitted appears to be a public document with BPI/CBI omitted from brackets. However, the confidential information is actually retrievable by manipulating codes in software. The Commission has found that the electronic transmission of a public document containing BPI/CBI in a recoverable form was a breach of the APO.

The Commission has cautioned counsel to be certain that each authorized applicant files with the Commission within 60 days, of the completion of an import injury investigation or at the conclusion of judicial or binational review of the Commission's determination, a certificate stating that, to his or her knowledge and belief, all copies of BPI/CBI have been returned or destroyed, and no copies of such materials 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 access to BPI/CBI. One firm-wide certificate is insufficient.

Attorneys who are signatories to the APO representing clients in a section 337 investigation should inform the administrative law judge and the Secretary if there are any changes to the information that was provided in the application for access to the CBI. This is similar to the requirement to update an applicant's information in title VII investigations.

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 the Commission could be hold them responsible for any failure of their former firm to return or destroy the CBI in an appropriate manner.

III. Specific APO Breach Investigations

A. Fiscal Year 2018

Case 1. The Commission determined that an attorney representing a party in a section 337 investigation breached an APO when the attorney disclosed CBI to unauthorized persons. The attorney, an APO signatory, prepared and directed an employee to file a public version of a submission that contained unredacted CBI. The document was finalized and filed on the public record by an employee supervised by the attorney, but the attorney did not review the final version of the document before it was filed. After being placed on the public record, the CBI was viewed by at least one non-party to the investigation. Approximately six days later, counsel for another party notified the attorney that the public version of the filing on the Commission's Electronic Document Information System (EDIS) contained unredacted CBI. The attorney contacted the Commission that same day to have the filing removed from EDIS.

The attorney, who is responsible for the subordinate employee's compliance with the APO, breached the APO because CBI was made available to unauthorized persons. In determining the appropriate action in response to the breach, the Commission considered mitigating factors, including that (1) the breach was inadvertent and unintentional; (2) the attorney took immediate corrective measures by contacting the Secretary's office once notified of the possible breach; and (3) the attorney had not committed a breach in the previous two years. The Commission also considered the following aggravating factors: (1) Opposing counsel discovered the breach; and (2) unauthorized persons accessed the CBI. The Commission issued a private letter of reprimand to the attorney.

B. Fiscal Year 2019

Case 1. A law firm participating in a title VII investigation notified the Secretary that it had filed a public version of its brief that potentially contained BPI. The Secretary, in consultation with the Office of the General Counsel, determined that no breach had actually occurred. The law firm's public filing did not contain any information released to the law firm under the APO. A letter to the firm advised that, under the circumstances, the Commission has closed the investigation.

Case 2. The Commission determined that an attorney representing a party in a title VII investigation breached the APO when the attorney failed to properly redact BPI from a public filing. The day after filing the public document on EDIS, the attorney discovered that the BPI was still present in the electronic version of the public document, and the attorney immediately contacted the Secretary.

The attorney breached the APO because BPI was made available to unauthorized persons. In determining the appropriate action in response to the breach, the Commission considered mitigating factors, including that (1) the breach was unintentional; (2) the attorney had never previously breached an APO; (3) the attorney took immediate corrective measures upon discovery of the breach; (4) the attorney promptly reported the situation to the Secretary; (5) there was no evidence that any non-signatory to the APO viewed the BPI, and (6) significant time had passed since the breach occurred. The Commission did not find any aggravating factors to be present, and it sent a letter to the attorney advising that it would take no further action in the matter.

Case 3. Counsel representing respondents in a section 337 investigation notified the Secretary that another law firm may have breached the APO in the prior investigation when it filed a new complaint. The respondents' counsel alleged that the new complaint contained information that could not have been known but for access to the CBI from the prior investigation. Complainants' counsel was able to point to evidence that adequately supported its claim that it relied on publicly available information in drafting the complaint at issue. Accordingly, the Commission determined that no breach occurred.

By order of the Commission.

Issued: February 4, 2020.

Lisa Barton,

Secretary to the Commission.

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