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(ii) Bring civil actions in a United States district court pursuant to paragraph (c) of this section (and section 337(f)(2) of the Tariff Act of 1930) to recover for the United States the civil penalty accruing to the United States under that section for the breach of a cease and desist order or a consent order, and to obtain a mandatory injunction incorporating the relief the Commission deems appropriate for enforcement of the cease and desist order or consent order; or

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

(iv) Issue a new cease and desist order as necessary to prevent the unfair practices that were the basis for originally issuing the cease and desist order, consent order, and/or exclusion order subject to the enforcement proceeding.

(5) Prior to effecting any issuance, modification, revocation, or exclusion under this section, the Commission shall consider the effect of such action upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

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

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

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

(iii) Upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article (or the agent of such person) with written notice of the aforesaid exclusion order and the fact

that seizure and forfeiture would result from any further attempt to import the article into the United States.

(b) *Court enforcement.* To obtain judicial enforcement of an exclusion order, a cease and desist order, a consent order, or a sanctions order, the Commission may initiate a civil action in the U.S. district court. In a civil action under section 337(f)(2) of the Tariff Act of 1930, the Commission may seek to recover for the United States the civil penalty accruing to the United States under that section for the breach of a cease and desist order or a consent order, and may ask the court to issue a mandatory injunction incorporating the relief the Commission deems appropriate for enforcement of the cease and desist order or consent order. The Commission may initiate a proceeding to obtain judicial enforcement without any other type of proceeding otherwise available under section 337 or this subpart or without prior notice to any person, except as required by the court in which the civil action is initiated.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38327, July 7, 2008; 78 FR 23486, Apr. 19, 2013; 83 FR 21163, May 8, 2018]

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

(a) *Petitions for modification or rescission of exclusion orders, cease and desist orders, and consent orders.* (1) Whenever any person believes that changed conditions of fact or law, or the public interest, require that an exclusion order, cease and desist order, or consent order be modified or set aside, in whole or in part, such person may request, pursuant to section 337(k)(1) of the Tariff Act of 1930, that the Commission make a determination that the conditions which led to the issuance of an exclusion order, cease and desist order, or consent order no longer exist. The Commission may also on its own initiative consider such action. The request shall state the changes desired and the changed circumstances or public interest warranting such action, shall include materials and argument in support thereof, and shall be served on all parties to the investigation in which the exclusion order, cease and desist

order, or consent order was issued. Any person may file an opposition to the petition within 10 days of service of the petition. If the Commission makes such a determination, it shall notify the Secretary of the Treasury and U.S. Custom and Border Protection.

(2) If the petitioner previously has been found by the Commission to be in violation of section 337 of the Tariff Act of 1930 and if its petition requests a Commission determination that the petitioner is no longer in violation of that section or requests modification or rescission of an order issued pursuant to section 337 (d), (e), (f), (g), or (i) of the Tariff Act of 1930, the burden of proof in any proceeding initiated in response to the petition pursuant to paragraph (b) of this section shall be on the petitioner. In accordance with section 337(k)(2) of the Tariff Act, relief may be granted by the Commission with respect to such petition on the basis of new evidence or evidence that could not have been presented at the prior proceeding or on grounds that would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

(3) If the petition requests modification or rescission of an order issued pursuant to section 337(d), (e), (f), (g), or (i) of the Tariff Act of 1930 on the basis of a licensing or other settlement agreement, the petition shall contain copies of the licensing or other settlement agreements, any supplemental agreements, any documents referenced in the petition or attached agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion. On motion for good cause shown, the administrative law judge or the Commission may limit the service of the agreements to the settling parties and the Commission investigative attorney.

(b) *Commission action upon receipt of petition.* The Commission may thereafter institute a proceeding to modify

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

(1) The determination of whether to institute shall be made within 30 days after the petition is filed, unless—

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

(ii) The petitioner requests that the Commission postpone the determination on whether to institute a modification or rescission proceeding; or

(iii) The petitioner withdraws the petition.

(2) If exceptional circumstances preclude Commission adherence to the 30-day deadline for determining whether to institute a modification or rescission proceeding on the basis of the petition, the determination will be made as soon after that deadline as possible.

(3) If the petitioner desires to have the Commission postpone making a determination on whether to institute a modification or rescission proceeding in response to the petition, the petitioner must file a written request with the Secretary. If the request is granted, the determination will be rescheduled for a date that is appropriate in light of the facts.

(4) The petitioner may withdraw the complaint as a matter of right at any time before the Commission votes on whether to institute a modification or rescission proceeding. To effect such withdrawal, the petitioner must file a written notice with the Commission.

(5) The Commission shall institute a modification or rescission proceeding by publication of a notice in the FEDERAL REGISTER. The notice will define the scope of the modification or rescission proceeding and may be amended by leave of the Commission.

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(c) *Comments.* Parties may submit comments on the recommended determination within 10 days from the service of the recommended determination. Parties may submit responses thereto within 5 business days from service of any comments.

[59 FR 39039, Aug. 1, 1994, as amended at 61 FR 43433, Aug. 23, 1996; 78 FR 23486, Apr. 19, 2013; 83 FR 21163, May 8, 2018]

§ 210.77 [Reserved]

§ 210.78 Notice of enforcement action to Government agencies.

(a) *Consultation.* The Commission may consult with or seek information from any Government agency when taking any action under this subpart.

(b) *Notification of Treasury.* The Commission shall notify the Secretary of the Treasury of any action under this subpart that results in a permanent or temporary exclusion of articles from entry, or the revocation of an order to such effect, or the issuance of an order compelling seizure and forfeiture of imported articles.

§ 210.79 Advisory opinions.

(a) *Advisory opinions.* Upon request of any person, the Commission may, upon such investigation as it deems necessary, issue an advisory opinion as to whether any person's proposed course of action or conduct would violate a Commission exclusion order, cease and desist order, or consent order. Any responses to a request for an advisory opinion shall be filed within 10 days of service of the request. The Commission will consider whether the issuance of such an advisory opinion would facilitate the enforcement of section 337 of the Tariff Act of 1930, would be in the public interest, and would benefit consumers and competitive conditions in the United States, and whether the person has a compelling business need for the advice and has framed his request as fully and accurately as possible. Advisory opinion proceedings are not subject to sections 554, 555, 556, 557, and 702 of title 5 of the United States Code.

(1) The determination of whether to issue an advisory opinion shall be made within 30 days after the petition is filed, unless—

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

(ii) The requester asks the Commission to postpone the determination on whether to institute an advisory proceeding; or

(iii) The petitioner withdraws the request.

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

(3) If the requester desires that the Commission postpone making a determination on whether to institute an advisory proceeding in response to its request, the requester must file a written request with the Secretary. If the request is granted, the determination will be rescheduled for whatever date is appropriate in light of the facts.

(4) The requester may withdraw the request as a matter of right at any time before the Commission votes on whether to institute an advisory proceeding. To effect such withdrawal, the requester must file a written notice with the Commission.

(5) The Commission shall institute an advisory proceeding by publication of a notice in the FEDERAL REGISTER. The notice will define the scope of the advisory opinion and may be amended by leave of the Commission.

(b) *Revocation.* The Commission may at any time reconsider any advice given under this section and, where the public interest requires, revoke its prior advice. In such event the person will be given notice of the Commission's intent to revoke as well as an opportunity to submit its views to the Commission. The Commission will not proceed against a person for violation of an exclusion order, cease and desist order, or consent order with respect to any action that was taken in good faith reliance upon the Commission's advice under this section, if all relevant facts were accurately presented to the Commission and such action was