

# UNITED STATES INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201 and 207

## AMENDMENTS TO RULES OF PRACTICE AND PROCEDURE

AGENCY: United States International Trade Commission.

ACTION: Final Rulemaking.

**SUMMARY:** The United States International Trade Commission (the Commission) hereby amends its Rules of Practice and Procedure concerning antidumping and countervailing duty investigations and reviews in 19 CFR parts 201 and 207. The amendments establish procedures for five-year reviews of antidumping and countervailing duty orders and suspension agreements that the Commission will conduct pursuant to the provisions of section 751(c) of the Tariff Act of 1930, as amended (the Act).

**DATES:** In accordance with the 30-day advance publication requirement imposed by 5 U.S.C. 553(d), the effective date of these rules is [30 days after publication in the *Federal Register*.]

**FOR FURTHER INFORMATION CONTACT:** Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission (telephone: 202-205-3087, e-mail: mbernstein@usitc.gov), or Vera A. Libeau, Office of Investigations, U.S. International Trade Commission (telephone 202-205-3176, e-mail: vlibeau@usitc.gov). 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

On October 23, 1997, the Commission published a Notice of Proposed Rulemaking (NOPR) in the **Federal Register**. 62 F.R. 55185 (Oct. 23, 1997). In the NOPR, the Commission proposed procedures for five-year reviews it will conduct pursuant to section 751(c) of the Act. Some of the proposed procedures were reflected in proposed amendments to the Commission's Rules of Practice and Procedure. The Commission additionally described in the preamble and annexes to the NOPR other proposed procedures which were not incorporated into the proposed regulations.

The Commission invited public comment on its proposed regulations, the procedures discussed in the NOPR preamble and annexes, and any other issues pertaining to five-year reviews. The Commission received 25 sets of first-round comments from 23 different submitters, and 15 sets of rebuttal comments from 12 different submitters. Those entities that submitted written comments, as well as the short-form designations that will be used to refer to them, are listed in Annex C to this notice. Additionally, the Commission conducted a public

hearing on February 26, 1998, concerning five-year reviews at which it heard testimony from numerous interested persons.

The Commission carefully considered all comments that it received. The Commission's response to those comments that relate to the subjects addressed in this rulemaking notice is provided below in the section-by-section analysis of the rulemaking amendments. The Commission appreciates the time and effort the commenters and hearing participants took to present their views, and believes that the comments and hearing testimony have contributed to improved regulations.

The Commission has determined that these regulations do not meet the criteria described in section 3(f) of the Executive Order 12866 (58 F.R. 51735, Oct. 4, 1993) (EO) and thus do not constitute a significant regulatory action for purposes of the EO. The Regulatory Flexibility Act (5 U.S.C. 601 note) is inapplicable to this rulemaking, because it is not one for which a NOPR is required under 5 U.S.C. 553(b) or any other statute. Although the Commission published a NOPR, these regulations are "agency rules of procedure and practice," and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

The sample notice of institution reproduced at Annex A to this notice constitutes an information collection request subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. After consultation with the Office of Management and Budget (OMB), the Commission has concluded that the collection of information that will be undertaken pursuant to the notice of institution is encompassed within a clearance OMB has given the Commission under the Paperwork Reduction Act to collect information for antidumping and countervailing duty investigations and reviews, including those undertaken pursuant to section 751 of the Act. This clearance has been assigned OMB Control Number 3117-0016.

Pursuant to the Contract with America Advancement Act of 1996 (Pub. L. 104-121), the Commission is submitting a report to the General Accounting Office and to each House of Congress describing these regulations and attaching their text.

## **Overview of the Amendments to the Regulations**

The final regulations and procedures for five-year reviews contain four principal changes from those proposed in the NOPR. These changes are summarized here. A comprehensive explanation of the changes is provided in the section-by-section analysis below.

First, responses to the notice of institution will be due 50 days after its publication in the **Federal Register**. Thus, responses to the Commission's notice need not be filed until 30 days after the date on which the Department of Commerce (Commerce) will inform the Commission if no domestic interested party has filed a Notice of Intent to Participate in the five-year review.

Second, the notice of institution has been revised significantly. In particular, the Commission has reduced the amount of empirical data that interested parties will be requested to submit in their responses. Additionally, interested parties will make a single submission to the Secretary.

Third, the Commission has decided not to adopt numerical guidelines concerning the adequacy, in the aggregate, of interested party responses to the notice of institution. The Commission will make adequacy rulings on a case-by-case basis taking several considerations into account.

Fourth, the Commission has decided not to adopt a regulation precluding interested parties from making data collection requests after submission of the comments on the draft questionnaires. Nevertheless, the regulation the Commission has promulgated states that it will entertain such late requests for data collection only in compelling circumstances.

### **Section-by-Section Analysis of the Regulations**

#### *Section 201.11*

The Commission has amended section 201.11 by adding sections 201.11(b)(4) and (b)(5), which govern the filing of entries of appearance in five-year reviews. Section 201.11(b)(4), which states that entries of appearance are due 21 days after publication of the notice of institution, is identical to the provision proposed in the NOPR. Stewart requested that the 21-day period for filing entries of appearance be extended to 30 days. The Commission has retained the 21-day period, which is the same period used in Commission investigations other than original antidumping and countervailing duty investigations.

Section 201.11(b)(5) concerns the filing of entries of appearance in a “full” five-year review. (A “full review” is any five-year review except one that has been terminated by Commerce pursuant to section 751(c)(3)(A) of the Act or that has been expedited by the Commission pursuant to section 751(c)(3)(B) of the Act.) This provision states that entries of appearance in full reviews may be filed within the period specified in the Notice of Scheduling the Commission will issue pursuant to section 207.62(c). The Commission has not established a fixed date, as it proposed to do in the NOPR, to maximize its flexibility in scheduling five-year reviews.

Nevertheless, as indicated in the final sentence of section 201.11(b)(5), parties will be provided a minimum of 45 days to file entries of appearance in full reviews. Stewart and Collier objected to any provision permitting parties to file entries of appearance after commencement of a full review. The Commission has decided to retain section 201.11(b)(5) to maximize participation in full reviews.

The Commission has not made other amendments to section 201.11 requested by

commenters. Section 201.11(a), as currently written, expressly authorizes industrial users and certain consumer organizations to enter appearances as parties in investigations under part 207. New section 207.60(a) makes clear that this provision applies to five-year reviews. Consequently, no further amendment to section 201.11, such as the one advocated by Canada, is needed to authorize industrial users and consumer organizations to appear as parties in five-year reviews.

The Commission has declined to modify the regulations to “encourage” interested parties to provide attorneys for industrial users and consumer groups with access to business proprietary information (BPI) under administrative protective order (APO), as requested by Hogan and H&H. Sections 777(b)(1) and (c) of the Act require the Commission to release BPI under APO to “interested parties.” Under section 771(9) of the Act, industrial users or consumers are not “interested parties.” Interested parties may elect to release information not acquired under APO under such terms and conditions as they designate to parties to a Commission investigation or review that do not have “interested party” status.

### *Section 207.3*

The Commission has amended section 207.3(b) to require hand or overnight service of prehearing briefs, hearing testimony, and posthearing briefs in five-year reviews. The amendment is identical to the one proposed in the NOPR.

Hoogovens proposed that the regulation be amended to require each party to serve its entry of appearance in a five-year review by hand or express mail to all parties indicated on the Commerce service list for the most recent administrative review pertaining to the order(s) that are the subject of the five-year review. The Commission has not adopted this proposal because it does not see the need for expeditious service of entries of appearance on parties to a Commerce proceeding that may or may not choose to appear in the Commission’s five-year review.

Stewart proposed that the regulation be amended to require hand or overnight service of final comments filed pursuant to section 207.68. The amendment to section 207.3 is designed to make service requirements in five-year reviews the same as those in original antidumping and countervailing duty investigations. The Commission does not require hand or overnight service for final comments in original investigations.

### *Section 207.45*

The Commission has amended section 207.45, which concerns changed circumstances reviews pursuant to section 751(b) of the Act, to change the statutory cross-reference in section 207.45(a) so it specifically cites section 751(b). The amendment is identical to that proposed in the NOPR.

### *Section 207.46*

The Commission has amended section 207.46, an interim regulation that establishes procedures for investigations under section 753 of the Act, which concerns countervailing duty orders issued under section 303 of the Act without an injury determination by the Commission. The amendments, which clarify the section's provisions and modify its cross-references in light of the other changes to the regulations made in this rulemaking, are identical to those proposed in the NOPR.

#### *Section 207.60*

Section 207.60 is a new provision that defines certain terms used in new Subpart F of Part 207 concerning five-year reviews. The terms defined are “five-year review,” “expedited review,” “full review,” and “notice of institution.”

The definition of “five-year review” has been revised to clarify that generic references to “investigations” in Part 201 or in subpart A of Part 207 are applicable to five-year reviews, unless superseded by a Subpart F regulation of more specific application.

The definitions of “expedited review” and “full review” are new, although each term was used in several places in the NOPR. An “expedited review” is a five-year review that the Commission has expedited pursuant to section 751(c)(3)(B) of the Act. A “full review” is any five-year review except one that has been terminated by Commerce pursuant to section 751(c)(3)(A) of the Act or that has been expedited by the Commission pursuant to section 751(c)(3)(B) of the Act.

The definition of “notice of institution” is identical to that proposed in the NOPR. The NOPR proposed definitions for the terms “domestic like product,” “domestic industry,” “expedited determination,” and “subject merchandise.” The Commission has deleted these definitions on the grounds they are unnecessary. This change renders the comments directed to these proposed definitions moot.

#### *Section 207.61*

Section 207.61 is a new provision concerning responses to the notice of institution. Sections 207.61(a) and 207.61(b) have changed substantially from the NOPR.

*Section 207.61(a): When Responses to Notice of Institution Must be Filed.* Under section 207.61(a), interested parties must submit their responses to the Commission's notice of institution no later than 50 days after its publication in the **Federal Register**. This response period is longer than the 30-day response period proposed in the NOPR. The Commission has made this change in response to both the comments to the NOPR and Commerce's interim final rules for five-year reviews.

Many commenters objected to the proposed requirement that all interested parties file

complete responses to the notice of institution within 30 days. Commenters stated two general types of objections. The first objection was based on section 751(c)(3)(A) of the Act, which directs Commerce to terminate a five-year review within 90 days when no domestic interested party responds to Commerce's notice of initiation. Respondent interested parties (a term that will be used to refer to interested parties described in sections 771(9)(A) and (B) of the Act, encompassing U.S. importers, foreign producers, and exporters of subject merchandise, and governments of the countries in which subject merchandise is produced or exported) objected to being required to submit substantive responses to the notice of institution before any domestic interested party (a term that will be used to refer to interested parties described in section 771(9)(C)-(G) of the Act, encompassing domestic producers of the like product, domestic worker groups, and associations of such groups) indicated its intent to participate in the five-year review. They contended that proposed section 207.61(a) placed undue burdens on respondent interested parties by requiring them to respond to the notice of institution even when no five-year review would ultimately be conducted.

The second objection was that the 30-day time period specified in the NOPR for filing responses to the notice of institution was too short. Schagrin requested that the comment period be extended to at least 37 days; Hoogovens requested that it be extended to 45 days; Eurofer and JMC requested that it be extended to 60 days. By contrast, Cement Committee supported the 30-day time period.

On March 20, 1998, Commerce published in the **Federal Register** its interim procedures for five-year reviews. These procedures specify that: (1) domestic interested parties must file a Notice of Intent to Participate in the five-year review no later than 15 days after initiation; (2) Commerce will notify the Commission no later than 20 days after initiation when no domestic interested party has filed a response to its notice of initiation; and (3) Commerce will notify the Commission no later than 40 days after initiation when no domestic interested party has responded adequately to its notice of initiation. 63 F.R. 13516, 13524-25 (Mar. 20, 1998).

In light of Commerce's interim procedures, the Commission has adopted a 50-day deadline for responses to the notice of institution. Consequently, respondent interested parties should know whether filing a response to the Commission's notice of institution is unnecessary because no domestic interested party has filed (1) a Notice of Intent to Participate with Commerce or (2) an adequate response to Commerce's notice of initiation. Additionally, a 50-day deadline will provide ample time for interested parties to compile information and prepare responses to the notice of institution.

*Section 207.61(b): Content of Responses to Notice of Institution.* Section 207.61(b) addresses the content of the responses to the notice of institution. It combines aspects of the proposed versions of section 207.61(b) and section 207.61(c), and has been revised significantly from the NOPR. Section 207.61(b) describes the content of the response to the notice of institution in general terms. A sample notice of institution is attached at Annex A to this notice. It was also revised significantly from the version proposed in the NOPR. The discussion below

explains the changes in the notice and the regulation.

The proposed notice of institution published in the NOPR drew widely divergent reactions from commenters. Some commenters criticized the Commission for seeking too much data upon initiation. Schagrin and Stewart contended that the Commission's proposal placed undue burdens on interested parties and maintained that the Commission should not seek empirical data (with the possible exception of shipment data) in the notice of institution that it would ultimately seek in questionnaires in full reviews. JMC criticized the Commission's proposal as excessively burdensome for foreign producers, which it contended should be required only to produce data on total shipments.

On the other hand, several commenters requested that the Commission seek even more information in the notice of institution than proposed in the NOPR. Canada requested that all interested parties be required to submit purchaser lists. ECS requested that domestic producers submit five years of data concerning their capital and research and development expenses. Eurofer requested that domestic producers be asked about the sourcing for their inputs. Micron requested that domestic producers be asked whether any improvements in their condition were related to the order or agreement under review. Several commenters representing domestic interests requested that the Commission request foreign producers to provide all types of data, including financial information, it was seeking from domestic producers. Quebec proposed addressing additional questions to domestic producers concerning market share and captive consumption and suggested that interested parties be required, rather than merely invited, to assert arguments concerning the domestic like product in their responses to the notice of institution.

Commenters also disagreed on the utility of the Commission's proposal that interested parties be asked to submit projections of empirical data for the current calendar year. Four commenters supported this proposal. Six opposed it and suggested that the Commission instead seek interim period data, as it currently does in questionnaires in original antidumping and countervailing duty investigations. Three commenters suggested that, if the Commission should decide to seek projections, the data should be provided in a different format than proposed in the NOPR.

After review of the comments and hearing testimony, the Commission has decided to make several major changes to the notice of institution. First, it has significantly reduced the amount of empirical data requested in the notice. Second, it has revised the question requesting a statement on the likely effects of revocation and termination to request interested parties to address the factors specified in section 752(a) of the Act. Third, it has edited or eliminated several narrative questions. Fourth, it has changed the format of the response to the notice of institution so that it will be a single document filed with the Secretary, instead of separate documents filed with the Secretary and the Office of Investigations.

The Commission has minimized the amount of empirical data requested in the notice of

institution to reduce both the burdens imposed on interested parties at the outset of a review and the likelihood that interested parties will need to respond to duplicative information requests should there be a full review. In terms of empirical data, domestic producers will be requested to submit their production quantity and the quantity and value of U.S. commercial shipments for the preceding calendar year. Importers will be requested to submit the quantity and value of their U.S. imports and their U.S. commercial shipments of the subject imports for the preceding calendar year. Foreign producers of subject merchandise will be requested to submit their production quantity and the quantity and value of U.S. exports for the preceding calendar year.

The Commission recognizes that it is requesting submission of considerably less empirical data in response to the notice of institution than it proposed in the NOPR. As authorized by the Act, the Commission will reach an expedited determination “without further investigation,” and will not generate additional factual information if it decides to conduct an expedited review. Instead, as contemplated by section 751(c)(3)(B) of the Act, the Commission will rely on the facts available, in accordance with section 776 of the Act, in making its determination. The Commission’s use of facts available, which is described below in detail in the discussion of section 207.62(e), may include reliance on adverse inferences against interested parties that do not cooperate with information requests, as authorized by section 776(b) of the Act.

To facilitate the Commission’s ability to use facts available and take adverse inferences in expedited reviews, the Commission has revised the question requesting a statement of the likely effects of revocation or termination of the order or agreement under review. The question now explicitly requests that interested parties address the factors the Commission must examine under section 752(a) of the Act when making a determination in a five-year review.

Additionally, the Commission has revised or eliminated several other narrative questions in the notice of institution. A new instruction requests unions or worker groups to identify the firms at which the workers they represent are employed. The wording on the question requesting identification of significant changes in supply and demand has been revised. The questions regarding cumulation and the submission of “other information or data” have been eliminated.

The Commission has retained the question giving interested parties the option of stating whether they agree with the definitions of domestic like product and domestic industry that the Commission reached in its original determination(s). Several commenters representing domestic interests argued that the Commission should reconsider its original domestic like product determination only in exceptional circumstances; Stewart requested that the regulations contain an express “presumption” that the domestic like product in a five-year review will be the same as in the original investigation. On the other hand, several commenters representing respondent interests advocated that the Commission retain the discretion to consider domestic like product issues in five-year reviews; Canada requested promulgation of a regulation to this effect.

In appropriate circumstances, the Commission may revisit its original domestic like

product and domestic industry determinations in five-year reviews. For example, the Commission may revisit its like product determination when there have been significant changes in the products at issue since the original investigation or when domestic like product definitions differed for individual orders within a group concerning similar products. Accordingly, interested parties will have the opportunity to address domestic like product and domestic industry issues in their responses to the notice of institution. As explained further below in the discussion of section 207.62, the existence of significant domestic like product issues is a factor that the Commission may take into account in determining whether to conduct a full review. The Commission does not believe a regulation on this issue is necessary, however.

In the regulations, the major drafting change has been the consolidation of proposed section 207.61(b) and section 207.61(c) into a single section 207.61(b). In the interest of transparency and convenience, the entire response to the notice of institution will be filed with the Secretary and will be subject to the requirements of sections 201.6, 201.8, and 207.3. (One commenter, Stewart, criticized the bifurcated filing process proposed in the NOPR on the grounds it would likely result in significant nonconfidential information being submitted to the Office of Investigations and therefore unavailable for public inspection.) As with the proposed regulations, the final version of section 207.61(b) does not specify each information request made in the notice of institution. Because the regulation is general in nature, the Commission will not elaborate in the regulation on the obligation of interested parties to respond to particular requests, as advocated by Pistachio Producers. As the Commission stated in the NOPR preamble, interested parties will only be required to provide information in their possession.

*Section 207.61(c): When Requested Information Cannot be Supplied.* Section 207.61(c) addresses situations in which an interested party cannot furnish the information requested in the notice of institution in the form or manner requested. The section has been revised so that it conforms more closely to section 782(c)(1) of the Act than did the proposed provision.

*Section 207.61(d): Submissions by Persons other than Interested Parties.* Section 207.61(d) authorizes persons who are not interested parties to submit to the Commission information relevant to a five-year review. It is unchanged from proposed section 207.61(e) in the NOPR, except for the due date of the submission. This submission is now due 50 days from publication of the notice of institution, the same date on which interested party responses to the notice of institution must be submitted.

The Commission will consider any information submitted pursuant to section 207.61(d) in making a determination in a full or expedited review. The Commission will also consider this information in making rulings on aggregate interested party adequacy. It will not use such material, however, to serve as a substitute for individual interested party responses, as suggested by H&H, Hogan, and Quebec.

*Section 207.62*

Section 207.62 is a new provision addressing Commission rulings on adequacy of interested party responses. It also describes procedures in expedited reviews. Its title has been revised to describe its purpose more accurately.

#### How the Commission Will Determine Whether to Expedite Reviews

Many comments addressed the discussion in the NOPR preamble concerning how interested party responses will be reviewed for adequacy and what standards the Commission will use to determine whether to conduct a full review or an expedited review. This section will discuss five issues that were the subject of comment: (1) how the Commission will evaluate individual interested party responses for adequacy; (2) which groups of interested parties the Commission will examine on an aggregate basis for adequacy; (3) what standards the Commission will use to determine whether interested party responses are adequate on an aggregate basis; (4) the circumstances in which the Commission may exercise its discretion to conduct a full review even when interested party responses are inadequate; and (5) the consequences of inadequate interested party responses.

*Evaluation of Individual Interested Party Responses.* Some commenters addressed how the Commission should evaluate the adequacy of individual interested party responses. Fuji and JISEA asserted that the Commission should require a “rigorous completion standard.” By contrast, H&H, Schagrin, and Stewart argued against any practice where the Commission would consider an individual response *per se* inadequate if it were incomplete in any respect.

The Commission initially intends to address the evaluation of individual interested party responses on a case-by-case basis, rather than providing specific guidance at this time. As five-year reviews proceed and the Commission gains experience in resolving these issues, it may be in a better position to address these issues categorically.

The preamble to the NOPR stated that the Commission would review each individual interested party response to the notice of institution for completeness immediately upon its receipt, would attempt to notify each interested party of any deficiencies in its response to the extent practicable, and would attempt to provide each interested party with approximately five to ten days in which to remedy and explain the deficiencies. The Commission has not changed its intentions in this regard. Nevertheless, it declines to adopt the suggestion of Eurofer, H&H, and Thailand that it codify in the regulations its procedures for notification. The Commission does not believe that it is necessary for the regulations to describe these procedures with the degree of specificity desired by these commenters.

*Which Groups Will Be Evaluated on an Aggregate Basis.* In the NOPR preamble, the Commission proposed to evaluate on an aggregate basis the adequacy of responses from two distinct groups of interested parties: (1) interested parties described in sections 771(9)(C), (D), (E), (F), and (G) of the Act (“domestic interested parties,” consisting of, *inter alia*, U.S. producers of the domestic like product and labor unions or groups of workers which are

representative of an industry producing the domestic like product); and (2) interested parties described in sections 771(9)(A) and (B) of the Act (“respondent interested parties,” consisting of, *inter alia*, U.S. importers and foreign exporters or producers of subject merchandise and subject country governments).

Some commenters advocated that the Commission subdivide these two groups. JMC asserted that the Commission should divide the domestic interested party group into two subgroups -- one encompassing producers and one encompassing worker groups -- and deem the domestic interested party response inadequate unless both subgroups submitted adequate responses. Similarly, Cement Committee, Collier, Micron, and Stewart proposed that the Commission divide the respondent interested party group into two subgroups -- one encompassing U.S. importers and one encompassing foreign producers of subject merchandise -- and deem the respondent interested party response inadequate unless both subgroups submitted adequate responses.

The Commission has declined to adopt either of these proposals. The Commission does not believe it is appropriate to analyze the adequacy of responses this narrowly. Consequently, the Commission’s examination of aggregate adequacy will focus on domestic interested parties and respondent interested parties, rather than on several discrete subgroups.

*Standards Used for Determining Adequacy of Aggregated Responses.* The comments addressing the standards that the Commission should use in determining the adequacy of the aggregated responses focused on three areas. First, several commenters asserted that the Commission should adopt considerably more lenient standards for determining aggregate adequacy than proposed in the NOPR. Second, commenters disputed the extent to which standards used by Commerce pursuant to sections 702(c)(4) and 732(c)(4) of the Act to determine whether an antidumping or countervailing duty petition is filed by or on behalf of a domestic industry are applicable to Commission rulings on adequacy in five-year reviews. Third, commenters addressed how the Commission should treat related parties in deciding whether the domestic interested party response was adequate.

Some commenters proposed that the Commission adopt very low adequacy thresholds. At the February 26 hearing, one representative of domestic interests stated that the Commission should conduct a full review as long as any domestic industry participant desired such a review. Similarly, one respondent representative stated that a full review should be conducted as long as a single committed respondent responds to the notice of institution.

The Commission has decided not to adopt a “single response” adequacy standard. When interested parties do not show a sufficient willingness to participate in a review and to submit requested information, conducting a full review may not be an efficient exercise of the resources of either the Commission or the parties. That a single domestic interested party or respondent interested party has filed an adequate response to the notice of institution is not *per se* sufficient indication that either pertinent group of interested parties *as a whole* is interested in a full review.

The Commission has decided not to adopt the numerical guidelines proposed in the NOPR. The Commission proposed these guidelines in the interest of providing guidance to interested parties concerning when response rates would be considered sufficiently high or low to provide a strong indication of the adequacy or inadequacy of aggregate interested party responses. Upon review of the comments and hearing testimony, the Commission has concluded that any benefits that would result from the articulation of numerical guidelines for adequacy or inadequacy are offset by the potential that parties appearing before the Commission would: (1) devote extensive effort to arguing that interested parties satisfied or failed to satisfy the numerical guidelines; or (2) confuse any numerical guidelines with a representation requirement, as some commenters did.

The Commission did not intend in the NOPR to equate adequacy with industry representation requirements. It agrees with several commenters' statements that the representation requirements in sections 702(c) and 732(c) of the Act do not apply to five-year reviews. Consequently, the Commission has not adopted the suggestions of Fuji/JISEA or Schagrin that it should consider domestic industry statements of "support" for continuation of an order in determining whether the domestic interested party response is adequate.

The Commission will evaluate the adequacy of interested party responses on a case-by-case basis. The Commission will take into account several considerations in evaluating the adequacy of interested party responses. Because both the considerations examined and the weight they are accorded may vary from review to review, the Commission does not believe that the adequacy standards can be articulated in the form of a regulation, as requested by Pistachio Producers.

In evaluating the adequacy of aggregate interested party response, the Commission will examine several considerations, including:

- The level of interested parties' responses. This encompasses an examination of the responding parties' share of domestic production (for domestic interested parties) or of subject imports or foreign production or exports to the United States of the subject merchandise (for respondent interested parties) for the most recent calendar year. While the Commission will generally use quantity-based production or import data in evaluating adequacy, it may use value data when such data provide the sole aggregate measure of production or sales for the pertinent domestic like product(s). (This may occur, for example, when a domestic like product includes both finished articles and parts or components.) As stated above, the Commission has not provided quantitative measures of what will likely constitute an "adequate" or "inadequate" aggregate response. Adequate responses by unions or worker groups that are interested parties pursuant to section 771(9)(D) of the Act will be counted as being equal to the production of the domestic like product of the firms at which the workers in the group or union are employed.

- The structure of the industries in question. As stated in the NOPR, a response rate that may seem to be inadequate for a highly concentrated industry may be adequate for a highly fragmented industry.
- The prevalence of related parties. Several commenters representing domestic interests requested that the Commission *per se* disregard nonresponses of domestic producers that are “related parties” under section 771(4)(B) of the Act in evaluating whether domestic interested party responses are adequate. By contrast, several commenters representing respondent interests requested that the Commission disregard nonresponses of related party domestic producers only when circumstances would support the exclusion of those producers from the domestic industry under the “appropriate circumstances” standard that the Commission applies in original antidumping and countervailing duty investigations.

The Commission has determined not to adopt either of these proposals for purposes of making adequacy rulings. Instead, the Commission will evaluate the significance of nonresponses of related parties on a case-by- case basis. It believes that the *per se* rule urged by the commenters representing domestic interests is too inflexible and is inconsistent with Commission practice. While the standard urged by the respondent commenters is ostensibly consistent with Commission practice, and is a standard the Commission intends to apply in making final determinations in five-year reviews, it is not a practical standard to use in making adequacy rulings. When the Commission makes such a ruling, it will frequently have insufficient information in the record to make a conclusion concerning whether “appropriate circumstances” exist to exclude a related party from the domestic industry.

- The ability of particular foreign producers to export to the United States. JMC and Schagrin questioned the inclusion of this criterion. The Commission believes that it can be relevant in certain circumstances, such as when particular foreign producers do not manufacture a version of the subject merchandise that can be exported to the United States.
- The extent to which subject imports appear to have been excluded from the U.S. market by the order or suspension agreement under review.

*Discretionary Factors Used in Determining Whether to Conduct a Full Review.* Section 751(c)(3)(B) of the Act provides that the Commission “may issue” an expedited determination when interested party responses are inadequate. Hence, the Commission has the discretion to conduct full reviews when the domestic and/or respondent interested party responses are inadequate. In this regard, the Commission has adopted Stewart’s suggestion of inserting in the first sentence of section 207.62(c) the language “or otherwise determines that a full review should proceed,” to underscore the Commission’s discretion to conduct full reviews. The Commission has not adopted the suggestion of JMC to circumscribe its exercise of discretion so that it retains discretion to conduct a full review only when respondent interested party responses

are inadequate.

Stewart requested that the Commission indicate in this notice circumstances in which it may exercise its discretion to conduct a full review notwithstanding inadequate interested party responses. The Commission has identified two such circumstances:

- Mixed responses in grouped reviews. In the NOPR, the Commission invited parties to comment on the appropriateness of making expedited determinations in grouped reviews involving subject merchandise from several countries, where domestic interested party responses are adequate and responses from the respondent interested parties are adequate with respect to some of the countries in the group but inadequate with respect to others. Canada, Schagrin, and Thailand commented that in such circumstances it is appropriate for the Commission to render expedited determinations with respect to the subject countries for which there has been inadequate respondent interested party response. These commenters did not agree among themselves, however, on the implications of such a decision on the use of facts available regarding cumulation in the full review(s). Stewart, by contrast, stated that the Commission should decline to reach expedited determinations in such situations from the standpoint of administrative efficiency. Collier stated it would prefer for the Commission not to render expedited determinations in grouped reviews if the alternative was adoption of a practice where cumulation in the full review(s) is limited or precluded.

The Commission shares Stewart's concern that making multiple, non-simultaneous determinations concerning a single domestic like product is likely to be administratively inefficient. For this reason, in grouped reviews where aggregate domestic interested party responses are not inadequate and responses from the respondent interested parties are adequate with respect to some of the countries in the group but inadequate with respect to others, the Commission will normally conduct full reviews for all countries in the group.

- The existence of significant domestic like product issues. Each interested party has the option of asserting arguments concerning the definition of the domestic like product in its response to the notice of institution. Should the Commission determine that there is a need in the five-year review to re-examine the domestic like product definition made in the original determination, it may determine to conduct a full review even in circumstances when domestic and/or respondent interested party responses are inadequate. This will enable the Commission to obtain data in a full review concerning the potential domestic like products.

Several commenters addressed the question of the implications of a tie vote on whether to expedite a review; one commenter, Stewart, requested that the Commission promulgate a regulation concerning tie votes. The Commission agrees with the commenters that the tie vote provision in section 771(11) of the Act is not applicable to a Commission decision on whether to

expedite a review. Consequently, a decision to expedite a review will require a majority vote of the Commission. The Commission has not, however, promulgated a regulation to that effect in the current rulemaking, which focuses solely on procedural issues. The Commission has further declined to promulgate the regulation requested by Stewart stating that the Commission will conduct a full review based on the vote of a single Commissioner. The Commission does not believe that a vote of a single Commissioner should preclude the Commission from conducting an expedited review when a Commission majority has concluded that conducting an expedited review is appropriate.

*Consequences of Inadequate Interested Party Responses.* Several commenters requested that the Commission state with particularity the consequences of inadequate interested party responses. Pistachio Producers requested the promulgation of one regulation concerning adverse inferences and another concerning Presidential embargo situations. Several commenters proposed that the Commission should make a “negative” determination (i.e., that revocation of an order, or termination of a suspension agreement, under review would not be likely to lead to continuation or recurrence of material injury) in any review expedited because of inadequate domestic interested party response. Micron and Schagrin proposed that the Commission should make an “affirmative” determination (i.e., that revocation of an order, or termination of a suspension agreement, under review would be likely to lead to continuation or recurrence of material injury) whenever it found that the respondent interested party response was inadequate.

The Commission has decided not to adopt any of these proposals. The statute authorizes an “automatic” determination in only one instance. Section 751(c)(3)(A) of the Act directs Commerce to issue a final determination terminating a review when there is no domestic interested party response to its notice of initiation. The Commission believes issuance of the type of *per se* rules advocated by some commenters that inadequate domestic (or respondent) interested party response will automatically lead to issuance of a negative (or affirmative) determination would be inconsistent with section 752(a) of the Act.

### The Final Regulation

*Section 207.62(a): Basis for Rulings on Adequacy.* Section 207.62(a) is a new provision intended to make explicit a concept several commenters found implicit in the proposed regulations and numerous others endorsed -- that the Commission will generally decide the questions of adequacy and whether to conduct an expedited review on an individual order, rather than a groupwide, basis. Section 207.62(a) further indicates that when a particular order encompasses multiple domestic like products on which the Commission originally made separate affirmative determinations, the Commission will make a separate ruling on the adequacy of the interested party responses and whether to conduct an expedited review for each domestic like product. This concept was endorsed by Collier, Fuji, and JISEA.

*Section 207.62(b): Comments on Adequacy.* Section 207.62(b), concerning comments to

the Commission regarding adequacy, is based on proposed section 207.62(a). Section 207.62(b) contains several changes from proposed section 207.62(a).

First, the Commission has increased the page limit for the comments from five to 15 pages. Several commenters complained that the five-page limit proposed in the NOPR was insufficient. Canada and Quebec requested that the page limit be increased to 15 pages; Fuji and JISEA requested that the page limit be increased to 20 pages; Cement Committee, Collier, and Stewart requested that the page limit be increased to five pages per subject country; Thailand requested that the page limit be removed. After consideration of the comments, the Commission has decided that some increase in the page limit is warranted. Nevertheless, the Commission does not agree that the limit should either be eliminated or increased to the extent requested by some of the commenters. Comments under section 207.62(b) are designed to be a succinct expression of views on a single issue. They are not intended to be briefs on the merits. Consequently, the Commission believes that a 15-page limit is appropriate.

An additional modification to section 207.62(b)(2) makes clear that in a grouped review, only one set of comments may be filed per party. This is consistent with current Commission practice.

There are also several changes in terminology throughout section 207.62(b). The terms “expedited review” and “party to the five-year review” are used to conform the language in section 207.62(b) to that in other provisions in Subpart F.

*Section 207.62(c): Notice of Scheduling for Full Reviews.* Section 207.62(c) is based on proposed section 207.62(b). It has been retitled more accurately to reflect its subject matter -- the notice of scheduling the Commission will issue if it determines to conduct a full review. The only change to the text of proposed section 207.62(b) is the addition of a clause to make clear that the Commission may decide to conduct a full review even when interested party responses to the notice of institution are inadequate.

Annex B to this notice contains a sample schedule for a full five-year review. This sample schedule contains several changes from the one proposed in the NOPR. Specifically, the interval between the issuance of draft questionnaires and the due date for party comments on questionnaires has been reduced; the time allowed for questionnaire responses has been decreased; and the prehearing report will be issued earlier than in the proposed schedule. The interval between the issuance of the prehearing report and the due date for prehearing briefs has been increased, as has the interval between the hearing and the due date for posthearing briefs. These changes are responsive to the comments of several commenters that the Commission’s proposed schedule allowed excessive time for preparation and comment on questionnaires and inadequate time for preparation of briefs and review of the prehearing report.

The sample schedule concentrates investigative activities within a 180-day period, which reflects the Commission’s need to deploy its staffing resources in the most effective manner.

Although the sample schedule indicates activities in a full review will occur between day 180 and day 360, these dates may vary in individual reviews, as the Commission intends to stagger schedules in simultaneously-initiated reviews in the interests of administrative efficiency. All reviews within a single group will have the same schedule, however. Further, the record closing date for a review will always occur after issuance of Commerce's determination.

*Section 207.62(d): Procedures for Expedited Reviews.* Section 207.62(d) is based on proposed section 207.62(c). It has been retitled more accurately to reflect its subject matter -- the procedures for expedited reviews. Its text has also been changed in several respects. Some terminology has been modified to conform this provision with others in Subpart F. The page limit for comments has been eliminated, as requested in the comments of Stewart and Thailand. The Commission has agreed to eliminate the page limit because the comments will be the only substantive filing that will be permitted in expedited reviews. The Commission has, however, retained the prohibition against the submission of new factual information in such comments. The Commission has not imposed the page limit requested by Collier on nonparty comments submitted pursuant to section 207.62(d)(3).

The Commission has declined to make several changes requested by commenters concerning the conduct of expedited reviews. Stewart and Schagrin proposed that the Commission give interested parties that submitted adequate responses the opportunity to submit additional factual information during the course of an expedited review. They argued that such a procedure would allow the Commission to reduce the amount of information requested in the notice of institution and would reduce the burdens on the parties and the Commission at the outset of a review. As discussed above, the Commission has decided to reduce significantly the amount of information requested in the notice of institution. The Commission has concluded that additional factual information is not essential to its analysis in expedited reviews. Therefore, the Commission believes it would be inappropriate and inefficient to undertake further investigative activities in expedited reviews. Instead, the Commission intends to exercise its statutory authority to dispose of such cases quickly and efficiently on the basis of the facts available (unless it concludes that a full review is appropriate on other grounds).

The Commission also will not permit rebuttal comments or final comments on the staff report to be submitted in an expedited review, as requested by Stewart. Such submissions are unnecessary in light of the limited record and condensed schedule of an expedited review.

A new section 207.62(d)(4) addresses staff reports in expedited reviews. Stewart requested that such a provision be added to the regulations. Although the Commission intends to release a staff report in expedited reviews, this report will likely follow a different format than staff reports in full reviews, in light of the more limited record that will be compiled in expedited reviews. The schedule for release of the staff report, and for other procedures in an expedited review, is indicated in the schedule in Annex B to this Notice.

*Section 207.62(e): Use of Facts Available.* Section 207.62(e) is a new provision stating

that a determination in an expedited review will be based on the facts available, in accordance with section 776 of the Act. Although this provision was not proposed in the NOPR, it does not establish any new requirements. Instead, it codifies the authority provided in section 751(c)(3)(B) of the Act.

The facts available may include information submitted on the record in the five-year reviews by parties and non-parties, other information the Commission may compile before the record closes, material from the record of the original investigation and subsequent Commission reviews, if any, and available information from Commerce proceedings. (As stated in the NOPR preamble, the material from the record of the original investigation that the Commission will release to the parties will include the Commission opinion(s) in the original investigation and staff reports and non-privileged memoranda, where available.) The facts available may also

include reliance on adverse inferences against interested parties that do not cooperate with information requests, as authorized by section 776(b) of the Act.

*Delegation.* In the NOPR, the Commission proposed a regulation (section 207.62(d)), which would have permitted the Commission to delegate to staff the responsibility for making adequacy rulings. Stewart and Schagrin requested that the provision not be promulgated, on the ground that staff should not be given the authority to make decisions having a significant impact on the parties' rights. Quebec supported the proposed provision.

The Commission has determined not to promulgate a regulation on delegation. The Commission has concluded that the regulation is unnecessary because, should it decide to delegate the responsibility for making adequacy rulings, promulgation of a regulation to effect such a delegation is not required.

### *Section 207.63*

Section 207.63 is a new provision addressing the circulation of draft questionnaires in full reviews.

*Section 207.63(a): Circulation of Draft Questionnaires.* Section 207.63(a) concerns the circulation of draft questionnaires for comment. Its text has been simplified by use of the term "full review."

*Section 207.63(b): Comments on Draft Questionnaires.* Section 207.63(b), which concerns the written comments that parties may file regarding the draft questionnaires, has been modified significantly from the NOPR. As proposed, section 207.63(b) required parties to present all requests for the collection of new data in their comments and stated that the Commission would disregard subsequent arguments premised on the collection of new data if such requests were not included in the comments.

Nine commenters, representing both domestic and respondent interests, objected to section 207.63(b) insofar as it required that all data requests be made in the questionnaire comments. These commenters contended that parties will not always be able to ascertain what data the Commission should collect until they review the responses to the questionnaires. Several of these commenters expressed divergent views on the circumstances in which the Commission should entertain subsequent data requests. Thailand advocated that the Commission issue supplemental questionnaires as a matter of course. Eurofer and Stewart, however, opposed such a procedure on the grounds that routine issuance of supplemental questionnaires could encourage parties not to respond to the initial questionnaires. Eurofer suggested that supplemental questionnaires not be authorized in the absence of a compelling reason.

After review of the comments, the Commission has concluded that section 207.63(b) should be modified. Accordingly, the second sentence of the section now provides that parties “should,” rather than “must,” present all data collection requests in their questionnaire comments. The Commission emphasizes that it ordinarily anticipates that parties will make all data collection requests in the questionnaire comments and that it will rarely entertain subsequent requests for data collection. Consequently, the final sentence of section 207.63(c) has been revised to provide that the Commission will not consider subsequent requests for the collection of new information unless there is a showing that there is a compelling need for the information and that the information could not have been requested in the comments on the draft questionnaires.

*Verification of Questionnaire Responses.* Several comments addressed verification of questionnaire responses in five-year reviews. Canada, Fuji, and JISEA requested that the Commission verify domestic producer data it receives. Dewey/Skadden requested promulgation of a regulation stating that the Commission will verify importer data it receives; Fuji and JISEA also supported verification of such data. Stewart requested promulgation of a regulation stating that the Commission will verify purchaser data it receives. Dewey/Skadden, Schagrin, and Stewart requested promulgation of a regulation stating that the Commission will verify foreign producer data it receives; Collier and Micron also supported such verification.

The Commission will consider verification of domestic interested party and respondent interested party information in appropriate circumstances and as staffing resources permit. The Commission will also consider using Commerce verification reports as appropriate. The regulations do not currently address verification in original investigations, and the Commission does not believe it is necessary to promulgate a regulation regarding verification in five-year reviews.

#### *Section 207.64*

Section 207.64 is a new provision concerning staff reports in full reviews. The section is identical to that proposed in the NOPR.

### *Section 207.65*

Section 207.65 is a new provision concerning prehearing briefs. The section, which is adapted from current section 207.23, is identical to that proposed in the NOPR.

### *Section 207.66*

Section 207.66 is a new provision concerning hearings in five-year reviews. The text of section 207.66(a) has been simplified by use of the term “full review.” Section 207.66(b) has not been changed from the NOPR.

### *Section 207.67*

Section 207.67 is a new provision concerning posthearing briefs and statements in five-year reviews. This section is identical to that proposed in the NOPR.

Cement Committee requested that this section be modified by inserting a provision stating that new factual information in such posthearing briefs and statements will be disregarded unless it is responsive to a question or request made at the Commission hearing. Collier requested that section 207.67(b) be modified by placing a five-page limit on statements by nonparties.

As stated in the NOPR preamble, the provisions of section 207.67 are intended to track sections 207.25 and 207.26, which govern posthearing briefs and statements in original investigations. Sections 207.25 and 207.26 do not contain any restrictions on the submission of new factual information of the type requested by Cement Committee. Nor does section 207.26 contain a page limit on the brief written statements that nonparties may submit. To maintain consistency between the procedures for original investigations and the procedures for five-year reviews, the Commission has determined not to insert the additional restrictions in section 207.67 requested by Cement Committee and Collier.

### *Section 207.68*

Section 207.68 is a new provision concerning final comments on information. This section, which follows current section 207.30, is identical to that proposed in the NOPR.

### *Section 207.69*

Section 207.69 is a new provision concerning publication and service of Commission determinations in five-year reviews. The section, which follows current section 207.29, is

identical to that proposed in the NOPR.

**List of Subjects**

*19 CFR Part 201*

Administrative practice and procedure, Investigations, Imports.

*19 C.F.R. Part 207*

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

For the reasons stated in the preamble, 19 CFR parts 201 and 207 are 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. New paragraphs (b)(4) and (b)(5) are added to § 201.11 to read as follows:

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

\* \* \* \* \*

(b) *Time for filing.* (1) \* \* \*

\* \* \* \* \*

(4) In the case of reviews conducted under subpart F of part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication in the FEDERAL REGISTER of the notice of institution described in § 207.60(d) of this chapter.

(5) Notwithstanding paragraph (b)(4) of this section, a party may file an entry of appearance in a review conducted under subpart F of part 207 of this chapter within the period specified in the notice issued under § 207.62(c) of this chapter. This period shall be at least 45 days.

\* \* \* \* \*

**PART 207 -- [AMENDED]**

3. The authority citation for part 207 continues to read as follows:

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

4. Paragraph (b) of § 207.3 is 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, 207.25, 207.65, 207.66, and 207.67 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.

\* \* \* \* \*

5. Paragraph (a) of § 207.45 is revised to read as follows:

**§ 207.45 Investigation to review outstanding determination.**

(a) Request for review. Any person may file with the Commission a request for the institution of a review investigation under section 751(b) of the Act. The person making the request shall also promptly serve copies of the request on the parties to the original investigation upon which the review is to be based. All requests shall set forth a description of changed circumstances sufficient to warrant the institution of a review investigation by the Commission.

\* \* \* \* \*

6. Paragraph (g) of § 207.46 is revised to read as follows:

**§ 207.46 Investigations concerning certain countervailing duty orders.**

\* \* \* \* \*

(g) Request for simultaneous section 751(c) review. (1) A requesting party who requests a section 753 review may at the same time request from the Commission and the administering authority a review under section 751(c) of the Act of a countervailing or antidumping duty order involving the same or comparable subject merchandise.

(2) Should the administering authority, after consulting with the Commission, determine to initiate a section 751(c) review, the Commission shall conduct a consolidated review under sections 751(c) and 753 of the Act of the orders involving the same or comparable subject merchandise. Any such consolidated review shall be conducted under the applicable procedures set forth in Subparts A and F of this part.

(3) Should the administering authority, after consulting with the Commission, determine not to initiate a section 751(c) review, the Commission will consider the request for a section 753 review pursuant to the procedures established in this section.

7. A new Subpart F is added to read as follows:

**Subpart F -- Five-Year Reviews**

- 207.60 Definitions
- 207.61 Responses to notice of institution
- 207.62 Rulings on adequacy and nature of Commission review
- 207.63 Circulation of draft questionnaires
- 207.64 Staff reports
- 207.65 Prehearing briefs
- 207.66 Hearing
- 207.67 Posthearing briefs and statements
- 207.68 Final comments on information
- 207.69 Publication of determinations

**§ 207.60 Definitions.**

For purposes of this subpart:

(a) The term five-year review means a five-year review conducted pursuant to section

751(c) of the Act. The provisions of part 201 of this chapter and subpart A of this part pertaining to “investigations” are generally applicable to five-year reviews, unless superseded by a provision in this subpart of more specific application.

(b) The term expedited review means a five-year review conducted by the Commission pursuant to section 751(c)(3)(B) of the Act.

(c) The term full review means a five-year review that has not been expedited by the Commission or terminated pursuant to section 751(c)(3) of the Act.

(d) The term notice of institution shall refer to the notice of institution of five-year review that the Commission shall publish in the FEDERAL REGISTER requesting that interested parties provide information to the Commission upon initiation of a five-year review.

### **§ 207.61 Responses to notice of institution.**

(a) When Information Must be Filed. Responses to the notice of institution shall be submitted to the Commission no later than 50 days after its publication in the FEDERAL REGISTER.

(b) Information to be Filed with the Secretary. The notice of institution shall direct each interested party to make a filing pursuant to §§ 201.6, 201.8 and 207.3 of this chapter containing the following:

(1) A statement expressing its willingness to participate in the review by providing information requested by the Commission;

(2) A statement regarding the likely effects of revocation of the order(s) or termination of the suspended investigation(s) under review;

(3) Such information or industry data as the Commission may specify in the notice of institution.

(c) When Requested Information Cannot be Supplied. Any interested party that cannot furnish the information requested by the notice of institution in the requested form and manner shall, promptly after issuance of the notice, notify the Commission, provide a full explanation of why it cannot furnish the requested information, and indicate alternative forms in which it can provide equivalent information. The Commission may modify its requests to the extent necessary to avoid posing an unreasonable burden on that party.

(d) Submissions by Persons Other than Interested Parties. Any person who is not an interested party may submit to the Commission, in a filing satisfying the requirements of § 201.8 of this chapter, information relevant to the Commission’s review no later than 50 days after

publication of the notice of institution in the FEDERAL REGISTER.

**§ 207.62 Rulings on adequacy and nature of Commission review.**

(a) Basis for Rulings on Adequacy. The Commission will assess the adequacy of aggregate interested party responses to the notice of institution with respect to each order or suspension agreement under review and, where the underlying affirmative Commission determination found multiple domestic like products, on the basis of each domestic like product.

(b) Comments to the Commission. (1) Comments to the Commission concerning whether the Commission should conduct an expedited review may be submitted by:

(I) Any interested party that is a party to the five-year review and that has responded to the notice of institution; and

(ii) Any party, other than an interested party, that is a party to the five-year review.

(2) Comments shall be submitted within the time specified in the notice of institution. In a grouped review, only one set of comments shall be filed per party per group. Comments shall not exceed fifteen (15) pages of textual material, double-spaced and single-sided, on stationery measuring 8 ½ x 11 inches. Comments containing new factual information shall be disregarded.

(c) Notice of Scheduling of Full Review. If the Commission concludes that interested parties' responses to the notice of institution are adequate, or otherwise determines that a full review should proceed, investigative activities pertaining to that review will continue. The Commission will publish in the FEDERAL REGISTER a notice of scheduling pertaining to subsequent procedures in the review.

(d) Procedures for Expedited Reviews. (1) If the Commission concludes that interested parties' responses to the notice of institution are inadequate, it may decide to conduct an expedited review. In that event, the Commission shall direct the Secretary to issue a notice stating that the Commission has decided to conduct an expedited review and inviting those parties to the review described in paragraph (d)(2) of this section to file written comments with the Secretary on what determination the Commission should reach in the review. The date on which such comments must be filed will be specified in the notice to be issued by the Secretary. Comments containing new factual information shall be disregarded.

(2) The following parties may file the comments described in paragraph (d)(1) of this section:

(I) Any interested party that is a party to the five-year review and that has filed an

adequate response to the notice of institution; and

(ii) Any party, other than an interested party, that is a party to the five-year review.

(3) Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review within the time specified for the filing of written comments.

(4) The Director shall prepare and place in the record, prior to the date on which the comments described in paragraph (d)(1) of this section must be filed, a staff report containing information concerning the subject matter of the review. A version of the staff report containing business proprietary information shall be placed in the nonpublic record and made available to persons authorized to receive business proprietary information under § 207.7, and a nonbusiness proprietary version of the staff report shall be placed in the public record.

(e) Use of Facts Available. The Commission's determination in an expedited review will be based on the facts available, in accordance with section 776 of the Act.

#### **§ 207.63 Circulation of draft questionnaires.**

(a) The Director shall circulate draft questionnaires to the parties for comment in each full review.

(b) Any party desiring to comment on the draft questionnaires shall submit such comments in writing to the Commission within a time specified by the Director. All requests for collecting new information should be presented at this time. The Commission will disregard subsequent requests for collection of new information absent a showing that there is a compelling need for the information and that the information could not have been requested in the comments on the draft questionnaires.

#### **§ 207.64 Staff reports.**

(a) Prehearing staff report. The Director shall prepare and place in the record, prior to the hearing, a prehearing staff report containing information concerning the subject matter of the five-year review. A version of the staff report containing business proprietary information shall be placed in the nonpublic record and made available to persons authorized to receive business proprietary information under § 207.7, and a nonbusiness proprietary version of the staff report shall be placed in the public record.

(b) Final staff report. After the hearing, the Director shall revise the prehearing staff report and submit to the Commission, prior to the Commission's determination, a final version of

the staff report. The final staff report is intended to supplement and correct the information contained in the prehearing staff report. A public version of the final staff report shall be made available to the public and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under § 207.7.

#### **§ 207.65 Prehearing briefs.**

Each party to a five-year review may submit a prehearing brief to the Commission on the date specified in the scheduling notice. A prehearing brief shall be signed and shall include a table of contents. 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.

#### **§ 207.66 Hearing.**

(a) In general. The Commission shall hold a hearing in each full review. The date of the hearing shall be specified in the scheduling notice.

(b) Procedures. Hearing procedures in five-year reviews will conform to those for final phase antidumping and countervailing duty investigations set forth in § 207.24.

#### **§ 207.67 Posthearing briefs and statements.**

(a) Briefs from Parties. Any party to a five-year review may file with the Secretary a posthearing brief concerning the information adduced at or after the hearing within a time specified in the scheduling notice 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 8 ½ x 11 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.

(b) Statements from Nonparties. Any person other than a party may submit a brief written statement of information pertinent to the review within the time specified for the filing of posthearing briefs.

#### **§ 207.68 Final comments on information.**

(a) The Commission shall specify a date after the filing of posthearing briefs on which it will disclose to all parties to the five-year review 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.

(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 § 207.67. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double spaced and single-sided, on stationery measuring 8 ½ x 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 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 changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

**§ 207.69 Publication of determinations.**

Whenever the Commission makes a determination concluding a five-year review, the Secretary shall serve copies of the determination and, when applicable, the nonbusiness proprietary version of the final staff report on all parties to the review, and on the administering authority. The Secretary shall publish notice of such determination in the FEDERAL REGISTER.

By order of the Commission.

Donna R. Koehnke  
Secretary

Issued: June 2, 1998

## ANNEX A

### SAMPLE NOTICE OF INSTITUTION OF FIVE-YEAR REVIEW

#### DEFINITIONS

- (1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.
- (2) The *Subject Country* in this review is [ **INSERT COUNTRY** ].
- (3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics or uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as [ **INSERT DEFINITION** ]. (Add the following if applicable) One Commissioner/certain Commissioners defined the *Domestic Like Product* differently.
- (4) The *Domestic Industry* is the producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of [ **INSERT DEFINITION** ]. (Add the following if applicable) One Commissioner/certain Commissioners defined the *Domestic Industry* differently.
- (5) The *Order Date* is the date that the **countervailing duty order/antidumping duty order/suspension agreement** under review became effective. In this review, the *Order Date* is [ **INSERT DATE** ].
- (6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

#### CERTIFICATION

In accordance with Commission rule 207.3, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

#### INFORMATION TO BE SUBMITTED TO THE COMMISSION

All responses should be filed with the Secretary and must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules. If business proprietary treatment is desired

for portions of a response, submitters must follow the requirements set forth in sections 201.6 and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response). Any interested party that cannot furnish the information requested should explain, at the earliest possible time, why it is unable to do so and indicate alternative forms in which it can provide equivalent information. **(Add the following if more than one country is involved)** If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*.

The response should include:

- (1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.
- (2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.
- (3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.
- (4) A statement of the likely effects of the **revocation of the countervailing duty order/ antidumping duty order/termination of the suspension agreement** on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.
- (5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).
- (6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in [ **INSERT COUNTRY** ] that currently export or have exported *Subject Merchandise* to the United States or other countries since [ **INSERT YEAR OF PETITION** ].

- (7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year [ **INSERT PRECEDING YEAR** ] (report *quantity* data in [ **INSERT MEASUREMENT UNIT** ] and *value* data in thousands of dollars). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.
- (a) Production (*quantity*) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production; and
  - (b) the *quantity* and *value* of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s).
- (8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from [ **INSERT COUNTRY** ], provide the following information on your firm's(s') operations on that product during calendar year [ **INSERT PRECEDING YEAR** ] (report *quantity* data in [ **INSERT MEASUREMENT UNIT** ] and *value* data in thousands of dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.
- (a) The *quantity* and *value* of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from [ **INSERT COUNTRY** ] accounted for by your firm's(s') imports; and
  - (b) the *quantity* and *value* of U.S. commercial shipments of *Subject Merchandise* imported from [ **INSERT COUNTRY** ].
- (9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in [ **INSERT COUNTRY** ], provide the following information on your firm's(s') operations on that product during calendar year [ **INSERT PRECEDING YEAR** ] (report *quantity* data in [ **INSERT MEASUREMENT UNIT** ] and *value* data in thousands of dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.
- (a) Production (*quantity*) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in [ **INSERT COUNTRY** ] accounted for by your firm's(s') production; and
  - (b) the *quantity* and *value* of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from [ **INSERT COUNTRY** ] accounted for by your firm's(s') exports.

- (10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and [ **INSERT PRODUCT DESCRIPTION** ] from other countries.
- (11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**ANNEX B**  
**SAMPLE SCHEDULE FOR FIVE-YEAR REVIEWS<sup>1</sup>**

ACTION/EVENT	DAY
Notice of institution published in the <i>Federal Register</i>	0
Entries of appearance/APO applications	21
Responses to notice of institution	50
Comments on appropriateness of expedited review	75
Notice of expedited or full review	95

**Expedited Review**

ACTION/EVENT	DAY
Commerce expedited determination (if issued)	120
Staff report to Commission and parties	122
Written submission on merits by parties	127
Commission vote	140
Commission determination and views transmitted to Commerce	150

<sup>1</sup> This sample schedule is provided for general guidance; work schedules for specific reviews may vary because of weekends and holidays. In addition, the Commission may extend its deadline by up to 90 days in all transition reviews and other extraordinarily complicated cases.

<sup>2</sup> The Commission may begin full reviews earlier than day 180; in such cases, the same relative schedule will apply.

<sup>3</sup> For U.S. firms; the return date for foreign producers questionnaires will be 37 days from the mail date.

**Full Review<sup>2</sup>**

ACTION/EVENT	DAY
New entries of appearance/APO applications	180
Draft questionnaires to parties for comment	190
Party comments on draft questionnaires	205
Questionnaire mail date	225
Commerce subsidy/dumping determination	240
Questionnaire return date <sup>3</sup>	255
Prehearing report to Commission and parties	285
Prehearing briefs	295
Hearing	305
Posthearing briefs	315
Staff report to Commission and parties	330
Final party comments	340
Commission vote	348
Commission determination and views transmitted to Commerce	360

## ANNEX C

### PARTIES SUBMITTING COMMENTS ON COMMISSION NOTICE OF PROPOSED RULEMAKING

<u>Short Form</u>	<u>Submitter</u>	<u>Representing</u>
AIS	American Institute for International Steel, Inc.	Itself
Canada	Canadian Embassy	Government of Canada
Cement Committee	King & Spalding	Southern Tier Cement Committee
Collier	Collier, Shannon, Rill & Scott, PLLC	American Beekeeping Federation American Honey Producers Ass'n Coalition for Fair Atlantic Salmon Trade Committee to Preserve American Color Television, Inc. Copper & Brass Fabricators Council Footwear Industries of America, Inc. Fresh Garlic Producers Ass'n Leather Industries of America Municipal Castings Fair Trade Council National Pasta Association National Pork Producers Council Specialty Steel Industry of North America Specialty Tubing Group
Dewey/Skadden	Dewey Ballantine LLP Skadden, Arps, Slate, Meagher & Flom LLP (joint submission)	Not specified
ECS	Economic Consulting Services Inc.	Itself
Eurofer	European Confederation of Iron and Steel Industries	Itself
Fuji	Willkie Farr & Gallagher	Fuji Photo Film, Inc.

<u>Short Form</u>	<u>Submitter</u>	<u>Representing</u>
H&H	Hogan & Hartson LLP	Itself
Hogan	Hogan & Hartson LLP	American Institute for International Steel Consumers for World Trade Enron Corp. General Motors Corp. International Ass'n of Drilling Contractors Michelin North America, Inc. Precision Metalforming Ass'n Steel Service Center Institute Sun Microsystems
Hoogovens	Powell, Goldstein, Frazer & Murphy LLP	Hoogovens Staal BV Hoogovens Steel USA, Inc.
Japan	Embassy of Japan	Government of Japan
JBIA	Japan Bearing Industrial Ass'n	Itself
JISEA	Willkie Farr & Gallagher	Japan Iron & Steel Exporters Ass'n
JMC	Japan Machinery Center for Trade and Investment	Itself
Jovanovich	Jovanovich Supply Co.	Itself
Micron	Hale and Dorr LLP	Micron Technology, Inc.
Pistachio Producers	California Pistachio Commission	Itself Western Pistachio Ass'n
Quebec	Pepper, Hamilton & Scheetz LLP	Gouvernement du Quebec
Schagrin	Schagrin Associates	Committee on Pipe and Tube Imports Wierton Steel Corp.

<u>Short Form</u>	<u>Submitter</u>	<u>Representing</u>
Step toe	Step toe & Johnson LLP	Not specified
Stewart	Stewart and Stewart	Not specified
Thailand	Dickstein Shapiro Morin & Oshinsky LLP	Royal Thai Government
TRC	Trade Resources Company	Itself
U.S. Steel	Skadden, Arps, Slate, Meagher & Flom PLLC	U.S. Steel Group, a Unit of USX Corp. USS/Kobe Steel Co.
WC&P	Wilmer, Cutler & Pickering	Itself
Willkie Group	Willkie Farr & Gallagher Kaye, Scholer, Fierman, Hays & Handler LLP Rogers & Wells Graham & James Sherman & Sterling White & Case O'Melveny & Myers Pepper, Hamilton & Scheetz LLP Step toe & Johnson LLP Weil Gotshal & Manges LLP Powell, Goldstein, Frazer & Murphy LLP Dorsey & Whitney LLP (Joint submission)	Not specified