

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission

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

SUMMARY: Since February 1991, the U.S. International Trade Commission (“Commission”) has issued an annual report on the status of its practice with respect to violations of its administrative protective orders (“APOs”) in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under Title VII and violations of the Commission’s rules including the rule on bracketing business proprietary information (“BPI”) (the “24-hour rule”), 19 CFR 207.3(c). This notice provides a summary of investigations completed during calendar year 2006 of breaches in proceedings under Title VII. In 2006, there were no completed investigations of breaches in proceedings other than Title VII. The Commission intends that this report inform representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal at (202) 205-1810. General information concerning the Commission can also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations or other proceedings conducted under Title VII of the Tariff Act of 1930, sections 202 and 204 of the Trade Act of 1974, section 421 of the Trade Act of 1974, section 337 of the Tariff Act of 1930, and NAFTA Article 1904.13, 19 U.S.C. 1516a(g)(7)(A) may enter into APOs that permit them, under strict conditions, to obtain access to BPI (Title VII) or confidential business information (“CBI”) (section 421, sections 201-204, and section 337) of other parties. See 19 U.S.C. 1677f; 19 C.F.R. 207.7; 19 C.F.R. 207.100, *et seq.*; 19 U.S.C. 2252(i); 19 U.S.C. 2451a(b)(3); 19 C.F.R. 206.17; 19 U.S.C. 1337(n); 19 C.F.R. 210.5, 210.34. The discussion below describes APO breach investigations that the Commission has completed during calendar year 2006, including a description of actions taken in response to these breaches.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. See 56 FR 4846 (Feb. 6, 1991); 57 FR 12,335 (Apr. 9, 1992); 58 FR 21,991 (Apr. 26, 1993); 59 FR 16,834 (Apr. 8, 1994); 60 FR 24,880 (May 10, 1995); 61 FR 21,203 (May 9, 1996); 62 FR 13,164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999); 65 FR 30434 (May 11, 2000); 66 FR 27685 (May 18, 2001); 67 FR 39425 (June 7, 2002); 68 FR 28256 (May 23, 2003); 69 FR 29972

(May 26, 2004); 70 FR 42382 (July 25, 2005); 71 FR 39355 (July 12, 2006). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

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

I. In General

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

- (1) Not divulge any of the BPI obtained under this APO or otherwise obtained in this investigation and not otherwise available to him or her, to any person other than --
 - (i) Personnel of the Commission concerned with the investigation,
 - (ii) The person or agency from whom the BPI was obtained,
 - (iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and
 - (iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decision making for an interested party which is a party to the investigation; and (d) have signed the acknowledgment for clerical personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);
- (2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;
- (3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO or otherwise obtained in this investigation without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;
- (4) Whenever materials (e.g., documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);
- (5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

- (6) Transmit each document containing BPI disclosed under this APO:
 - (i) with a cover sheet identifying the document as containing BPI,
 - (ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,
 - (iii) if the document is to be filed by a deadline, with each page marked “Bracketing of BPI not final for one business day after date of filing,” and
 - (iv) if by mail, within two envelopes, the inner one sealed and marked “Business Proprietary Information--To be opened only by [name of recipient]”, and the outer one sealed and not marked as containing BPI;
- (7) Comply with the provision of this APO and section 207.7 of the Commission’s rules;
- (8) Make true and accurate representations in the authorized applicant’s application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (e.g., change in personnel assigned to the investigation);
- (9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and
- (10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

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

- (1) Disbarment from practice in any capacity before the Commission along with such person’s partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;
- (2) Referral to the United States Attorney;
- (3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;
- (4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and
- (5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

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

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

subject to strict statutory and regulatory constraints concerning BPI and CBI, and face potentially severe penalties for noncompliance. See 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission’s authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

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

II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation has commenced and that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of the General Counsel (OGC) prepares a letter of inquiry to be sent to the possible breacher over the Secretary’s signature to ascertain the possible breacher’s views on whether a breach has occurred.¹ If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that although a breach has occurred, sanctions are not warranted, and therefore finds it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction.

Sanctions for APO violations serve two basic interests: (a) preserving the confidence of submitters of BPI that the Commission is a reliable protector of BPI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, “[T]he effective enforcement of limited disclosure under

¹ Procedures for inquiries to determine whether a prohibited act such as a breach has occurred and for imposing sanctions for violation of the provisions of a protective order issued during NAFTA panel or committee proceedings are set out in 19 C.F.R. §§ 207.100 - 207.120. Those investigations are initially conducted by the Commission’s Office of Unfair Import Investigations.

administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.” H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

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

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

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

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

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

The Department of Commerce ("Commerce") performs functions related to those of the Commission under title VII, including the issuance of APOs. The two agencies cooperate when necessary in the identification of possible APO breaches. In 2006, one APOB investigation was completed that involved a referral from Commerce about the possible release of BPI obtained under the Commission's APO during a meeting at the Department. No breach was found in that matter and it is summarized as Case 2 for the investigations in which no breach was found. Similarly, also in 2006, a concern arose that proprietary information obtained under Commerce's APO may have been released during a Commission hearing. Commerce was informed of the situation by Commission staff.

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

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

In addition, attorneys representing clients in section 337 investigations should send a notice to the Commission if they are no longer participating in a section 337 investigation or the subsequent appeal of the Commission's determination. In Case 10 of the summaries of completed 2005 APOB investigations published in the *Federal Register* on July 12, 2006 (71 F.R. 39361), the Commission found that a lead attorney, who left a law firm which represented a respondent in a Commission investigation after the investigation was completed but before the appeal of the Commission's determination had ended, breached the APO by not informing the Commission of his departure and that he should no longer be a signatory to the APO. In addition, the Commission found that he had also breached the APO by failing to ensure that his former firm complied with the APO requirements for returning and destroying the confidential materials obtained under the APO. Thus, individual counsel in section 337 investigations should take care to inform the Commission of their departure from a position for which they are a signatory to a Commission APO and to inform the Commission about their disposition of CBI obtained under the APO that is in their possession or they could be held responsible for any failure of their former firm to return or destroy the CBI in an appropriate manner.

III. Specific Investigations in Which Breaches Were Found.

The Commission presents the following case studies to educate users about the types of APO breaches found by the Commission. The studies provide the factual background, the actions taken by the Commission, and the factors considered by the Commission in determining the appropriate actions. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure of such facts could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

Case 1. The Commission determined that an associate attorney and a professional assistant breached the APO by failing to redact BPI from the public version of the prehearing brief filed by their law firm.

The firm uses a macro for redaction of bracketed material. However, because the macro does not remove BPI from bracketing in charts and tables, the professional assistant was responsible for manually redacting the BPI. The associate attorney was the final attorney to review the brief and sign it for the firm. The breach was inadvertent, neither person sanctioned had previous APO breaches during the two-year period normally examined by the Commission for sanctions purposes, the firm took quick action to minimize the effect of the release of the BPI, and the firm improved its procedures to avoid a similar incident in the future. Nevertheless, the Commission decided to issue a private letter of reprimand to both the attorney and the professional assistant because a non-signatory of the APO read the BPI that had been released.

Initially, the Commission had also found that the lead attorney, a partner, and the APO coordinator had both breached the APO because they failed to follow the procedures in place prior to the breach which required that either a partner or the APO coordinator review the brief before it is filed. During the sanctions phase of the APOB investigation the partner and the APO coordinator requested that the Commission reconsider its determination that they had breached

the APO because the requirement that a partner or the APO coordinator review the brief was a new procedural requirement that became effective after the breach in question. The APO coordinator, in providing the Commission with the firm's new procedures, had inadvertently indicated that this requirement was in place prior to the breach. Because the partner was unaware of the error made by the APO coordinator concerning the new procedures, the argument that he was not responsible for the breach had not previously been available to him. The Commission considered the argument and determined that the partner and the APO coordinator had not breached the APO. Since the APO coordinator caused the confusion by not taking sufficient care in his communications regarding the procedures with the Commission, he was admonished in the Commission's letter to be more careful about his communications with the Commission and his awareness of the firm's APO procedures. The Commission also stated that he should have been on notice of the need for particular vigilance with respect to unauthorized disclosure of BPI because other personnel in his firm had previously breached the APO by disclosing BPI to an unauthorized person.

Case 2. The Commission determined that a trade analyst at a law firm had breached the APO when he gave a document containing BPI to a clerical employee to proofread although the clerical employee was not subject to the APO.

A partner at the law firm who was the supervising attorney in the Commission investigation had instructed the trade analyst to prepare a spreadsheet which would contain BPI. He also instructed the analyst to handle the material according to APO guidelines and assign work on the document to only those clerical employees who were included on the APO. Instead, the analyst gave the final proofreading responsibility to a clerical employee who was not listed on the APO.

The Commission issued a warning letter to the trade analyst. The trade analyst had no prior APO breaches within the two-year period normally considered by the Commission for sanctions purposes. The only non-signatory who viewed the BPI was the clerical employee. The BPI was not divulged outside the law firm nor to any other non-signatory in the firm. The firm took immediate steps to change its procedures to be sure that no clerical person who was not on the APO would have access to BPI in future cases. The breach was discovered by the analyst, who reported it to the supervising attorney.

The Commission found that the supervising attorney and the clerical employee did not breach the APO. The trade analyst had eight years of experience with Commission investigations and no prior breaches, thus making the delegation of responsibility for preparing the document in question reasonable. The clerical employee was not subject to the APO and had handled the BPI in a manner that would not place the information at risk of being further divulged.

Case 3. The Commission found that an attorney breached the APO by providing a document containing BPI to an economic consultant who was not a signatory to the APO.

An attorney in a law firm gave a copy of a document containing BPI to the economic consultant working with his firm on a Commission investigation. He provided this document under the mistaken belief that the law firm had filed an APO application that had been signed by the consultant and that the application had been approved. The consultant had been told by the

attorney that the APO application had been filed and approved. Thus, the consultant, based on this information, accepted the document and retained it in his files for almost five months, until the breach was discovered by the attorney. At all times the consultant treated the BPI as if he were a signatory of the APO.

The Commission decided to issue a warning letter to the attorney instead of a private letter of reprimand in light of several mitigating circumstances. The disclosure of the BPI was to a consultant practitioner who safeguarded the BPI under the terms of the APO. The breach was inadvertent; the attorney acted under the mistaken belief that the consultant was a signatory to the APO. The attorney had not had any previous APO violations within the two-year period normally considered by the Commission for sanctions purposes. Finally, the attorney took prompt action to remedy the breach once he discovered it.

The Commission also considered whether there was good cause to sanction the consultant under Commission rule 201.15 (19 C.F.R. § 201.15) for accepting the document containing BPI while not being a signatory to the APO. The Commission decided that there was not good cause because the consultant reasonably relied on representations of counsel that his APO application had been filed and approved. However, the consultant was advised for future investigations to ensure independently that he and his staff are subject to the APO before accessing BPI.

Case 4. The Commission found that a lead attorney and a legal assistant breached the APO by filing a public version of a prehearing brief containing BPI.

After a law firm filed the confidential version of their client's prehearing brief, and the public version was reviewed by an associate attorney, the lead attorney decided to expand the bracketing on a particular page of the confidential brief. The lead attorney then asked a legal assistant to prepare a public version of the replacement page and substitute that page into the public version of the brief. The next morning, when the public brief was scheduled to be filed, the lead attorney asked the associate to oversee the production and filing of the brief. The brief was then filed by the legal assistant without further review by either attorney.

The Commission issued warning letters to the lead attorney and the legal assistant for failing to redact BPI from the replacement page. The Commission noted that the lead attorney was the supervising attorney for the failed redaction process, allowing the unredacted page to be filed with the Commission without an attorney reviewing that page. The Commission decided to issue a warning letter instead of a private letter of reprimand because this was the only breach in which the lead attorney had been involved within the two-year period normally considered by the Commission for sanctions purposes, the breach was unintentional, prompt action was taken to remedy the breach, and the firm took measures to assure that this type of error would not occur in the future, specifically revising its APO procedures to ensure that an attorney will review and sign off that a redacted replacement page is ready for filing. No non-signatory to the APO gained access to the BPI.

In determining that the legal assistant breached the APO, the Commission noted that the assistant was delegated the responsibility of redacting the BPI from the brief and that she was directly involved in the process and acknowledges that she forgot to redact all of the BPI. The Commission considered the same mitigating factors for the legal assistant as for the lead attorney in determining that she should receive a warning letter instead of a private letter of reprimand.

The Commission found that the associate was not responsible for the breach because he did not prepare or review the replacement page and did not have first hand knowledge of the incident.

A second breach was also alleged regarding this brief. An attorney from another firm informed the lead attorney that information that had been bracketed in an exhibit to the public version of the brief was not redacted. The Commission determined that this was not a breach because the information was not obtained through the APO and was otherwise available to the firm.

Case 5. The Commission determined that an attorney and a paralegal breached the APO by failing to redact bracketed BPI from the public version of a pre-hearing brief.

The attorney prepared the public version of the brief and attached several exhibits from the confidential version of the brief. He then instructed the paralegal to redact all bracketed information in the brief and attachments. After the paralegal removed the bracketed information the attorney reviewed the document and approved it for filing. The attorney's legal secretary then filed the public version of the pre-hearing brief together with the confidential version of the brief.

Ten days later the attorney was informed by the Commission Secretary that one of the exhibits contained unredacted bracketed BPI. The attorney then took immediate action to cure the problem by alerting counsel for other parties and instructing them and his legal secretary to destroy all hard copies and electronic copies of the exhibit containing BPI. The attorney determined that no non-signatory had been provided with a copy of the brief. The law firm took immediate steps to change its procedures to avoid similar problems in the future.

The Commission decided to issue warning letters instead of private letters of reprimand to the attorney and the paralegal because no non-signatory read the BPI, the breach was inadvertent, neither person had been found to have breached an APO within the two-year period normally considered by the Commission for sanctions purposes, the firm took immediate steps to remedy the breach once the attorney was notified of the breach, and it changed its procedures to assure that this type of error would not occur in the future. The Commission also decided that the legal secretary did not breach the APO because she had only been instructed to file the brief and not check the document for confidential information.

There were three investigations in which no breach was found:

Case 1. The Commission determined that an attorney responsible for preparing the public version of a prehearing brief did not breach the APO even though he failed to redact all of the bracketed information from the brief. The Commission determined that the unredacted information was not BPI in that it consisted of general descriptions of trends of otherwise proprietary data and the trends were publicly available.

Case 2. A question was raised by a Department of Commerce ("Commerce") official concerning whether BPI from the Commission's investigation was used during a meeting regarding the Commerce side of the investigation. The lead attorney for a party commented at the meeting that Commerce officials should request certain questionnaire responses from the

Commission's record to clarify issues in the Commerce investigation. The Commission noted in a letter to the lead attorney that this could be construed to suggest that the attorney was aware of the contents of the questionnaire responses and was using the confidential information obtained under the Commission's APO to respond to questions in the Commerce proceedings. This would normally be a breach in that signatories to an APO agree to use BPI obtained under that order solely for the purposes of the Commission investigation in question. The Commission determined that the attorney's statement was not a breach, however, because the Commission had discussed the specific issue in the public version of its views and had relied heavily on those questionnaire responses in its discussion.

In addition to the lead attorney, another partner and a trade analyst for the law firm were at the meeting. The Commission found that the trade analyst did not breach the APO because he did not discuss the questionnaire responses from the Commission investigation and limited his discussion to specific methodologies and facts pertaining to information on the record at Commerce. The Commission found that good cause did not exist to sanction the partner, who was not an APO signatory, under Commission rule 201.15 (19 C.F.R. § 201.15) because, although he attended the meeting, he did not participate in the substantive discussions.

Case 3. A law firm attached an exhibit list containing BPI to its post-hearing brief. The Commission determined that disclosure of the information in the exhibit list was not a breach of the APO. Part of the information was not BPI because it was on the public record at the time the brief was filed; the other information concerned was BPI obtained from the law firm's clients and not obtained under the APO.

By order of the Commission.

Issued: August 27, 2007

Marilyn R. Abbott
Secretary to the Commission