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(23-1882)

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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures
Committee on Safeguards

Original: English

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLES 18.5, 32.6 AND 12.6 OF THE AGREEMENTS**

Supplement

The following communication, dated and received on 14 March 2023, is being circulated at the request of the delegation of the United States.

Pursuant to Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 32.6 of the Agreement on Subsidies and Countervailing Measures, and Article 12.6 of the Agreement on Safeguards, the United States hereby notifies:

Implementing Rules for the United States-Mexico-Canada Agreement Implementation Act, 88 Fed. Reg. 14887 (Mar. 10, 2023)

The United States International Trade Commission (Commission) is making technical amendments to its rules, relating to safeguard actions, and injury to domestic industries from imports sold at less than fair value or from subsidized exports, to conform with changes made by the United States-Mexico-Canada Agreement Implementation Act (USMCA Act).

The amendments are effective April 10, 2023.

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INTERNATIONAL TRADE COMMISSION

19 CFR Parts 206 and 207

Implementing Rules for the United States-Mexico-Canada Agreement
Implementation Act

AGENCY: United States International Trade Commission.

ACTION: Final rule.

SUMMARY: The United States International Trade Commission (Commission) is making technical amendments to its rules, relating to safeguard actions, and injury to domestic industries from imports sold at less than fair value or from subsidized exports, to conform with changes made by the United States-Mexico-Canada Agreement Implementation Act (USMCA Act).

DATES:

Effective date: April 10, 2023.

Applicability date: The date the Agreement Between the United States of America, the United Mexican States, and Canada entered into force, July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary, United States International Trade Commission, telephone (202) 205-2000; William Gearhart, Office of the General Counsel, United States International Trade Commission, telephone (202) 205-3091; Garrett Peterson, Office of the General Counsel, United States International Trade Commission, telephone (202) 205-3241. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its website at <https://www.usitc.gov>.

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these technical amendments to the rules of practice and procedure to conform with the USMCA Act. This preamble provides background information, a regulatory analysis of the rules, a section-by-section explanation of amendments and new rules, and a description of the amendments and new rules.

These rules are being promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 553) (APA), and will be codified in 19 CFR parts 206 and 207.

Background

On November 30, 2018, the ``Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada'' (the Protocol) was signed to replace the North American Free Trade Agreement (NAFTA). The Agreement Between the United States of America, the United Mexican States (Mexico), and Canada (the USMCA) is attached as an annex to the Protocol and was subsequently amended to reflect certain modifications and technical corrections in the ``Protocol of Amendment to the Agreement Between the United States of America, the United Mexican States, and Canada,'' which the Office of the United States Trade Representative (USTR) signed on December 10, 2019.

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The United States adopted the USMCA through the enactment of the USMCA Act on January 29, 2020, and the USMCA entered into force on July 1, 2020.

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) (Tariff Act) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. In addition, sections 103(b) and 412(g) of the USMCA Act (19 U.S.C. 4513(b) and 4582(g), respectively) direct the Commission to prescribe implementing regulations necessary or appropriate to carry out actions required by or authorized by the USMCA Act.

The Commission is making technical amendments to existing rules of procedures and practice regarding the USMCA Act. In part 206, these include amendments that (1) implement provisions in section 301 of the Act that require the Commission to make special findings with respect to imports from Canada or Mexico if the Commission makes an affirmative determination in a global safeguard action investigation under section 202(b) of the Trade Act of 1974; and (2) delete references to U.S.-Canada and U.S.-Mexico bilateral safeguard actions, since section 601 of the USMCA Act repeals former statutory provisions that provided for such actions. In part 207, these include amendments to the provisions regarding the issuance of administrative protective orders (APOs) in binational dispute panels concerning antidumping and countervailing duty determinations now covered under section 422 of the USMCA Act.

A. Subparts B, C, and D of Part 206

Sections 301-302 of the USMCA Act implements the provisions of Article 10.2 of the USMCA concerning global safeguard investigations under section 202 of the Trade Act of 1974 (19 U.S.C. 2252). A similar provision appeared in sections 311-312 of the North American Free Trade Agreement Implementation Act (NAFTA Act); section 502(b)-(c) of the USMCA Act amended these provisions and transferred them to sections 301-302 of the USMCA Act. The USMCA Act retains without substantive change the global safeguard procedures established under the NAFTA Act. For example, these unaltered provisions required that, if the Commission finds that increased global imports are causing or threaten to cause serious injury to a domestic industry, the Commission also must provide factual findings to the President as to whether imports from Canada and/or Mexico "account for a substantial share of imports" and "contribute importantly to the serious injury caused by U.S. imports" (19 U.S.C. 4551(a)). The USMCA Act maintains these and all global safeguard provisions from the NAFTA Act while updating references to the applicable agreements and implementing laws, consistent with sections 301-302 of the USMCA Act.

Neither the USMCA Act nor the USMCA contains provisions for bilateral safeguard actions concerning imports from USMCA countries. Accordingly, section 601 of the USMCA Act repeals provisions under the NAFTA Act that had allowed for such investigations. Additionally, bilateral safeguard actions under the United States-Chile Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), the Dominican Republic Central American-United States Free Trade Agreement Implementation Act (19 U.S.C. 4064), and United States-Peru Trade Promotion Implementation Act (19 U.S.C. 3805 note) have expired.

B. Subpart G of Part 207

Section 422 of the USMCA Act amends U.S. law to implement Chapter 10, Section D of the USMCA, which retains the mechanism from NAFTA for the establishment of binational dispute panels to resolve disputes between any two of the USMCA countries with respect to antidumping and countervailing duty cases.

Section 422 strikes references to previous agreements and replaces them with references to either USMCA (for new binational disputes initiated after implementation of USMCA) or NAFTA (for prior binational disputes that are on-going following implementation of USMCA). Section 422 does not otherwise substantively alter previous procedures established under the NAFTA Act. Accordingly, these technical amendments largely maintain the rules of practice and procedure, adopted in 1995, concerning the protection of business proprietary information (BPI), and access to that information under APO, that had been implemented under the NAFTA Act, while updating references to the applicable agreements and implementing laws. These technical amendments also update certain provisions consistent with agency practice regarding electronic filing.

Procedure for Adopting the Amendments

The Commission ordinarily promulgates amendments to the Code of Federal Regulations in accordance with the notice-and-comment rulemaking procedure in section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). That procedure entails publication of proposed rulemaking in the Federal Register that solicits public comments on the amendments, consideration by the Commission of public comments on the contents of the amendments, and publication of the final amendments at least 30 days prior to their effective date.

In this instance, however, the Commission is amending rules in 19 CFR parts 206 and 207 on a final basis. The Commission's authority to adopt final amendments without following all steps listed in section 553 of the APA is derived from section 335 of the Tariff Act (19 U.S.C. 1335), sections 103(b) and 412(g) of the USMCA Act (19 U.S.C. 4513(b) and 4582, respectively), and section 553 of the APA.

Section 553(b) of the APA allows an agency to dispense with publication of a notice of proposed rulemaking when the agency for good cause finds that notice and public comment on the rules are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates that finding and the reasons therefor into the rules adopted by the agency. Section 553(d)(3) of the APA allows an agency to dispense with the publication of notice of final rules at least thirty days prior to

their effective date if the agency finds that good cause exists for not meeting the advance publication requirements and the agency publishes that finding along with the rules.

In this instance, the Commission has determined that the requisite circumstances exist for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. The amendments to part 206 are technical amendments reflecting the retention in the USMCA Act of the precise requirements from the NAFTA Act for certain Commission findings concerning goods from Canada and/or Mexico when conducting a global safeguard investigation. The amendments to part 206 likewise reflect the expiration of provisions addressing bilateral safeguard actions involving USMCA countries. The amendments to part 207 are technical amendments, mostly involving changing references from the NAFTA Act to the USMCA Act, that do not alter the substance of agency procedures regarding the treatment of BPI in binational panel disputes. Given the technical nature of these amendments, the Commission has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment is unnecessary. Moreover, the Commission

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finds under section 553(b)(3)(B) of the APA that good cause exists to waive prior notice and opportunity for comment. Under section 504(k)(1) of the USMCA Act (19 U.S.C. 4581), challenges to final antidumping and countervailing duty determinations initiated on or after July 1, 2020 will be subject to the provisions of the USMCA Act, and rules of procedure updating reference to the USMCA Act are thus necessary. Hence, it would be impracticable as well as unnecessary for the Commission to comply with the usual notice of proposed rulemaking and public comment procedure. Therefore, the Commission has determined to issue these technical amendments as final rules under these circumstances.

Regulatory Analysis of Amendments to the Commission's Rules

The Commission has determined that the technical amendments to the rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993) and thus do not constitute a ``significant regulatory action" for purposes of the Executive order.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) or any other statute.

The final rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (2 U.S.C. 1531-1538), because the final rules will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year (adjusted annually for inflation), and will not significantly or uniquely affect small governments, as defined in 5 U.S.C. 601(5).

These final rules are not ``major rules" as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). Moreover, they are exempt from the reporting requirements of that Act because they contain rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

Section-by-Section Explanation of the Amendments

Part 206--Investigations Related to Global and Bilateral Safeguard Actions, Market Disruptions, Trade Diversion, and Review of Relief Actions

Section 206.1 is amended to remove references to the NAFTA Act and to add references to the USMCA Act.

Section 206.6 is amended to remove references to the NAFTA Act and to add references to the USMCA Act.

Section 206.14(i) is amended to remove references to NAFTA countries and to add references to USMCA countries.

The heading of subpart C of part 206 is amended to replace ``NAFTA" with ``USMCA."

Section 206.21 is amended to remove references to the NAFTA Act and to add references to the USMCA Act.

Section 206.23 is amended to remove references to the NAFTA Act and NAFTA countries and to add references to the USMCA Act and USMCA countries.

Section 206.24(c) is amended to remove a reference to NAFTA country and to add a reference to USMCA country.

Section 206.31 is amended to remove references to agreements whose bilateral safeguard provisions have expired, including the United States-Chile Free Trade Agreement Implementation Act, the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, the NAFTA Act, and the United States-Peru Trade Promotion Agreement Implementation Act.

Section 206.33(a) is amended to remove a reference to Canadian articles; Sec. 206.33(b) is amended to remove references to free trade agreements whose bilateral safeguard provisions have expired; and Sec. 206.33(c) and (d) are amended to remove references to Canada and Mexico.

Section 206.34's introductory text is amended to remove references to Canadian articles, Canada, and Mexico.

Section 206.37 is amended to remove a reference to NAFTA.

Part 207, Subpart G--Implementing Regulations for the United-States-Mexico-Canada Agreement Implementation Act

The heading of subpart G to part 207 is amended to replace ``North American Free Trade Agreement" with ``United States-Mexico-Canada Agreement."

Section 207.90 is amended to remove references to the NAFTA and NAFTA Act and to add references to the USMCA and USMCA Act.

Section 207.91 definitions are amended as follows: ``Agreement" is amended to reference applicable agreements, including the USMCA and NAFTA; ``Article 1904 Rules" is removed; ``Binational Panel Rules" is added and defined as the Rules of Procedure for Article 10.12 published by the United States Trade Representative in 88 FR 10171, February 16, 2023, or, where applicable, Article 1904 of the NAFTA; ``Complaint" is amended to reflect Binational Panel Rules; ``Counsel" is amended to reflect the definition of counsel under applicable rules; ``Date of service" is amended to add reference to electronic service; ``Days" is amended to replace ``shall be" with ``will be"; ``Extraordinary challenge committee" is amended to add reference to the USMCA; ``ECC Rules" is amended to add reference to the USMCA; ``Final determination" is amended to add reference to the USMCA; ``Free Trade Area Country" is amended to reference 19 U.S.C. 1516a(f)(9) instead of 19 U.S.C. 1516a(f)(10); ``NAFTA Act" is removed; ``Notice of appearance" is amended to reflect applicable rules; ``Panel review" is amended to add reference to the USMCA; ``Relevant FTA Secretary" is removed; ``Responsible Secretary" is added and defined as the Secretary of the Section of the Secretariat located in the country in which the final determination under review was made; ``Secretariat" is amended to include reference to the USMCA; ``Service address" is amended to reflect Commission practice and to allow for electronic service; ``USMCA Act" is added and defined as the United States-Mexico-Canada Implementation Act, Public Law 116-113 (January 29, 2020); reference to the definitions set forth in Article 1904 is amended to reference the definitions set forth in the Binational Panel Rules.

Section 207.92 is amended to remove references to the Department of Commerce regulations at 19 CFR part 356 and replace it with reference to ``Binational Panel Rules."

Section 207.93(b)(6) and (c)(3) are amended to add reference to Secretaria de Economia; Sec. 207.93(c)(2)(i) is amended to add reference to the website of the Commission Secretary; Sec. 207.93(c)(2)(ii)(B) is amended to add reference to the USMCA; Sec. 207.93(c)(4)(ii)(A) is amended to replace ``NAFTA" with ``USMCA"; Sec. 207.93(c)(4)(ii)(B) is amended to replace ``Article 1904 Panel" with ``Binational Panel"; Sec. 207.93(c)(4)(v) is amended to replace ``relevant FTA secretary" with ``Responsible Secretary"; Sec. 207.93(c)(5)(i) is amended

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to replace ``NAFTA" with ``USMCA"; Sec. 207.93(c)(5)(ii)(A) and (B) are amended to replace ``NAFTA" with ``USMCA"; and Sec. 207.93(d)(1) is amended to replace ``United States-Canada Free Trade Agreement" with ``NAFTA".

Section 207.94 is amended to replace ``extraordinary challenge committee" with the shorthand ``ECC."

List of Subjects in 19 CFR Parts 206 and 207

Administrative practice and procedure, Trade agreements.

For the reasons stated in the preamble, the United States International Trade Commission amends 19 CFR parts 206 and 207 as follows:

PART 206--INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS

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1. The authority citation for part 206 is revised to read as follows:

Authority: 19 U.S.C. 1335, 2112 note, 2251-2254, 2436, 3805 note, 4051-4065, 4101, and 4551-4552.

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2. Section 206.1 is revised to read as follows:

Sec. 206.1 Applicability of part.

This part applies to proceedings of the Commission under sections 201-202, 204, and 406 of the Trade Act of 1974, as amended (19 U.S.C. 2251-2252, 2254, and 2436), and sections 301-302 of the United States-Mexico-Canada Implementation Act (19 U.S.C. 4551-4552) (hereinafter USMCA Implementation Act), and the statutory provisions listed in Sec. 206.31 that implement bilateral safeguard provisions in other free trade agreements into which the United States has entered.

Subpart A--General

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3. Section 206.6 is amended by revising paragraph (b)(2) to read as follows:

Sec. 206.6 Report to the President.

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(b) * * *

(2) In the case of a determination made under section 301(b) of the USMCA Implementation Act, the Commission will include in its report the findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry.

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Subpart B--Investigations Relating to Global Safeguard Actions

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4. Section 206.14 is amended by revising paragraph (i) to read as follows:

Sec. 206.14 Contents of petition.

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(i) Imports from USMCA countries. Quantitative data indicating the share of imports accounted for by imports from each USMCA country (Canada and Mexico), and petitioner's view on the extent to which imports from such USMCA country or countries are contributing importantly to the serious injury, or threat thereof, caused by total imports of such article.

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5. The heading for subpart C is revised to read as follows:

Subpart C--Investigations Relating to a Surge in Imports From a USMCA Country

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6. Section 206.21 is revised to read as follows:

Sec. 206.21 Applicability of subpart.

This subpart applies specifically to investigations under section 302 of the USMCA Implementation Act (19 U.S.C. 4552). For other applicable rules, see subpart A of this part and part 201 of this chapter.

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7. Section 206.23 is revised to read as follows:

Sec. 206.23 Who may file a request.

If the President, under section 302(b) of the USMCA Implementation Act (19 U.S.C. 4552(b)), has excluded imports from a USMCA country or countries from an action under chapter 1 of title II of the Trade Act of 1974, any entity that is representative of an industry for which such action is being taken may request the Commission to conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the action.

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8. Section 206.24 is amended by revising paragraph (c) to read as follows:

Sec. 206.24 Contents of request.

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(c) Data concerning imports from the USMCA country or countries that form the basis of requestor's claim that a surge in imports has occurred;

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Subpart D--Investigations Relating to Bilateral Safeguard Actions

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9. Section 206.31 is revised to read as follows:

Sec. 206.31 Applicability of subpart.

This subpart applies specifically to investigations under section 311(b) of the United States-Australia Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Bahrain Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Colombia Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), section 211(b) of the United States-Jordan Free Trade Area Implementation Act (19 U.S.C. 2112 note), section 311(b) of the United States-Korea Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Morocco Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Oman Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Panama Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), and section 311(b) of the United States-Singapore Free Trade Agreement Implementation Act (19 U.S.C. 3805 note). For other applicable rules, see subpart A of this part and part 201 of this chapter.

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10. Section 206.33 is amended by revising paragraphs (a) through (d) to read as follows:

Sec. 206.33 Who may file a petition.

(a) In general. A petition under this subpart may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article that is like or directly competitive with an article that is allegedly, as a result of the reduction or elimination of a duty provided for under a free trade agreement listed in paragraph (b) of this section, being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions

that imports of the article constitute a substantial cause of serious injury, or threat thereof, to such domestic industry. Unless the implementation statute provides otherwise, a petition may be filed only during the transition period of the particular free trade agreement.

(b) List of free trade agreements. The free trade agreements referred to in paragraph (a) of this section include the

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United States-Australia Free Trade Agreement, the United States-Bahrain Free Trade Agreement, the United States-Colombia Trade Promotion Agreement, the United States-Jordan Free Trade Area Agreement, the United States-Korea Free Trade Agreement, the United States-Morocco Free Trade Agreement, the United States-Oman Free Trade Agreement, the United States-Panama Trade Promotion Agreement, and the United States-Singapore Free Trade Agreement, to the extent that such agreements have entered into force.

(c) Critical circumstances. An entity of the type described in paragraph (a) of this section that represents a domestic industry may allege that critical circumstances exist and petition for provisional relief with respect to imports if such product is from Australia, Jordan, Korea, Morocco, or Singapore.

(d) Perishable agricultural product. An entity of the type described in paragraph (a) of this section that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to imports of such product from Australia, Jordan, Korea, Morocco, or Singapore, but only if such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

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11. Section 206.34 is amended by revising the introductory text to read as follows:

Sec. 206.34 Contents of petition.

A petition under this subpart shall include specific information in support of the claim that, as a result of the reduction or elimination of a duty provided for under a free trade agreement listed in Sec. 206.33(b), an article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the article constitute a substantial cause of serious injury, or threat thereof, to the domestic industry producing an article that is like or directly competitive with the imported article. If provisional relief is requested in a petition concerning an article from Australia, Jordan, Korea, Morocco, or Singapore, the petition shall state whether provisional relief is sought because critical circumstances exist or because the imported article is a perishable agricultural product. In addition, a petition filed under this subpart shall include the following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

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12. Section 206.37 is revised to read as follows:

Sec. 206.37 Limited disclosure of certain confidential business information under administrative protective order.

Except in the case of an investigation under the United States-Jordan Free Trade Area Implementation Act, the Secretary shall make available to authorized applicants, in accordance with the provisions of Sec. 206.17, confidential business information obtained in an investigation under this subpart.

PART 207--INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

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13. The authority citation for part 207 is revised to read as follows:

Authority: 19 U.S.C. 1335, 1671-1677n, 2482, 3513, 4582.

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14. The heading for subpart G is revised and the authority citation for subpart G is removed. The revision reads as follows:

Subpart G--Implementing Regulations for the United States-Mexico-Canada Agreement

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15. Section 207.90 is revised to read as follows:

Sec. 207.90 Scope.

This subpart sets forth the procedures and regulations for implementation of Section D of Chapter 10 of the Agreement between the United States of America, the United Mexican States, and Canada, as provided by Section 422(a) of the United States-Mexico-Canada Implementation Act (19 U.S.C. 1677(f)). These regulations are authorized by section 412(g), as amended by section 504(c)(3)(G), of the United States-Mexico-Canada Implementation Act and 19 U.S.C. 4582.

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16. Section 207.91 is revised and republished to read as follows:

Sec. 207.91 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in the Binational Panel Rules and the ECC Rules (as defined in this section) are applicable to this subpart and to any protective orders issued pursuant to this subpart. As used in this subpart--

Administrative Law Judge means the United States Government employee appointed under 5 U.S.C. 310(f) to conduct proceedings under this part in accordance with 5 U.S.C. 554.

Agreement means Article 10.12 of the Agreement between the United States of America, the United Mexican States ("Mexico"), and Canada entered into among these states, effective July 1, 2020 ("USMCA"); or, with respect to binational panel proceedings between either of Canada and the United States or Mexico and the United States underway as of the date of enactment of the Agreement, it means the Article 1904 of the North American Free Trade Agreement entered into between the governments of the United States of America, Mexico, and Canada, effective January 1, 1994 ("NAFTA").

Binational Panel Rules means the Rules of Procedure for Article 10.12 published by the United States Trade Representative in 88 FR 10171, February 16, 2023, or, where applicable, Article 1904 of the NAFTA.

Canadian Secretary means the Secretary of the Canadian section of the Secretariat and includes any person authorized to act on the Secretary's behalf.

Charged party means a person who is charged by the Commission with committing a prohibited act under 19 U.S.C. 1677f(f)(3).

Clerical person means a person such as a paralegal, secretary, or law clerk who is employed or retained by and under the direction and control of an authorized applicant.

Commission means the United States International Trade Commission.

Commission Secretary means the Secretary to the Commission.

Complaint means the complaint referred to in the Binational Panel Rules.

Counsel means a person entitled to appear as counsel before a Federal court in the United States, consistent with the Binational Panel and ECC Rules, and counsel for an interested person who plans to file a timely complaint or notice of appearance in the panel review.

Date of service means the day a document is deposited in the mail, electronically sent, or delivered in person, as applicable.

Days means calendar days, but if a deadline falls on a weekend or United States Federal holiday, it will be extended to the next working day.

ECC Rules means the Rules of Procedure for Annex 10-B.3 published by the United States Trade

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Representative in 88 FR 10171, February 16, 2023, or, where applicable, Annex 1904.13 of the NAFTA.

Extraordinary challenge committee ("ECC") means the committee established to review decisions of a panel or conduct of a panelist, pursuant to Annex 10-B.3 to Chapter 10 of the USMCA or to Annex 1904.13 of the NAFTA.

Final determination means "final determination" under Article 10.8 of the USMCA or Article 1911 of the NAFTA.

Free Trade Area country means the "free trade area country" as defined in 19 U.S.C. 1516a(f)(9).

Investigative attorney means an attorney designated by the Office of Unfair Import Investigations to engage in inquiries and proceedings under Sec. Sec. 207.100 through 207.120.

Mexican Secretary means the Secretary of the Mexican section of the Secretariat and includes any persons authorized to act on the Secretary's behalf.

Notice of appearance means the notice of appearance provided for by the Binational Panel Rules or ECC Rules, as applicable.

Panel review means review of a final determination, including review by an extraordinary challenge committee, pursuant to Section D of Chapter 10 of the USMCA or Chapter 19 of the NAFTA.

Party means, for the purposes of Sec. Sec. 207.100 through 207.120, either the investigative attorney(ies) or the charged party(ies).

Person means, for the purposes of Sec. Sec. 207.100 through 207.120, an individual, partnership, corporation, association, organization, or other entity.

Privileged information means all information covered by the provisions of the second sentence of 19 U.S.C. 1677f(f)(1)(A).

Professional means an accountant, economist, engineer, or other non-legal specialist who is employed by, or under the direction and control, of a counsel.

Prohibited act means the violation of a protective order, the inducement of a violation of a protective order, or the knowing receipt of information the receipt of which constitutes a violation of a protective order.

Proprietary information means confidential business information as defined in 19 CFR 201.6(a).

Protective order means an administrative protective order issued by the Commission.

Responsible Secretary means the Secretary of the Section of the Secretariat located in the country in which the final determination under review was made.

Secretariat means the Secretariat established pursuant to Article 30.6 of the USMCA and Article 2002 of the NAFTA, and includes the Secretariat sections located in Canada, the United States, and Mexico.

Service address means the address filed with the Secretariat as the service address for that person, including any electronic mail address submitted with that address.

Service list means the list maintained by the Commission Secretary under 19 CFR 201.11(d) of persons in the administrative proceeding leading to the final determination under panel review.

United States Secretary means the Secretary of the United States section of the Secretariat and includes any person authorized to act on the Secretary's behalf.

USMCA Act means the United States-Mexico-Canada Implementation Act, Public Law 116-113 (January 29, 2020).

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17. Section 207.92 is revised to read as follows:

Sec. 207.92 Procedures for commencing review of final determinations.

(a) Notice of Intent to Commence Judicial Review. A Notice of Intent to Commence Judicial Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Binational Panel Rules.

(b) Request for Panel Review. A Request for Panel Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Binational Panel Rules.

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18. Section 207.93 is amended by revising paragraphs (b) introductory text, (b)(6), (c)(2)(i), (c)(2)(ii)(B), (c)(3), (c)(4)(ii)(A) and (B), (c)(4)(v), (c)(5)(i) and (ii), and (d)(1) to read as follows:

Sec. 207.93 Protection of proprietary information during panel and committee proceedings.

* * * * *

(b) Persons authorized to receive proprietary information under protective order. The following persons may be authorized by the Commission to receive access to proprietary information if they comply with the regulations in this section and such other conditions imposed upon them by the Commission:

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(6) Any officer or employee of the Government of Canada or the Government of Mexico who the Canadian Minister of Trade or the Mexican Secretary of Economía (Secretar[iacute]a de Econom[iacute]a), as the case may be, informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees; and

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(c) * * *

(2) * * *

(i) The Commission Secretary shall adopt from time to time forms for submitting requests for release pursuant to protective order that incorporate the terms of this section. The Commission Secretary shall supply the United States Secretary with copies of the forms for persons described in paragraphs (b)(1), (4), (5), and (6) of this section. Other applicants may obtain the forms at the Commission Secretary's office at 500 E Street SW, Washington, DC 20436, or from the website of the Commission Secretary.

(ii) * * *

(B) Not use any of the proprietary information released under protective order and not otherwise available for purposes other than the particular proceedings under Section D of Chapter 10 of the USMCA, or Article 1904 of the NAFTA, as applicable;

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(3) Timing of applications. An application for any person described in paragraph (b)(1) or (2) of this section may be filed after a notice of request for panel review has been filed with the Secretariat. A person described in paragraph (b)(4) of this section shall file an application immediately upon assuming official responsibilities in the United States, Canadian, or Mexican Secretariat. An application for any person described in paragraph (b)(5) or (6) of this section may be filed at any time after the United States Trade Representative, the Canadian Minister of Trade, or the Mexican Secretar[iacute]a de Econom[iacute]a, as the case may be, has notified the Commission Secretary that such person requires access.

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(4) * * *

(ii) * * *

(A) Filing. A person described in paragraph (b)(2) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall file the completed original of the form (USMCA APO Form C) and three (3) copies with the Commission Secretary, and four (4) copies with the United States Secretary.

(B) Service. If an applicant files before the deadline for filing notices of

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appearance for the panel review, the applicant shall concurrently serve each person on the service list with a copy of the application. If the applicant files after the deadline for filing notices of appearance for the panel review, the applicant shall serve each participant in the panel review in accordance with the applicable Binational Panel Rules and ECC Rules. Service on a person may be effected by delivering a copy to the person's service address; by sending a copy to the person's service address by facsimile transmission, expedited courier service, expedited mail service; or by personal service.

* * * * *

(v) Applications of persons described in paragraph (b)(6) of this section. A person described in paragraph (b)(6) of this section shall submit the completed original of the protective order application to the Responsible Secretary. The Responsible Secretary in turn, shall file the original and three (3) copies with the Commission Secretary.

(5) * * *

(i) If counsel or a professional has been granted access in an administrative proceeding to proprietary information under a protective order that contains a provision governing continued access to that information during panel review, and that counsel or professional retains the proprietary information more than fifteen (15) days after a First Request for Panel Review is filed with the Secretariat, that counsel or professional, and such clerical persons with access on or after that date, become immediately subject to the terms and conditions of USMCA APO Form C maintained by the Commission Secretary on that date including provisions regarding sanctions for violations thereof.

(ii) Any person described in paragraph (c)(5)(i) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall:

(A) File the completed original of the form (USMCA APO Form C) and three (3) copies with the Commission Secretary; and

(B) File four (4) copies of the completed USMCA APO Form C with the United States Secretary.

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(d) * * *

(1) Applicants described in paragraphs (b)(1), (4), (5), and (6) of this section. Upon approval of an application of persons described in paragraph (b)(1), (4), (5), or (6) of this section, the Commission Secretary shall issue a protective order permitting release of proprietary information. Any member of a binational panel proceeding initiated under the NAFTA to whom the Commission Secretary issues a protective order must countersign it and return one copy of the countersigned order to the United States Secretary. Any other applicant under paragraph (b)(1) of this section must file a copy of the order with the United States Secretary.

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19. Section 207.94 is revised to read as follows:

Sec. 207.94 Protection of privileged information during panel and committee proceedings.

If a panel or ECC decides that the Commission is required, pursuant to the United States law, to grant access pursuant to a protective order to information for which the Commission has claimed a privilege, any individual to whom the panel or ECC has directed the Commission release information and who is otherwise within the category of individuals eligible to receive proprietary information pursuant to Sec. 207.93(b), may file an application for a protective order with the Commission. Upon receipt of such application, the Commission Secretary shall certify to the Commission that a panel or ECC has required the Commission to release such information to specified persons, pursuant to 19 U.S.C. 1677f(f)(1). Twenty-four hours following such certification, the Commission Secretary shall issue a protective order releasing such information to any authorized applicant subject to terms and conditions equivalent to those described in Sec. 207.93(c)(2).

By order of the Commission.

Issued: February 16, 2023.
Lisa Barton,
Secretary to the Commission.
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