

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436**

19 CFR Part 206

**Investigations relating to global and bilateral safeguard actions,
market disruption, trade diversion, and review of relief actions.**

AGENCY: United States International Trade Commission.

ACTION: Interim rules with request for comments.

SUMMARY: The United States International Trade Commission (Commission) is amending Part 206 of its Rules of Practice and Procedure on an interim basis and requests comments on the amendments. These amendments are necessary to implement provisions of Public Law 106-286 that require the Commission to conduct new types of investigations of market disruption or trade diversion and reviews of relief actions. The intended effect of the amendments is to establish procedures for the new kinds of investigations and reviews that closely track the procedures for investigations and reviews under certain other existing laws.

DATES:

Effective Date: February 22, 2002.

Comment Date: Comments are due by 5:15 p.m. on April 23, 2002.

ADDRESSES: A signed original and 8 copies of each set of comments should be mailed or hand-delivered to Marilyn R. Abbott, Acting Secretary, United States International Trade Commission, 500 E Street, SW, Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202-205-3086. 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 may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

The preamble below is designed to assist readers in understanding the interim amendments the Commission is making to its Rules of Practice and Procedure. The preamble begins with a discussion of the background of the rulemaking, then explains why an interim rulemaking procedure was adopted,

provides an overview and a section-by-section analysis of the interim amendments, and ends with a regulatory analysis addressing government-wide statutes and issuances on rulemaking. The Commission encourages members of the public to comment – in addition to any other comments they wish to make on the rules amendments -- on whether the interim amendments are in language that is sufficiently plain for users of the rules to understand.

Background

Public Law 106-286 [H.R. 4444], 114 Stat. 880, was signed by the President on October 10, 2000. Section 103(a) of the law added new sections 421 and 422 to the Trade Act of 1974 (19 U.S.C. 2451 and 2451a) that require the Commission to conduct new kinds of investigations and reviews of relief actions.

New section 421(b) of the Trade Act requires the Commission to investigate, in specified circumstances, “to determine whether products of the People’s Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.”

The President may provide relief, under section 421(a), in the form of increased duties and/or other import restrictions with respect to the product being imported from the People’s Republic of China. He will grant such relief to the extent and for the period that he considers necessary to prevent or remedy the market disruption. Starting six months after the relief first takes effect, the President may request a report from the Commission, under section 421(n)(1), on the probable effect that modification, reduction, or termination of the relief would have on the relevant domestic industry. Section 421(n)(3) provides that when the President issues relief under section 421(a), the Commission must collect such data as is necessary to enable it to respond rapidly to a request by the President under section 421(n)(1).

Within a specified time before the relief is to terminate, section 421(o) requires the Commission to investigate, at the request of the President or in response to a petition on behalf of the industry concerned, to determine whether action under section 421 continues to be necessary to prevent or remedy market disruption.

The new section 422(b) of the Trade Act requires the Commission to investigate, in appropriate circumstances, to determine whether an action of a type described in section 422(c) “has caused, or threatens to cause, a significant diversion of trade into the domestic market of the United States.” Section 422(c) indicates that an “action” for purposes of section 422(b) is an action --

(1) by the People's Republic of China to prevent or remedy market disruption in a WTO [World Trade Organization] member other than the United States; (2) by a WTO member other than the United States to withdraw concessions under the WTO

Agreement or otherwise to limit imports to prevent or remedy market disruption; (3) by a WTO member other than the United States to apply a provisional safeguard within the meaning of the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the WTO; or (4) any combination of actions described in paragraphs (1) through (3).

The President determines, pursuant to section 422(h), what action to take to prevent or remedy the trade diversion or threat thereof. Section 422(j) requires the Commission to review the continued need for action taken under section 422(h) if the World Trade Organization (WTO) member or members involved notify the Committee on Safeguards of the WTO of any modification in the action taken by them against the People's Republic of China pursuant to consultation referred to in section 422(a). Specifically, the Commission must determine whether a significant diversion of trade continues to exist. After receiving the Commission's report on that subject, the President will determine whether to modify, withdraw, or keep in place the action taken under section 421(h).

The Procedure for Adopting the Interim Amendments

The Commission ordinarily promulgates amendments to the Code of Federal Regulations in accordance with the rulemaking procedure in section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). That procedure entails publishing a notice of proposed rulemaking in the Federal Register that solicits public comment on the proposed amendments, considering the public comments in deciding on the final content of the amendments, and publishing the final amendments at least 30 days prior to their effective date. In this instance, however, the Commission is amending its rules in 19 CFR part 206 on an interim basis, effective upon publication of this notice in the Federal Register.

The Commission's authority to adopt interim amendments without following all steps listed in section 553 of the APA is derived from section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) and section 553 of the APA.

Section 335 of the Tariff Act authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. The Commission has determined that the need for interim rules is clear in this instance. The new sections 421 and 422 of the Trade Act require the Commission to conduct new kinds of investigations and reviews. Rulemaking is essential for orderly administration of the new statutory provisions. Since the People's Republic of China acceded to the WTO on December 11, 2001, it is imperative that implementing rules be adopted as quickly as possible.

Section 553(b) of the APA allows an agency to dispense with publication of a notice of proposed rulemaking when the following circumstances exist: (1) the rules in question are interpretive rules, general statements of policy, or rules of agency organization, procedure or practice; or (2) 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 requirement 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. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rulemaking that solicits public comment, the Commission finds that the interim amendments to part 206 are “agency rules of procedure and practice.” Moreover, the People’s Republic of China’s accession to the WTO on December 11, 2001, a date that could not be predicted sufficiently far in advance, makes the establishment of rules a matter of urgency. Hence, it clearly would have been impracticable for the Commission to comply with the notice of proposed rulemaking and public comment procedure.

For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim amendments to part 206 at least thirty days prior to their effective date, the Commission finds that the fact that the People’s Republic of China acceded to the WTO on December 11, 2001 makes such advance publication impossible and constitutes good cause for not complying with that requirement.

The Commission recognizes that interim rule amendments should not respond to anything more than the exigencies created by the new legislation. Each interim amendment to part 206 accordingly falls into one or more of the following categories: (1) a revision of a preexisting rule to make it applicable to one or more of the new kinds of investigations or reviews of relief actions; (2) clarification of the manner in which a preexisting rule is to be applied to one or more of the new kinds of investigations or reviews; or (3) a new rule covering a matter addressed in the new legislation but not covered by a preexisting rule.

After taking into account all comments received and the experience acquired under the interim amendments, the Commission will replace them with final amendments promulgated in accordance with the notice, comment, and advance publication procedure prescribed in section 553 of the APA.

Overview of the Interim Amendments

Until the publication of this notice, part 206 of the Commission's rules consisted of subpart A, which set out general requirements applicable to all investigations covered by the part, and subparts B-F, each of which established procedures for a particular type of investigation.

Among other things, the Commission is amending subpart A to extend the coverage of part 206 to investigations and reviews of relief actions under the new section 421 or 422 of the Trade Act.

Before this notice was published, subpart E of part 206 covered only market disruption investigations under section 406(a) of the Trade Act of 1974. The new investigations under section 421(b) also will address market disruption and will be similar, though not identical, to the investigations under section 406(a). For that reason, the Commission is amending subpart E to cover investigations under section 421(b) (in addition to investigations under section 406(a)). The Commission also is amending subpart E to cover investigations under section 421(o) on whether action under section 421 continues to be necessary to prevent or remedy market disruption.

The new investigations under section 422(b) concerning trade diversion--and the reviews under section 422(j) on whether there is a continued need for action taken under section 422(h)--do not so closely fit an existing subpart of part 206. For that reason, the Commission is adding a new subpart G to cover investigations under section 422(b) and reviews under section 422(j). Nevertheless, the procedures in subpart G closely track those in other subparts of part 206.

The Heading for Part 206

As noted, the new section 422 of the Act requires the Commission to conduct investigations of and reviews of relief actions for trade diversion. The Commission is therefore amending the heading of part 206 to include a reference to trade diversion.

The Table of Contents

Among other changes, the Commission is amending the heading of section 206.3 in subpart A of part 206. In subpart E, the Commission also is revising the heading of section 206.43, adding a new section 206.44, redesignating the existing sections 206.44 and 206.45 as 206.45 and 206.46, and adding a new section 206.47. Finally, the Commission is adding a new subpart G. The Commission is therefore amending the table of contents for part 206 to reflect those changes.

The Authority Citation

The Commission is amending the authority citation to part 206 to include citations to 19 U.S.C. 2451 and 2451a (the new sections 421 and 422 of the Trade Act).

Section-By-Section Analysis of the Interim Amendments

Subpart A--General

Section 206.1

Section 206.1 describes the applicability of part 206. The first sentence of that section lists the statutes under which the Commission performs functions and duties in accordance with part 206. The Commission is amending that sentence to include a reference to the Commission's functions and duties under the new sections 421 and 422 of the Trade Act. The third sentence of section 206.1 describes the kinds of investigations or reviews that are covered by subpart B, C, D, or E of part 206. The Commission is amending that sentence to state that subpart E of part 206 provides rules governing petitions and investigations under section 421 of the Trade Act (as well as petitions and investigations under section 406 of that Act). Finally, the Commission is adding a sentence to the end of section 206.1 stating that the new subpart G of part 206 provides rules applying to the Commission's functions and duties under section 422 of the Trade Act.

Section 206.2

The first sentence of section 206.2 states that the Commission will institute an investigation under part 206 in response to a petition, request, resolution, or motion as described in the applicable statute. The Commission is amending that sentence by adding the new sections 421 and 422 of the Trade Act to the list of statutes under which the Commission may institute an investigation.

The second sentence in section 206.2 states that the first page of each petition or request must identify the statute and the subpart of part 206 under which the petition or request is being filed. The Commission is amending that sentence to add sections 421(b) and (c) of the Trade Act to the list of statutes and the new subpart G to the list of subparts.

Section 206.3

Paragraph (a) of section 206.3 requires the Commission to promptly institute an investigation and to publish notice thereof in the Federal Register upon receipt of a properly filed petition or request under part 206. That obligation would apply to a petition or request under the new section 421(b) or (c) or the new section 422(b) of the Trade Act. The Commission also is required, however, in appropriate circumstances to institute an investigation and to publish a notice in the Federal Register in response to a resolution by the Senate Committee on Finance or the House Committee on Ways and Means or on the Commission's own motion. The Commission is amending paragraph (a) of section 206.3 by adding a sentence to the end of that paragraph to provide for those contingencies.

Paragraph (b) of section 206.3 specifies the required content of each Federal Register notice published pursuant to paragraph (a), that is, following receipt of a properly filed request or petition.

The Commission is amending paragraph (b) by adding a sentence to the end of that paragraph stating that the notice will provide the same kind of information when the Commission institutes an investigation in response to a resolution or on the Commission's own motion.

Paragraph (c) of section 206.3 indicates that the Commission will make a nonconfidential copy of each petition or request available for public inspection. The Commission is amending paragraph (c) to state that the Commission will make each petition, request, resolution, or Commission motion available for public inspection, minus any confidential business information. Because of that change, the Commission also is amending the heading of section 206.3 to eliminate the reference to the availability of petitions for public inspection. Since the Commission will make each petition, request, resolution, or Commission motion available for such inspection, the revised portion of the heading will simply consist of the words "availability for public inspection."

Section 206.4

Section 206.4 currently requires the Commission to promptly transmit copies of a petition or request and the resulting notice of investigation to the Office of the United States Trade Representative, the Secretary of Commerce, the Secretary of Labor, and other Federal agencies directly concerned. Those provisions do not match the statutory notification requirements or actual Commission practice for some types of investigations that are currently subject to provisions of part 206 (e.g., investigations under section 204(c) of the Trade Act or section 302(b) of the North American Free Trade Agreement Implementation Act). In addition, the existing text of section 206.4 is not consistent with the notification requirements of the new section 421(b)(4) of the Trade Act, under which the Commission must provide the President, the United States Trade Representative (USTR), the House Committee on Ways and Means, and the Senate Committee on Finance with nonconfidential copies of each petition, request, or resolution filed under section 421(b). For those reasons, the Commission is revising section 206.4 by deleting the existing text and replacing it with the statement that for each investigation subject to provisions of part 206, the Commission will transmit copies of the petition, request, resolution, or motion as required by the relevant statute, along with a copy of the notice of investigation.

Section 206.5

Paragraph (b) of section 206.5 provides for public hearings on injury and remedy in investigations conducted under subpart C, D, or E of part 206. The Commission is amending paragraph (b) on an interim basis to have it cover hearings in investigations under subpart C, D, E, or G. The specific changes that the Commission is making are described below.

First, the Commission is amending the heading of paragraph (b) to include investigations conducted under the new subpart G. Since the Commission is not likely to conduct a particular investigation under each of subparts C, D, E, and G, the revised heading refers to investigations under subpart C, D, E, or G.

Next, the Commission is amending the text of paragraph (b). The text currently states that the Commission will conduct a hearing on the subject of injury and remedy in each investigation instituted under subparts C, D, and E. Subpart E currently covers investigations under section 406(a) of the Trade Act. The Commission is amending paragraph (b) of section 206.5 to state that it will conduct a hearing on injury and remedy in each investigation instituted under subpart C or D or section 406(a) of the Trade Act and subpart E.

Subpart E, as amended in this notice, will cover investigations under section 421(b) or (o) of the Act in addition to investigations under section 406(a). Section 421 is comparable to section 406 in many respects. Moreover, material injury or the threat thereof to a domestic industry is an element of section 421(b). (See section 421(d) regarding the existence and cause of “market disruption” for purposes of section 421.) Material injury to a domestic industry or a threat thereof also would be relevant in an investigation under section 421(o) to determine whether the Presidential action taken under section 421(k) continues to be necessary to prevent or remedy market disruption.

Section 421 of the Act is a new statute however. For that reason, the Commission prefers not to adopt a rule, at this time, that would restrict the subject matter of public hearings in investigations under section 421(b) or (o) to “injury and remedy.” The Commission is therefore adding a sentence to paragraph (b) of section 206.5 stating that the Commission will conduct a hearing in each investigation instituted under section 421(b) or (o) of the Trade Act and subpart E, and that the Federal Register notice announcing the investigation will list the date, time, and location of the hearing, the subjects to be addressed, and the procedures to be followed, e.g., the procedure to be followed by each person who wishes to appear at the hearing.

The new subpart G of part 206 will cover, among other things, investigations under section 422(b) of the Trade Act. The principal subjects of those investigations are (1) whether an action described in section 422(c) of the Act has caused or threatens to cause a significant diversion of trade into the domestic market of the United States and (2) what relief, if any, the Commission should recommend to the President. Unlike market disruption under section 421 of the Act, trade diversion under section 422 does not include the element of material injury or threat thereof to a domestic industry (compare section 422(d)(1) of the Act to sections 421(c)(1) and (2) and (i)(1)(A)).

The Commission is therefore amending paragraph (b) of section 206.5 to say that for each investigation under section 421(b) or (o) or section 422(b) of the Trade Act, the Federal Register notice announcing the investigation will specify the date, time, and location of the public hearing, the subjects to be addressed, and the procedures to be followed.

Section 206.6

Paragraph (a) of section 206.6 provides a general description of the required content of Commission reports to the President on investigations conducted under part 206.

Paragraph (a)(2) discusses the Commission's obligation to provide recommendations for action in the report after reaching an affirmative determination in the investigation.

The Commission is amending paragraph (a)(2) to reflect the Commission's obligation to provide recommendations for action in the Commission report after reaching an affirmative determination under section 421(b)(1) or (i)(1) or section 422(b) of the Act--or a determination that the President and the USTR may regard as affirmative under section 421(e) or (i)(1) or section 422(e)(1).

Paragraph (b) of section 206.6 describes additional findings and information that the Commission will include in reports to the President concerning certain kinds of investigations conducted under Part 206. Paragraph (b)(1) applies to determinations under section 202(b) of the Trade Act. Paragraph (b)(2) applies to determinations under section 302(b) of the NAFTA Implementation Act. The Commission is adding a new paragraph (b)(3) concerning the kinds of additional findings and information that will be included in reports concerning determinations under section 421(b) or 422(b) of the Trade Act. The content of that new paragraph is based on the Commission's obligation to consider certain factors, pursuant to section 421(g)(2)(D) or 422(e)(3)(iv), in reaching a determination under section 421(b) or 422(b) of the Act.

Section 206.7

Paragraph (a) of section 206.7 currently provides that, except for limited disclosure under an administrative protective order in accordance with section 206.17, the Commission will not release confidential business information unless the submitter either consents or had notice, when the information was submitted, that the Commission might release it. Paragraph (a) also states that when appropriate, the Commission will provide confidential business information in reports to the President and the USTR, but will release expurgated copies of the reports to the public. Paragraph (a) currently applies only to investigations conducted under subpart B, C, D, or F of part 206.

Paragraph (a) of section 206.7 implements sections 202(a)(8) and (i) of the Trade Act concerning the treatment of confidential business information. Section 202(a)(8) states that the procedures concerning the release of such information that are set forth in section 332 of the Tariff Act (19 U.S.C. 1332) shall apply with respect to information received by the Commission in the course of certain other kinds of investigations. Section 202(i) of the Trade Act states that the Commission shall promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties who are parties to an investigation under section 202 of the Act. Sections 202(a)(8) and (i) of the Trade Act apply to investigations under section 421 or 422 of the Act. See sections 421(b)(3) and 422(b)(3).

Investigations under section 421(b) or (o) of the Act will be conducted in accordance with amended subpart E of part 206, while investigations under section 422(b) will be governed by the new

subpart G. The Commission is therefore amending the first sentence in paragraph (a) of section 206.7 to include references to those investigations and subparts.

(See also the discussion below concerning the interim amendments to section 206.47, regarding the limited disclosure of confidential business information under an administrative protective order in investigations under section 421(b) or (o) of the Trade Act. Also see the discussion of the new section 206.66 regarding such disclosures in investigations under section 422(b) of the Act and the omission of such disclosures in reviews under section 422(j).)

Subpart E--Investigations for Relief From Market Disruption

Section 206.41

Section 206.41 describes the applicability of subpart E of part 206. The first sentence of that section makes subpart F applicable solely to investigations under section 406 of the Trade Act. The Commission is amending that sentence to state that subpart E applies to investigations under section 421(b) or (o) of the Trade Act as well as investigations under section 406(a) of the Act.

Section 206.42

Section 206.42 tells who may file a petition for an investigation governed by subpart E of part 206.

Because section 206.42 only covers petitions under section 406(a) of the Trade Act, the Commission is amending that section by designating the original text paragraph (a) of section 206.42, but revising it to explicitly apply to petitions under section 406(a) of the Act. Also, because of the broadened applicability of subpart E (as described above in the analysis of section 206.41), the Commission is adding a new paragraph (b) to section 206.42 that tells who may file a petition under section 421(b) or (o) of the Trade Act.

Section 206.43

Section 206.43 describes the required content of a petition for an investigation governed by subpart E of part 206. The Commission is revising the heading of section 206.43 to indicate that this section pertains solely to petitions under section 406(a) of the Trade Act. In the first sentence of the introductory text in section 206.43, the Commission is changing the words “a petition under this subpart E” to “a petition under section 406(a) of the Trade Act.” The required content of a petition under the new section 421(b) or (o) of the Trade Act will be set forth in a new section 206.44, as described below.

New Section 206.44

The Commission is adding a new section 206.44 to subpart E of part 206, describing the required content of a petition under section 421(b) or (o) of the Trade Act. As the legislative history of section 421 (See H.R. Rept. No. 632, 106th Cong., 2d Sess. 16-17 (May 22, 2000)) points out, the provisions of that section are modeled after section 406 of the Act, but with certain modifications to conform to the language of the U.S.-China Bilateral Trade Agreement. The Commission accordingly has modeled the new section 206.44 in part after section 206.43 governing the required content of a petition under section 406(a) of the Act. But the new section 206.44 imposes requirements based on section 421 of the Act.

Paragraph (a) of the new section 206.44 imposes the basic requirement that the petition must provide specific information to support the claim that products of the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. Section 421 imposes stringent deadlines for the Commission to make the required determination(s). Hence, the petition may become a primary source of data (in an investigation based on a petition). For that reason, paragraph (a) of the new section 210.44 in subpart E of part 206 requires the petition to provide the information specified in paragraphs (a) through (i) of that section, to the extent that such information is reasonably available to the petitioner with due diligence.

Paragraph (b) of the new section 206.44 tells what product description data the petition must contain, and is modeled after paragraph (a) of section 206.43 governing the product description in a petition under section 406(a) of the Trade Act.

A petition under section 421(b) of the Act must be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. See sections 421(b)(1) and 202(a) of the Act. Hence, paragraph (c) of the new section 206.44 specifies what data the petition must furnish to establish that the petitioner satisfies the representativeness requirement. Paragraph (c) corresponds to paragraph (b) of section 206.43, concerning the representativeness of a petition under section 406(a) of the Act.

Paragraph (d) of the new section 206.44 specifies the import data to be furnished in a petition under section 421(b) of the Trade Act. Paragraph (d) is similar to paragraph (c) of section 206.43, which describes the import data to be furnished in a petition under section 406(a) of the Act. The difference is that owing to the language of section 421(c)(1) of the Act, paragraph (d) of the new section 206.44 requires the submission of information about whether imports are increasing absolutely or relatively (instead of absolutely or relative to domestic production).

Paragraph (e) of the new section 206.44 specifies the domestic production data to be submitted in a petition under section 421(b) of the Trade Act. Paragraph (e) matches paragraph (d) of

section 206.43, which describes the domestic production data to be furnished in a petition under section 406(a) of the Act.

Paragraph (f) of the new section 206.44 specifies the injury data to be submitted in a petition under section 421(b) of the Trade Act. Paragraph (f) is similar to paragraph (e) of section 206.43, which describes the data showing injury that must be included in a petition under section 406(a) of the Act.

Paragraph (g) of the new section 206.44 specifies the injury causation data to be submitted in a petition under section 421(b) of the Trade Act. Paragraph (g) differs from paragraph (f) of section 206.43, regarding the cause of injury as described in a petition under section 406(a) of the Act. Owing to differences between factors the Commission must consider under section 421(d)(1) of the Act and those it must consider under section 406(e)(1)(C) of the Act, paragraph (g) of the new section 206.44 does not indicate that the petition should include evidence of disruptive pricing practices or other efforts to unfairly manage trade patterns (in addition to evidence of the effect of the subject imports on prices in the United States). Instead, paragraph (g) requires the submission of data about the effect that the product imported from the People's Republic of China has on prices in the United States for like or directly competitive articles--which is consistent with section 421(d)(3) of the Act.

A petition under section 421(b) of the Trade Act may allege that critical circumstances exist and may request that provisional relief be provided with respect to the product identified in the petition. See section 421(i) of the Act. For that reason, paragraph (h) of the new section 206.44 states that a petition alleging critical circumstances must provide information demonstrating that delay in taking action under section 421 of the Act would cause damage to the relevant domestic industry that would be difficult to repair.

Paragraph (i) of the new section 206.44 states that the petition must include a statement describing the import relief sought and the purpose thereof.

Paragraph (j) of the new section 206.44 describes the required content of a petition under section 421(o) of the Trade Act. A petition under section 421(o) must be filed "on behalf of the industry concerned." Therefore, paragraph (j) of the new section 206.44 requires the petition to provide evidence of representativeness, as described in paragraph (b) of that section. The new paragraph (j) also states that the petition must contain specific information supporting the petitioner's claim that action under section 421 of the Trade Act continues to be necessary to prevent or remedy market disruption. Paragraph (j) also tells the petitioner that the information provided should take into account factors such as those specified in paragraphs (c)-(g) of section 206.44. Owing to the short time provided for the Commission to make its determination under section 421(o), the petition may become a key source of information. For that reason, paragraph (j) of section 206.44 states that, to comply with paragraph (j), the petition should contain all relevant information reasonably available to the petitioner with due diligence.

Existing Section 206.44 -- Redesignated as Section 206.45

Existing section 206.44 addresses the time by which the Commission must furnish its report to the President in an investigation under section 406(a) of the Trade Act. Because the Commission is adding a new section 206.44 as discussed above, the Commission is redesignating existing section 206.44 as section 206.45. The Commission also is redesignating the existing provisions of section 206.44 as paragraph (a) of section 206.45 and explicitly limiting them to the issuance of a report to the President in an investigation under section 406(a) of the Trade Act. The Commission is adding a new paragraph (b) concerning the deadlines for submitting its determination and report to the President and the USTR in an investigation under section 421(b) of the Trade Act. A new paragraph (c) states the Commission's deadlines for issuing a determination and report on critical circumstances, pursuant to section 421(i) of the Act, when the petition in an investigation under section 421(b) alleges that such circumstances exist and requests provisional relief. Finally, the Commission is adding a new paragraph (d) concerning the time by which the Commission must issue its determination and report in an investigation under section 421(o) of the Act.

Existing Section 206.45 -- Redesignated as Section 206.46

Existing section 206.45 states that the Commission will issue a nonconfidential version of the report issued in an investigation under subpart E and will publish a summary of it in the Federal Register. Because the Commission is adding a new section 206.44 to subpart E as discussed above, the existing section 206.45 will become section 206.46. The Commission is making no changes in the substance of this rule.

Section 206.47

Section 421(b)(3) of the Trade Act states that sections 202(a)(8) and (i) of the Act, relating to the treatment of confidential business information, shall apply to investigations conducted under section 421. The provisions concerning confidential business information in investigations under section 202(b) of the Act are set forth in sections 206.7 and 206.17 of part 206.

Section 206.7 applies to investigations under section 421(b) or (o) of the Trade Act as a result of the Commission's interim amendments to sections 206.7 and 206.41.

The Commission is adding a new section 206.47 to provide for the limited disclosure of confidential business information under an administrative protective order, as described in section 206.17, in investigations under section 421(b) or (o) of the Act.

Subpart G--Investigations For Action in Response to Trade Diversion:
Reviews of Action Taken

As noted in the overview, the Commission is adding a new subpart G concerning investigations under section 422(b) and reviews under section 422(j) of the Trade Act.

Section 206.61

Section 206.61 describes the applicability of subpart G and cross-references relevant rules of general application.

Section 206.62

Section 206.62 states who may file a petition for an investigation under section 422(b) of the Trade Act. This section is based on section 422(b)(1) of the Act, which states that a petition may be filed by an entity described in section 202(a) of the Act.

Section 206.63

Section 206.63 describes the required content of a petition for an investigation under section 422(b) of the Trade Act. It consists of an introductory paragraph and paragraphs (a)-(f).

The introductory paragraph of the new section 206.63 imposes the basic requirement that the petition must provide specific information to support the claim that an action described in section 422(c) has caused, or threatens to cause, a significant diversion of trade into the domestic market of the United States. Because of the stringent deadline for the Commission to make its determination under section 422(b)(1) of the Act, the petition may become a primary source of information. The introductory paragraph of section 206.63 accordingly requires the petition to furnish the information specified in the introductory paragraph and paragraphs (a)-(f) of that section, to the extent that such information is reasonably available to the petitioner with due diligence.

Among other things, paragraph (a) directs the petitioner to submit data concerning the imported product at issue. A petition under section 422(b) must be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. See sections 422(b)(1) and 202(a) of the Act. Hence, paragraph (a) of the new section 206.63 also requires the petition to provide the name and description of the domestic product concerned, while paragraph (b) requires the submission of evidence of the petitioner's representativeness.

Paragraph (c) indicates that the petition must contain a description of the action, as defined in section 422(c) of the Trade Act, that allegedly has caused or threatens to cause a significant diversion of trade into the domestic market of the United States.

Paragraph (d) requires the petition to provide information about the factors enumerated in section 422(d)(1) of the Act, which the Commission must consider in determining whether significant diversion or the threat thereof exists for purposes of section 422.

Section 422(d)(2) of the Trade Act directs the Commission to examine the changes in imports into the United States from the People's Republic of China since the time that the WTO member commenced the investigation that led to a request for consultations described in section 422(a) of the Act. In some cases, the United States Customs Service will be required by law to monitor the subject imports and to make data from such monitoring available to the Commission upon request. See section 422(a) of the Act. However, the Commission has drafted paragraph (e) of section 206.63 to require the petition to provide any information available to the petitioner that will help the Commission fulfill its statutory obligation to examine the changes in imports.

Finally, paragraph (f) of section 206.63 states that the petition must contain a statement describing the import relief desired under section 422(h) and the purpose thereof.

Section 206.64

Section 206.64 addresses the institution of an investigation under section 422(b) or a review under section 422(j) of the Trade Act. Section 206.64 also addresses the Commission's publication of a Federal Register notice concerning the investigation or review and the fact that the Commission will make the petition, request, resolution, or motion that triggered the investigation or the notification document that triggered the review available for public inspection, except for any confidential information contained therein.

Section 206.65

Section 206.65 governs public hearings in investigations under section 422(b) and reviews under section 422(j) of the Trade Act. Section 422(b)(2) of the Act makes public hearings mandatory for investigations under section 422(b). Paragraph (a) section 206.65 states that hearings for those investigations are provided for in paragraph (b) of section 206.5 (discussed above).

Section 206.66

Section 422(b)(3) of the Trade Act states that the provisions of sections 202(a)(8) and (i) of the Act, relating to confidential business information, shall apply to investigations conducted under

section 422. The provisions governing the treatment of such information in investigations under section 202(b) of the Act are set forth in sections 206.7 and 206.17 of part 206.

Section 206.7 applies to investigations under section 422(b) of the Act as a result of the Commission's interim amendments to sections 206.7 and 206.41.

The Commission is adding a new section 206.66 to provide for the limited disclosure of confidential business information under an administrative protective order, as described in section 206.17, in investigations under section 422(b).

As noted, section 422(b)(3) of the Act states that the provisions of sections 202(a)(8) and (i) of the Act, relating to the treatment of confidential business information, "shall apply to *investigations* conducted under this section [422] [italics added]." Section 422(j) characterizes a review under section 422(j) as a "review of circumstances." The Commission notes further that while it has 60 days to make its determination in such a review (as opposed to 45 days for making a determination in an investigation under section 422(b)), section 422(j) of the Act does not mandate the kinds of procedures that apply to an investigation under section 422(b), namely, the publication of a Federal Register notice of institution and the conduct of a public hearing. For those reasons, the Commission did not draft the new section 206.66 to provide in reviews for the limited disclosure of confidential business information under an administrative protective order, as described in section 206.17.

Section 206.67

Paragraph (a) of section 206.67 lists the deadlines for issuance of the Commission's determination and report to the President and the USTR in an investigation under section 422(b) of the Trade Act. Paragraph (b) lists the deadlines for issuing the determination and report in a review under section 422(j) of the Act.

Section 206.68

Section 206.68 governs the publishing of the Commission reports and notice concerning such report in an investigation under section 422(b) or a review under section 422(j) of the Trade Act. This rule states that upon making a report to the President of the results of such investigation or a review, the Commission will make the report public (with the exception of information which the Commission determines to be confidential) and will publish notice of the report in the Federal Register.

Regulatory Analysis

The Regulatory Flexibility Act

The Commission notes that 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 section 553(b) of the APA. (See the discussion above concerning the procedure for adopting the interim amendments.)

Even if the Regulatory Flexibility Act applied, the Commission's interim amendments to part 206 are not likely to affect small entities in the manner that the Act is intended to prevent. The interim amendments are agency rules of procedure and practice. The procedures for the new types of proceedings are similar to those for existing types. Moreover, the Commission has no reason to believe, at this point, that a majority of the petitioners will be small entities. For those reasons, the Commission certifies, pursuant to 5 U.S.C. 605(b), that the interim rule amendments in this notice will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The Commission has determined that the interim amendments to part 206 do not meet the criteria described in section 3(f) of Executive Order 12866 (58 Fed. Reg. 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order. As noted, they merely respond to exigencies created by the new legislation. The interim amendments to part 206 will not result in (1) an annual effect on the economy of \$100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Executive Order 13132

The interim amendments to part 206 of the Commission's rules do not contain federalism implications warranting the preparation of a Federalism Assessment pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

The Unfunded Mandates Reform Act of 1995

The interim amendments to part 206 of the Commission's 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, and will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et. seq.).

The Small Business Regulatory Enforcement Fairness Act of 1996

The interim amendments to part 206 of the Commission's rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et. seq.). The interim amendments will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The Contract With America Advancement Act of 1996

The interim amendments to part 206 of the Commission's rules are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104-121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The Paperwork Reduction Act

The interim amendments to part 206 are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), since they do not contain any new information collection requirements.

List of Subjects in 19 CFR Part 206

Administrative practice and procedure, Business and industry, Imports, Investigations, Trade agreements.

For the reasons stated in the preamble, the Commission amends 19 CFR part 206 as follows:

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

1. Revise the heading for part 206 to read as follows:

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

2.-3. Revise the authority citation for part 206 to revise the text to read as follows:

Authority: 19 U.S.C. 1335, 2251-2254, 2451-2451a, 3351-3382; secs. 103, 301-302, Pub. L. 103-465, 108 Stat. 4809.

4. Revise § 206.1 to read as follows:

§ 206.1 Applicability of part.

This part 206 applies specifically to functions and duties of the Commission under sections 201-202, 204, 406, and 421-422 of the Trade Act of 1974, as amended (19 U.S.C. 2251, 2252, 2254, 2436, 2451-2451a) (hereinafter Trade Act), and sections 301-318 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3351 et seq.) (hereinafter NAFTA Implementation Act). Subpart A of this part sets forth rules generally applicable to investigations conducted under these provisions; for other rules of general application, see part 201 of this chapter. Subpart B of this part sets forth rules specifically applicable to petitions and investigations under section 202 of the Trade Act; subpart C sets forth rules specifically applicable to requests and investigations under section 312(c) of the NAFTA Implementation Act; subpart D sets forth rules specifically applicable to petitions and investigations under section 302 of the NAFTA Implementation Act; and subpart E sets forth rules specifically applicable to petitions and investigations under section 406 or 421 of the Trade Act. Subpart F of this part sets forth rules applicable to functions and duties under section 204 of the Trade Act. Subpart G sets forth rules applicable to functions and duties under section 422 of the Trade Act.

5. Revise § 206.2 to read as follows:

§ 206.2 Identification of type of petition or request.

An investigation under this part 206 may be commenced on the basis of a petition, request, resolution, or motion as provided in section 202(a)(1), 204(c)(1), 406(a)(1), 421(b) or (o), or 422(b) of the Trade Act of 1974 or section 302(a)(1) or 312(c)(1) of the North American Free Trade Agreement Implementation Act. Each petition or request, as the case may be, filed by an entity representative of a domestic industry under this part 206 shall state clearly on the first page thereof “This is a [petition or request] under section [202, 204(c), 406, 421(b) or (o), or 422(b) of the Trade Act of 1974, or section 302 or 312(c) of the North American Free Trade Agreement Implementation Act] and Subpart [B, C, D, E, F, or G] of part 206 of the rules of practice and procedure of the United States International Trade Commission.”

6. In § 206.3, revise the section heading, add a second sentence to paragraph (a), amend paragraph (b) to add a second sentence, and revise paragraph (c) to read as follows:

§ 206.3 Institution of investigations; publication of notice; and availability for public inspection.

(a) * * * The Commission also will institute an investigation and publish a notice following receipt of a resolution or on the Commission’s own motion under part 206.

(b) * * * The Commission will provide the same sort of information in its notice when the investigation was instituted following receipt of a resolution or on the Commission's own motion.

(c) Availability for public inspection. The Commission will promptly make each petition, request, resolution, or Commission motion available for public inspection (with the exception of confidential business information).

7. Revise § 206.4 to read as follows:

§ 206.4 Notification of other agencies.

For each investigation subject to provisions of part 206, the Commission will transmit copies of the petition, request, resolution, or Commission motion as required by the relevant statute, along with a copy of the notice of investigation.

8. Amend § 206.5 to revise paragraph (b) to read as follows:

§ 206.5 Public hearing.

* * * * *

(b) Investigations under subpart C, D, E, or G of this part. A public hearing on the subject of injury and remedy will be held in connection with each investigation instituted under subpart C or D of this part or section 406(a) of the Trade Act and subpart E of this part, after reasonable notice thereof has been published in the FEDERAL REGISTER. The Commission also will conduct a public hearing in each investigation instituted under section 421(b) or (o) of the Trade Act and subpart E of this part or section 422(b) of the Act and subpart G. The FEDERAL REGISTER notice announcing the institution of such an investigation will list the date, time, and location of the hearing, the subjects to be addressed, and the procedures to be followed.

* * * * *

9. Amend § 206.6 to revise paragraph (a)(2) and to add paragraph (b)(3) to read as follows:

§ 206.6 Report to the President.

(a) * * *

(2) If the determination is affirmative--or in the case of an investigation under section 421(b) or 422(b) of the Trade Act, if the President or the United States Trade Representative may consider the Commission's determination to be affirmative under section 421(e) or (i)(1) or section 422(e)(1) of the

Act--to the extent appropriate, the recommendations for action and an explanation of the basis for each recommendation;

* * * * *

(b) * * *

(3) In the case of a determination made under section 421(b) or 422(b) of the Trade Act, the Commission will also include in its report a description of--

(i) The short- and long-term effects that implementation of the action recommended is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and

(ii) The short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers, and the communities where production facilities of such industry are located, and on other domestic industries.

10. Amend § 206.7 to revise the first sentence of paragraph (a) to read as follows:

§ 206.7 Confidential business information; furnishing of nonconfidential summaries thereof.

(a) Nonrelease of information. Except as provided for in § 206.17, in the case of an investigation under subpart B, C, D, F, or G of this part or an investigation under section 422 of the Trade Act and subpart E of this part, the Commission will not release information which the Commission considers to be confidential business information within the meaning of § 201.6 of this chapter unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information.

* * *

11. Amend § 206.41 to revise the first sentence to read as follows:

§ 206.41 Applicability of subpart.

This subpart E applies specifically to investigations under section 406(a) or 421(b) or (o) of the Trade Act. * * *

12. Revise § 206.42 to read as follows:

§ 206.42 Who may file a petition.

(a) A petition under section 406(a) of the Trade Act 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 with respect to which there are imports of a like or directly competitive article which is the product of a Communist country, which imports, allegedly, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of material injury, or the threat thereof, to such domestic industry.

(b) A petition under section 421(b) or (o) of the Trade Act may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

13. Amend § 206.43 to revise the heading and the first sentence of the introductory text to read as follows:

§ 206.43 Contents of a petition under section 406(a) of the Trade Act.

A petition for relief under section 406(a) of the Trade Act shall include specific information in support of the claim that imports of an article that are the product of a Communist country which are like or directly competitive with an article produced by a domestic industry, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of material injury, or the threat thereof, to such domestic industry.

* * *

* * * * *

14. Sections 206.44 and 206.45 are redesignated as §§ 206.45 and 206.46, respectively, and a new § 206.44 is added to read as follows:

§ 206.44 Contents of a petition under section 421(b) or (o) of the Trade Act.

(a) Petitions under section 421(b). A petition for relief under section 421(b) of the Trade Act shall provide specific information in support of the claim that products of the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. In addition, such petition shall include the information described in paragraphs (b) through (i) of this section. The petition shall provide the information required by this paragraph and paragraphs (b) through (i) of this section to the extent that such information is reasonably available to the petitioner with due diligence.

(b) Product description. Each petition shall include the name and description of the imported product concerned, specifying the United States tariff provision under which such product is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic product concerned.

(c) Representativeness. Each petition shall include:

(1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic product is produced;

(2) The percentage of domestic production of the like or directly competitive domestic product that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and

(3) The names and locations of all other producers of the domestic product known to the petitioner.

(d) Import data. Each petition shall include import data for at least each of the most recent 5 full years which form the basis of the claim that imports from the People's Republic of China of a product like or directly competitive with the product produced by the domestic industry concerned are increasing rapidly, either absolutely or relatively.

(e) Domestic production data. Each petition shall include data on total U.S. production of the domestic product for each full year for which data are provided pursuant to paragraph (d) of this section.

(f) Data showing injury and/or threat of injury. Each petition shall include the following quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to material injury, information, including data on production, capacity, capacity utilization, shipments, net sales, profits, employment, productivity, inventories, and expenditures on capital and research and development, indicating:

(i) An idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Unemployment or underemployment within the industry; and/or

(2) With respect to the threat of material injury, data relating to:

(i) Declines in sales or market share, increases in inventory (whether maintained by domestic producers, importers, wholesalers, retailers, or producers or exporters in the People's Republic of China), and/or a downward trend in production, profits, wages, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(iv) Data regarding productive capacity in the People's Republic of China, any unused productive capacity, and any potential for product shifting in the People's Republic of China.

(g) Cause of injury. Each petition shall enumerate and describe the causes believed to be resulting in the material injury, or threat thereof, described in paragraph (f) of this section. The petition shall provide information relating to the effect of imports of the subject merchandise on prices in the United States for like or directly competitive articles. The petition shall also include a statement regarding the extent to which increased imports, either actual or relative, of the imported product are believed to be such a cause, supported by pertinent data.

(h) Critical circumstances. If the petition alleges that critical circumstances exist within the meaning of section 421(i)(1) of the Trade Act, the petition shall provide detailed information supporting that claim as well as detailed information demonstrating that delay in taking action under section 421 of the Act would cause damage to the relevant domestic industry that would be difficult to repair.

(i) Relief sought and purpose thereof. The petition shall include a statement describing the import relief sought under section 421(i)(4) and/or section 421(a) of the Trade Act and the purpose thereof.

(j) Petitions under section 421(o). A petition under section 421(o) of the Trade Act shall include evidence of representativeness, as described in paragraph (b) of this section, as well as specific information in support of the claim that action under section 421 of the Act continues to be necessary to prevent or remedy market disruption. The information provided in support of that claim should take into account factors such as those specified in paragraphs (c) through (g) of this section. To comply with this paragraph, the petition should contain all relevant information that is reasonably available to the petitioner with due diligence.

15. Revise the newly designated § 206.45 to read as follows:

§ 206.45 Time for reporting.

(a) In an investigation under section 406(a) of the Trade Act, the Commission will make its report to the President at the earliest practical time, but not later than 3 months after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(b) In an investigation under section 421(b) of the Trade Act, the Commission will transmit to the President and the United States Trade Representative its determination at the earliest practicable time, but in no case later than 60 days (or 90 days in the case of a petition requesting provisional relief under section 421(i) of the Act) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted. The Commission will transmit its report to the President and the Trade Representative no later than 20 days after the transmittal of the determination.

(c) In an investigation under section 421(b) of the Trade Act in which the petition requests provisional relief under section 421(i) of the Act, the Commission will transmit to the President and the Trade Representative its determination and report with respect to section 421(i) of the Act no later than 45 days after the petition is filed.

(d) In an investigation under section 421(o) of the Trade Act, the Commission shall transmit to the President a report on its investigation and determination not later than 60 days before the action under section 421(m) of the Trade Act is to terminate.

16.-17. Add § 206.47 to read as follows:

§ 206.47 Limited disclosure of certain confidential business information under administrative protective order.

In an investigation under section 421(b) or (o) of the Trade Act, the Secretary shall make confidential business information available to authorized applicants, subject to the provisions of § 206.17.

18. Add subpart G, consisting of §§ 206.61-206.68, to read as follows:

**Subpart G--Investigations For Action in Response to Trade Diversion;
Reviews of Action Taken**

206.61 Applicability of subpart.

206.62 Who may file a petition.

206.63 Contents of a petition.

- 206.64 Institution of investigation or review; publication of notice; and availability for public inspection.
- 206.65 Public hearing.
- 206.66 Limited disclosure of certain confidential business information under administrative protective order.
- 206.67 Time for determination and report.
- 206.68 Public report.

**Subpart G--Investigations For Action in Response to Trade Diversion;
Reviews of Action Taken**

§ 206.61 Applicability of subpart.

The provisions of this subpart G apply to investigations under section 422(b) and/or reviews under section 422(j) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.62 Who may file a petition.

A petition for an investigation under section 422(b) of the Trade Act may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

§ 206.63 Contents of petition.

A petition under section 422(b) of the Trade Act shall include specific information in support of the claim that an action described in section 422(c) of the Trade Act has caused, or threatens to cause, a significant diversion of trade into the domestic market of the United States. To comply with that requirement and the requirements in paragraphs (a) through (f) of this section, the petition shall include all relevant information that is reasonably available to the petitioner with due diligence. The petition shall include the following information:

(a) **Product description.** The name and description of the imported product concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the domestic product concerned;

(b) **Representativeness.** (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic product is produced;

(2) The percentage of domestic production of the domestic product that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and

(3) The names and locations of all other producers of the domestic product known to the petitioner;

(c) Description of the action. A description of the action or actions, as defined in section 422(c) of the Trade Act, that allegedly has caused or threatens to cause a significant diversion of trade into the domestic market of the United States;

(d) Trade diversion data. (1) The actual or imminent increase in United States market share held by such imports from the People's Republic of China;

(2) The actual or imminent increase in volume of such imports into the United States;

(3) The nature and extent of the action taken or proposed by the WTO member concerned;

(4) The extent of exports from the People's Republic of China to that WTO member and to the United States;

(5) The actual or imminent changes in exports to that WTO member due to the action taken or proposed;

(6) The actual or imminent diversion of exports from the People's Republic of China to countries other than the United States;

(7) Cyclical or seasonal trends in import volumes into the United States of the products at issue; and

(8) Conditions of demand and supply in the United States market for the products at issue;

(e) Import data. Any import data available to the petitioner that will aid the Commission in examining, pursuant to section 422(d)(2) of the Trade Act, the changes in imports into the United States from the People's Republic of China since the time that the WTO member commenced the investigation that led to a request for consultations described in section 422(a) of the Act; and

(f) Relief sought and purpose thereof. A statement describing the import relief sought under section 422(h) of the Trade Act and the purpose thereof.

§ 206.64 Institution of investigation or review; publication of notice; and availability for public inspection.

(a) Paragraphs (a) and (b) in § 206.3 govern the institution of an investigation under section 422(b) of the Act and the publication of a FEDERAL REGISTER notice concerning the investigation. Following receipt of notification that the WTO member or members involved have notified the Committee on Safeguards of the WTO of a modification in the action taken by them against the People's Republic of China pursuant to consultation referred to in section 422(a) of the Act, the Commission will promptly conduct a review under section 422(j) of the Act regarding the continued need for action taken under section 422(h) of the Act. The Commission also will publish notice of the review in the FEDERAL REGISTER.

(b) The Commission will make available for public inspection the notification document that prompted a review under paragraph (a) of this section, excluding any confidential business information in the document. Paragraph (c) in § 206.3 governs the availability for public inspection of a petition, request, resolution, or motion that prompted the Commission to institute an investigation under section 422(b) of the Act.

§ 206.65 Public hearing.

Public hearings in investigations under section 422(b) of the Act are provided for in § 206.5(b).

§ 206.66 Limited disclosure of certain confidential business information under administrative protective order.

In an investigation under section 422(b) of the Trade Act, the Secretary shall make confidential business information available to authorized applicants, subject to the provisions of § 206.17.

§ 206.67 Time for determination and report.

(a) In an investigation under section 422(b) of the Trade Act, the Commission will transmit its determination under that section of the Act to the President and the Trade Representative at the earliest practical time, but not later than 45 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be. The Commission shall issue and transmit its report on the determination not later than 10 days after the determination is issued.

(b) In a review under section 422(j) of the Trade Act, the Commission will report its determination to the President not later than 60 days after the notification described in that section of the Act.

§ 206.68 Public report.

Upon making a report to the President of the results of an investigation under section 422(b) or a review under section 422(j) of the Trade Act, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

By Order of the Commission.

Marilyn R. Abbott
Acting Secretary

Issued: February 15, 2002