

Subpart C—Investigations Relating to a Surge in Imports From a NAFTA Country

§ 206.21 Applicability of subpart.

This subpart C applies specifically to investigations under section 312(c) of the NAFTA Implementation Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.22 Definition applicable to subpart C.

For the purposes of this subpart, the term *surge* means a significant increase in imports over the trend for a recent representative base period.

§ 206.23 Who may file a request.

If the President, under section 312(b) of the NAFTA Implementation Act, has excluded imports from a NAFTA 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.

§ 206.24 Contents of request.

The request for an investigation shall include the following information:

(a) The identity of the entity submitting the request; a description of the relief action the effectiveness of which is allegedly being undermined; and a description of the imported article, identifying the United States tariff provision under which it is classified, and the name of the country or countries from which the surge in imports is alleged to be coming;

(b) The information required in § 206.14(b) of this subpart concerning representativeness of the entity filing the request;

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

(d) Information supporting the claim that such surge in imports undermines the effectiveness of the relief action.

§ 206.25 Time for reporting.

The Commission will submit the findings of its investigation to the President no later than 30 days after the request is received.

§ 206.26 Public report.

Upon making a report to the President of the results of an investigation to which this subpart C relates, the Commission will make such report public (with the exception of any confidential business information) and cause a summary thereof to be published in the FEDERAL REGISTER.

Subpart D—Investigations Relating to Bilateral Safeguard Actions

§ 206.31 Applicability of subpart.

This subpart D applies specifically to investigations under section 302(b) of the NAFTA Implementation Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.32 Definitions applicable to subpart D.

For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

(a) *Critical circumstances* mean such circumstances as are described in section 202(b)(3)(B) of the Trade Act;

(b) *Perishable agricultural product* means any agricultural article or citrus product, including livestock, which is the subject of monitoring pursuant to section 202(d) of the Trade Act.

§ 206.33 Who may file a petition.

(a) *In general.* A petition under this subpart D 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 a Canadian or Mexican article that is allegedly, as a result of the reduction or elimination of a duty provided for under the North American Free Trade Agreement, being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article alone constitute a substantial cause of serious injury, or

(except in the case of a Canadian article) a threat of serious injury, to such domestic industry.

(b) *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 Canada or Mexico 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.

(c) The President is authorized to provide import relief with respect to an article from Canada or Mexico during the period provided for in section 305(a) of the NAFTA Implementation Act; the President may provide relief after the expiration of this period, but only if the Government of Canada or Mexico, as the case may be, consents to such provision (see section 305(b) of the NAFTA Implementation Act).

§ 206.34 Contents of petition.

A petition under this Subpart D shall include specific information in support of the claim that, as a result of the reduction or elimination of a duty provided for under the North American Free Trade Agreement, a Canadian or Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury, or (except in the case of a Canadian article) a threat of serious injury, to the domestic industry producing an article that is like or directly competitive with the imported article. Such petition shall state whether provisional relief is sought because *critical circumstances* exist or because the imported article is a *perishable agricultural product*. In addition, such petition 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:

(a) *Product description.* The name and description of the imported article 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 like or directly competitive domestic article 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 article is produced;

(2) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

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

(c) *Import data.* Import data for at least each of the most recent 5 full years that form the basis of the claim that the Canadian or Mexican article concerned is being imported in increased quantities in absolute terms;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to serious injury, data indicating:

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

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

(iii) Significant unemployment or underemployment within the industry; and/or

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

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity,