

**§ 207.68**

**§ 207.68 Final comments on information.**

(a) The Commission shall specify a date after the filing of posthearing briefs on which it will disclose to all parties to the five-year review all information it has obtained on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 207.7.

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.67. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double spaced and single-sided, on stationery measuring 8½×11 inches. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

**§ 207.69 Publication of determinations.**

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

**19 CFR Ch. II (4-1-04 Edition)**

**Subpart G—Implementing Regulations for the North American Free Trade Agreement**

**AUTHORITY:** Sec. 777(d) of the Tariff Act of 1930 (19 U.S.C. 1677f (d)); secs. 402(g), 405 of the North American Free Trade Agreement Implementation Act (107 Stat. 2057, Pub. L. 103-182, Dec. 8, 1993).

**SOURCE:** 59 FR 5097, Feb. 3, 1994, unless otherwise noted.

**§ 207.90 Scope.**

This subpart sets forth the procedures and regulations for implementation of Article 1904 of the North American Free Trade Agreement under the Tariff Act of 1930, as amended by title IV of the North American Free Trade Agreement Implementation Act (19 U.S.C. 1516a and 1677f). These regulations are authorized by section 402(g) of the North American Free Trade Agreement Implementation Act and 19 U.S.C. 1335.

**§ 207.91 Definitions.**

As used in this subpart—

*Administrative Law Judge* means the United States Government employee appointed under section 310(f) of title 5 of the United States Code to conduct proceedings under this part in accordance with section 554 of title 5 of the United States Code;

*Agreement* means the North American Free Trade Agreement entered into among Canada, the United States of America and the United Mexican States ("Mexico"); or, with respect to binational panel proceedings between Canada and the United States underway as of the date of enactment of the Agreement, or any binational panel proceedings that may proceed between the United States and Canada following any withdrawal from the Agreement by the United States or Canada, the United States-Canada Free Trade Agreement entered into between the Government of Canada and the Government of the United States of America, effective as of January 1, 1989;

*Article 1904 Rules* means the Rules of Procedure for Article 1904 Binational Panel Reviews adopted by the United States of America, Canada and Mexico pursuant to the Agreement, or where applicable under the Agreement, the

Rules of Procedure for Article 1904 Binational Panel Reviews adopted by the United States of America and Canada pursuant to the United States-Canada Free Trade Agreement, as amended;

*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 Article 1904 Rules;

*Counsel* means persons described in the definition of *counsel of record* in Rule 3 of the Article 1904 Rules or the 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 or delivered in person;

*Days* means calendar days, but if a deadline falls on a weekend or United States federal holiday, it shall be extended to the next working day;

*Extraordinary challenge committee* means the committee established pursuant to Annex 1904.13 of the Agreement to review decisions of a panel or conduct of a panelist;

*ECC Rules* means the Rules of Procedure for Article 1904 Extraordinary Challenge Committees adopted by the United States of America, Canada and Mexico, or where applicable, the Rules of Procedure for Article 1904 Extraordinary Challenge Committees adopted by the United States of America and Canada pursuant to the United States-Canada Free Trade Agreement, as amended;

*Final determination*, means "final determination" under Article 1911 of the Agreement;

*Free Trade Area Country* means the "free trade area country" as defined in 19 U.S.C. 1516a(f)(10);

*Investigative attorney* means an attorney designated by the Office of Unfair Import Investigations to engage in inquiries and proceedings under 19 CFR 207.100 *et seq.*

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

*NAFTA Act* means the North American Free Trade Agreement Implementation Act, Pub. L. 103-182 (December 8, 1993);

*Notice of Appearance* means the notice of appearance provided for by Article 1904 Rules or by the ECC Rules;

*Panel review* means review of a final determination pursuant to chapter 19 of the Agreement, including review by an extraordinary challenge committee;

*Party* means, for the purposes of 19 CFR 207.100 through 207.120, either the investigative attorney(ies) or the charged party(ies);

*Person* means, for the purposes of 19 CFR 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;

*Relevant FTA Secretary* means the Secretary referred to in Article 1908 of the Agreement;

*Secretariat* means the Secretariat established pursuant to Article 2002 of

the Agreement and includes the Secretariat sections located in Canada, the United States, and Mexico;

*Service address* means the facsimile number, if any, and address of the counsel of record for a person or, where a person is not represented by counsel, the facsimile number, if any, and address set out by a person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served or, where a Change of Service Address has been filed by a person, the facsimile number, if any, and address set out as the service address in that form;

*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;

Except as otherwise provided in this subpart, the definitions set forth in the Article 1904 Rules and the ECC Rules are applicable to this subpart and to any protective orders issued pursuant to this subpart.

**§ 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 Department of Commerce in its regulations at 19 CFR part 356.

(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 Department of Commerce in its regulations at 19 CFR part 356.

**§ 207.93 Protection of proprietary information during panel and committee proceedings.**

(a) *Requests for protective orders.* A request for access to proprietary information pursuant to 19 U.S.C. 1677f(f)(1) shall be made to the Secretary of the Commission.

(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 these regulations and such other conditions imposed upon them by the Commission:

(1) The members of a binational panel or an extraordinary challenge committee, any assistant to a member, court reporters and translators;

(2) Counsel and professionals, provided that the counsel or professional does not participate in competitive decision-making, as defined in *US Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for the person represented or for any person that would gain a competitive advantage through knowledge of the proprietary information sought;

(3) Clerical persons who are employed or retained by and under the direction and control of a person described in paragraph (b) (1), (2), (5) or (6) of this section who has been issued a protective order, if such clerical persons:

(i) Are not involved in the competitive decision-making, or the support functions for the competitive decision-making, of a participant to the proceeding or of any person that would gain a competitive advantage through knowledge of the proprietary information sought, and

(ii) Have agreed to be bound by the terms set forth in the application for protective order of the person who retains or employs him or her;

(4) The Secretaries of the United States, Canadian and Mexican sections of the Secretariat and members of their staffs;

(5) Any officer or employee of the United States Government who the United States Trade Representative informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees; and

(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 Commerce and Industrial Development, as the case may be, informs the Commission Secretary needs access to