

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation****Delta-Mendota Canal/California Aqueduct Intertie, Alameda County, California**

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS) and notice of public scoping meetings.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation) intends to prepare an EIS for the Delta-Mendota Canal/California Aqueduct Intertie (Intertie). A primary purpose of the Intertie is to allow for operation and maintenance activities on the Tracy pumping plant and fish facility, the Delta-Mendota Canal, and the O'Neill pumping plant and intake canal. A Draft EIS is expected to be available in May 2007.

The Intertie consists of constructing and operating a pumping plant and pipeline connection between the Delta Mendota Canal (DMC) and the California Aqueduct. The Intertie would be used in a number of ways to achieve multiple benefits, including meeting current water supply demands, allowing for the maintenance and repair of the Central Valley Project (CVP) Delta export and conveyance facilities, and providing operational flexibility to respond to emergencies related to both the CVP and State Water Project (SWP).

Reclamation decided to withdraw the recently published Finding of No Significant Impact and Environmental Assessment (EA) for the Intertie and to initiate an EIS based on public challenge to the EA content and conclusions.

**DATES:** A series of public scoping meetings will be held to solicit public input on the alternatives, concerns, and issues to be addressed in the EIS. The meeting dates are as follows:

- Tuesday, August 1, 2006, 10 a.m. to 12 Noon, Sacramento, CA.
- Thursday, August 3, 2006, 6 to 8 p.m., Stockton, CA.

Written comments on the scope of the EIS should be mailed to Reclamation at the address below by September 4, 2006.

**ADDRESSES:** The public scoping meeting locations are:

- *Sacramento*—Federal Building, 2800 Cottage Way, Cafeteria Rooms C-1001 and C-1002, Sacramento, CA 95825.
- *Stockton*—Cesar Chavez Central Library, 605 North El Dorado Street,

Steward-Hazelton Room, Stockton, CA 95202.

Written comments on the scope of the EIS should be sent to: Ms. Sammie Cervantes, Bureau of Reclamation, 2800 Cottage Way, MP-730, Sacramento, CA 95825.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sharon McHale, Reclamation Project Manager, at the above address, at 916-978-5086, TDD 916-978-5608, or via fax at 916-978-5094 or e-mail at [smchale@mp.usbr.gov](mailto:smchale@mp.usbr.gov).

**SUPPLEMENTARY INFORMATION:** The project area is in an unincorporated area of the San Joaquin Valley in Alameda County, west of the city of Tracy. The site is in a rural area zoned for general agriculture and is under federal and state ownership. The Intertie would be located at milepost 7.2 of the DMC, connecting with milepost 9.1 of the California Aqueduct, where they are approximately 500 feet apart.

The Intertie would include a 450 cubic feet per second (cfs) pumping plant at the DMC that would allow up to 400 cfs to be pumped from the DMC to the California Aqueduct through an underground pipeline. Because the aqueduct is located approximately 50 feet higher in elevation than the DMC, up to 900 cfs could be conveyed from the aqueduct to the DMC using gravity flow.

The Intertie would be owned by the Federal government and operated by the San Luis and Delta Mendota Water Authority (Authority). An agreement among Reclamation, the California Department of Water Resources, and the Authority would identify the responsibilities and procedures for operating the Intertie. A permanent easement would be obtained by Reclamation where the Intertie alignment crosses state property.

If special assistance is required at the scoping meetings, please contact Ms. Sammie Cervantes at 916-978-5189, TDD 916-978-5608, or via e-mail at [scervantes@mp.usbr.gov](mailto:scervantes@mp.usbr.gov). Please notify Ms. Cervantes as far in advance of the meetings as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 916-978-5608.

Written comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in

which respondent's identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Dated: May 10, 2006.

**Frank Michny,**

*Regional Environmental Officer, Mid-Pacific Region.*

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**INTERNATIONAL TRADE COMMISSION****Summary of Commission Practice Relating to Administrative Protective Orders**

**AGENCY:** U.S. International Trade Commission.

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

**SUMMARY:** Since February 1991, the U.S. International Trade Commission ("Commission") has issued an annual report on the status of its practice with respect to violations of its administrative protective orders ("APOs") in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under Title VII and violations of the Commission's rules including the rule on bracketing business proprietary information ("BPI") (the "24-hour rule"), 19 CFR 207.3(c). There were no completed investigations of rule violations during calendar year 2005. This notice provides a summary of investigations completed during calendar year 2005 of breaches in proceedings under Title VII, section 421 of the Trade Act of 1974, as amended, section 337 of the Tariff Act of 1930, as amended, and one conducted under the procedures for imposing sanctions for violation of the provisions of a protective order issued during NAFTA dispute resolution panel and Extraordinary Challenge Committee proceedings. The Commission intends that this report inform representatives of

parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding types of actions the Commission has taken.

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:**

Representatives of parties to investigations or other proceedings conducted under Title VII of the Tariff Act of 1930, sections 202 and 204 of the Trade Act of 1974, section 421 of the Trade Act of 1974, section 337 of the Tariff Act of 1930, and NAFTA Article 1904.13, 19 U.S.C. 1516a (g)(7)(A) may enter into APOs that permit them, under strict conditions, to obtain access to BPI (Title VII) or confidential business information ("CBI") (section 421, sections 201-204, and section 337) of other parties. See 19 U.S.C. 1677f; 19 CFR 207.7; 19 CFR 207.100, *et. seq.*; 19 U.S.C. 2252(i); 19 U.S.C. 2451a(b)(3); 19 CFR 206.17; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34. The discussion below describes APO breach investigations that the Commission has completed during calendar year 2005, including a description of actions taken in response to these breaches.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. See 56 *FR* 4846 (Feb. 6, 1991); 57 *FR* 12,335 (Apr. 9, 1992); 58 *FR* 21,991 (Apr. 26, 1993); 59 *FR* 16,834 (Apr. 8, 1994); 60 *FR* 24,880 (May 10, 1995); 61 *FR* 21,203 (May 9, 1996); 62 *FR* 13,164 (March 19, 1997); 63 *FR* 25064 (May 6, 1998); 64 *FR* 23355 (April 30, 1999); 65 *FR* 30434 (May 11, 2000); 66 *FR* 27685 (May 18, 2001); 67 *FR* 39425 (June 7, 2002); 68 *FR* 28256 (May 23, 2003); 69 *FR* 29972 (May 26, 2004); 70 *FR* 42382 (July 25, 2005). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2005 a fourth edition of *An Introduction to Administrative Protective Order Practice*

*in Import Injury Investigations* (Pub. No. 3755). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, tel. (202) 205-2000 and on the Commission's Web site at <http://www.usitc.gov>.

**I. In General**

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

(1) Not divulge any of the BPI obtained under this APO or otherwise obtained in this investigation and not otherwise available to him or her, to any person other than—

(i) Personnel of the Commission concerned with the investigation

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who: (a) Are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decision making for an interested party which is a party to the investigation; and (d) have signed the acknowledgment for clerical personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO or otherwise obtained in this investigation without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials (e.g., documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may

result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI

(iii) if the document is to be filed by a deadline, with each page marked "Bracketing of BPI not final for one business day after date of filing," and

(iv) if by mail, within two envelopes, the inner one sealed and marked "Business Proprietary Information—To be opened only by [name of recipient]", and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (e.g., change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

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

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the

current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate. APOs in investigations other than those under Title VII contain similar, though not identical, provisions.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of CBI and BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI and CBI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

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

## II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation has commenced and that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of the General

Counsel (OGC) prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the possible breacher's views on whether a breach has occurred.<sup>1</sup> If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that although a breach has occurred, sanctions are not warranted, and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction.

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI that the Commission is a reliable protector of BPI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, "[T]he effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation." H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

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

Commission considers whether there are prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

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

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

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

<sup>1</sup> Procedures for inquiries to determine whether a prohibited act such as a breach has occurred and for imposing sanctions for violation of the provisions of a protective order issued during NAFTA panel or committee proceedings are set out in 19 CFR 207.100–207.120. Those investigations are initially conducted by the Commission's Office of Unfair Import Investigations. During 2005, one investigation regarding a possible violation of a protective order issued during a NAFTA panel or committee proceeding was completed under those procedures.

Counsel participating in Title VII investigations have reported to the Commission potential breaches involving the electronic transmission of public versions of documents. In these cases, the document transmitted appears to be a public document with BPI omitted from brackets. However, the BPI is actually retrievable by manipulating codes in software. The Commission has found that the electronic transmission of a public document containing BPI in a recoverable form was a breach of the APO.

The Commission advised in the preamble to the notice of proposed rulemaking in 1990 that it will permit authorized applicants a certain amount of discretion in choosing the most appropriate method of safeguarding the confidentiality of the BPI. However, the Commission cautioned authorized applicants that they would be held responsible for safeguarding the confidentiality of all BPI to which they are granted access and warned applicants about the potential hazards of storage on hard disk. The caution in that preamble is restated here:

[T]he Commission suggests that certain safeguards would seem to be particularly useful. When storing business proprietary information on computer disks, for example, storage on floppy disks rather than hard disks is recommended, because deletion of information from a hard disk does not necessarily erase the information, which can often be retrieved using a utilities program. Further, use of business proprietary information on a computer with the capability to communicate with users outside the authorized applicant's office incurs the risk of unauthorized access to the information through such communication. If a computer malfunctions, all business proprietary information should be erased from the machine before it is removed from the authorized applicant's office for repair. While no safeguard program will insulate an authorized applicant from sanctions in the event of a breach of the administrative protective order, such a program may be a mitigating factor. Preamble to notice of proposed rulemaking, 55 FR 24100, 24103 (June 14, 1990).

In the past several years, the Commission completed APOB investigations which involved members of a law firm or consultants working with a firm who were granted access to APO materials by the firm although they were not APO signatories. In these cases, the firm and the person using the BPI mistakenly believed an APO application had been filed for that person. The Commission determined in all of these cases that the person who was a non-signatory, and therefore did not agree to be bound by the APO, could not be found to have breached the APO.

Action could be taken against these persons, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all cases in which action was taken, the Commission decided that the non-signatory was a person who appeared regularly before the Commission and was aware of the requirements and limitations related to APO access and should have verified his or her APO status before obtaining access to and using the BPI. The Commission notes that section 201.15 may also be available to issue sanctions to attorneys or agents in different factual circumstances where they did not technically breach the APO but where their actions or inactions did not demonstrate diligent care of the APO materials even though they appeared regularly before the Commission and were aware of the importance the Commission placed on the care of APO materials. In 2005 there was one investigation where the Commission considered issuing a sanction to an attorney under section 201.15, but determined that there was not good cause, and one investigation where a private letter of reprimand was issued to an attorney for good cause shown, pursuant to section 201.15.

Also in recent years the Commission has found the lead attorney to be responsible for breaches where he or she failed to provide adequate supervision over the handling of BPI. Lead attorneys should be aware that their responsibilities for overall supervision of an investigation, when a breach has been caused by the actions of someone else in the investigation, may lead to a finding that the lead attorney has also violated the APO. The Commission has found that a lead attorney did not violate the APO in cases where his delegation of authority was reasonable. A prior breach by a subordinate attorney would suggest that delegation of authority to that attorney may not be reasonable.

### III. Specific Investigations in Which Breaches Were Found

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

the Commission's inability to disclose particular facts more fully.

*Case 1.* The Commission determined that a lead attorney, a second attorney, and an economist breached the APO by failing to redact BPI from a public statement filed on behalf of their client. The BPI consisted of the position on the petition taken by a non-petitioner member of the domestic industry. Although the persons accused of breaching the APO argued that the information was public information, the Commission found that it was BPI at the time the information was left unredacted in their client's statement. The Commission found that the lead attorney committed a second breach by allowing access to the BPI by a third attorney in the firm who was not a signatory to the APO.

The Commission issued private letters of reprimand to the first two attorneys and the economist. In reaching its decision, the Commission considered the existence of mitigating factors, including the unintentional nature of the breaches, the fact that some corrective measures were taken immediately, and the absence of any prior breaches during the previous two year period usually considered by the Commission for purposes of determining sanctions. The Commission noted that the two attorneys and the economist did not provide the Commission with information indicating that non-signatories who had access to the BPI did not read the information. Based on the information available, including the amount of time the BPI was available to its client, the Commission presumed that the BPI was read by non-signatories to the APO.

The Commission also issued a private letter of reprimand by finding good cause under Commission rule 201.15(a) to sanction the third attorney, who failed to apply for APO access before handling BPI and for his role in supervising the preparation of the public statement containing BPI that was the subject of this APO breach investigation. The Commission considered the unintentional nature of the breach, the fact that some corrective measures were immediately taken, the fact that his firm had internal APO procedures in place, and the absence within the past two years of any prior breaches or other rule 201.15 allegations involving the use of BPI as a non-signatory to an APO. The Commission also gave consideration to the presumption that unauthorized persons read the BPI.

*Case 2.* A law firm that was representing a foreign government in a World Trade Organization (WTO)

dispute settlement proceeding provided its client with a confidential version of a Commission remand opinion on the same product in dispute. This opinion was used as one of many exhibits attached to the foreign government's first brief in the WTO dispute. Consequently, the document became available for about a month to WTO officials and their staffs, third party countries, and the government filing the document. The law firm did not discover the inclusion of the confidential opinion, but was instead informed by its client, the foreign government.

Inquiries with the law firm did not extract clear information on how the confidential opinion had ended up as an exhibit in the brief. Based on the information that was available, the Commission decided to issue a private letter of reprimand to the lead attorney for the firm in the Commission investigation that resulted in the Commission remand opinion. The Commission found that as lead attorney under the APO, the attorney had overall responsibility for the conduct of the investigation at his firm, including the safeguarding of BPI. The Commission reached its decision to issue the private letter of reprimand after giving consideration to the existence of several mitigating factors including the unintentional nature of the breach, the fact that appropriate corrective measures were taken immediately, and the absence of any prior breaches in the previous two years. The Commission also gave consideration to the aggravating factor that the BPI in question may have been viewed by unauthorized persons. The Commission found that even though the BPI constituted a very small part of a large submission, the large number of parties that had received it and the length of time they had the BPI, caused the Commission to presume that the BPI was read by non-signatories to the APO.

The Commission also determined that there was good cause under Commission rule 201.15(a) to sanction two attorneys in the firm who were not on the Commission APO but were representing the foreign government in the WTO dispute settlement proceeding for the use of the confidential Commission remand opinion as an exhibit in the foreign government's brief. These attorneys were experienced in the international trade area and should have taken greater care to check the exhibits that were provided to the foreign government for inclusion in its brief. The Commission issued private letters of reprimand to these attorneys after considering the same mitigating

and aggravating factors noted with regard to the first attorney.

*Case 3.* The Commission issued warning letters to two attorneys for a breach of the APO when a package containing CBI on an electronic disk was misplaced, and recovered unopened after 14 days, by a courier service used by their law firm. The two attorneys, the lead attorney and a partner in the firm who was most directly involved in the day to day decisions including the handling of the APO materials, were found to have breached because the APO materials in the package were made available to unauthorized persons during the period the package was misplaced, although the package was not opened and the materials were not viewed by unauthorized persons. The Commission also found that the materials were not stored in accordance with the requirements of the APO during the period they were misplaced. There had been no previous problems with the courier service prior to this particular incident.

The Commission considered the attorneys' argument that the Commission was time-barred under its rules from finding that a breach occurred. The Commission's rules require that the APOB investigation be commenced within 60 days of the alleged breach. The attorneys mistakenly believed that the investigation began when they were notified by letter about the APOB investigation. Instead, an APOB investigation begins when the Commission Secretary opens a breach file and notifies the appropriate Commission offices that a breach file has been opened. This was done well within the 60-day requirement.

The Commission issued warning letters rather than a sanction after giving consideration to the facts that the breach was unintentional, the attorneys had no record of prior breaches, the breach was reported promptly, and there was no evidence that the APO materials were reviewed by unauthorized persons.

After the Commission issued the warning letters, the attorneys filed a request that the Commission reconsider its decision because a Commission decision not available to the attorneys at the time they filed their responses, but reached before the decision in their case, was inconsistent with the Commission's decision in their case. The Commission decided to reconsider its earlier decision regarding the attorneys because they did not have the other Commission decision available to them at the time they filed their responses. However, the Commission

concluded that the decisions in question were not inconsistent and, accordingly, denied their request to reverse the decision.

*Case 4.* The Commission issued a private letter of reprimand to an attorney who was responsible for reviewing the public version of a document that was filed with the Commission and served on other persons with CBI obtained under the APO left in brackets in a footnote. The Commission did not accept counsel's argument that the submitter's counsel had waived confidential treatment and that the information was not CBI. The attempted waiver was obtained after the alleged breach; the attorney offered no evidence that the CBI was publicly available at the time of the alleged breach; the CBI in question was contained in the staff report and was the work product of a Commission staff member; and the information was treated as CBI throughout the Commission investigation, even after the alleged breach.

The Commission reached its decision to sanction the attorney after giving consideration to the unintentional nature of the breach, the fact that corrective measures were taken immediately, and the fact that the law firm had changed its practices since the breach to increase the level of review. The Commission found two aggravating circumstances present. First, the Commission presumed that the CBI was viewed by unauthorized persons, including the firm's clients and other persons to whom the firm sent the document, as well as by unauthorized persons who may have viewed the CBI while it was in the Commission's public file. Second, the breach was discovered by the Commission's staff.

*Case 5.* The Commission issued a private letter of reprimand to the lead attorney and warning letters to two attorneys and a legal assistant/non-attorney APO records coordinator for failure to destroy or return materials which contained BPI obtained under the APO in a timely manner. The Commission issued a private letter of reprimand to the lead attorney after considering as mitigating circumstances that the BPI was not disclosed to any unauthorized persons, the breach was reported promptly upon its discovery, and that the lead attorney was not aware of serious health problems affecting the attorney who held the day-to-day responsibility for APO compliance in the investigation. The aggravating circumstances considered were the fact that this was the lead attorney's third APO breach in a relatively short period of time and the fact that the firm had

retained the BPI materials for a long period of time after they should have been returned or destroyed.

The Commission issued warning letters to the two attorneys after considering that the BPI was not disclosed to any unauthorized person and the two attorneys had previously not violated an APO. The Commission found an additional mitigating factor for the first attorney, who was originally responsible for the day-to-day conduct of the case, in that he had been experiencing symptoms consistent with a potentially life-threatening medical condition. The Commission found an additional mitigating factor for the second attorney, who had taken over responsibility for the investigation after the first attorney left the firm, in that he was not responsible for the APO compliance at the time the breach commenced. The Commission issued a warning letter to the legal assistant, although he had received a warning letter within the previous two years, after considering that the legal assistant was acting under the supervision of an attorney during the period in question, that BPI was not disclosed to any unauthorized person; and that the breach was reported promptly once it was discovered by the firm. The Commission found that the duration of the breach was an aggravating factor for the two attorneys and the legal assistant.

The Commission also considered whether there was good cause under Commission rule 201.15(a) to sanction an attorney in the firm who was not on the APO but was the attorney-APO coordinator for the firm. The Commission determined that there was not good cause to sanction the attorney after reviewing the description of his duties as the attorney-APO coordinator.

*Case 6.* The Commission issued warning letters to two attorneys, a legal assistant, and a professional assistant for failure to remove all bracketed BPI from the public version of a brief. The confidential brief had been rebracketed as authorized by the Commission's 24-hour rule. During the efforts to remove the BPI from those brackets for the public version of the brief, the computer program redacting the BPI failed. The program had previously been accurate in its redaction of BPI from brackets. Consequently, under the constraint of limited time, the document was redacted manually. In spite of the efforts of the two attorneys and the assistants, BPI remained in the brief and was filed with the Commission. Before the brief was sent to other parties, the error was found. One attorney contacted the Commission and immediately requested that the brief not be entered into EDIS.

The redaction was corrected before the brief was sent to the other parties.

A warning letter and not a sanction was issued because the breach was unintentional; the firm took immediate steps to notify the Commission and to rectify the matter and protect the BPI; the firm revamped its APO procedures to allow more time for the redacting after adding brackets under the Commission's 24-hour rule; and none of the participants in the breach had previously breached a Commission APO. In addition, there was no information suggesting that any unauthorized person had reviewed the BPI.

*Case 7.* The Commission issued a warning letter to one attorney who had been responsible for preparing the public version of a draft brief which contained several pages of unredacted BPI and which he sent to his clients for review. The Commission decided not to sanction the attorney because he had no prior breaches within the previous two years, the breach was unintentional, prompt action was taken to remedy the breach, and none of the non-signatories who received the draft containing BPI read the document. A second attorney who responded to the original inquiry concerning a possible breach was found not to have breached because he was only involved in drafting the original brief but not involved in preparing the public version of that document.

*Case 8.* The Commission considered whether a number of firm personnel had been responsible for a breach of the APO by filing with the Commission and serving on the parties listed on the public service list a public version of a brief containing BPI that was unbracketed and unredacted on one page of the brief. The Commission found that all individuals in the firm except a senior associate were not responsible for the breach.

The Commission found that the senior associate was responsible for the breach and issued a warning letter. The Commission decided not to sanction the attorney because this was the only breach in which he was involved within the period generally examined by the Commission for purposes of determining sanctions; the breach was unintentional; the breach was discovered by the firm; prompt action was taken to remedy the breach and the record in the APOB investigation suggested that the BPI likely was not revealed to unauthorized parties. Each of the attorneys who were served with the public version of the brief were signatories to the APO. In addition, each attorney served with the brief was notified very quickly about the mistake,

and was provided with a replacement page and a request that they destroy the page containing the BPI. Each firm confirmed that this was done and that the brief containing the BPI was not copied or otherwise disclosed to non-signatory persons.

The lead attorney was not found to have breached even though he signed the public version of the brief containing the BPI. At the time he signed the brief, he instructed the senior associate to redact the BPI before filing, but the senior associate failed to do this. The Commission found that the lead attorney's delegation to the senior associate to make the final corrections to the brief was reasonable, especially in light of the associate's years of experience practicing before the Commission with no prior breaches.

*Case 9.* The Commission issued a warning letter to an attorney who was responsible for transmitting an electronic version of a document containing BPI to a client who was a non-signatory to the APO. Before transmitting the document, the attorney had converted the original Word document to a .pdf file after using a "white-out" program that had visibly removed the BPI from the document. The client, in an effort to type notes on the document, converted the document back to Word which caused the BPI to become visible.

In determining to issue a warning letter instead of a sanction, the Commission considered the fact that the breach was inadvertent, the attorney endeavored at all times to abide by the APO; the attorney's office and the client took immediate steps to remedy the situation; and the firm implemented new procedures regarding the creation of non-confidential versions of documents containing business proprietary information. The client only read portions he annotated and never viewed the BPI before sending the document back to the attorney.

*Case 10.* The Commission initiated an APOB investigation into possible breaches by three attorneys. Two attorneys in a law firm which represented respondents in the underlying Commission investigation were issued private letters of reprimand for two breaches. The first breach was the failure to comply in a timely manner with the return or destroy and certification requirements of the APO after judicial proceedings ended in connection with the petitioner's appeal of the Commission determination. The certificate of destruction was filed approximately three months after the judicial proceedings ended. The second breach was the failure to inform the

Commission that one of the two attorneys, who had been the lead attorney during the Commission investigation, had left the firm after the investigation had ended but before resulting litigation had been completed. The second of the two attorneys became the lead attorney for the duration of the appeals.

The Commission found that the first attorney, by failing to inform the Commission that he had left the law firm and should no longer be a signatory to the APO, retained an obligation to ensure that his former firm complied with the APO requirements for returning and destroying the materials. The Commission issued the private letter of reprimand to the first attorney after considering the mitigating factor that there was no disclosure of BPI to unauthorized persons. The Commission also considered two aggravating factors. First, it considered the fact that he was responsible for a second breach by not informing the Commission of his departure from the law firm. Second, he failed to expeditiously arrange for destruction or return of BPI upon learning of the breach from the Commission Secretary. In spite of his oral assurance that he would work with his former colleagues to cure the breach, he took no action until he received the Commission's letter of inquiry, over a month later.

The second attorney, who was the lead attorney during the time when the certificate of return or destruction should have been filed, failed to file it in a timely manner. He also breached the APO by not informing the Commission that the first lead attorney had left the firm. The Commission issued a private letter of reprimand to the second attorney after consideration of two mitigating factors: The lack of any disclosure of BPI to unauthorized persons and the fact that he took appropriate corrective measures immediately once he learned of the breach. The Commission also considered the fact that he was responsible for two breaches in this one investigation and the fact that when he took over as the lead attorney after the departure of the first attorney, he did not make efforts to review and comprehend the APO or the Commission's rules on handling APO materials to compensate for his inexperience with Commission investigations.

An attorney from a second law firm, which represented other respondents in the Commission investigation, certified to the destruction of all materials released under the APO thirty-two days after the firm representing the petitioner

filed its certificate of destruction of the APO materials. The petitioner filed its certificate a week after the time lapsed for filing a writ of certiorari to the Supreme Court. There is no specific time limit for returning or destroying the materials after an appeal has ended but the Commission considered whether the certificate was filed within a reasonable period of time. The Commission found that this attorney filed the certificate within a reasonable period of time and, therefore, did not breach the APO.

*Case 11.* The Commission investigated whether an attorney, an economist, and a secretary in a law firm had breached the APO when the secretary transmitted the confidential version of a brief to a client who was not a signatory to the APO. The Commission found that the attorney had not committed a breach even though he was the lead attorney and had signed the Acknowledgment for Clerical Personnel as the individual exercising direction and control. The attorney was not personally involved in giving directions and supervision to the secretary regarding the transmittal of the brief. Instead, the attorney had delegated responsibilities for portions of the Commission investigation to the economist and it was the economist who directed the secretary to mail the document and did not check the material before it was mailed. The delegation from the attorney to the economist was reasonable in that the economist had no previous breaches and was an experienced and fairly senior member of the firm's trade practice who had previously given similar assignments to the firm's clerical personnel.

The Commission found that the economist and the secretary were responsible for the breach and issued private letters of reprimand to them. The economist failed in his supervision of the secretary and the secretary, who had worked on Commission investigations for many years, had inappropriately mailed a confidential document to a non-signatory of the APO. In determining to sanction the economist and the secretary, the Commission considered the mitigating factors that they had no prior breaches within the previous two years, the breach was unintentional, and the firm took appropriate corrective measures once it learned of the breach. The Commission also considered the aggravating factor that the BPI in question was viewed by an unauthorized person.

*Case 12.* The lead attorney in a law firm filed a certificate of return or

destruction of APO materials 15 months after the conclusion of a Commission investigation after an associate in the firm discovered that the APO files remained in the firm's secure storage. No appeal had been taken so the deadline for the return or destruction of the materials was 60 days after the conclusion of the investigation. The lead attorney argued that the firm's policy laid the responsibility for ensuring that the return and destruction deadline was met with the most senior associate assigned to an investigation. In this case the associate in question had left the firm six months after the investigation had concluded but had sent a certification to the Commission upon leaving the firm that all APO materials in his personal possession were returned or destroyed. He argued that responsibility to return or destroy the materials held in the firm's secure storage was that of the lead attorney and the paralegal assigned to the investigation.

The Commission found that both the lead attorney and the associate were responsible for the failure to return or destroy the APO materials and to certify thereto within the deadline provided in the APO. The Commission determined to issue warning letters and not sanctions to the two attorneys after giving consideration to the nature of the violation and the facts that their failure to fully comply with the APO was unintentional, that this was the only failure to comply with an APO in which they were involved within the two year period generally examined by the Commission for purposes of determining sanctions, and that the BPI was fully protected and was not released to any third party while it remained at the firm. In addition, with regard to the lead attorney, he notified the Commission immediately upon discovering the belated destruction and he took further action by changing the firm's procedures to prevent future delays in complying with the return or destruction requirements of a Commission APO.

There were investigations in which no breach was found. For example, in one case no breach was found because the alleged BPI was otherwise publicly available at the time the public version of the pre-hearing brief containing the alleged BPI was filed; and in another case, no breach was found because the attorneys had applied to be subject to the APO on behalf of their new clients and the Secretary's office had approved the application before they filed a post hearing brief containing BPI they had acquired through their representation of another client.

By order of the Commission.

Issued: July 6, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6-10914 Filed 7-11-06; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-578]

### Certain Mobile Telephone Handsets, Wireless Communication Devices, and Components Thereof; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 9, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of QUALCOMM Incorporated of San Diego, California. A supplement to the complaint was filed on June 27, 2006. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile telephone handsets, wireless communication devices, and components thereof by reason of infringement of claims 1, 3, and 4 of U.S. Patent No. 5,452,473; claim 1 of U.S. Patent No. 5,590,408; claims 2, 7, and 8 of U.S. Patent No. 5,655,220; claims 1, 6, 9, 18, 23, and 24 of U.S. Patent No. 5,576,767; claims 3, 4, 13, 59, and 60 of U.S. Patent No. 5,542,104; and claims 1 and 7 of U.S. Patent No. 6,453,182. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD

terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2576.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on July 5, 2006, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile telephone handsets, wireless communication devices, or components thereof by reason of infringement of one or more of claims 1, 3, and 4 of U.S. Patent No. 5,452,473; claim 1 of U.S. Patent No. 5,590,408; claims 2, 7, and 8 of U.S. Patent No. 5,655,220; claims 1, 6, 9, 18, 23, and 24 of U.S. Patent No. 5,576,767; claims 3, 4, 13, 59, and 60 of U.S. Patent No. 5,542,104; and claims 1 and 7 of U.S. Patent No. 6,453,182, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—  
QUALCOMM Incorporated, 5775  
Morehouse Drive, San Diego, CA  
92121.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:  
Nokia Corporation, Keilalahdentie 2-4  
Espoo, P.O. Box 226, FIN-00045  
Nokia Group, Finland.

Nokia Inc., 6000 Connection Drive,  
Irving, Texas 75039.

(c) The Commission Investigative Attorney, party to this investigation, is David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: July 7, 2006.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6-10910 Filed 7-11-06; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[USITC SE-06-046]

### Sunshine Act Meeting; Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** July 20, 2006 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.