



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

United States Code Annotated
Title 19. Customs Duties
Chapter 4. Tariff Act of 1930
Subtitle IV. Countervailing and Antidumping Duties
Part IV. General Provisions (Refs & Annos)

19 U.S.C.A. § 1677f

§ 1677f. Access to information

Currentness

(a) Information generally made available

(1) Public information function

There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies.

(2) Progress of investigation reports

The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) Ex parte meetings

The administering authority and the Commission shall maintain a record of any ex parte meeting between--

(A) interested parties or other persons providing factual information in connection with a proceeding, and

(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding,

if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(4) Summaries; non-proprietary submissions

The administering authority and the Commission shall disclose--

(A) any proprietary information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

(b) Proprietary information

(1) Proprietary status maintained

(A) In general

Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than--

(i) to an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted or any review under this subtitle covering the same subject merchandise, or

(ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding negligence, gross negligence, or fraud under this subtitle.

(B) Additional requirements

The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by--

(i) either--

(I) a non-proprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(II) a statement that the information is not susceptible to summary accompanied by a statement of the reasons in support of the contention, and

(ii) either--

(I) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

(2) Unwarranted designation

If the administering authority of the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.

(3) Section 1675 reviews

Notwithstanding the provisions of paragraph (1), information submitted to the administering authority or the Commission in connection with a review under [section 1675\(b\)](#) or [1675\(c\)](#) of this title which is designated as proprietary by the person submitting the information may, if the review results in the revocation of an order or finding (or termination of a suspended investigation) under [section 1675\(d\)](#) of this title, be used by the agency to which the information was originally submitted in any investigation initiated within 2 years after the date of the revocation or termination pursuant to a petition covering the same subject merchandise.

(c) Limited disclosure of certain proprietary information under protective order

(1) Disclosure by administering authority or Commission

(A) In general

Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during a proceeding. Customer names obtained during any investigation which requires a determination under [section 1671d\(b\)](#) or [1673d\(b\)](#) of this title may not be disclosed by the administering authority under protective order until either an order is published under [section 1671e\(a\)](#) or [1673e\(a\)](#) of this title as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names under protective order during any such investigation until a reasonable time prior to any hearing provided under [section 1677c](#) of this title.

(B) Protective order

The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(C) Time limitation on determinations

The administering authority or the Commission, as the case may be, shall determine whether to make information available under this paragraph--

(i) not later than 14 days (7 days if the submission pertains to a proceeding under [section 1671b\(a\)](#) or [1673b\(a\)](#) of this title) after the date on which the information is submitted, or

(ii) if--

(I) the person that submitted the information raises objection to its release, or

(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under [section 1671b\(a\)](#) or [1673b\(a\)](#) of this title) after the date on which the information is submitted.

(D) Availability after determination

If the determination under subparagraph (C) is affirmative, then--

(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date; and

(ii) the business proprietary information submitted to the administering authority or the Commission after the date of the determination shall be served as required by subsection (d).

(E) Failure to disclose

If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.

(2) Disclosure under court order

If the administering authority denies a request for information under paragraph (1), then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that--

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

(d) Service

Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order; however, a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

(e) Repealed. Pub.L. 103-465, Title II, § 231(d)(1), Dec. 8, 1994, 108 Stat. 4897

(f) Disclosure of proprietary information under protective orders issued pursuant to the United States-Canada Agreement or the USMCA

(1) Issuance of protective orders

(A) In general

If binational panel review of a determination under this subtitle is requested pursuant to article 1904 of the United States-Canada Agreement or article 10.12 of the USMCA, or an extraordinary challenge committee is convened under Annex 1904.13 of the United States-Canada Agreement or chapter 10 of the USMCA, the administering authority or the Commission, as appropriate, may make available to authorized persons, under a protective order described in paragraph (2), a copy of all proprietary material in the administrative record made during the proceeding in question. If the administering authority or the Commission claims a privilege as to a document or portion of a document in the administrative record of

the proceeding in question and a binational panel or extraordinary challenge committee finds that in camera inspection or limited disclosure of that document or portion thereof is required by United States law, the administering authority or the Commission, as appropriate, may restrict access to such document or portion thereof to the authorized persons identified by the panel or committee as requiring access and may require such persons to obtain access under a protective order described in paragraph (2).

(B) Authorized persons

For purposes of this subsection, the term “authorized persons” means--

- (i) the members of, and the appropriate staff of, the binational panel or the extraordinary challenge committee, as the case may be, and the Secretariat,

- (ii) counsel for parties to such panel or committee proceeding, and employees, and persons under the direction and control, of such counsel,

- (iii) any officer or employee of the United States Government designated by the administering authority or the Commission, as appropriate, to whom disclosure is necessary in order to make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the Agreement or chapter 10 of the USMCA, and

- (iv) any officer or employee of the Government of a free trade area country (as defined in [section 1516a\(f\)\(9\)](#) of this title) designated by an authorized agency of such country to whom disclosure is necessary in order to make decisions regarding the convening of extraordinary challenge committees under chapter 19 of the Agreement or chapter 10 of the USMCA.

(C) Review

A decision concerning the disclosure or nondisclosure of material under protective order by the administering authority or the Commission shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such decision on any question of law or fact by an action in the nature of mandamus or otherwise.

(2) Contents of protective order

Each protective order issued under this subsection shall be in such form and contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall ensure that regulations issued pursuant to this paragraph shall be designed to provide an opportunity for participation in the binational panel proceeding, including any extraordinary challenge, equivalent to that available for judicial review of determinations by the administering authority or the Commission that are not subject to review by a binational panel.

(3) Prohibited acts

It is unlawful for any person to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of a protective order issued under this subsection or to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of an undertaking entered into with an authorized agency of a free trade area country (as defined in [section 1516a\(f\)\(9\)](#) of this title) to protect proprietary material during binational panel or extraordinary challenge committee review pursuant to article 1904 of article 1904 of¹ the United States-Canada Agreement or article 10.12 of the USMCA.

(4) Sanctions for violation of protective orders

Any person, except a judge appointed to a binational panel or an extraordinary challenge committee under [section 4582\(b\)](#) of this title, who is found by the administering authority or the Commission, as appropriate, after notice and an opportunity for a hearing in accordance with [section 554 of Title 5](#) to have committed an act prohibited by paragraph (3) shall be liable to the United States for a civil penalty and shall be subject to such other administrative sanctions, including, but not limited to, debarment from practice before the administering authority or the Commission, as the administering authority or the Commission determines to be appropriate. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty and other sanctions shall be assessed by the administering authority or the Commission by written notice, except that assessment shall be made by the administering authority for violation, inducement of a violation or receipt of information with reason to know that such information was disclosed in violation, of an undertaking entered into by any person with an authorized agency of a free trade area country (as defined in [section 1516a\(f\)\(9\)](#) of this title).

(5) Review of sanctions

Any person against whom sanctions are imposed under paragraph (4) may obtain review of such sanctions by filing a notice of appeal in the United States Court of International Trade within 30 days from the date of the order imposing the sanction and by simultaneously sending a copy of such notice by certified mail to the administering authority or the Commission, as appropriate. The administering authority or the Commission shall promptly file in such court a certified copy of the record upon which such violation was found or such sanction imposed, as provided in [section 2112 of Title 28](#). The findings and order of the administering authority or the Commission shall be set aside by the court only if the court finds that such findings and order are not supported by substantial evidence, as provided in [section 706\(2\) of Title 5](#).

(6) Enforcement of sanctions

If any person fails to pay an assessment of a civil penalty or to comply with other administrative sanctions after the order imposing such sanctions becomes a final and unappealable order, or after the United States Court of International Trade has entered final judgment in favor of the administering authority or the Commission, an action may be filed in such court to enforce the sanctions. In such action, the validity and appropriateness of the final order imposing the sanctions shall not be subject to review.

(7) Testimony and production of papers

(A) Authority to obtain information

For the purpose of conducting any hearing and carrying out other functions and duties under this subsection, the administering authority and the Commission, or their duly authorized agents--

(i) shall have access to and the right to copy any pertinent document, paper, or record in the possession of any individual, partnership, corporation, association, organization, or other entity,

(ii) may summon witnesses, take testimony, and administer oaths,

(iii) and may require any individual or entity to produce pertinent documents, books, or records.

Any member of the Commission, and any person so designated by the administering authority, may sign subpoenas, and members and agents of the administering authority and the Commission, when authorized by the administering authority or the Commission, as appropriate, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(B) Witnesses and evidence

The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subparagraph (A) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena issued under subparagraph (A), an action may be filed in any district or territorial court of the United States to require the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization or other entity, issue any order requiring such individual or entity to appear before the administering authority or the Commission, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(C) Mandamus

Any court referred to in subparagraph (B) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this subsection or any order of the administering authority or the Commission made in pursuance thereof.

(D) Depositions

For purposes of carrying out any functions or duties under this subsection, the administering authority or the Commission may order testimony to be taken by deposition. Such deposition may be taken before any person designated by the administering authority or Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization or other entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the administering authority or Commission, as provided in this paragraph.

(E) Fees and mileage of witnesses

Witnesses summoned before the administering authority or the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(g) Information relating to violations of protective orders and sanctions

The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c) or (d), and such information shall be treated as information described in [section 552\(b\)\(3\) of Title 5](#).

(h) Opportunity for comment by consumers and industrial users

The administering authority and the Commission shall provide an opportunity for industrial users of the subject merchandise and, if the merchandise is sold at the retail level, for representative consumer organizations, to submit relevant information to the administering authority concerning dumping or a countervailable subsidy, and to the Commission concerning material injury by reason of dumped or subsidized imports.

(i) Publication of determinations; requirements for final determinations

(1) In general

Whenever the administering authority makes a determination under [section 1671a](#) or [1673a](#) of this title whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under [section 1671b](#) or [1673b](#) of this title, a final determination under [section 1671d](#) of this title or [section 1673d](#) of this title, a preliminary or final determination in a review under [section 1675](#) of this title, a determination to suspend an investigation under this subtitle, or a determination under [section 1675b](#) of this title, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.

(2) Contents of notice or determination

The notice or determination published under paragraph (1) shall include, to the extent applicable--

(A) in the case of a determination of the administering authority--

- (i)** the names of the exporters or producers of the subject merchandise or, when providing such names is impracticable, the countries exporting the subject merchandise to the United States,
- (ii)** a description of the subject merchandise that is sufficient to identify the subject merchandise for customs purposes,
- (iii)(I)** with respect to a determination in an investigation under part I of this subtitle or [section 1675b](#) of this title or in a review of a countervailing duty order, the amount of the countervailable subsidy established and a full explanation of the methodology used in establishing the amount, and

(II) with respect to a determination in an investigation under part II of this subtitle or in a review of an antidumping duty order, the weighted average dumping margins established and a full explanation of the methodology used in establishing such margins, and

(iv) the primary reasons for the determination; and

(B) in the case of a determination of the Commission--

(i) considerations relevant to the determination of injury, and

(ii) the primary reasons for the determination.

(3) Additional requirements for final determinations

In addition to the requirements set forth in paragraph (2)--

(A) the administering authority shall include in a final determination described in paragraph (1) an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the investigation or review (as the case may be), concerning the establishment of dumping or a countervailable subsidy, or the suspension of the investigation, with respect to which the determination is made; and

(B) the Commission shall include in a final determination of injury an explanation of the basis for its determination that addresses relevant arguments that are made by interested parties who are parties to the investigation or review (as the case may be) concerning volume, price effects, and impact on the industry of imports of the subject merchandise.

CREDIT(S)

(June 17, 1930, c. 497, Title VII, § 777, as added Pub.L. 96-39, Title I, § 101, July 26, 1979, 93 Stat. 187; amended Pub.L. 98-573, Title VI, § 619, Oct. 30, 1984, 98 Stat. 3038; Pub.L. 99-514, Title XVIII, §§ 1886(a)(13), 1889(8), Oct. 22, 1986, 100 Stat. 2922, 2926; Pub.L. 100-418, Title I, § 1332, Aug. 23, 1988, 102 Stat. 1207; Pub.L. 100-449, Title IV, § 403(c), Sept. 28, 1988, 102 Stat. 1884; Pub.L. 101-382, Title I, §§ 134(a)(4), 135(b), Aug. 20, 1990, 104 Stat. 650, 651; Pub.L. 103-182, Title IV, § 412(c), Dec. 8, 1993, 107 Stat. 2146; Pub.L. 103-465, Title II, §§ 226 to 228, 231(b), (d)(1), Dec. 8, 1994, 108 Stat. 4886 to 4888, 4896, 4897; Pub.L. 114-125, Title IV, § 413(a), Feb. 24, 2016, 130 Stat. 159; Pub.L. 116-113, Title IV, § 422(a), Jan. 29, 2020, 134 Stat. 64; Pub.L. 116-260, Div. O, Title VI, § 601(f), Dec. 27, 2020, 134 Stat. 2151.)

TERMINATION OF AMENDMENT

<For termination of amendment by section 501(c) of Pub.L. 100-449, see Sunset Provisions note set out under this section.>

TERMINATION OF USMCA (AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE UNITED MEXICAN STATES, AND CANADA)

<During any period in which a country ceases to be a USMCA country, this Act and the amendments made by this Act (United States-Mexico-Canada Agreement Implementation Act, [Pub.L. 116-113](#)) shall cease to have effect with respect to that country, and on the date on which the USMCA ceases to be in force with respect to the United States, this Act and the amendments made by this Act shall cease to have effect, see [Pub.L. 116-113, Title VI, § 621](#), set out as [19 U.S.C.A. § 4621](#).>

[Notes of Decisions \(68\)](#)

Footnotes

1 So in original.

19 U.S.C.A. § 1677f, 19 USCA § 1677f

Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.