§ 1677f. Access to information

(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, 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.

(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 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) 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 propri-
are parties to the proceeding. The information shall be served upon all other interested parties who are parties to the proceeding.


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

(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 NAFTA or the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of the NAFTA or the United States-Canada Agreement, 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 NAFTA or the Agreement, and

(iv) any officer or employee of the Government of a free trade area country (as defined in section 1516a(f)(10) 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 NAFTA or the Agreement.

(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)(10) of this title) to protect proprietary material during binational panel or extraordinary challenge committee review pursuant to article 1904 of the NAFTA or the United States-Canada Agreement.

(4) Sanctions for violation of protective orders

Any person, except a judge appointed to a binational panel or an extraordinary challenge committee under section 3432(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
(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 an 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, or, as the case may be, the methodology used in establishing the amount, and

(II) 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 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.


AMENDMENT OF SECTION

For termination of amendment by section 501(c) of Pub. L. 100–449, see Effective and Termination Dates of 1988 Amendment note below.

AMENDMENTS

2016—Subsec. (b)(1). Pub. L. 114–125 inserted “negligence, gross negligence, or” after “regarding”.


Subsec. (b)(1). Pub. L. 103–465, §226(a)(1), amended par. (1) generally, designating first sentence as subpar. (A), (ii), and (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 such margins, and (iv) the primary reasons for the determination; and

Subsec. (b)(2). Pub. L. 103–465, §226(b), inserted at end “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.”


Subsec. (e). Pub. L. 103–465, §231(d)(1), struck out heading and text of subsec. (e). Text read as follows:
“Information shall be submitted to the administering authority or the Commission during the course of a proceeding on a timely basis and shall be subject to control by other parties and within such reasonable time as the administering authority or the Commission shall provide. If information is submitted without an adequate opportunity for other parties to comment thereon, the administering authority or the Commission may return the information to the party submitting it and not consider it.”

Subsecs. (h) (1). Pub. L. 103–465, §§ 227, 228, added subsecs. (h) and (1).


Subsec. (f)(1)(A). Pub. L. 103–182, § 412(c)(2), (3), inserted “the NAFTA or” before “the United States-Canada Agreement” in two places, in second sentence inserted “or extraordinary challenge committee” after “bilateral panel”, and substituted “identified by the panel or committee” for “identified by the panel”.

Subsec. (f)(1)(B). Pub. L. 103–182, § 412(c)(4), in cl. (iii), inserted “the NAFTA or” before “the Agreement” and in cl. (iv), inserted “the NAFTA or” before “the Agreement” and substituted “Government of a free trade area country (as defined in section 1516a(f)(10) of this title) designated by an authorized agency of such country” for “Government of Canada designated by an authorized agency of Canada”.


Subsec. (f)(3). Pub. L. 103–182, § 412(c)(6), (7), substituted “agency of a free trade area country (as defined in section 1516a(f)(10) of this title)” for “agency of Canada” and inserted “or extraordinary challenge committee” after “bilateral panel” and the NAFTA or” before “the United States-Canada Agreement”.

Subsec. (f)(4). Pub. L. 103–182, § 412(c)(7), (8), inserted “, except a judge appointed to a bilateral panel or an extraordinary challenge committee under section 3432(b) of this title,” after “Any person” and substituted “agency of a free trade area country (as defined in section 1516a(f)(10) of this title)” for “agency of Canada”.

1990—Subsec. (c)(1)(A). Pub. L. 101–382, § 135(b)(1), inserted at end “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 1671d(c) or 1673d(c) 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 investigation until a reasonable time prior to any hearing provided under section 1677c of this title.”

Subsec. (d). Pub. L. 101–382, § 134(a)(4), redesignated subsec. (d), relating to disclosure of proprietary information, etc., as (f).

Subsec. (f). Pub. L. 101–382, § 134(a)(4), redesignated subsec. (d), relating to disclosure of proprietary information, etc., as (f).

Subsec. (f)(1)(A). Pub. L. 101–382, § 134(a)(4)(A), struck out “(but not privileged material as defined by the rules of procedure referred to in article 1904(14) of the United States-Canada Agreement)” after “all proprietary material” and inserted at end “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 bilateral panel 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 as requiring access and may require such persons to obtain access under a protective order described in paragraphs (1) and (2).”

Subsec. (f)(1)(B)(ii) to (iv). Pub. L. 101–382, § 134(a)(4)(B), inserted “, and persons under the direction and control,” after “employee” in cl. (ii), substituted “make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the Agreement, and for “implement the United States-Canada Agreement with respect to such proceeding.” in cl. (iii), and added cl. (iv).

Subsec. (f)(3). Pub. L. 101–382, § 134(a)(4)(C), struck out “or after violate,” in two places and inserted “or knowingly to receive information the receipt of which constitutes a violation of,” after “the violation of,” in two places.

Subsec. (f)(4). Pub. L. 101–382, § 134(a)(4)(D), added provisions relating to receipt of information with reason to know the information was disclosed in violation.


1988—Subsec. (b)(1)(B)(ii). Pub. L. 100–418, § 1332(2)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “(a) statement that the information should not be released under administrative protective order.”

Subsec. (c)(1)(A). Pub. L. 100–418, § 1332(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “Upon receipt of an application, before or after receipt of the information requested which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make proprietary information submitted by any other party to the investigation available under a protective order described in subparagraph (B).”

Subsec. (c)(1)(C) to (E). Pub. L. 100–418, § 1332(2)(B), added subpars. (C) to (E).

Subsec. (c)(2). Pub. L. 100–418, § 1332(3), struck out “or the Commission denies a request for proprietary information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product,” after “information under paragraph (1),”.

Subsec. (d). Pub. L. 100–419 temporarily added subsec. (d) relating to disclosure of proprietary information, etc. See Effective and Termination Dates of 1988 Amendment note below.

Pub. L. 100–418, § 1332(4), added subsec. (d) relating to service.


Subsec. (c). Pub. L. 99–514, § 1896(a)(13)(B), substituted “proprietary” for “confidential” in heading and in pars. (1)(A) and (2).

1984—Subsec. (a)(3). Pub. L. 98–573, § 619(1), amended par. (3) generally, substituting in provisions preceding subpar. (A) “of any ex parte meeting” for “of ex parte meetings”, in subpar. (A) “a proceeding” for “an investigation”, in subpar. (B) “or any person” for “and any person” and “that proceeding,” for “that investigation,” and, in provisions following subpar. (B), “if information relating to that proceeding was presented or discussed at such meeting. The record of such an” for “The record of the”.

Subsec. (b)(1). Pub. L. 98–573, § 619(2), in first sentence, inserted provision referring to an officer or employee of
§ 1677f-1. Sampling and averaging; determination of weighted average dumping margin and countervailable subsidy rate

(a) In general

For purposes of determining the export price (or constructed export price) under section 1677a of this title or the normal value under section 1677b of this title, and in carrying out reviews under section 1675 of this title, the administering authority may—

(1) use averaging and statistically valid samples, if there is a significant volume of sales of the subject merchandise or a significant number or types of products, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(b) Selection of averages and samples

The authority to select averages and statistically valid samples shall rest exclusively with the administering authority. The administering authority shall, to the greatest extent possible, consult with the exporters and producers regarding the method to be used to select exporters, producers, or types of products under this section.

(c) Determination of dumping margin

(1) General rule

In determining weighted average dumping margins under section 1673b(d), 1673d(c), or 1675(a) of this title, the administering authority shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise.

(2) Exception

If it is not practicable to make individual weighted average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may determine the weighted average dumping margin for a reasonable number of exporters or producers by limiting its examination to—

(A) a sample of exporters, processors, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or

(B) exporters and producers accounting for the largest volume of the subject merchan-