

## § 351.105

## 19 CFR Ch. III (4–1–23 Edition)

(B) The submitter made a nonconforming request for business proprietary treatment of factual information (see § 351.304);

(C) The Secretary denied a request for business proprietary treatment of factual information (see § 351.304);

(D) The submitter is unwilling to permit the disclosure of business proprietary information under APO (see § 351.304).

(iii) In no case will the official record include any document that the Secretary rejects as untimely filed, or any unsolicited questionnaire response unless the response is a voluntary response accepted under § 351.204(d) (see § 351.302(d)).

(b) *Public record.* The Secretary will maintain a public record of each proceeding. The record will consist of all material contained in the official record (see paragraph (a) of this section) that the Secretary decides is public information under § 351.105(b), government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, and public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit (see § 351.103). The Secretary will charge an appropriate fee for providing copies of documents.

(c) *Protection of records.* Unless ordered by the Secretary or required by law, no record or portion of a record will be removed from the Department.

[62 FR 27379, May 19, 1997, as amended at 76 FR 39274, July 6, 2011]

### **§ 351.105 Public, business proprietary, privileged, and classified information.**

(a) *Introduction.* There are four categories of information in an anti-dumping or countervailing duty proceeding: public, business proprietary, privileged, and classified. In general, public information is information that may be made available to the public, whereas business proprietary information may be disclosed (if at all) only to authorized applicants under an APO. Privileged and classified information may not be disclosed at all, even under

an APO. This section describes the four categories of information.

(b) *Public information.* The Secretary normally will consider the following to be public information:

(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;

(2) Factual information that is not designated as business proprietary by the person submitting it;

(3) Factual information that, although designated as business proprietary by the person submitting it, is in a form that cannot be associated with or otherwise used to identify activities of a particular person or that the Secretary determines is not properly designated as business proprietary;

(4) Publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations; and

(5) Written argument relating to the proceeding that is not designated as business proprietary.

(c) *Business proprietary information.* The Secretary normally will consider the following factual information to be business proprietary information, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process;

(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);

(3) Distribution costs (but not channels of distribution);

(4) Terms of sale (but not terms of sale offered to the public);

(5) Prices of individual sales, likely sales, or other offers (but not components of prices, such as transportation, if based on published schedules, dates of sale, product descriptions (other than business or trade secrets described in paragraph (c)(1) of this section), or order numbers);

(6) Names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, distributor, or supplier, unless the destination or designation would reveal the name);

(7) In an antidumping proceeding, the exact amount of the dumping margin on individual sales;

(8) In a countervailing duty proceeding, the exact amount of the benefit applied for or received by a person from each of the programs under investigation or review (but not descriptions of the operations of the programs, or the amount if included in official public statements or documents or publications, or the *ad valorem* countervailable subsidy rate calculated for each person under a program);

(9) The names of particular persons from whom business proprietary information was obtained;

(10) The position of a domestic producer or workers regarding a petition; and

(11) Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(d) *Privileged information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the Secretary decides that the information should not be released to the public or to parties to the proceeding. Privileged information is exempt from disclosure to the public or to representatives of interested parties.

(e) *Classified information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (47 FR 14874 and 15557, 3 CFR 1982 Comp. p. 166) or successor executive order, if applicable. Classified information is exempt from disclosure to the public or to representatives of interested parties.

**§ 351.106 *De minimis* net countervailable subsidies and weighted-average dumping margins disregarded.**

(a) *Introduction.* Prior to the enactment of the URAA, the Department had a well-established and judicially sanctioned practice of disregarding net countervailable subsidies or weighted-average dumping margins that were *de minimis*. The URAA codified in the Act the particular *de minimis* standards to be used in antidumping and countervailing duty investigations. This section discussed the application of the *de*

*minimis* standards in antidumping or countervailing duty proceedings.

(b) *Investigations*—(1) *In general.* In making a preliminary or final antidumping or countervailing duty determination in an investigation (see sections 703(b), 733(b), 705(a), and 735(a) of the Act), the Secretary will apply the *de minimis* standard set forth in section 703(b)(4) or section 733(b)(3) of the Act (whichever is applicable).

(2) *Transition rule.* (i) If:

(A) The Secretary resumes an investigation that has been suspended (see section 704(i)(1)(B) or section 734(i)(1)(B) of the Act); and

(B) The investigation was initiated before January 1, 1995, then

(ii) The Secretary will apply the *de minimis* standard in effect at the time that the investigation was initiated.

(c) *Reviews and other determinations*—

(1) *In general.* In making any determination other than a preliminary or final antidumping or countervailing duty determination in an investigation (see paragraph (b) of this section), the Secretary will treat as *de minimis* any weighted-average dumping margin or countervailable subsidy rate that is less than 0.5 percent *ad valorem*, or the equivalent specific rate.

(2) *Assessment of antidumping duties.* The Secretary will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the relevant period of review made by any person for which the Secretary calculates an assessment rate under § 351.212(b)(1) that is less than 0.5 percent *ad valorem*, or the equivalent specific rate.

**§ 351.107 Cash deposit rates for non-producing exporters; rates in antidumping proceedings involving a nonmarket economy country.**

(a) *Introduction.* This section deals with the establishment of cash deposit rates in situations where the exporter is not the producer of subject merchandise, the selection of the appropriate cash deposit rate in situations where entry documents do not indicate the producer of subject merchandise, and the calculation of dumping margins in