Committee on Subsidies and Countervailing Measures

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Revised Countervailing Duty Regulations of the United States

Corrigendum

The attached page should replace page 7 of SCM/1/Add.3/Rev.3/Suppl.1.

1English only/Anglais seulement/Inglés solamente
submitter presents a convincing argument of harm. Rather than modify § 355.4(a)(3), we will entertain such arguments on a case-by-case basis. We have already addressed the first part of the second comment in our response to the comment on § 355.3(b). As for the second argument, we agree and are amending § 355.4(a)(4) to read "publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations."

Sec. 355.4(b)

Comment: One party suggests that the proprietary nature of any enumerated exceptions should be judged by the same standards as other information for which proprietary treatment is requested. The types of information enumerated (that will not be given proprietary treatment) may be valuable to competitors, revealing marketing areas, a shift in customer focus, or the timing of new marketing efforts. Another party also suggests that the exceptions in paragraphs (b)(3) and (b)(6) be deleted.

A third party suggests changing the terminology to "confidential" to conform with section 777 of the Act. This section should also state that "proprietary" information is a class of "confidential" information, because "confidential" is more of a red-flag to alert document users.

Department's Position: We will entertain on a case-by-case basis arguments against the parenthetical exceptions listed in § 355.4(b). As used in the proposed rulemaking, the list of exceptions reflects our experience with information submitted in proceedings. It attempts to eliminate unnecessary disagreement over documents that generally fall into one category or another.

Section 777 of the Act was amended in 1986 to strike out the words "confidential," "confidentiality," and "non-confidential" throughout that section and insert instead "proprietary," "proprietary status," and "non-proprietary," respectively. See Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1988). Although a laudable goal, we do not currently have the resources to undertake this substantial task. In notices of determinations published in the Federal Register, we state each significant issue and describe the Department's position on it. There are private services available for researching those notices.

Sec. 355.5

Comment: One party suggests that, as a method of better informing the public, the Department should develop and maintain a compendium of issues and precedents as part of the Subsidy Library.

Department's Position: Although a laudable goal, we do not currently have the resources to undertake this substantial task. In notices of determinations published in the Federal Register, we state each significant issue and describe the Department's position on it. There are private services available for researching those notices.

Sec. 355.6

Comment: One party suggests adding to the list of public information, with the burden on the submitter to establish the contrary, items such as price lists distributed to a group of customers, subsidy amounts available to the general public, and the total amount of subsidy benefits by program given by the government.

Department's Position: Price lists may be public information of a type described in paragraph (a)(1) or (a)(2) of this section, or proprietary information described in paragraph (b)(5). We cannot presume that limited distribution of a price list to a specific group of customers constitutes public availability. For example, sellers may circulate different price lists to different groups of customers and expect prospective customers to protect the information as proprietary.

We agree that subsidy amounts that are publicly stated (e.g., through press releases or public statements of government officials) presumptively are not proprietary, and thus we are amending the exceptions in paragraph (b)(7) to so state. We do not agree that the total amount given by a government through a particular program should be presumptively public information, unless the government has made the amount public.

Sec. 355.7

Note: These rules include the regulations promulgated on August 17, 1987 (52 FR 30363) regarding de minimis net subsidies. The provision has been renumbered from § 355.8 to § 355.7.

Sec. 355.11

Comment: One party asks what standards apply to a determination to self-initiate an investigation, and whether the Department might self-initiate an investigation under § 355.11 rather than an administrative review under § 355.22(b) for the purpose of complying with section 762 of the Act.

Department's Position: As provided in section 702(a) of the Act, the standards for self-initiation are stated in section 701(a) of the Act. The determination must be based on available information. Regarding implementation of section 762(b) of the Act, as added by the 1984 Act, we believe that the investigation is an administrative review rather than an investigation appropriate. The proceeding is sui generis. It is initiated "at the direction of the President," and there is no indication in section 762 that time limits for investigations would apply. Because many sections in Subpart B of the regulations relating to investigations are inapplicable to the
proprietary treatment) may be valuable English translations."

As for the second argument, we agree with section 777 of the Act. This section and insert instead "proprietary," "non-confidential" throughout that the suggestion for parallel construction of customer codes, we believe that the Department to extend proprietary treatment to customer, distributor, and supplier names in whatever documents they might be presented to the Department, including encoding sheets. If customer codes alone are sufficient to reveal proprietary information in a particular situation, the Department would consider a request by the submitter to protect such codes from public disclosure.

Sec. 355.4(b)(7)

Comment: Another party suggests adding to the list of public information, with the burden on the submitter to establish the contrary, items such as price lists distributed to a group of customers, subsidy amounts available to the general public, and the total amount of subsidy benefits by program given by a government. In a particular situation, the Department would consider a request by the submitter to protect such codes from public disclosure.

Sec. 355.4(b)(8)

Department's Position: Price lists may be public information of a type described in paragraph (a)(1) or (a)(2) of this section, or proprietary information described in paragraph (b)(5). We cannot presume that limited distribution of a price list to a specific group of customers constitutes public availability. For example, sellers may circulate different price lists to different groups of customers and expect prospective customers to protect the information as proprietary.

We agree that subsidy amounts that are publicly stated (e.g., through press releases or public statements of government officials) are presumptively not proprietary, and thus we are amending the exceptions in paragraph (b)(7) to state. We do not agree that the total amount given by a government through a particular program should be presumptively public information, unless the government has made the amount public.

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Sec. 355.6

Note: These rules include the regulations promulgated on August 17, 1987 (52 FR 35063) regarding de minimis net subsidies. The provision has been renumbered from § 355.8 to § 355.7.

Sec. 355.11

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Department's Position: As provided in section 702(a) of the Act, the standards for self-initiation are stated in section 701(a) of the Act. The determination must be based on available information. Regarding implementation of section 762(b) of the Act, as added by the 1984 Act, we believe that Section 762(b) is self-implementing and that the administrative review rather than an investigation is appropriate. The proceeding is sui generis. It is initiated "at the direction of the President," and there is no indication in section 762 that time limits for investigations would apply. Because many sections in Subpart B of the regulations relating to investigations are inapplicable to these