

GENERAL AGREEMENT ON

RESTRICTED

SCM/1/Add.3/Rev.3/Suppl.1/Corr.1*

1 May 1989

TARIFFS AND TRADE

Special Distribution

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 we stated 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 1988 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 1988, Pub. L. No. 99-514, section 1886(a)(18), 100 Stat. 2085 (1988). This technical amendment accomplished the stated purpose of the House-Senate conference on the 1984 Act. See H. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 178 (1984). The term "confidential" is used specifically to identify a national security classification referred to in paragraph (d) of this section and § 355.33. "Proprietary" has a different meaning.

Sec. 355.4(b)(5)

Comment: One party suggests that dates and order numbers be proprietary because they may disclose customer identities.

Department's Position: We have addressed this comment in the discussion of our position on § 355.4(b).

Sec. 355.4(b)(6)

Comment: One party states that the parenthetical phrase in paragraph (b)(6) should include the designation of the type of distributor and supplier. The proposed rule specifies only the type of customer. This party also suggests adding a paragraph to clarify whether the Department treats customer codes as proprietary information. The party urges the Department to extend proprietary treatment to the codes in order to avoid inadvertent disclosure of customer names and sales patterns.

Department's Position: We agree with the suggestion for parallel construction in the parenthetical phrase, so that the phrase would include a reference to "designation of type of customer, distributor, or supplier," and have modified the regulation accordingly. As for customer codes, we believe that the encoding sheets, but not the encoded names, should be proprietary. We have already included the encoding sheets within the description of proprietary material, because such sheets must by definition contain customer names. In other words, we would give 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.

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 or others) 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. 355.5

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. 355.7

Note: These rules include the regulation promulgated on August 17, 1987 (52 FR 30600) 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(i) 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 initiation of an 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