

**CHAPTER 3:
ACCESS TO INFORMATION**

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References:

- The Tariff Act of 1930, as amended (the Tariff Act)
 - Section 777 - access to information
 - Section 777(a) - information generally made available
 - Section 777(b) - proprietary information
 - Section 777(b)(1) - treatment of information designated as proprietary
 - Section 777(b)(1)(B) - additional requirements for parties submitting proprietary information
 - Section 777 (c) - limited disclosure of certain proprietary information under administrative protective order (APO)
 - Section 777 (d) - service of information to interested parties
- Department of Commerce (DOC) Regulations
 - 19 CFR 351.103 - the central records unit
 - 19 CFR 351.105 - public, business proprietary, privileged, and classified information
 - 19 CFR 351.105(b) - public information

- 19 CFR 351.105(c) - business proprietary information
 - 19 CFR 351.105(d) - privileged information
 - 19 CFR 351.105(e) - classified information
 - 19 CFR 351.303 - filing, format, translation, service, and certification of documents
 - 19 CFR 351.304 - establishing business proprietary treatment of information
 - 19 CFR 351.304(a) - claim for business proprietary treatment
 - 19 CFR 351.304(b) - identification of business proprietary information
 - 19 CFR 351.304 (c) - public versions
 - 19 CFR 351.304(d) - nonconforming submissions
 - 19 CFR 351.305 - access to business proprietary information
 - 19 CFR 351.305(a) - the APO
 - 19 CFR 351.305(b) - application for access under APO
 - 19 CFR 351.305(c) - approval of access under APO; APO service list
 - 19 CFR 351.306 - use of business proprietary information
 - 19 CFR 351.306(d) - disclosure to parties not authorized to receive business proprietary information
- Part 354 - procedures for imposing sanctions for violations of an APO
- The Trade Secrets Act, as amended (18 USC 1905 (2001))
- The Uruguay Round Agreements Act
- Section 129(b)
- The North American Free Trade Agreement (NAFTA)
- Section 129, Article 1904

I. OVERVIEW

To conduct antidumping duty proceedings, we require interested parties to provide complete, accurate and candid information. In order to gain a full understanding of issues in a proceeding, as well as to properly calculate margins and subsidy rates, we must obtain the actual data that companies often maintain as their own confidential information. At the same time, we must conduct our unfair trade proceedings in as open and transparent a manner as possible, demonstrating to the public that our decision-making is based on the facts provided in the case and the applicable law, rather than behind-the-scenes consideration. We must also be able to explain our decisions adequately to the public through the publication of our decisions in the Federal Register and documents we generate and place on the record of the proceeding.

In order to balance these apparently conflicting goals, we provide a means for parties to submit information in such a way as to protect proprietary business data from public disclosure, yet at the same time require that sufficient information remain available to the public so that the public will have a reasonable understanding of the relevant information in a particular case. For documents we generate in the conduct of unfair trade proceedings, we have the same responsibility of protecting a company's proprietary information, while also informing the public with a sufficiently detailed explanation of our decisions. In addition, we have developed a system where the legal or

other representatives of an interested party may review the business proprietary information submitted by all the parties in a given proceeding and comment on it, without disclosing that information to unauthorized persons.

The Department's official statement on our policy and practice is:

The United States has the most transparent antidumping and countervailing duty procedures in the world. Protection of business proprietary information is a narrow exception to the requirement for disclosure and the preference for transparency. For these reasons, the regulations require parties to demonstrate that business proprietary information should be withheld from disclosure, rather than the reverse.... There is a presumption that business proprietary information can be publicly summarized to permit meaningful participation by a party that does not have access to business proprietary information under APO {administrative protective order}. See [Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order](#), 63 FR 24391, 24393 (May 4, 1998).

II. CATEGORIES OF INFORMATION

For establishing which information may be protected from disclosure, and which should be part of the public record, 19 CFR 351.105 sets forth the categories of information in an AD/CVD proceeding: public, business proprietary, privileged, and classified.

A. Public Information

All information submitted by parties in an AD/CVD proceeding is treated as publicly available information unless it is accompanied by a request for business proprietary treatment. The types of information which are normally regarded as public information are set forth in paragraph (b) of 19 CFR 351.105. This paragraph describes public information as:

1. Factual information of a type that has been published or otherwise made available to the public by the person submitting it such as in advertisements, product brochures or marketing displays.
2. Factual information that is not designated as business proprietary by the person submitting it.
3. Factual information which, although designated as business proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person, or which 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.

5. Written argument relating to the proceeding that is not designated as business proprietary. As articulated in the policy statement quoted above, our general approach is that all information submitted should be considered public information, unless and until the submitting party affirmatively demonstrates that specific information or data requires treatment as “business proprietary” and thus should not be disclosed to the public.

B. Business Proprietary Information

Only that information which can be designated as “business proprietary” (equivalent to “business confidential”) may be treated as business proprietary information. The description of what may be classified as business proprietary information is addressed in 19 CFR 351.105(c). The regulation states that the following factual information will generally be regarded as business proprietary information, if it is 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. The exact amount of the dumping margin on individual sales.
8. The names of particular persons from whom business proprietary information was obtained.
9. The position of a domestic producer or workers regarding a petition.
10. Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

As discussed below, when a party claims proprietary treatment for information submitted in a proceeding, it must include a statement explaining why that specific piece of information requires that treatment. Typically, the statement will cite the appropriate subsection of the regulation listed above as part of the explanation. Additional information and guidance on what may and may not be considered “business proprietary” information is discussed in the Antidumping Duty Procedures Handbook (AD Handbook).

C. Privileged Information

The description of what the Department considers to be privileged information for the purpose of an AD/CVD proceeding is set forth in 19 CFR 351.105(d). This section explains that the Department will consider information privileged if, based on principles of law concerning privileged information, it decides that the information should not be released to the public or to the parties to the proceeding. Privileged information is exempt from disclosure to the public or to representatives of interested parties, even under the terms of an administrative protective order (APO).

Generally, an example of a type of information that would be considered privileged is the name of an informer in a fraud investigation. Privileged information, however, is put on the record in a privileged index, and released to parties under a judicial protective order (JPO) unless the court agrees not to release it. Any claim of privileged information requires a meeting with a legal team member and your program manager.

D. Classified Information

Section 351.105(e) of the Department's regulations defines "classified information" as information that is classified under Executive Order No. 12958 of April 17, 1995, as amended by Executive Order No. 13292 of March 25, 2003. Classified information is exempt from disclosure to the public or to representatives of interested parties under the terms of an APO.

Classified information is normally national security information, the release of which would cause harm to the national security interests of the United States. This information is classified by such terms as "confidential," "secret," and "top secret." Generally, this type of information would not be presented to the Department in the context of an AD/CVD proceeding. As terms such as "confidential" and "secret" are used for classified information, they should not be used as synonyms for the "business confidential" information obtained in AD/CVD proceedings. For that reason, we normally label the business information we receive that must be protected from disclosure as "business proprietary."

III. PLACEMENT OF INFORMATION ON THE RECORD

A. Information Placed on the Record

The administrative record consists of two parts: (1) the official record; and (2) the public record.

All documents filed in the administrative proceeding are placed on the official record, including documents that contain business proprietary information, privileged information or classified information. Public versions of these documents are also included in the official record. However, not all documents filed as part of the official record are releasable to the parties or the public. Privileged or classified information is placed on the official record, but is not releasable under APO.

All documents that contain information for which proprietary treatment is claimed, including documents prepared internally which contain business proprietary information, may be released only to authorized applicants to the APO.

Finally, the public record includes all documents filed with the Department that contain only public information. This record includes the public versions of submitted documents releasable under APO, as well as public versions of Department-drafted documents that contain proprietary information. The public record does not include privileged or classified documents, but it may include documents where privileged or classified information has been redacted.

Sometimes, three versions of the same document may be found in the official record. For example, in an investigation, a petitioner may rely on a foreign market research report to support the petition. In such cases, the Department may permit the petitioner to double-bracket the name and any identifying information of the author of such reports. This double-bracketed information is not releasable under APO. The petitioner would therefore be required to file an official version of the document, a version releasable under APO, and a public version. However, if the Department is required to submit the record to the court for litigation purposes, it may withhold information not releasable under APO. In instances where three versions of the same document exist, the analyst should consult with the case attorney to determine which versions are to be released to the court.

B. Information Not Placed on the Record

With respect to certain documents prepared by the Department that may contain business proprietary information submitted by a respondent, it is our general practice to provide respondent's counsel with advance copies (e.g., verification reports, and other sensitive case documents), in order to confirm the bracketing of business proprietary information prior to the release of the document under APO and prior to the creation of the public version for inclusion in the public file. A similar approach may be taken for documents prepared based on proprietary information submitted by the petitioner. These documents are not placed on the record in this draft form, but are only placed on the record once the bracketing to mark business proprietary information is completed.

Privileged, pre-decisional memoranda are also not normally considered part of the record. For example, pre-decisional drafts (also known as working drafts) of documents such as Federal Register Notices, Issues and Decision Memoranda, Calculation Memoranda, etc., are not considered part of the record and are not placed in either the official or public files. Finally, pre-decisional briefing memoranda, considered privileged, are also not considered part of the record and are not placed in either the official or public files.

IV. TREATMENT OF BUSINESS PROPRIETARY INFORMATION

A. Establishing Business Proprietary Treatment of Information

Section 351.304 of the regulations sets forth rules concerning the treatment of business proprietary information in general. Paragraph (a)(1) provides persons with the right to request:

- (i) that certain information be considered business proprietary, and
- (ii) that certain business proprietary information be exempt from disclosure under APO.

Consistent with section 777(c)(1)(A) of the Tariff Act, paragraph (a)(2) provides that, as a general matter, the Department will require that all business proprietary information be disclosed to authorized applicants, with the exception of:

- (i) Customer names in an investigation only (not applicable in an administrative review);
- (ii) Information for which the Department finds there is a clear and compelling need to withhold from disclosure; and
- (iii) Classified or privileged information (see definitions above).

B. Identification of Business Proprietary Information

In order to distinguish between public information and business proprietary information included in a submission, 19 CFR 351.304(b) addresses how business proprietary information should be identified in documents submitted to the Department.

Under 19 CFR 351.304(b)(1), information for which a person claiming business proprietary status must be identified by placing single brackets (“[]”) around the information. For example: “The material cost for building one widget is \$[50.05].”

This section also requires that a person claiming business proprietary status for information must explain why each item in question is entitled to that status. That is, a submission must specify why each “bracketed” item is entitled to proprietary treatment under section 351.105(c) of the regulations, as described above. It is not sufficient for the submitting party to claim proprietary treatment simply because it does not want to make the information public, nor that it has never been made public previously. See the AD Handbook for a discussion on analyzing requests for proprietary treatment.

The section further explains that the submitting person must include an agreement to permit disclosure under APO, unless the submitter claims that there is a clear and compelling need to withhold the information from disclosure under APO. Section 351.304(b)(2)(i) of the Department’s regulations requires that double brackets (“[[]]”) should be placed around business proprietary information for which the submitting party claims a clear and compelling need to

withhold from disclosure under APO; and customer names submitted in an investigation. The submission must include a full explanation of the reasons for the claim.

As noted above, under 19 CFR 351.304(a)(2)(i), customer names may be exempted from disclosure to authorized parties under an APO in an AD/CVD investigation. (However, they are not exempt from disclosure in an administrative review.) Accordingly, 19 CFR 351.304(b)(2)(ii) permits the enclosure of business proprietary customer names within double brackets, and 19 CFR 351.304(b)(2)(iii) permits the submitter to redact the information within double brackets in providing the business proprietary document to other parties to the proceeding under an APO.

The Department also has the responsibility to comply with this regulation. The Department may not release business proprietary customer names during an investigation - not orally, not in verification reports, and not in any other document it generates. In order to prevent improper handling of customer names during an investigation, Department analysts may choose to avoid the use of customer names in DOC-generated documents whenever possible.

C. Department Procedures for Working with Business Proprietary Information

Employees of the Department have the responsibility to protect from disclosure all business proprietary information submitted or obtained in the course of an unfair trade proceeding. The AD Handbook provides more detailed guidance on working with this information.

In addition, under the “Trade Secrets Act” (18 USCS Section 1905 (2001)), federal government employees are prohibited from disclosing business proprietary information that they learn as a result of employment, even after they are no longer employed by the government. The penalties for such disclosure include criminal fines and imprisonment.

The text of the Trade Secrets Act is:

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process

Act (15 U.S.C. 1311-1314), publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operation, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

V. PUBLIC VERSIONS OF DOCUMENTS AND PUBLIC SUMMARIES OF BUSINESS PROPRIETARY INFORMATION

“(The Department) 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...”

(Section 777(b)(1)(B) of the Act)

“The public version must contain a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information.”

This latter sentence, from 19 CFR 351.304(c)(1), is the key statement of this section of the regulations which deals with the public version of a business proprietary submission.

A public version of a business proprietary document must be submitted.

Procedurally, 19 CFR 351.304(c)(1) requires a party to file the public version of a submission on the first business day after the filing deadline for the business proprietary version of the submission. This practice is known as the “one day lag” rule.

Section 351.304(c)(1) of the Department’s regulations specifies, as noted above, that the public summaries must be sufficiently detailed to allow a reasonable understanding of the business proprietary information contained in the submission. With respect to numerical data, the regulation provides that this information will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure. For example, if the actual figure is \$1,569.45, the public summary may show this figure as any number within the range of \$1,412.51 to \$1,726.40, all of which are numbers that are within 10 percent of the original number.

In an index, the proprietary values are multiplied or divided by the same number, which then shows the relationship between the figures. An example of the use of an index for a public summary would be for a financial statement, where the total sales revenue of a company would be represented by the index of 100, rather than the actual figure of \$2,358,901. The totals for major line items would be represented by a number that reflects the relationship of that line item amount to the sales revenue (i.e., a ratio). In the example below, the Employee Cost amount of \$390,685 divided by the sales revenue \$2,358,901 results in a ratio of .17 (as rounded to two decimal places).

When multiplied by the sales revenue index of 100, the resulting index for Employee costs is 17. This methodology is applied to each of the reported financial statement line items.

Occasionally, when the submitting party contends that the number is so small that even ranging the number to within 10 percent would not be adequate to protect the proprietary information, the Department may allow the numerical data in question to be ranged within 20 percent of the actual number. The chart below illustrates how business proprietary data may be summarized for the public version of the document. The submitting party should indicate which method it is using for summarizing numeric data.

| <u>Financial Statement Line Item</u> | <u>Actual Amount</u> | <u>PUBLIC SUMMARY OPTIONS</u> | |
|--------------------------------------|----------------------|-------------------------------|----------------|
| | | <u>Ranged +/- 10%</u> | <u>Indexed</u> |
| Sales Revenue | [2,358,901.00] | [2,193,778] | [100] |
| Raw Materials Consumed | [687,470.00] | [742,468] | [29] |
| Employee Costs | [390,685.00] | [378,964] | [17] |
| Stores & spares consumed | [107,619.00] | [113,000] | [5] |
| Power and Fuel | [255,697.00] | [251,350] | [11] |

Other provisions stated in 19 CFR 351.304(c)(1) are:

- **If an individual portion of the numerical data is voluminous, at least one percent representative of that portion must be summarized.** For example, if the printout of a sales listing is 500 pages, a party may submit a public summary of 5 pages of that material to demonstrate the type of information included in the data.
- **A submitter may not create a public summary of business proprietary information of another person.** This provision recognizes that the person who provided the proprietary information is the one who understands its potential to cause competitive harm if it is released to the public, and another party cannot properly determine what part of that information may be released or summarized in a public version. In addition, it may lead to the improper disclosure of the information by the other party, which would be a violation of the APO. As a practical matter, this provision allows party A to cite the previously-submitted business proprietary information by party B in a submission such as a case brief, without providing a public summary. However, because party B submitted the information with an appropriate public summary, the public can refer to that public version of the original submission to gain a reasonable understanding of the matter.

- **A party has one day to correct bracketing of information in a submission.** The “one day lag” rule also allows a party to submit a final business proprietary version of the entire document along with the submission of the public version. Effectively, it allows the party to correct its bracketing of information for classification errors discovered during the preparation of the public version. This provision does not allow for any other changes to the information originally submitted. This provision is part of 19 CFR 351.304(c)(2), which includes the following requirements:
 1. If a submitting party discovers that it has failed to bracket information correctly, the submitter may file a complete, rebracketed business proprietary version of the submission along with the public version (see 19 CFR 351.303(b)).
 2. At the close of business on the day on which the public version of a submission is due under paragraph (c)(2) of this section, however, the bracketing of business proprietary information in the original business proprietary version or, if a corrected version is timely filed, the corrected business proprietary version will become final.
 3. Once bracketing has become final, the Secretary will not accept any further corrections to the bracketing of information in a submission, and the Secretary will treat non-bracketed information as public information.

Specific filing requirements are contained in 19 CFR 351.303. The purpose of this requirement is to ensure that the Department is reviewing the correct business proprietary version.

As noted above, public versions of documents containing public summaries or an explanation of why business proprietary information cannot be summarized are required to be filed one business day after the due date of the business proprietary version of the document with the final business proprietary version of the document. As explained below, failure to submit a proper public version of the business proprietary document will result in the rejection of the business proprietary document. Section 351.304(c)(1) of the Department’s regulations permits a party to claim that summarization is not possible. However, the regulations also state that the Department will vigorously enforce the requirement for public summaries, and will grant claims that summarization is impossible only in exceptional circumstances.

VI. NONCONFORMING SUBMISSIONS

“(The Department) will enforce vigorously the requirement for public summaries, and will grant claims that summarization is impossible only in exceptional circumstances.”

See [Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order](#), 63 FR 24391, 24393 (May 4, 1998).

The Department has the active responsibility to ensure that requests for proprietary treatment and the public summaries of proprietary information meet the requirements of the regulations. Section 351.304(d) of the Department's regulations deals with submissions that do not meet the requirements of section 777(b) of the Tariff Act or the DOC's regulations. That is, this paragraph explains how the Department will enforce the requirements for public summaries.

Section 351.304(d)(1) of the Department's regulations states that the Department will return a submission that does not meet the requirements of section 777(b) of the Act and this section of the regulations (*i.e.*, a submission which lacks an adequate request for proprietary treatment of information and/or inadequate public summary of proprietary information with a written explanation). The submitting person may take any of the following actions within two business days after receiving this written explanation:

- (i) Correct the problems and resubmit the information; or
- (ii) Agree to have the information in question treated as public information.

If a party submits business proprietary information and claims that there was a clear and compelling need to withhold the information from APO release, but the Department denies that claim, under 19 CFR 351.304(d)(1)(iii), the party must agree to release the information under APO, or (iv) submit other material concerning the subject matter of the returned information (*i.e.*, alternate material germane to the matter that the submitter agrees to release under APO). If the submitting person does not take any of these actions, the Department will not consider the returned submission in reaching its determination in that proceeding.

Section 351.304(d)(2) of the Department's regulations establishes a timeframe for the Department to determine the status of information - normally within 30 days after the day on which the information is submitted. In the meantime, if the business proprietary status of information is in dispute, the regulation requires the Department to treat the relevant portion of the submission as business proprietary information until the status of the information is decided.

The deadline in this section is intended to avoid situations in which the Department inadvertently accepts nonconforming submissions or only recognizes the problem too late to request replacements. The AD Handbook provides detailed guidance on analyzing submissions with respect to requests for proprietary treatment and adequate public summaries. The AD Handbook also includes examples of memoranda and letters for addressing deficiencies in these areas and for returning non-conforming submissions.

VII. THE APO/DOCKETS UNIT

The APO/Dockets Unit is responsible for three major functions for E&C.

1. The administration of the APO provision of the statute and regulations in E&C's antidumping duty and countervailing duty proceedings.
2. The management of the Dockets counter where all filings or submissions to E&C are officially marked as received by E&C.
3. Serving as the Department designee (in this case, the Director of the APO/Dockets Unit) for the official service/receipt of injunctions from the U.S. Court of International Trade that are served on E&C by parties to the Court proceedings.

VIII. BACKGROUND INFORMATION ON APOs:

The U.S. Department of Commerce's E&C is required by law to protect certain information submitted in an AD/CVD proceeding. The Trade Secrets Act (18 USC 1905) makes it a crime for federal officials to publicly disclose business proprietary information that a federal agency gathers pursuant to its mandate, unless otherwise authorized by law. The APO provision in AD/CVD proceedings is a limited exemption to the Trade Secrets Act.

Section 777(c)(1)(A) of the Act provides the Department with the specific statutory authority to release business proprietary information submitted by private parties during the course of an AD/CVD proceeding under the terms of an APO. The statute requires that the Department release all business proprietary information presented to or obtained by it during the course of a proceeding, under the terms of an APO, except for:

- customer names in an investigation (customer names may be released under APO in administrative reviews and in other segments of the proceeding);
- privileged information;
- classified information; and,
- specific information for which there is a clear and compelling need to withhold from disclosure (commonly referred to as "clear and compelling need" or [[double bracketed]] information),

to the representatives of all parties to the proceeding who are subject to an APO. All APO authorized persons are entitled to all business proprietary information.

The Department does not have the discretion to determine which party might need or want certain information. If a party is an "authorized applicant" listed on the Department's APO Service List, the person is entitled to receive access to all business proprietary information, with the limited exception of the information noted above.

The Department's current APO regulations became effective on June 3, 1998

(sections 351.304 - 351.306 and Part 354 of the Department's regulations, 63 FR 24391-24411) Amendments to these regulations, along with a new application for APO, were published on January 22, 2008, and became effective on February 21, 2008 (73 FR 3634). APO practice under these regulations is significantly different from practice under previous regulations with respect to a party's and the Department's ability to use APO information. Under the current APO regulations, parties and the Department may use business proprietary information in the segment of the proceeding in which it is submitted and in additional segments of the same proceeding as detailed in the APO. Both the parties and the Department can reach back to previous segments of a proceeding governed by these regulations in order to move business proprietary information forward. Actual use or disclosure of business proprietary information outside the scope of an APO, or use of the knowledge gained by access to APO information outside the scope of an APO would be a violation of the APO.

The ability to use APO information is critical. The Department's prior regulations generally, permitted use of business proprietary information only in the segment of the proceeding in which it was submitted. If the Department wanted to use business proprietary information from an earlier segment of a proceeding, the Department sought permission from the submitter. There are ongoing suspension agreements that are still governed by APOs issued under the previous APO regulations, and there are other segments of proceedings where the Department may have an interest in reaching back to use business proprietary information from previous segments that are still governed by these regulations. In these instances, analysts should always consult with the APO Unit when there is an issue concerning the use of business proprietary information .

APO information submitted in a proceeding may not be used in a different proceeding unless it is placed on the record of a different proceeding by the actual owner of the information. This means that generally, neither the Department nor an interested party subject to APO in a segment of a proceeding has the authority to move business proprietary information from one proceeding to another proceeding. If there is any issue about the movement of business proprietary information to or from another proceeding, the analyst team needs to consult with their team attorney and the APO Unit, as in most instances the movement is prohibited.

The preamble to the regulations published on May 4, 1998 (63 FR 24398) identifies three specific instances in which the Department would be expected to use information from different segments of proceedings or different proceedings:

- 1) Information from prior segments may be used in a sunset or changed circumstances review of the same proceeding (section 777(b)(1) of the Act);
- 2) business proprietary information from a sunset or changed circumstances review resulting in revocation may be used in an investigation on the same merchandise from the same country initiated within two years of revocation (section 777(b)(3) of the Act); and

- 3) information from a terminated investigation may be used in a new investigation on the subject merchandise from the same and another country within three months of termination of the prior investigation (sections 704 and 734 of the Act).

What is an APO?

The APO is a legal document issued by E&C's APO/Dockets Unit. It is the legal mechanism by which the Department controls 1) the limited disclosure of business proprietary information in AD/CVD proceedings to the legal or other representatives of interested parties, and 2) the use of the business proprietary information in the proceedings. The Department authorizes the release of business proprietary information under APO when a representative files the Department's application for APO access in which it agrees to be bound by the terms of the APO, and the names of the approved applicants are entered on the Department's APO Service List. The APO requires all authorized applicants to:

- use the business proprietary information only in the segment of the proceeding in which it was submitted or in which it is authorized for use;
- protect the information from unauthorized disclosure;
- report any violation of the terms of the APO; and
- acknowledge the sanctions that may be imposed should there be a violation of the terms of the APO.

The representative of an interested party may not reveal APO protected information to officials of the interested party that it represents. Timely access to business proprietary information under APO is generally considered to be essential in most cases in order for a representative to fully represent the interests of its client. In some instances, however, representatives do not want the responsibilities associated with APO authorization and some representatives do not apply for APO access. The representative of an interested party is not required to apply for APO access.

Section 351.305(a) of the Department's regulations provides for a single APO to be placed on the record of a segment of an AD/CVD proceeding within two days after a petition is filed or an investigation is self-initiated. The amendments to the regulations published in January 2008 provide for APOs to be placed on the record of a proceeding within five business days after the day on which 1) a request for a new shipper review is properly filed, 2) an application for a scope ruling is properly filed, 3) a request for a changed circumstances review is properly filed, or 4) within five days after the initiation of any other segment of the proceeding. ("segment of proceeding" is defined in 19 CFR 351.102 as a portion of the proceeding that is reviewable under section 561A of the Act.) All authorized applicants are subject to the terms of the single APO.

Who can apply for APO access?

Only the representative of an interested party, such as a U.S. or foreign producer, an importer, exporter, U.S. labor union, or foreign government (19 CFR 351.305((b)(2)) can apply for APO access. Generally the representative is a lawyer, economist or trade specialist, typically from private law or consulting firms. The representative may retain specialists who are not attorneys to assist in the representation of the interested party, such as an economist, trade specialist or computer specialist. However, any such specialists must also be identified in the APO Service List.

The representative of an interested party does not need to apply for APO access in order to view his/her own client's business proprietary information.

When can representatives apply for APO access?

In an AD/CVD investigation, a representative can apply for APO access the day a petition is filed with the Department. In a new shipper review, scope inquiry, or changed circumstances review, a representative may apply for APO access the day after these requests are filed. In any other segment of a proceeding (*i.e.*, administrative review or anticircumvention inquiry) a representative can apply for APO access the day the initiation is published in the Federal Register (19 CFR 351.305(a)). The representatives of most interested parties apply for APO access as soon as legally permissible, and expect that the Department will grant APO status within the time frame set forth by the regulations.

IX. ADMINISTRATION OF THE APO PROVISION

The APO/Dockets Unit administers the APO provisions of the statute (Section 777(c) of the Act) and the regulations (section 351 and Part 354 of the Department's regulations) for all E&C AD/CVD proceedings and in Binational Panel Reviews under Article 1904 of the North American Free Trade Agreement (NAFTA) (Part 356, Subpart C of the Department's regulations).

The APO/Dockets Unit provides consultation and technical guidance to E&C staff and interested parties concerning case-specific issues regarding business proprietary information and the treatment of business proprietary information under the terms of an APO. The APO Unit issues APOs and authorizes APO access to the representatives of interested parties in all AD/CVD proceedings: investigations, administrative reviews, new shipper reviews, scope inquiries, changed circumstances reviews, suspension agreements, anti-circumvention inquiries, sunset reviews, remand proceedings, Binational Panel Reviews under Article 1904 of NAFTA, Section 129 Determinations pursuant to Section 129(b) of the Uruguay Round Agreements Act, and APO violation investigations.

X. APO RELEASE PROCEDURES

No individual analyst has the authority to personally release business proprietary information subject to an APO to any person. All business proprietary information subject to APO is released through the APO/Dockets Unit under strict administrative controls. Analyst responsibilities for APO release are explained the AD Handbook.

XI. CLOSED SESSIONS OF HEARINGS

Section 351.310(f) of the Department's regulations provides for a "closed session" of the public hearing for limited discussion of business proprietary information subject to APO. The deadline for a party to request a closed session of the hearing is no later than the date the case briefs are due.

If the team approves the request, arrangements need to be made with the APO Unit as soon as possible for coverage. The APO Unit will provide a draft of a letter that the team will need to send to all interested parties concerning closed session procedures. The procedures for closed sessions and analyst responsibilities for preparing for a closed session are explained in the AD Handbook.

XII. ALLEGATIONS OF AN APO VIOLATION

The Department takes all allegations of an APO violation, or the mis-handling of business proprietary information by the Department, very seriously. An allegation of an APO violation or the mis-handling of business proprietary information must be brought to the immediate attention of the APO/Dockets Unit. After initial review of the situation to determine if a violation has occurred, or may have occurred, immediate steps are taken to mitigate any possible damage. Discussion of the analysts role in the initial reporting of an APO violation can be found in the AD Handbook.

An allegation of an APO violation is kept confidential. No information regarding an alleged APO violation should be found anywhere on the record of any proceeding. To assist with *DAMAGE CONTROL* the analyst will be asked to immediately retrieve all copies of the offending document(s) from the ADCVD Operations team, CCTEC, Office of Policy, and from the Official and Public Files in CRU. Once that is done, the investigation itself is handled by the APO/Dockets Unit (Part 354 of the Department's regulations). The allegation may not be discussed further with anyone, including any member of the E&C case team.

XIII. DOCKETS

The APO/Dockets Unit is also charged with the management of E&C's Dockets function (19 CFR 351.103). Dockets is responsible for the official receipt of all AD/CVD filings and other special filings made with E&C, enforcement of the filing requirements of the regulations (19 CFR 351.303), and the initial distribution to the appropriate offices. A discussion of Dockets responsibilities and procedures can be found in the AD Handbook.

XIV. INJUNCTIONS

The APO/Dockets Unit is also responsible for the official receipt of injunctions from the U.S. Court of International Trade that are served on E&C by parties to the Court proceedings. When received at the Dockets counter, the injunction is processed as described in the AD Handbook, and is hand-delivered within a short time (usually within a few hours) after service to the appropriate Office Director for immediate action. The APO/Dockets Unit maintains the official Injunction Log of receipt for all properly served injunctions.