

Department's Regulation on Certification – 19 CFR 351.303(g)

FREQUENTLY ASKED QUESTIONS (FAQs)

Section 782(b) of the Tariff Act of 1930, as amended, (the Act), requires that any person providing factual information to the Department during an AD/CVD proceeding must certify the accuracy and completeness of such information. See 19 U.S.C. 1677m(b). The Department of Commerce's regulations set forth the specific requirements for such certifications at 19 CFR 351.303(g) and require all factual information submitted during an antidumping (AD) and/or countervailing duty (CVD) proceeding to be certified by the person responsible for the presentation of factual information and his/her representative, if applicable, to be accurate and complete to the best of their knowledge. This regulation was recently amended in a Final Rule issued on July 17, 2013. See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings, 78 FR 42678 (July 17, 2013) (Certification Final Rule). The purpose of the amendment is to strengthen the certifications as well as to ensure that parties and their counsel/representative are aware of potential consequences of false certifications. The amended regulation provides separate certification templates for companies and governments, and their representatives.

What is the effective date of this Certification Final Rule?

August 16, 2013. This rule will apply to all investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of AD/CVD proceedings initiated on or after August 16, 2013.

Where can I find the template or format for the certification?

The templates or format for certifying information can be found in the Department's regulations at 19 CFR 351.303(g), a copy of which is also provided at the end of these FAQs for your convenience. There are three certification templates. An interested party, other than a government, must use the template provided at 19 CFR 351.303(g)(1)(i). If the interested party is a government, then the certification at 351.303(g)(1)(ii) applies. Legal counsel or non-attorney representatives of the interested party must use the certification provided at 351.303(g)(2).

Why do I need to certify a submission?

The Department relies on factual information provided by the party in its submissions to make its decisions in each AD or CVD proceeding. Thus, it is expected and necessary that the facts provided by parties are accurate and complete to the best of the submitter's knowledge. We require a certification to that effect pursuant to section 782(b) of the Act, which requires that any person providing factual information to the Department during an AD/CVD proceeding must certify the accuracy and completeness of such information.

How do I determine if the information is factual or not, and whether it needs to be certified?

The Department recently amended the definition of “factual information” provided in its regulations as well as the time limits for submission of factual information. See Definition of Factual Information and Time Limits for Submission of Factual Information, 78 FR 21246, April 10, 2013 (Factual Information Rule). We have provided 19 CFR 351.102(b)(21) below for your convenience. Please note that the newly amended 19 CFR 351.301(b) requires any person, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. See Factual Information Rule, 78 FR at 21247, 21254.

Thus, for certification purposes, if a submission contains factual information as defined in 19 CFR 102(b)(21), it must be certified. The Department has created a narrow exception to the certification requirement for procedural submissions only. See Certification Final Rule, 78 FR at 42686, 42690 (Comments 10 and 22).

§ 351.102 Definitions.

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(b) * * *

(21) *Factual information.* “*Factual information*” means:

(i) *Evidence, including statements of fact, documents, and data submitted either in response to initial and supplemental questionnaires, or, to rebut, clarify, or correct such evidence submitted by any other interested party;*

(ii) *Evidence, including statements of fact, documents, and data submitted either in support of allegations, or, to rebut, clarify, or correct such evidence submitted by any other interested party;*

(iii) *Publicly available information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2), or, to rebut, clarify, or correct such publicly available information submitted by any other interested party;*

(iv) *Evidence, including statements of fact, documents and data placed on the record by the Department, or, evidence submitted by any interested party to rebut, clarify or correct such evidence placed on the record by the Department; and*

(v) *Evidence, including statements of fact, documents, and data, other than factual information described in paragraphs (b)(21)(i)–(iv) of this section, in addition to evidence submitted by any other interested party to rebut, clarify, or correct such evidence.*

What types of submissions are exempt from certification?

In the Certification Final Rule the Department has made a narrow exception that exempts procedural submissions from the requirement. See Certification Final Rule, 78 FR at 42686, 42690 (Comments 10 and 22).

Some examples of submissions that are considered procedural in nature are as follows: requests for extension of time limits for questionnaire responses or other submissions; hearing requests; requests for review; letters of appearance; corrections to a previous submission that has

been certified (as these will be deemed to be covered by the certification included in the original submission to which they belong); requests to extend preliminary and final determinations/results; requests for verification; or requests for alignment with a parallel proceeding; and many APO filings.

Examples of submissions which the Department considers non-procedural in nature and therefore require certification include: questionnaire responses, deficiency comments, surrogate value information, verification exhibits, and other factual information placed on the record. To the extent that a factual submission also is procedural in nature, e.g., a questionnaire response that also contains a request to extend a final determination, a certification is required. See id. at 42686.

Must case and rebuttal briefs be certified?

No. The Department will not require certification for case and rebuttal briefs, as these documents are limited, consistent with 19 CFR 351.309, to written arguments based on submissions containing factual information that would already have the appropriate certifications. See Certification Final Rule, 78 FR at 42690 (Comment 20).

Why should I certify information contained in a submission which is not my own information and was obtained by me from another source?

The purpose of requiring company/government certifications even with submissions of factual information that has been obtained from public sources or compiled by a representative, is that the company/government must take ultimate responsibility for the information that has been provided to the Department on its behalf. In doing so, it should be recognized that the signer is certifying to the “best of {his/her} knowledge,” as underscored by the language in the certification itself. Requiring company/government certifications for submissions containing third party public information, or information compiled by a representative, also prevents parties from submitting information that they know may contain inaccurate information or which the certifier knows has been superseded with revised information.

How does a party certify a submission that contains proprietary information of another party to which the submitter is not privy to?

Because a company/government has no access to another party’s business proprietary information under APO regulations, the Department will require that the company/government certifications for such submissions be included in the public version of the document. Although the public version of such documents would contain blanks or ranged data in place of the proprietary information, in certifying to the “best of {its} knowledge” the company/government is certifying only the public information contained therein, and is informing the Department that it is aware of the submission filed on its behalf. Further, the Department also requires that submissions containing both a company/government’s own information and third party business proprietary information be certified. However, because a company may only certify the public information and its own business proprietary information that it has provided, we have modified the text of the certification to make clear that a party is certifying only all of the public and all of its own business proprietary information that it provides in the submission. When a submission contains both a company/government’s own information and third party business proprietary information, the company/government certification must be included in the public version of the

document. See Certification Final Rule, 78 FR at 42685 (Comment 9). The company/government official's certification will serve to certify the accuracy and completeness of its own BPI and the public information contained in the submission because the Department considers the proprietary document and corresponding public version to constitute a single submission, as explained in Comment 15 of the Certification Final Rule. See id., 78 FR at 42689.

The counsel/representative's certification must be included in all versions of the document, *i.e.*, the public version, the final business proprietary document, and the one-day lag version. The counsel/representative does not need a newly dated certification in instances where a final proprietary document is submitted after a one-day lag version is filed; the same certification can be included in the final business proprietary document and the corresponding public version.

What are the certification requirements when counsel/representative represents several interested parties?

Recognizing that it could be cumbersome for counsel/representative to obtain certifications from each of the interested parties it represents, the Certification Final Rule allows one interested party to certify on behalf of all the interested parties represented by the same counsel/representative, provided that all of the interested parties agree in writing to such an arrangement. See Certification Final Rule, 78 FR at 42690 (Comment 21). If all parties are in agreement, the designated counsel/representative must file an initial letter identifying the "lead" party who will certify on behalf of all of the other interested parties. In addition, this initial letter must contain certifications from each of the parties that will be represented. We note that a union, association, or coalition (*i.e.*, interested parties within the meaning of section 771(9) (D), (E), (F) or (G) of the Act) is not required to provide with the initial letter additional certifications from their constituent members, because the union, association, or coalition itself is the interested party. Further, in subsequent filings during a proceeding, the Department will not accept a certification solely from the "lead" party if the submission also contains any information that belongs to another of the member interested parties. In such instances, both the lead party and the party(ies) whose information is contained in the submission must certify the information by including certifications in the public version of the document. Similarly, if a union, association, or coalition files a submission containing information that belongs to any of its constituent members or provides information in a submission on a disaggregated basis, then those individual constituent members must also certify the submission by including a certification in the public version of the document.

What are the certification requirements when there is more than one representative/law firm representing multiple parties?

Where there is more than one representative/law firm representing multiple parties, the representative certifications must be from the "lead" interested party's representative and the representative of the party whose specific information is contained in the submission. See Certification Final Rule, 78 FR at 42683 (Comment 5).

Which certification should I complete if I am an attorney but not a member of the U.S. Bar?

Foreign attorneys who are not licensed in the United States, a U.S. possession, or territory, must use the “representative” designation in the certification template provided in 19 CFR 351.303(g)(2). See Certification Final Rule, 78 FR at 42690 (Comment 24).

What are the consequences of knowingly certifying false information?

False certifications and violations are subject to prosecution under U.S. law (including, but not limited to, 18 U.S.C. 1001), which imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. Violations will be referred to the appropriate authorities such as the Department’s Office of Inspector General or the U.S. Department of Justice. Further, the Department will, on a case-by-case basis, evaluate instances of possible material false statements or information as circumstances may differ from one case to another.

Why can’t I sign the certification electronically?

At its current phase of implementation, the Department’s electronic system for filing submissions (Import Administration Antidumping and Countervailing Duty Centralized Electronic Service System - IA ACCESS), cannot accommodate electronic signatures for certification purposes. See Certification Final Rule, 78 FR at 42681 (Comment 3). Therefore, until electronic signatures become feasible, a certifier must sign the certification by hand and retain the original for a period of five years from the date of filing the submission. A copy of the certification must be filed with the submission.

As noted in the Certification Final Rule, the Department will continue to consider permitting electronic signatures as future phases of IA ACCESS are implemented.

Why should I retain the original signed certification for five years?

Original certifications must be maintained so that they can be physically examined, if requested, at verification and so that they can be obtained from the certifier if, for example, the Department is contemplating referring a possible certification violation to the Department’s Office of Inspector General or the U.S. Department of Justice. Should the acceptance of electronic signatures for certification purposes become feasible at a later date, maintenance of the original signed document may become unnecessary, and the Department may remove this record-keeping requirement at that time. See Certification Final Rule, 78 FR at 42681 (Comment 3).

How should I date my certification?

The date of signature (found in the certification after the signature line) should be the actual date the person signs the certification. This date does not need to match the date of the submission. See Certification Final Rule, 78 FR at 42689 (Comment 16). The identifier date (found in the first sentence of the certification that identifies the submission by title and date) can be either the due date of the submission or the date the submission is filed. See id., 78 FR at 42679 (Comment 1).

What should I do if my certification is deficient/contains inaccuracies?

If a certification is deficient it should be corrected within two business days. The Department will normally allow up to two business days from the date the party is notified of the deficiency. There is no need to re-submit the entire submission. A letter explaining the correction with the revised certification should be filed with the Department. See 78 FR at 42690 (Comment 23).

Can I modify the certification template provided in the Department’s regulations if I have an unusual situation?

No. Parties may not modify the language in the certification templates. If you are experiencing a situation that has not already been addressed by the Certification Final Rule, please contact the analyst serving as the point-of-contact for your proceeding for further guidance.

CERTIFICATION REGULATION AND TEMPLATES FOR COMPANY, GOVERNMENT AND LEGAL COUNSEL OR REPRESENTATIVE

§ 351.303 Filing, document identification, format, translation, service, and certification of documents.

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(g) *Certifications.* Each submission containing factual information must include the following certification from the person identified in paragraph (g)(1) of this section and, in addition, if the person has legal counsel or another representative, the certification in paragraph (g)(2) of this section. The certifying party must maintain the original signed certification for a period of five years from the date of filing the submission to which the certification pertains. The original signed certification must be available for inspection by U.S. Department of Commerce officials. Copies of the certifications must be included in the submission filed at the Department.

(1) For the person(s) officially responsible for presentation of the factual information:

(i) **COMPANY CERTIFICATION ***

I, **(PRINTED NAME AND TITLE)**, currently employed by **(COMPANY NAME)**, certify that I prepared or otherwise supervised the preparation of the attached submission of **(IDENTIFY THE SPECIFIC SUBMISSION BY TITLE)** due on **(DATE)** OR filed on **(DATE)** pursuant to the **(INSERT ONE OF THE FOLLOWING OPTIONS IN { }): {THE (ANTIDUMPING OR COUNTERVAILING) DUTY INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER)}** or **{THE (DATES OF PERIOD OF REVIEW) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)}** or **{THE (SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW**

OR SCOPE RULING OR CIRCUMVENTION INQUIRY) OF THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER))). I certify that the public information and any business proprietary information of **(CERTIFIER'S COMPANY NAME)** contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: _____

Date: _____

* For multiple person certifications, all persons should be listed in the first sentence of the certification and all persons should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, e.g., "I" should be changed to "we" and "my knowledge" should be changed to "our knowledge."

(ii) GOVERNMENT CERTIFICATION **

I, **(PRINTED NAME AND TITLE)**, currently employed by the government of **(COUNTRY)**, certify that I prepared or otherwise supervised the preparation of the attached submission of **(IDENTIFY THE SPECIFIC SUBMISSION BY TITLE) due on (DATE) OR filed on (DATE)** pursuant to the **(INSERT ONE OF THE FOLLOWING OPTIONS IN { }: {THE (ANTIDUMPING OR COUNTERVAILING) DUTY INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (DATES OF PERIOD OF REVIEW) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW OR SCOPE RULING OR CIRCUMVENTION INQUIRY) OF THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER))**). I certify that the public information and any business proprietary information of the government of **(COUNTRY)** contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce.

In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: _____

Date: _____

** For multiple person certifications, all persons should be listed in the first sentence of the certification and all persons should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, e.g., “I” should be changed to “we” and “my knowledge” should be changed to “our knowledge.”

(2) For the legal counsel or other representative:

REPRESENTATIVE CERTIFICATION ***

I, (PRINTED NAME), with (LAW FIRM or OTHER FIRM), (INSERT ONE OF THE FOLLOWING OPTIONS IN { }: {COUNSEL TO} or {REPRESENTATIVE OF}) (COMPANY NAME, OR GOVERNMENT OF COUNTRY, OR NAME OF ANOTHER PARTY), certify that I have read the attached submission of (IDENTIFY THE SPECIFIC SUBMISSION BY TITLE) due on (DATE) OR filed on (DATE) pursuant to the (INSERT ONE OF THE FOLLOWING OPTIONS IN { }: {THE (ANTIDUMPING OR COUNTERVAILING DUTY) INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (DATES OF PERIOD OF REVIEW) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW OR SCOPE RULING OR CIRCUMVENTION INQUIRY) OF THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)}). In my capacity as (INSERT ONE OF THE FOLLOWING OPTIONS IN { }: {COUNSEL} or {ADVISER, PREPARER, OR REVIEWER}) of this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the

accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: _____

Date: _____

*** For multiple representative certifications, all representatives and their firms should be listed in the first sentence of the certification and all representatives should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, e.g., “I” should be changed to “we” and “my knowledge” should be changed to “our knowledge.”