

**Subpart C—Proprietary and Privileged Information**

- 356.9 Persons authorized to receive proprietary information.
- 356.10 Procedures for obtaining access to proprietary information.
- 356.11 Procedures for obtaining access to privileged information.

**Subpart D—Violation of a Protective Order or a Disclosure Undertaking**

- 356.12 Sanctions for violation of a protective order or disclosure undertaking.
- 356.13 Suspension of rules.
- 356.14 Report of violation and investigation.
- 356.15 Initiation of proceedings.
- 356.16 Charging letter.
- 356.17 Request to charge.
- 356.18 Interim sanctions.
- 356.19 Request for a hearing.
- 356.20 Discovery.
- 356.21 Subpoenas.
- 356.22 Prehearing conference.
- 356.23 Hearing.
- 356.24 Proceeding without a hearing.
- 356.25 Witnesses.
- 356.26 Initial decision.
- 356.27 Final decision.
- 356.28 Reconsideration.
- 356.29 Confidentiality.
- 356.30 Sanctions for violations of a protective order for privileged information.

AUTHORITY: 19 U.S.C. 1516a and 1677f(f), unless otherwise noted.

SOURCE: 59 FR 229, Jan. 3, 1994, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 356 appear at 78 FR 62418, Oct. 22, 2013.

**Subpart A—Scope and Definitions****§ 356.1 Scope.**

This part sets forth procedures and rules for Article 10.12 of the United States-Mexico-Canada Agreement under the Tariff Act of 1930, as amended by title IV of the United States-Mexico-Canada Agreement Implementation Act of 2020 (19 U.S.C. 1516a and 1677f(f)). This part is authorized by section 412(g) of the United States-Mexico-Canada Agreement Implementation Act of 2020.

[86 FR 70048, Dec. 9, 2021]

**§ 356.2 Definitions.**

For purposes of this part:

(a) *Act* means the Tariff Act of 1930, as amended;

(b) *Administrative law judge* means the person appointed under 5 U.S.C. 3105 who presides over the taking of evidence as provided by subpart D of this part;

(c) *Affected party* means a person against whom sanctions have been proposed for alleged violation of a protective order or disclosure undertaking but who is not a charged party;

(d) *Agreement* means the United States-Mexico-Canada Agreement (USMCA) between Canada, the United Mexican States, and the United States, signed on November 30, 2018, as amended;

(e) *APO Sanctions Board* means the Administrative Protective Order Sanctions Board;

(f) *Article 10.12 Binational Panel Rules* means the USMCA Article 10.12 Binational Panel Rules, established in accordance with Article 10.12.14 of the USMCA, and any subsequent amendments;

(g) *Authorized agency of a free trade area country* means:

(1) In the case of Canada, any Canadian government agency that is authorized by Canadian law to request the Department to initiate proceedings to impose sanctions for an alleged violation of a disclosure undertaking; and

(2) In the case of Mexico, any Mexican government agency that is authorized by Mexican law to request the Department to initiate proceedings to impose sanctions for an alleged violation of a disclosure undertaking;

(h) *Binational panel* means a binational panel established pursuant to Annex 10-B.1 to Chapter Ten of the Agreement for the purposes of reviewing a final determination;

(i) *Charged party* means a person who is charged by the Deputy Under Secretary with violating a protective order or a disclosure undertaking;

(j) *Chief Counsel* means the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, or designee;

(k) *Days* means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;

(l) *Department* means the U.S. Department of Commerce;

§ 356.2

19 CFR Ch. III (4-1-23 Edition)

(m) *Deputy Under Secretary* means the Deputy Under Secretary for International Trade, U.S. Department of Commerce;

(n) *Director* means the Senior APO Specialist (as defined by 19 CFR 354.2) or an office director under a Deputy Assistant Secretary, International Trade Administration, or a designee;

(o) *Disclosure undertaking* means:

(1) In the case of Canada, the Canadian mechanism for protecting proprietary or privileged information during proceedings pursuant to Article 10.12 of the Agreement, as prescribed by subsection 77.21(2) of the Special Import Measures Act, as amended;

(2) In the case of Mexico, the Mexican mechanism for protecting proprietary or privileged information during the proceedings pursuant to Article 10.12 of the Agreement, as prescribed by the Ley de Comercio Exterior and its regulations;

(p) *Extraordinary challenge committee* means the committee established pursuant to Annex 10-B.3 to Chapter Ten of the Agreement to review decisions of a panel or conduct of a panelist;

(q) *Final determination* means “final determination” as defined by Article 10.8 of the Agreement;

(r) *Free trade area country* or *FTA country* means “free trade area country” as defined by section 516A(f)(9) of the Act (19 U.S.C. 1516a(f)(9));

(s) *Investigating authority* means the competent investigating authority that issued the final determination subject to review and includes, in respect of the issuance, amendment, modification or revocation of a protective order or disclosure undertaking, any person authorized by the investigating authority;

(t) *Lesser-included sanction* means a sanction of the same type but of more limited scope than the proposed sanction for violation of a protective order or disclosure undertaking; thus, a one-year bar on representation before the Department is a lesser-included sanction of a proposed seven-year bar;

(u) *Letter of transmittal* means a document marked according to the requirements of 19 CFR 351.303(d)(2);

(v) *Official publication* means:

(1) In the case of Canada, the *Canada Gazette*;

(2) In the case of Mexico, the *Diario Oficial de la Federacion*; and

(3) In the case of the United States, the *FEDERAL REGISTER*;

(w) *Panel review* means review of a final determination pursuant to Chapter Ten of the Agreement;

(x) *Party to the proceeding* means a person that would be entitled, under section 516A of the Act (19 U.S.C. 1516a), to commence proceedings for judicial review of a final determination;

(y) *Participant* means a party to the proceeding that files a Complaint or a Notice of Appearance in a panel review, and the Department;

(z) *Parties* means, in an action under subpart D of this part, the Department and the charged party or affected party;

(aa) *Person* means, an individual, partnership, corporation, association, organization, or other entity;

(bb) *Privileged information* means:

(1) With respect to a panel review of a final determination made in Canada, information of the investigating authority that is subject to the solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, and with respect to which the privilege has not been waived;

(2) With respect to a panel review of a final determination made in Mexico:

(i) Information of the investigating authority that is subject to attorney-client privilege under the laws of Mexico; or

(ii) Internal communications between officials of Secretariat of Economy in charge of antidumping and countervailing duty investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination; and

(3) With respect to a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States and with respect to

which the privilege has not been waived;

(cc) *Proprietary information* means:

(1) With respect to a panel review of a final determination made in Canada, information referred to in subsection 84(3) of the Special Import Measures Act, as amended, or subsection 45(3) of the Canadian International Trade Tribunal Act, as amended, with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information;

(2) With respect to a panel review of a final determination made in Mexico, *informacion confidencial*, as defined under article 80 of the Ley de Comercio Exterior and its regulations; and

(3) With respect to a panel review of a final determination made in the United States, business proprietary information under section 777(f) of the Act (19 U.S.C. 1677f(f)) and information the disclosure of which the Department has decided is limited under the procedures adopted pursuant to Article 10.12.14 of the Agreement, including business or trade secrets; production costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter;

(dd) *Protective order* means a protective order issued by the Department under 19 CFR 356.10(c) or 356.11(c);

(ee) *Scope determination* or *class or kind of merchandise determination* means a determination by the Department, reviewable under section 516A(a)(2)(B)(vi) of the Act (19 U.S.C. 1516a(a)(2)(B)(vi)), as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or an antidumping or countervailing duty order covering free trade area country merchandise.

(ff) *Secretariat* means the Secretariat established pursuant to Article 30.6 of the Agreement and includes the Secre-

tariat sections located in Canada, Mexico, and the United States;

(gg) *Secretary* means the Secretary of the Canadian section of the Secretariat, the Secretary of the Mexican section of the Secretariat, or the Secretary of the United States section of the Secretariat and includes any person authorized to act on behalf of the Secretary;

(hh) *Service address* means the address of the counsel of record for a person, including an electronic mail address submitted with that address, or, where a person is not represented by counsel, the address set out by the person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served, including an electronic mail address submitted with that address, or where a Change of Service Address has been filed by a person, the new service address set out as the service address in that form, including an electronic mail address submitted with that address;

(ii) *Service list* means, with respect to a panel review of a final determination made in the United States, the list maintained by the investigating authority of persons who have been served in the proceeding leading to the final determination;

(jj) *Under Secretary* means the Under Secretary for International Trade, U.S. Department of Commerce, or designee;

(kk) *United States section of the Secretariat* means, for the purposes of filing, United States Secretary, USMCA Secretariat, room 2061, U.S. Department of Commerce 14th and Constitution Avenue NW, Washington, DC 20230.

[59 FR 229, Jan. 3, 1994, as amended at 86 FR 70048, Dec. 9, 2021]

## Subpart B—Procedures for Commencing Review of Final Determinations

### § 356.3 Notice of intent to commence judicial review.

A party to a proceeding who intends to commence judicial review of a final determination made in the United States shall file a Notice of Intent to Commence Judicial Review, which shall contain such information, and be