



U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436 United States
Phone: 202-205-2000
Fax: 202-205-2104
www.usitc.gov

Nondisclosure Confidentiality Agreement for Mediators

- to be signed by the mediator and countersigned by the Secretary -

I, _____, a mediator, intending to be legally bound, consent to the terms in this Agreement in consideration of my being granted conditional access to certain information, as specified below:

1. This information includes all communications (written or oral) provided by the U.S. International Trade Commission ("Commission") and the private parties to this investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, including all confidential business information and all information provided in mediation. The mediation is confidential and is protected by the confidentiality provisions of the Alternative Dispute Resolution Act, 5 U.S.C. § 574. A dispute resolution communication between a mediator and a party that is protected from disclosure under 5 U.S.C. § 574 is also protected from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(3), as provided by 5 U.S.C. § 574. The parties' communications are also protected by other authorities, including the Federal Rules of Evidence, the Administrative Procedures Act, 5 U.S.C. § 551, and 19 U.S.C. § 1337(n). By my being granted conditional access to the information indicated above, the Commission has placed special confidence and trust in me, and I am obligated to protect this information from unauthorized disclosure.
2. This agreement is made and intended for the benefit of the Commission and may be enforced by the Commission. By granting me conditional access to information in this context, the Commission, or any authorized representative, may seek any remedy available to it to enforce this Agreement, including, but not limited to, a court order prohibiting disclosure of this Agreement, I could be subjected to administrative, disciplinary, civil, or criminal action, as appropriate, under the laws, regulations, and directives applicable to the category of information involved. I also understand that the Commission has not waived any statutory or common law evidentiary privileges or protections that it may assert in any administrative or court proceeding to protect any sensitive information to which I have been given conditional access under the terms of this Agreement.
3. All forms of communication (written and oral) are to be protected.
4. Communications made by the private parties in joint session may not be disclosed to anyone not participating in the session.
5. Communications of information that is other public may be disclosed.
6. If I am served with a subpoena or other demand, I will promptly advise the General Counsel of the Commission of such service or demand, the nature of the documents or information sought, and all relevant facts or circumstances. The Chairman of the Commission may assert privileges for the information described above. See *Touchy v. Regan*, 340 U.S. 462 (1951). If the Chairman asserts privilege over the information, I will respectfully decline to produce the requested documents, to testify,



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or to otherwise disclose requested information. The General Counsel will defend the assertion of privilege on behalf of the mediator and the Commission. If a court rules that I must comply with a demand made upon me, I will respectfully ask the court to wait for the General Counsel to submit an explanation to the court regarding the nature of the privilege being asserted.

7. I will make no verbatim recording of the mediation, such as an audiotape, videotape, or a stenographic record.
8. The Commission investigative attorney may participate as a party to the investigation upon the request of the parties. Otherwise, the Commission investigative attorney will not have knowledge of the contents of the mediation proceedings, except that he or she may review any settlement agreement that arises from successful mediation before advising the presiding administrative law judge about whether a settlement is in the public interest.
9. As described in the Users' Manual, the Commission may communicate with the Secretary and with the mediators with a view to revising the mediation program. The Secretary or the mediator may also communicate with an administrative law judge regarding a motion for sanctions, only to the extent necessary to make a recommendation on sanctions. In both situations, the substance of the communication will remain confidential.
10. In addition to the above terms regarding confidentiality of communications made during mediation, I will not disclose any confidential business information to any person not covered by a protective order. A protective order covers only those counsel who have been subscribed to the protective order by the administrative law judge or the Commission, but does not cover parties under representation and does not cover executives who are employed directly by the party (inside counsel).

Mediator Name

337-TA-_____
Investigation No.

Mediator Signature

Date

Secretary to the Commission

Date