

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN WINDSHIELD WIPERS AND
COMPONENTS THEREOF**

Inv. No. 337-TA-928

Inv. No. 337-TA-937

(Consolidated)

ORDER No. 42: DENYING TRICO'S MOTION TO DECLASSIFY CBI

(November 18, 2015)

On October 8, 2015, Respondents Trico Products Corporation and Trico Components SA de CV (collectively, "Trico") filed a motion to declassify certain admitted trial exhibits (*Motion*). (Motion Docket No. 928-051.) On October 16, 2015, Complainants Valeo North America, Inc. and Delmex de Juarez S. de R.L. de C.V. (collectively, "Valeo") filed a response in opposition to Trico's *Motion* (*Opposition*). Valeo also filed the Declarations of Todd Moreman dated October 16, 2015 ("Moreman Decl.") and Thomas Miller dated October 15, 2015 ("Miller Decl.") in support of its *Opposition*. Specifically, Trico argues that the documents at issue are not entitled to a "Confidential Business Information" ("CBI") designation and do not qualify for protection under such designation. (*See Motion* at 1.) Valeo disagrees and argues that the documents "are properly protectable because their disclosure would cause substantial harm to Valeo's competitive position." (*See Opposition* at 2.)

I. LEGAL STANDARDS

Pursuant to the Protective Order in effect in this Investigation (Order No. 1), CBI is "information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, amount or source of any income, profits, losses, or expenditures of any

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person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either (i) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions; or (ii) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information." *See* Order No. 1 at 1.

Valeo bears the burden of proving that the documents at issue are entitled to the CBI designation. *See Certain Bearings and Packaging Thereof*, Inv. No. 337-TA-469, Order No. 38, 2002 WL 31302600, *4 (U.S.I.T.C. Oct. 9, 2002) ("[The] party that has supplied information designated as confidential and seeks to maintain that classification . . . and/or the party that seeks to reclassify it as its own confidential business information . . . bears the burden of proof as to the confidentiality thereof.").

II. DISCUSSION

A. Redacted Versions

Initially, I reject Trico's belated request that Valeo produce redacted, public, versions of the trial exhibits at issue, in the event any portion thereof is deemed non-confidential. (*See Motion* at 1.) Trico provides no good cause for its belated request and cites no case in support of its "burdensome" request. *See Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same (III)*, Inv. No. 337-TA-630, Order No. 47, 2009 WL 2845890, *4 (U.S.I.T.C. Aug. 28, 2009) ("While it might be easy in theory to redact [] confidential testimony of its 'qualifying' CBI and produce a public version, the reality is that such a process would be quite burdensome not only on the parties, but on the Commission as well."). While I would probably have been more sympathetic to Trico's request during fact discovery, I will not compel

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Valeo at this late juncture, months after the evidentiary hearing, to produce redacted versions of the exhibits at issue, especially because for it to do so would cause Valeo substantial competitive harm.

B. Publicly Available Exhibits

Trico argues that some of the trial exhibits were improperly designated as CBI because they are publicly available. (*See Motion* at 8 (citing CX-11C, CX-250C, CX-252C, CX-262C,¹ CX-452C, RX-125C, RX-147C, RX-149C, JX-6C, RX-150C, and JX-5C).) However, as discussed below, at least portions of those exhibits are not publicly available and include CBI.

- CX-11C includes the publicly available complaint but also the confidential declaration of Thomas Miller dated July 25, 2014. Valeo persuasively established that the declaration of Thomas Miller includes CBI. (*See Opposition* at 6 (“The Miller declaration contains Valeo’s financial and other sensitive information, and was submitted to provide factual support for Valeo’s position that it has satisfied the economic prong of the domestic industry requirement in this investigation.”) (citing Miller Decl. at ¶ 4).) *See also* Miller Decl. at ¶ 4 (“[CX-11C] includes highly confidential Valeo financial information concerning Valeo’s domestic investments and sales revenues, and its public disclosure would cause substantial harm to Valeo’s competitive position.”).

- CX-250C: Valeo also persuasively established that at least portions of CX-250C include CBI. (*See Opposition* at 6 (“[O]nly a portion of the information contained in that document came from Valeo’s publicly available SEC filings. The rest of the financial information in the document is Valeo’s CBI and is not public information.”) (citing Miller Decl.

¹ Valeo agreed to de-designate CX-262C thereby mooting Trico’s *Motion* with respect to that exhibit.

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at ¶ 6.) *See also* Miller Decl. at ¶ 6 (“[CX-250C] contains Valeo's confidential financial information and its disclosure would cause substantial harm to Valeo's competitive position.”).

- CX-252C and CX-452C: Valeo argues that CX-252C and CX-452C include current internal product designations reflecting Valeo’s internal business practices. (*See Opposition* at 6-7 (citing Moreman Decl. at ¶ 11).) Valeo’s North American R&D Director, Mr. Moreman, further explained that “Valeo’s internal product designations reflect its internal [

] that Valeo’s competitors could still find useful.”

(*See* Moreman Decl. at ¶ 11.) I find that Valeo persuasively established that at least portions of CX-252C and CX-452C include CBI.

- RX-125C, RX-147C, RX-149C, RX-150C, JX-5C, and JX-6C: Valeo states that RX-125C, RX-147C, RX-149C, RX-150C, JX-5C, and JX-6C are “internal presentations consisting of development drawings of Valeo’s Gen II and/or Gen IIB connectors.” (*See Opposition* at 7 (citing Moreman Decl. at ¶ 9).) In addition, Mr. Moreman explained that “[the] documents reflect Valeo’s [] and their public disclosure would cause substantial harm to Valeo’s competitive position by disclosing confidential aspects of Valeo’s [] to Valeo’s competitors.” (*See* Moreman Decl. at ¶ 9.)

I find that Valeo persuasively established that at least portions of RX-125C, RX-147C, RX-149C, RX-150C, JX-5C, and JX-6C include CBI.

C. Presentations and Meeting Minutes Involving Third Parties

Trico also argues that some of the trial exhibits were improperly designated as CBI because they relate to presentations made to third parties or minutes of meetings held with third parties. (*See Motion* at 9 (citing CX-130C, CX-131C, CX-676C, JX-5C, JX-6C, JX-12C, RX-

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99C, RX-101C, RX-118C, RX-125C, RX-147C, RX-149C, and RX-150C).) Valeo responds that “none of the documents challenged by Trico [] were actually shared with third parties, and each of them contains confidential Valeo business information” (*See Opposition* at 8-9 (citing Moreman Decl. at ¶ 10).) In addition, Mr. Moreman explained that “each of the documents contains Valeo’s confidential business information, including [] and much of the information is quite recent.” (*See* Moreman Decl. at ¶ 10.) Mr. Moreman further stated that “[t]he public disclosure of these documents would cause substantial harm to Valeo’s competitive position.” (*See id.*) I find that Valeo persuasively established that at least portions of CX-130C, CX-131C, CX-676C, JX-5C, JX-6C, JX-12C, RX-99C, RX-101C, RX-118C, RX-125C, RX-147C, RX-149C, and RX-150C include CBI.

D. Documents that Are More Than a Decade Old

Trico further argues that some of the trial exhibits were improperly designated as CBI because they are more than a decade old and have little to no competitive value. (*See Motion* at 10 (citing CX-676C, RX-79C, RX-80C, RX-96C, RX-99C, RX-100C, JX-11C, RX-101C, JX-12C, RX-102C, RX-104C, RX-105C, RX-106C, RX-107C, RX-108C, RX-109C, RX-110C, RX-111C, RX-116C, RX-118C, RX-125C, RX-147C, RX-149C, JX-6C, RX-150C, JX-5C, and RX-192C).) Valeo responds that the “documents reflect Valeo’s confidential business practices relating to[] (*See Opposition* at 4 (citing Moreman Decl. at ¶¶ 4-9).)

There is no *per se* rule that old documents do not qualify for CBI protection. *See, e.g., Encyclopedia Brown Prods., Ltd. v. HBO, Inc.*, 26 F. Supp. 2d 606, 614 (S.D.N.Y. 1998) (“Confidential business information dating back even a decade or more may provide valuable

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insights into a company's current business practices that a competitor would seek to exploit.”).

In this case, Valeo persuasively established that at least portions of the older trial exhibits include CBI. For instance, Mr. Moreman stated in his declaration that:

The age of these documents does not detract from their value as Valeo's confidential business information because [

] The public disclosure of these documents would cause substantial harm to Valeo's competitive position by revealing important aspects of Valeo's business practices relating to [

] Valeo's competitors and other members of the public that should not have access to that information.

See Moreman Decl. at ¶ 4 (emphasis added).

E. CX-113C and CX-251C

Trico also cites CX-113C and CX-251C but does not explain why these exhibits should be declassified. On the other hand, Valeo explained that “[CX-251C] reflects Valeo's [] and that “public disclosure of the document would cause substantial harm to Valeo's competitive position.” (*See* Moreman Decl. at ¶ 12.) Valeo further argued that “CX-113C is Valeo's [] and that “[CX-113C] contains additional highly confidential financial information concerning Valeo's [] and its public disclosure would cause substantial harm to Valeo's competitive position.” (*See* Miller Decl. at ¶ 5.) I find that Valeo persuasively established that at least portions of CX-113C and CX-251C include CBI.

III. CONCLUSION

Accordingly, Trico's motion to declassify is DENIED.

Within 7 days of the date of this order, the parties shall jointly submit: (1) a proposed public version of this order with any proposed redactions bracketed in red; and (2) a written justification for any proposed redactions specifically explaining why the piece of information sought to be redacted is confidential and why disclosure of the information would be likely to cause substantial harm or likely to have the effect of impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions.²

SO ORDERED.



Thomas B. Pender
Administrative Law Judge

² Under Commission Rules 210.5 and 201.6(a), confidential business information includes:

information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information.

See 19 C.F.R. § 201.6(a). Thus, to constitute confidential business information the disclosure of the information sought to be designated confidential must *likely have the effect of* either: (1) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions; or (2) *causing substantial harm* to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained.

**IN THE MATTER OF CERTAIN WINDSHIELD WIPERS
AND COMPONENTS THEREOF**

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CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER No. 42** has been served upon, **The Office of Unfair Import Investigations** and the following parties on
CEC - 1 2015.



Lisa R. Barton, Secretary
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