

authority under paragraph (2) shall not be subject to judicial review.

(b) Monitoring by Commission

(1) In general

If the determination made under subsection (a)(2)(A) and a determination made under any clause of subsection (a)(2)(B) with respect to a petition are affirmative, the Commission shall immediately commence monitoring of trade in the downstream product that is the subject of the determination made under subsection (a)(2)(A). If the Commission finds that imports of a downstream product being monitored increased during any calendar quarter by 5 percent or more over the preceding quarter, the Commission shall analyze that increase in the context of overall economic conditions in the product sector.

(2) Reports

The Commission shall make quarterly reports to the administering authority regarding the monitoring and analyses conducted under paragraph (1). The Commission shall make the reports available to the public.

(c) Action on basis of monitoring reports

The administering authority shall review the information in the reports submitted by the Commission under subsection (b)(2) and shall—

(1) consider the information in determining whether to initiate an investigation under section 1671a(a) or 1673a(a) of this title regarding any downstream product, and

(2) request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to component parts.

(d) Definitions

For purposes of this section—

(1) The term “component part” means any imported article that—

(A) during the 5-year period ending on the date on which the petition is filed under subsection (a), has been subject to—

(i) a countervailing or antidumping duty order issued under this subtitle or section 1303¹ of this title that requires the deposit of estimated countervailing or antidumping duties imposed at a rate of at least 15 percent ad valorem, or

(ii) an agreement entered into under section 1671c, 1673c, or 1303¹ of this title after a preliminary affirmative determination under section 1671b(b), 1673b(b)(1), or 1303¹ of this title was made by the administering authority which included a determination that the estimated net countervailable subsidy was at least 15 percent ad valorem or that the estimated average amount by which the normal value exceeded the export price (or the constructed export price) was at least 15 percent ad valorem, and

(B) because of its inherent characteristics, is routinely used as a major part, component, assembly, subassembly, or material in a downstream product.

(2) The term “downstream product” means any manufactured article—

(A) which is imported into the United States, and

(B) into which is incorporated any component part.

(June 17, 1930, ch. 497, title VII, §780, as added Pub. L. 100-418, title I, §1320(a), Aug. 23, 1988, 102 Stat. 1189; amended Pub. L. 103-465, title II, §§233(a)(1)(E), (2)(A)(vi), 261(d)(1)(B)(iv), 270(a)(1)(M), Dec. 8, 1994, 108 Stat. 4898, 4910, 4917.)

Editorial Notes

REFERENCES IN TEXT

Section 804 of the Trade and Tariff Act of 1984, referred to in subsec. (a)(2)(B)(i), is section 804 of Pub. L. 98-573, which is set out as a note under section 2253 of this title.

Section 1303 of this title, referred to in subsecs. (a)(2)(B)(ii), (iii) and (d)(1)(A)(i), (ii), is defined in section 1677(26) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103-465, §261(d)(1)(B)(iv), substituted “or 1673a(a)” for “, 1673a(a), or 1303”.

Subsec. (d)(1)(A)(ii). Pub. L. 103-465, §270(a)(1)(M), inserted “countervailable” before “subsidy”.

Pub. L. 103-465, §233(a)(1)(E), (2)(A)(vi), substituted “normal value” for “foreign market value” and “export price (or the constructed export price)” for “United States price”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 233(a)(1)(E), (2)(A)(vi) and 270(a)(1)(M) of Pub. L. 103-465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103-465, set out as a note under section 1671 of this title.

Amendment by section 261(d)(1)(B)(iv) of Pub. L. 103-465 effective on the effective date of title II of Pub. L. 103-465, Jan. 1, 1995, see section 261(d)(2) of Pub. L. 103-465, set out as a note under section 1315 of this title.

§ 1677j. Prevention of circumvention of anti-dumping and countervailing duty orders

(a) Merchandise completed or assembled in United States

(1) In general

If—

(A) merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—

(i) an antidumping duty order issued under section 1673e of this title,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 1671e of this title or section 1303¹ of this title,

(B) such merchandise sold in the United States is completed or assembled in the

¹ See References in Text note below.

United States from parts or components produced in the foreign country with respect to which such order or finding applies,

(C) the process of assembly or completion in the United States is minor or insignificant, and

(D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise,

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include within the scope of such order or finding the imported parts or components referred to in subparagraph (B) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.

(2) Determination of whether process is minor or insignificant

In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account—

(A) the level of investment in the United States,

(B) the level of research and development in the United States,

(C) the nature of the production process in the United States,

(D) the extent of production facilities in the United States, and

(E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

(3) Factors to consider

In determining whether to include parts or components in a countervailing or anti-dumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

(A) the pattern of trade, including sourcing patterns,

(B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order or finding described in paragraph (1) applies, and

(C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

(b) Merchandise completed or assembled in other foreign countries

(1) In general

If—

(A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of—

(i) an antidumping duty order issued under section 1673e of this title,

(ii) a finding issued under the Anti-dumping Act, 1921, or

(iii) a countervailing duty order issued under section 1671e of this title or section 1303¹ of this title,

(B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

(i) is subject to such order or finding, or

(ii) is produced in the foreign country with respect to which such order or finding applies,

(C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is minor or insignificant,

(D) the value of the merchandise produced in the foreign country to which the anti-dumping duty order applies is a significant portion of the total value of the merchandise exported to the United States, and

(E) the administering authority determines that action is appropriate under this paragraph to prevent evasion of such order or finding,

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include such imported merchandise within the scope of such order or finding at any time such order or finding is in effect.

(2) Determination of whether process is minor or insignificant

In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account—

(A) the level of investment in the foreign country,

(B) the level of research and development in the foreign country,

(C) the nature of the production process in the foreign country,

(D) the extent of production facilities in the foreign country, and

(E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

(3) Factors to consider

In determining whether to include merchandise assembled or completed in a foreign country in a countervailing duty order or an anti-dumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

(A) the pattern of trade, including sourcing patterns,

(B) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B) is affiliated with the person who uses the merchandise described in paragraph (1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and

(C) whether imports into the foreign country of the merchandise described in para-

graph (1)(B) have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

(c) Minor alterations of merchandise

(1) In general

The class or kind of merchandise subject to—

- (A) an investigation under this subtitle,
- (B) an antidumping duty order issued under section 1673e of this title,
- (C) a finding issued under the Antidumping Act, 1921, or
- (D) a countervailing duty order issued under section 1671e of this title or section 1303¹ of this title,

shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) Exception

Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

(d) Later-developed merchandise

(1) In general

For purposes of determining whether merchandise developed after an investigation is initiated under this subtitle or section 1303¹ of this title (hereafter in this paragraph referred to as the “later-developed merchandise”) is within the scope of an outstanding antidumping or countervailing duty order issued under this subtitle or section 1303¹ of this title as a result of such investigation, the administering authority shall consider whether—

- (A) the later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the “earlier product”),
- (B) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product,
- (C) the ultimate use of the earlier product and the later-developed merchandise are the same,
- (D) the later-developed merchandise is sold through the same channels of trade as the earlier product, and
- (E) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

The administering authority shall take into account any advice provided by the Commission under subsection (e) before making a determination under this subparagraph.

(2) Exclusion from orders

The administering authority may not exclude a later-developed merchandise from a countervailing or antidumping duty order merely because the merchandise—

- (A) is classified under a tariff classification other than that identified in the peti-

tion or the administering authority’s prior notices during the proceeding, or

(B) permits the purchaser to perform additional functions, unless such additional functions constitute the primary use of the merchandise and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the merchandise.

(e) Commission advice

(1) Notification to Commission of proposed action

Before making a determination—

- (A) under subsection (a) with respect to merchandise completed or assembled in the United States (other than minor completion or assembly),
- (B) under subsection (b) with respect to merchandise completed or assembled in other foreign countries, or
- (C) under subsection (d) with respect to any later-developed merchandise which incorporates a significant technological advance or significant alteration of an earlier product,

with respect to an antidumping or countervailing duty order or finding as to which the Commission has made an affirmative injury determination, the administering authority shall notify the Commission of the proposed inclusion of such merchandise in such countervailing or antidumping order or finding. Notwithstanding any other provision of law, a decision by the administering authority regarding whether any merchandise is within a category for which notice is required under this paragraph is not subject to judicial review.

(2) Request for consultation

After receiving notice under paragraph (1), the Commission may request consultations with the administering authority regarding the inclusion. Upon the request of the Commission, the administering authority shall consult with the Commission and any such consultation shall be completed within 15 days after the date of the request.

(3) Commission advice

If the Commission believes, after consultation under paragraph (2), that a significant injury issue is presented by the proposed inclusion, the Commission may provide written advice to the administering authority as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order or finding is based. If the Commission decides to provide such written advice, it shall promptly notify the administering authority of its intention to do so, and must provide such advice within 60 days after the date of notification under paragraph (1). For purposes of formulating its advice with respect to merchandise completed or assembled in the United States from parts or components produced in a foreign country, the Commission shall consider whether the inclusion of such parts or components taken as a whole would be inconsistent with its prior affirmative determination.

(f) Time limits for administering authority determinations

The administering authority shall, to the maximum extent practicable, make the determinations under this section within 300 days from the date of the initiation of a countervailing duty or antidumping circumvention inquiry under this section.

(June 17, 1930, ch. 497, title VII, §781, as added Pub. L. 100-418, title I, §1321(a), Aug. 23, 1988, 102 Stat. 1192; amended Pub. L. 103-465, title II, §230, Dec. 8, 1994, 108 Stat. 4891.)

Editorial Notes

REFERENCES IN TEXT

The Antidumping Act, 1921, referred to in subsecs. (a)(1)(A)(ii), (b)(1)(A)(ii), and (c)(1)(C), is act May 27, 1921, ch. 14, title II, 42 Stat. 11, which was classified generally to sections 160 to 171 of this title, and was repealed by Pub. L. 96-39, title I, §106(a), July 26, 1979, 93 Stat. 193.

Section 1303 of this title, referred to in subsecs. (a)(1)(A)(iii), (b)(1)(A)(iii), (c)(1)(D), and (d)(1), is defined in section 1677(26) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103-465, §230(a), amended subsecs. (a) and (b) generally, to include provisions relating to whether process of assembly or completion of merchandise in United States or foreign countries is minor or insignificant.

Subsec. (f). Pub. L. 103-465, §230(b), added subsec. (f).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103-465, set out as a note under section 1671 of this title.

EFFECTIVE DATE

Section applicable with respect to articles entered, or withdrawn from warehouse for consumption, on or after Aug. 23, 1988, see section 1337(d) of Pub. L. 100-418, set out as an Effective Date of 1988 Amendment note under section 1671 of this title.

§ 1677k. Third-country dumping

(a) Definitions

For purposes of this section:

(1)(A) The term “Agreement” means the Agreement on Implementation of Article VI of the GATT 1994 (relating to antidumping measures).

(B) The term “GATT 1994” has the meaning given that term in section 3501(1)(B) of this title.

(2) The term “Agreement country” means a foreign country that has accepted the Agreement.

(3) The term “Trade Representative” means the United States Trade Representative.

(b) Petition by domestic industry

(1) A domestic industry that produces a product that is like or directly competitive with

merchandise produced by a foreign country (whether or not an Agreement country) may, if it has reason to believe that—

(A) such merchandise is being dumped in an Agreement country; and

(B) such domestic industry is being materially injured, or threatened with material injury, by reason of such dumping;

submit a petition to the Trade Representative that alleges the elements referred to in subparagraphs (A) and (B) and requests the Trade Representative to take action under subsection (c) on behalf of the domestic industry.

(2) A petition submitted under paragraph (1) shall contain such detailed information as the Trade Representative may require in support of the allegations in the petition.

(c) Application for antidumping action on behalf of domestic industry

(1) If the Trade Representative, on the basis of the information contained in a petition submitted under paragraph (1), determines that there is a reasonable basis for the allegations in the petition, the Trade Representative shall submit to the appropriate authority of the Agreement country where the alleged dumping is occurring an application pursuant to Article 12 of the Agreement which requests that appropriate antidumping action under the law of that country be taken, on behalf of the United States, with respect to imports into that country of the merchandise concerned.

(2) At the request of the Trade Representative, the appropriate officers of the Department of Commerce and the United States International Trade Commission shall assist the Trade Representative in preparing the application under paragraph (1).

(d) Consultation after submission of application

After submitting an application under subsection (c)(1), the Trade Representative shall seek consultations with the appropriate authority of the Agreement country regarding the request for antidumping action.

(e) Action upon refusal of Agreement country to act

If the appropriate authority of an Agreement country refuses to undertake antidumping measures in response to a request made therefor by the Trade Representative under subsection (c), the Trade Representative shall promptly consult with the domestic industry on whether action under any other law of the United States is appropriate.

(Pub. L. 100-418, title I, §1317, Aug. 23, 1988, 102 Stat. 1188; Pub. L. 103-465, title VI, §621(a)(1), Dec. 8, 1994, 108 Stat. 4992.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Omnibus Trade and Competitiveness Act of 1988, and not as part of the Tariff Act of 1930 which comprises this chapter.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-465 designated existing provisions as subpar. (A), substituted “GATT 1994” for “General Agreement on Tariffs and Trade”, and added subpar. (B).