

the Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, then the administering authority—

(1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding, or

(2) shall transfer the information (other than confidential information) concerning the practice, subsidy, or subsidy program to the library maintained under section 1677f(a)(1) of this title, if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to any other merchandise.

(June 17, 1930, ch. 497, title VII, §775, as added Pub. L. 96-39, title I, §101, July 26, 1979, 93 Stat. 186; amended Pub. L. 98-573, title VI, §617, Oct. 30, 1984, 98 Stat. 3037; Pub. L. 99-514, title XVIII, §1886(a)(12), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 103-465, title II, §283(b), Dec. 8, 1994, 108 Stat. 4930.)

AMENDMENTS

1994—Pub. L. 103-465 substituted “Countervailable subsidy” for “Subsidy” in section catchline and amended text generally. Prior to amendment, text read as follows: “If, in the course of a proceeding under this subtitle, the administering authority discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then the administering authority—

“(1) shall include the practice in the proceeding if it appears to be a subsidy with respect to the merchandise which is the subject of the proceeding, or

“(2) shall transfer the information concerning the practice (other than confidential information) to the library maintained under section 1677f(a)(1) of this title, if the practice appears to be a subsidy with respect to any other merchandise.”

1986—Pub. L. 99-514 substituted “a proceeding” for “an proceeding” in introductory provisions.

1984—Pub. L. 98-573 substituted “proceeding” for “investigation” wherever appearing.

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 OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as a note under section 1671 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1801-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1677e. Determinations on basis of facts available

(a) In general

If—

(1) necessary information is not available on the record, or

(2) an interested party or any other person—

(A) withholds information that has been requested by the administering authority or the Commission under this subtitle,

(B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 1677m of this title,

(C) significantly impedes a proceeding under this subtitle, or

(D) provides such information but the information cannot be verified as provided in section 1677m(i) of this title,

the administering authority and the Commission shall, subject to section 1677m(d) of this title, use the facts otherwise available in reaching the applicable determination under this subtitle.

(b) Adverse inferences

(1) In general

If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this subtitle—

(A) may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available; and

(B) is not required to determine, or make any adjustments to, a countervailable subsidy rate or weighted average dumping margin based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

(2) Potential sources of information for adverse inferences

An adverse inference under paragraph (1)(A) may include reliance on information derived from—

(A) the petition,

(B) a final determination in the investigation under this subtitle,

(C) any previous review under section 1675 of this title or determination under section 1675b of this title, or

(D) any other information placed on the record.

(c) Corroboration of secondary information

(1) In general

Except as provided in paragraph (2), when the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation or review, the administering authority or the Commission, as the case may

be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

(2) Exception

The administrative authority and the Commission shall not be required to corroborate any dumping margin or countervailing duty applied in a separate segment of the same proceeding.

(d) Subsidy rates and dumping margins in adverse inference determinations

(1) In general

If the administering authority uses an inference that is adverse to the interests of a party under subsection (b)(1)(A) in selecting among the facts otherwise available, the administering authority may—

(A) in the case of a countervailing duty proceeding—

(i) use a countervailable subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country; or

(ii) if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use; and

(B) in the case of an antidumping duty proceeding, use any dumping margin from any segment of the proceeding under the applicable antidumping order.

(2) Discretion to apply highest rate

In carrying out paragraph (1), the administering authority may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available.

(3) No obligation to make certain estimates or address certain claims

If the administering authority uses an adverse inference under subsection (b)(1)(A) in selecting among the facts otherwise available, the administering authority is not required, for purposes of subsection (c) or for any other purpose—

(A) to estimate what the countervailable subsidy rate or dumping margin would have been if the interested party found to have failed to cooperate under subsection (b)(1) had cooperated; or

(B) to demonstrate that the countervailable subsidy rate or dumping margin used by the administering authority reflects an alleged commercial reality of the interested party.

(June 17, 1930, ch. 497, title VII, § 776, as added Pub. L. 96-39, title I, § 101, July 26, 1979, 93 Stat. 186; amended Pub. L. 98-573, title VI, § 618, Oct. 30, 1984, 98 Stat. 3037; Pub. L. 100-418, title I, §§ 1326(d)(1), 1331, Aug. 23, 1988, 102 Stat. 1204, 1207; Pub. L. 103-465, title II, § 231(c), Dec. 8, 1994, 108 Stat. 4896; Pub. L. 114-27, title V, § 502, June 29, 2015, 129 Stat. 383.)

AMENDMENTS

2015—Subsec. (b). Pub. L. 114-27, § 502(1), inserted par. (1) designation and heading before “If the administering”, substituted “under this subtitle—” for “under this subtitle, may use”, inserted “(A) may use” before “an inference that is adverse”, substituted “facts otherwise available; and” for “facts otherwise available. Such adverse inference may include”, added subpar. (B), inserted par. (2) designation, heading, and “An adverse inference under paragraph (1)(A) may include” before “reliance on information”, and redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (2) and realigned margins.

Subsec. (c). Pub. L. 114-27, § 502(2), designated existing provisions as par. (1) and inserted heading, substituted “Except as provided in paragraph (2), when the” for “When the”, and added par. (2).

Subsec. (d). Pub. L. 114-27, § 502(3), added subsec. (d).

1994—Pub. L. 103-465 amended section generally, substituting present provisions for provisions relating to verification of information, certification of submissions, and determinations required to be made on best information available.

1988—Subsec. (a). Pub. L. 100-418, § 1331(1), (3), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 100-418, § 1331(1), (2), redesignated former subsec. (a) as (b) and in heading substituted “Verification” for “General rule”.

Subsec. (b)(3)(A). Pub. L. 100-418, § 1326(d)(1), which directed the amendment of this subtitle by substituting “subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title” for “subparagraph (C), (D), (E), or (F), of section 1677(9) of this title” was executed to subsec. (b)(3)(A) of this section by substituting “section 1677(9)(C), (D), (E), (F), or (G) of this title” for “section 1677(9)(C), (D), (E), or (F) of this title” to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 100-418, § 1331(1), redesignated former subsec. (b) as (c).

1984—Subsec. (a). Pub. L. 98-573 amended subsec. (a) generally, which prior to amendment read as follows: “Except with respect to information the verification of which is waived under section 1673b(b)(2) of this title, the administering authority shall verify all information relied upon in making a final determination in an investigation. In publishing such a determination, the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its determination, which may include the information submitted in support of the petition.”

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 OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 applicable with respect to investigations initiated after Aug. 23, 1988, and to reviews initiated under section 1673e(c) or 1675 of this title after Aug. 23, 1988, see section 1337(b) of Pub. L. 100-418, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as a note under section 1671 of this title.

§ 1677f. Access to information**(a) Information generally made available****(1) Public information function**

There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies.

(2) Progress of investigation reports

The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) Ex parte meetings

The administering authority and the Commission shall maintain a record of any ex parte meeting between—

(A) interested parties or other persons providing factual information in connection with a proceeding, and

(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding,

if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(4) Summaries; non-proprietary submissions

The administering authority and the Commission shall disclose—

(A) any proprietary information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

(b) Proprietary information**(1) Proprietary status maintained****(A) In general**

Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than—

(i) to an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted or any review under this subtitle covering the same subject merchandise, or

(ii) to an officer or employee of the United States Customs Service who is di-

rectly involved in conducting an investigation regarding negligence, gross negligence, or fraud under this subtitle.

(B) Additional requirements

The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—

(i) either—

(I) a non-proprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(II) a statement that the information is not susceptible to summary accompanied by a statement of the reasons in support of the contention, and

(ii) either—

(I) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

(2) Unwarranted designation

If the administering authority of the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.

(3) Section 1675 reviews

Notwithstanding the provisions of paragraph (1), information submitted to the administering authority or the Commission in connection with a review under section 1675(b) or 1675(c) of this title which is designated as proprietary by the person submitting the information may, if the review results in the revocation of an order or finding (or termination of a suspended investigation) under section 1675(d) of this title, be used by the agency to which the information was originally submitted in any investigation initiated within 2 years after the date of the revocation or termination pursuant to a petition covering the same subject merchandise.