

§ 1677i. Downstream product monitoring

(a) Petition requesting monitoring

(1) In general

A domestic producer of an article that is like a component part or a downstream product may petition the administering authority to designate a downstream product for monitoring under subsection (b). The petition shall specify—

- (A) the downstream product,
- (B) the component product incorporated into such downstream product, and
- (C) the reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of such downstream product.

(2) Determination regarding petition

Within 14 days after receiving a petition submitted under paragraph (1), the administering authority shall determine—

- (A) whether there is a reasonable likelihood that imports into the United States of the downstream product will increase as an indirect result of any diversion with respect to the component part, and
- (B) whether—
 - (i) the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement (within the meaning of section 804 of the Trade and Tariff Act of 1984),
 - (ii) merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of investigations suspended under section 1671c or 1673c of this title or countervailing or antidumping duty orders issued under this subtitle or section 1303¹ of this title, or
 - (iii) merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least 2 investigations suspended under section 1671c or 1673c of this title or countervailing or antidumping duty orders issued under this subtitle or section 1303¹ of this title.

(3) Factors to take into account

In making a determination under paragraph (2)(A), the administering authority may, if appropriate, take into account such factors as—

- (A) the value of the component part in relation to the value of the downstream product,
- (B) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product, and
- (C) the relationship between the producers of component parts and producers of downstream products.

(4) Publication of determination

The administering authority shall publish in the Federal Register notice of each determina-

tion made under paragraph (2) and, if the determination made under paragraph (2)(A) and a determination made under any subparagraph of paragraph (2)(B) are affirmative, shall transmit a copy of such determinations and the petition to the Commission.

(5) Determinations not subject to judicial review

Notwithstanding any other provision of law, any determination made by the administering 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 determina-

¹ See References in Text note below.

tion 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.)

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”.

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 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 antidumping 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—

¹ See References in Text note below.