''changes in classification and in basis of value specified in any report''.

Subsec. (d). Pub. L. 96–39, § 202(a)(2)(C), substituted ''changes in classification specified in the report'' for ''changes in classification or in basis of value specified in the report''.

Subsec. (f). Pub. L. 96–39, § 202(a)(2)(C), substituted ''change in classification which has taken effect'' for ''change in classification or in basis of value which has taken effect''.

Subsec. (j). Pub. L. 96–39, § 202(a)(2)(D), struck out subsec. (j) which authorized the Secretary of the Treasury to make necessary rules and regulations for the entry and declaration of foreign articles with respect to which a change in the basis of value had been made.

Subsec. (k). Pub. L. 96–39, § 202(a)(2)(C), substituted ''changes in classification or increases or decreases'' for ''changes in classification or in basis of value or increases or decreases''.

1958—Subsec. (a). Pub. L. 85–686 struck out provisions which authorized the commission to adopt such reasonable procedure and rules and regulations as it deemed necessary to execute its functions under this section. See section 1335 of this title.

1956—Subsec. (b). Act Aug. 2, 1956, struck out ''(as defined in section 1402(g))'' after ''selling price''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective July 1, 1980, see section 204(a) of Pub. L. 96–39, set out as a note under section 1401a of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 2, 1956, effective only as to articles entered, or withdrawn from warehouse, for consumption on or after thirtieth day following publication of the final list provided for in section 6(a) of said act, set out in note under section 1402 of this title, see section 8 of act Aug. 2, 1956, set out as an Effective Date note under section 1401a of this title.

§ 1337. Unfair practices in import trade

(a) Unlawful activities; covered industries; definitions

(1) Subject to paragraph (2), the following are unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provision of law, as provided in this section:

(A) Unfair methods of competition and unfair acts in the importation of articles (other than articles provided for in subparagraphs (B), (C), (D), and (E)) into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of which is—

(i) to destroy or substantially injure an industry in the United States;

(ii) to prevent the establishment of such an industry; or

(iii) to restrain or monopolize trade and commerce in the United States.

(B) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that—

(i) infringe a valid and enforceable United States patent or a valid and enforceable United States copyright registered under title 17; or

(ii) are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent.

(C) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that infringe a valid and enforceable United States trademark registered under the Trademark Act of 1946 [15 U.S.C. 1051 et seq.].

(D) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of a semiconductor chip product in a manner that constitutes infringement of a mask work registered under chapter 9 of title 17.

(E) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consigner, of an article that constitutes infringement of the exclusive rights in a design protected under chapter 13 of title 17.

(2) Subparagraphs (B), (C), (D), and (E) of paragraph (1) apply only if an industry in the United States, relating to the articles protected by the patent, copyright, trademark, mask work, or design concerned, exists or is in the process of being established.

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned—

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

(C) substantial investment in its exploitation, including engineering, research and development, or licensing.

(4) For the purposes of this section, the phrase ''owner, importer, or consignee'' includes any agent of the owner, importer, or consignee.

(b) Investigation of violations by Commission

(1) The Commission shall investigate any alleged violation of this section on complaint under oath or upon its initiative. Upon commencing any such investigation, the Commission shall publish notice thereof in the Federal Register. The Commission shall conclude any such investigation and make its determination under this section at the earliest practicable time after the date of publication of notice of such investigation. To promote expeditious adjudication, the Commission shall, within 45 days after an investigation is initiated, establish a target date for its final determination.

(2) During the course of each investigation under this section, the Commission shall consult with, and seek advice and information from, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate.

(3) Whenever, in the course of an investigation under this section, the Commission has reason to believe, based on information before it, that a matter, in whole or in part, may come within the purview of part II of subtitle IV of this chapter, it shall promptly notify the Secretary of

Commerce so that such action may be taken as is otherwise authorized by such part II. If the Commission has reason to believe that the matter before it (A) is based solely on alleged acts and effects which are within the purview of section 1671 or 1673 of this title, or (B) relates to an alleged copyright infringement with respect to which action is prohibited by section 1008 of title 17, the Commission shall terminate, or not institute, any investigation into the matter. If the Commission has reason to believe the matter before it is based in part on alleged acts and effects which are within the purview of section 1671 or 1673 of this title, and in part on alleged acts and effects which may, independently from or in conjunction with those within the purview of such section, establish a basis for relief under this section, then it may institute or continue an investigation into the matter. If the Commission notifies the Secretary or the administering authority (as defined in section 1677(1) of this title) with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for final decision. Any final decision by the administering authority under section 1671 or 1673 of this title with respect to the matter within such section 1671 or 1673 of this title of which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.

(c) Determinations; review

The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section, except that the Commission may, by issuing a consent order or on the basis of an agreement between the private parties to the investigation, including an agreement to present the matter for arbitration, terminate any such investigation, in whole or in part, without making such a determination. Each determination under subsection (d) or (e) of this section shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5. All legal and equitable defenses may be presented in all cases. A respondent may raise any counterclaim in a manner prescribed by the Commission. Immediately after a counterclaim is received by the Commission, the respondent raising such counterclaim shall file a notice of removal with a United States district court in which venue for any of the counterclaims raised by the party would exist under section 1391 of title 28. Any counterclaim raised pursuant to this section shall relate back to the date of the original complaint in the proceeding before the Commission. Action on such counterclaim shall not delay or affect the proceeding under this section, including the legal and equitable defenses that may be raised under this subsection. Any person adversely affected by a final determination of the Commission under subsection (d), (e), (f), or (g) of this section may appeal such determination, within 60 days after the determination becomes final, to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of title 5. Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), (f), and (g) of this section with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5. Determinations by the Commission under subsections (e), (f), and (j) of this section with respect to forfeiture of bonds and under subsection (h) of this section with respect to the imposition of sanctions for abuse of discovery or abuse of process shall also be reviewable in accordance with section 706 of title 5.

(d) Exclusion of articles from entry

(1) If the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry.

(2) The authority of the Commission to order an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that—

(A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or

(B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

(e) Exclusion of articles from entry during investigation except under bond; procedures applicable; preliminary relief

(1) If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under

this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the Commission later determines that the respondent has violated the provisions of this section, the bond may be forfeited to the complainant.

(2) A complainant may petition the Commission for the issuance of an order under this subsection. The Commission shall make a determination with regard to such petition by no later than the 90th day after the date on which the Commission's notice of investigation is published in the Federal Register. The Commission may extend the 90-day period for an additional 60 days in a case it designates as a more complicated case. The Commission shall publish in the Federal Register its reasons why it designated the case as being more complicated. The Commission may require the complainant to post a bond as a prerequisite to the issuance of an order under this subsection. If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent.

(3) The Commission may grant preliminary relief under this subsection or subsection (f) of this section to the same extent as preliminary injunctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure.

(4) The Commission shall prescribe the terms and conditions under which bonds may be forfeited under paragraphs (1) and (2).

(f) Cease and desist orders; civil penalty for violation of orders

(1) In addition to, or in lieu of, taking action under subsection (d) or (e) of this section, the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e) of this section, as the case may be. If a temporary cease and desist order is issued in addition to, or in lieu of, an exclusion order under subsection (e) of this section, the Commission may require the complainant to post a bond, in an amount determined by the Commission to be sufficient to protect the respondent from any injury, as a prerequisite to the issuance of an order under this subsection. If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent. The Commission shall prescribe the terms and conditions under which the bonds may be forfeited under this paragraph.

(2) Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of $100,000 or twice the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

(g) Exclusion from entry or cease and desist order; conditions and procedures applicable

(1) If—

(A) a complaint is filed against a person under this section;

(B) the complaint and a notice of investigation are served on the person;

(C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;

(D) the person fails to show good cause why the person should not be found in default; and

(E) the complainant seeks relief limited solely to that person;

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person unless, after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.

(2) In addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be issued if—

(A) no person appears to contest an investigation concerning a violation of the provisions of this section,

(B) such a violation is established by substantial, reliable, and probative evidence, and

(C) the requirements of subsection (d)(2) of this section are met.

(h) Sanctions for abuse of discovery and abuse of process

The Commission may by rule prescribe sanctions for abuse of discovery and abuse of process to the extent authorized by Rule 11 and Rule 37 of the Federal Rules of Civil Procedure.

(i) Forfeiture

(1) In addition to taking action under subsection (d) of this section, the Commission may

issue an order providing that any article imported in violation of the provisions of this section be seized and forfeited to the United States if—

(A) the owner, importer, or consignee of the article previously attempted to import the article into the United States;

(B) the article was previously denied entry into the United States by reason of an order issued under subsection (d) of this section; and

(C) upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article written notice of—

(i) such order, and

(ii) the seizure and forfeiture that would result from any further attempt to import the article into the United States.

(2) The Commission shall notify the Secretary of the Treasury of any order issued under this subsection and, upon receipt of such notice, the Secretary of the Treasury shall enforce such order in accordance with the provisions of this section.

(3) Upon the attempted entry of articles subject to an order issued under this subsection, the Secretary of the Treasury shall immediately notify all ports of entry of the attempted importation and shall identify the persons notified under paragraph (1)(C).

(4) The Secretary of the Treasury shall provide—

(A) the written notice described in paragraph (1)(C) to the owner, importer, or consignee of any article that is denied entry into the United States by reason of an order issued under subsection (d) of this section; and

(B) a copy of such written notice to the Commission.

(j) Referral to President

(1) If the Commission determines that there is a violation of this section, or that, for purposes of subsection (e) of this section, there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the President a copy of such determination and the action taken under subsection (d), (e), (f), (g), or (i) of this section, with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the President, for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken under subsection (d), (e), (f), (g), or (i) of this section with respect thereto shall have no force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c) of this section, be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), (f), (g), or (i) of this section, with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) of this section or subject to a cease and desist order under subsection (f) of this section shall, until such determination becomes final, be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the determination becomes final, the bond may be forfeited to the complainant. The Commission shall prescribe the terms and conditions under which bonds may be forfeited under this paragraph.

(4) If the President does not disapprove such determination within such 60-day period, or if he notifies the Commission before the close of such period that he approves such determination, then, for purposes of paragraph (3) and subsection (c) of this section such determination shall become final on the day after the close of such period or the day on which the President notifies the Commission of his approval, as the case may be.

(k) Period of effectiveness; termination of violation or modification or rescission of exclusion or order

(1) Except as provided in subsections (f) and (j) of this section, any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.

(2) If any person who has previously been found by the Commission to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or rescission of an exclusion from entry or order under subsection (d), (e), (f), (g), or (i) of this section—

(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner; and

(B) relief may be granted by the Commission with respect to such petition—

(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding, or

(ii) on grounds which would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

***(l)* Importation by or for United States**

Any exclusion from entry or order under subsection (d), (e), (f), (g), or (i) of this section, in cases based on a proceeding involving a patent, copyright, mask work, or design under subsection (a)(1) of this section, shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, an owner of the patent, copyright, mask work, or design adversely affected shall be entitled to reasonable and entire compensation in an action before the United

States Court of Federal Claims pursuant to the procedures of section 1498 of title 28.

(m) "United States" defined

For purposes of this section and sections 1338 and 1340[1] of this title, the term ''United States'' means the customs territory of the United States as defined in general note 2 of the Harmonized Tariff Schedule of the United States.

(n) Disclosure of confidential information

(1) Information submitted to the Commission or exchanged among the parties in connection with proceedings under this section which is properly designated as confidential pursuant to Commission rules may not be disclosed (except under a protective order issued under regulations of the Commission which authorizes limited disclosure of such information) to any person (other than a person described in paragraph (2)) without the consent of the person submitting it.

(2) Notwithstanding the prohibition contained in paragraph (1), information referred to in that paragraph may be disclosed to—

(A) an officer or employee of the Commission who is directly concerned with—

(i) carrying out the investigation or related proceeding in connection with which the information is submitted,

(ii) the administration of a bond posted pursuant to subsection (e), (f), or (j) of this section,

(iii) the administration or enforcement of an exclusion order issued pursuant to subsection (d), (e), or (g) of this section, a cease and desist order issued pursuant to subsection (f) of this section, or a consent order issued pursuant to subsection (c) of this section,

(iv) proceedings for the modification or rescission of a temporary or permanent order issued under subsection (d), (e), (f), (g), or (i) of this section, or a consent order issued under this section, or

(v) maintaining the administrative record of the investigation or related proceeding,

(B) an officer or employee of the United States Government who is directly involved in the review under subsection (j) of this section, or

(C) an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under subsection (d), (e), or (g) of this section resulting from the investigation or related proceeding in connection with which the information is submitted.

(June 17, 1930, ch. 497, title III, § 337, 46 Stat. 703; Proc. No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Pub. L. 85–686, § 9(c)(1), Aug. 20, 1958, 72 Stat. 679; Pub. L. 93–618, title III, § 341(a), Jan. 3, 1975, 88 Stat. 2053; Pub. L. 96–39, title I, § 106(b)(1), title XI, § 1105, July 26, 1979, 93 Stat. 193, 310; Pub. L. 96–417, title VI, § 604, Oct. 10, 1980, 94 Stat. 1744; Pub. L. 97–164, title I, §§ 160(a)(5), 163(a)(4), Apr. 2, 1982, 96 Stat. 48, 49; Pub. L. 98–620, title IV, § 413, Nov. 8, 1984, 98 Stat. 3362; Pub. L. 100–418, title I, §§ 1214(h)(3), 1342(a), (b), Aug. 23, 1988, 102 Stat. 1157, 1212, 1215; Pub. L. 100–647, title IX, § 9001(a)(7), (12), Nov. 10, 1988, 102 Stat. 3807; Pub. L. 102–563, § 3(d), Oct. 28, 1992, 106 Stat. 4248; Pub. L. 103–465, title II, § 261(d)(1)(B)(ii), title III, § 321(a), Dec. 8, 1994, 108 Stat. 4909, 4943; Pub. L. 104–295, § 20(b)(11), (12), (c)(2), Oct. 11, 1996, 110 Stat. 3527, 3528; Pub. L. 106–113, div. B, § 1000(a)(9) [title V, § 5005(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–594; Pub. L. 108–429, title II, § 2004(d)(5), Dec. 3, 2004, 118 Stat. 2592.)

[1] See References in Text note below.

REFERENCES IN TEXT

The Trademark Act of 1946, referred to in subsec. (a)(1)(C), is act July 5, 1946, ch. 540, 60 Stat. 427, as amended, also popularly known as the Lanham Act, which is classified generally to chapter 22 (§ 1051 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1051 of Title 15 and Tables.

The Federal Rules of Civil Procedure, referred to in subsecs. (e)(3), (h), and (k)(2)(B)(ii), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 1340 of this title, referred to in subsec. (m), was omitted from the Code.

The Harmonized Tariff Schedule of the United States, referred to in subsec. (m), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

CODIFICATION

The reference to the Philippine Islands, formerly contained in subsec. (k), was omitted because of independence of the Philippines proclaimed by the President of the United States in Proc. No. 2695, issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and set out as a note thereunder.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title III, § 316, 42 Stat. 943. That section was superseded by section 337 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

2004—Subsec. (a)(1)(E). Pub. L. 108–429, § 2004(d)(5)(A), realigned margins.

Subsec. (a)(2). Pub. L. 108–429, § 2004(d)(5)(B), substituted ''(D), and (E)'' for ''and (D)''.

1999—Subsec. (a)(1)(A). Pub. L. 106–113, § 1000(a)(9) [title V, § 5005(b)(1)(A)(i)], substituted ''(D), and (E)'' for ''and (D)''.

Subsec. (a)(1)(E). Pub. L. 106–113, § 1000(a)(9) [title V, § 5005(b)(1)(A)(ii)], added subpar. (E).

Subsec. (a)(2), (3). Pub. L. 106–113, § 1000(a)(9) [title V, § 5005(b)(1)(B)], substituted ''mask work, or design'' for ''or mask work''.

Subsec. (*l*). Pub. L. 106–113, § 1000(a)(9) [title V, § 5005(b)(2)], substituted ''mask work, or design'' for ''or mask work'' in two places.

1996—Subsec. (b)(3). Pub. L. 104–295, § 20(c)(2), amended Pub. L. 103–465, § 321(a)(1)(C)(i). See 1994 Amendment note below.

Pub. L. 104–295, § 20(b)(12), struck out ''such section and'' before ''such part II'' in first sentence.

Pub. L. 104–295, § 20(b)(11), amended Pub. L. 103–465, § 261(d)(1)(B)(ii)(I). See 1994 Amendment note below.

1994—Subsec. (b). Pub. L. 103–465, § 321(a)(1)(A), struck out ''; time limits'' after ''Commission'' in heading.

Subsec. (b)(1). Pub. L. 103–465, § 321(a)(1)(B), substituted third and fourth sentences for ''The Commission shall conclude any such investigation, and make its determination under this section, at the earliest practicable time, but not later than one year (18 months in more complicated cases) after the date of publication of notice of such investigation. The Commission shall publish in the Federal Register its reasons for designating any investigation as a more com-

plicated investigation. For purposes of the one-year and 18-month periods prescribed by this subsection, there shall be excluded any period of time during which such investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.''

Subsec. (b)(3). Pub. L. 103–465, § 321(a)(1)(C)(ii), struck out after fourth sentence ''For purposes of computing the 1-year or 18-month periods prescribed by this subsection, there shall be excluded such period of suspension.''

Pub. L. 103–465, § 321(a)(1)(C)(i), as amended by Pub. L. 104–295, § 20(c)(2), in first sentence, made technical amendment to reference in original act which appears in text as reference to ''such part II''.

Pub. L. 103–465, § 261(d)(1)(B)(ii)(II)–(V), in second sentence, struck out ''1303,'' after ''purview of section'' and comma after ''1671'' and made technical amendment to references to sections 1671 and 1673 of this title to correct references to corresponding sections of original act, in third sentence, substituted ''1671'' for ''1303, 1671,'', and in last sentence, struck out ''of the Secretary under section 1303 of this title or'' after ''Any final decision'' and substituted ''1671 or'' for ''1303, 1671, or''.

Pub. L. 103–465, § 261(d)(1)(B)(ii)(I), as amended by Pub. L. 104–295, § 20(b)(11), in first sentence, struck out reference to section 1303 of this title after ''within the purview'' and made technical amendment to reference to part II of subtitle IV of this chapter by substituting in the original ''of subtitle B of title VII of this Act'' for ''of section 303 or of subtitle B of title VII of the Tariff Act of 1930''.

Subsec. (c). Pub. L. 103–465, § 321(a)(2), in first sentence, substituted ''an agreement between the private parties to the investigation, including an agreement to present the matter for arbitration'' for ''a settlement agreement'', inserted after third sentence ''A respondent may raise any counterclaim in a manner prescribed by the Commission. Immediately after a counterclaim is received by the Commission, the respondent raising such counterclaim shall file a notice of removal with a United States district court in which venue for any of the counterclaims raised by the party would exist under section 1391 of title 28. Any counterclaim raised pursuant to this section shall relate back to the date of the original complaint in the proceeding before the Commission. Action on such counterclaim shall not delay or affect the proceeding under this section, including the legal and equitable defenses that may be raised under this subsection.'', and inserted at end ''Determinations by the Commission under subsections (e), (f), and (j) of this section with respect to forfeiture of bonds and under subsection (h) of this section with respect to the imposition of sanctions for abuse of discovery or abuse of process shall also be reviewable in accordance with section 706 of title 5.''

Subsec. (d). Pub. L. 103–465, § 321(a)(5)(A), designated existing provisions as par. (1), substituted ''there is a violation'' for ''there is violation'' in first sentence, and added par. (2).

Subsec. (e)(1). Pub. L. 103–465, § 321(a)(3)(A), in last sentence, substituted ''prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the Commission later determines that the respondent has violated the provisions of this section, the bond may be forfeited to the complainant.'' for ''determined by the Commission and prescribed by the Secretary.''

Subsec. (e)(2). Pub. L. 103–465, § 321(a)(3)(B), inserted at end ''If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent.''

Subsec. (e)(4). Pub. L. 103–465, § 321(a)(3)(C), added par. (4).

Subsec. (f)(1). Pub. L. 103–465, § 321(a)(4), inserted at end ''If a temporary cease and desist order is issued in addition to, or in lieu of, an exclusion order under subsection (e) of this section, the Commission may require the complainant to post a bond, in an amount determined by the Commission to be sufficient to protect the respondent from any injury, as a prerequisite to the issuance of an order under this subsection. If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent. The Commission shall prescribe the terms and conditions under which the bonds may be forfeited under this paragraph.''

Subsec. (g)(2)(C). Pub. L. 103–465, § 321(a)(5)(B), added subpar. (C).

Subsec. (j)(3). Pub. L. 103–465, § 321(a)(6), substituted ''shall, until such determination becomes final, be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the determination becomes final, the bond may be forfeited to the complainant. The Commission shall prescribe the terms and conditions under which bonds may be forfeited under this paragraph.'' for ''shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final.''

Subsec. (*l*). Pub. L. 103–465, § 321(a)(8), substituted ''Court of Federal Claims'' for ''Claims Court''.

Subsec. (n)(2)(A). Pub. L. 103–465, § 321(a)(7)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''an officer or employee of the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted,''.

Subsec. (n)(2)(C). Pub. L. 103–465, § 321(a)(7)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under this section resulting from the investigation in connection with which the information is submitted.''

1992—Subsec. (b)(3). Pub. L. 102–563 amended second sentence generally. Prior to amendment, second sentence read as follows: ''If the Commission has reason to believe the matter before it is based solely on alleged acts and effects which are within the purview of section 1303, 1671, or 1673 of this title, it shall terminate, or not institute, any investigation into the matter.''

1988—Subsec. (a). Pub. L. 100–418, § 1342(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are declared unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provisions of law, as provided in this section.''

Subsec. (b)(2). Pub. L. 100–418, § 1342(b)(1)(A), substituted ''Department of Health and Human Services'' for ''Department of Health, Education, and Welfare''.

Subsec. (b)(3). Pub. L. 100–418, § 1342(b)(1)(B), substituted ''Secretary of Commerce'' for ''Secretary of the Treasury''.

Subsec. (c). Pub. L. 100–418, § 1342(a)(2), inserted before period at end of first sentence '', except that the Commission may, by issuing a consent order or on the basis of a settlement agreement, terminate any such investigation, in whole or in part, without making such a determination''.

Pub. L. 100–418, § 1342(b)(2), inserted reference to subsec. (g) in two places.

Subsec. (e). Pub. L. 100–418, § 1342(a)(3), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f)(1). Pub. L. 100–418, § 1342(a)(4)(A), substituted ''In addition to, or in lieu of,'' for ''In lieu of''.

Subsec. (f)(2). Pub. L. 100–418, § 1342(a)(4)(B), substituted ''$100,000 or twice'' for ''$10,000 or''.

Subsecs. (g) to (i). Pub. L. 100–418, § 1342(a)(5), added subsecs. (g) to (i). Former subsecs. (g) to (i) redesignated (j) to (*l*), respectively.

Subsec. (j). Pub. L. 100–418, §1342(a)(5)(A), redesignated former subsec. (g) as (j). Former subsec. (j) redesignated (m).

Subsec. (j)(1)(B), (2), (3). Pub. L. 100–418, §1342(b)(3), inserted reference to subsecs. (g) and (i).

Subsec. (k). Pub. L. 100–418, §1342(b)(4), which directed the substitution ''(j)'' for ''(g)'' was executed by making that substitution in par. (1) and not in par. (2), as added by Pub. L. 100–418, §1342(a)(6), to reflect the probable intent of Congress.

Pub. L. 100–418, §1342(a)(6), as amended by Pub. L. 100–647, §9001(a)(7), designated existing provisions as par. (1) and added par. (2).

Pub. L. 100–418, §1342(a)(5)(A), redesignated former subsec. (h) as (k).

Subsec. (*l*). Pub. L. 100–418, §1342(b)(5), inserted reference to subsecs. (g) and (i).

Pub. L. 100–418, §1342(a)(7), substituted ''a proceeding involving a patent, copyright, or mask work under subsection (a)(1)'' for ''claims of United States letters patent'' and ''an owner of the patent, copyright, or mask work'' for ''a patent owner''.

Pub. L. 100–418, §1342(a)(5)(A), redesignated former subsec. (i) as (*l*).

Subsec. (m). Pub. L. 100–418, §1342(a)(5)(A), redesignated former subsec. (j) as (m).

Pub. L. 100–418, §1214(h)(3), substituted ''general note 2 of the Harmonized Tariff Schedule of the United States'' for ''general headnote 2 of the Tariff Schedules of the United States''.

Subsec. (n). Pub. L. 100–418, §1342(a)(8), added subsec. (n).

Subsec. (n)(2)(B). Pub. L. 100–647, §9001(a)(12), substituted ''subsection (j)'' for ''subsection (h)''.

1984—Subsec. (c). Pub. L. 98–620 inserted '', within 60 days after the determination becomes final,'' after ''appeal such determination''.

1982—Subsec. (c). Pub. L. 97–164, §163(a)(4), substituted ''Court of Appeals for the Federal Circuit'' for ''Court of Customs and Patent Appeals''.

Subsec. (i). Pub. L. 97–164, §160(a)(5), substituted ''United States Claims Court'' for ''Court of Claims''.

1980—Subsec. (c). Pub. L. 96–417 provided that the appeal of determinations to the United States Court of Customs and Patent Appeals be reviewed in accordance with chapter 7 of title 5 and substituted provision that review of findings concerning the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy, be in accordance with section 706 of title 5 for provision giving such court jurisdiction to review determinations in same manner and subject to same limitations and conditions as in case of appeals from decisions of the United States Customs Court.

1979—Subsec. (b)(3). Pub. L. 96–39, §1105(a), substituted ''a matter, in whole or in part,'' for ''the matter'' and inserted provisions relating to matters based solely or in part on alleged acts and effects within the purview of section 1303, 1671, or 1673 of this title.

Pub. L. 96–39, §106(b)(1), substituted ''part II of subtitle IV of this chapter'' for ''the Antidumping Act, 1921''.

Subsec. (c). Pub. L. 96–39, §1105(c), substituted ''Any person adversely affected by a final determination of the Commission under subsection (d), (e), or (f) of this section'' for ''Any person adversely affected by a final determination of the Commission under subsection (d) or (e) of this section''.

Subsec. (f). Pub. L. 96–39, §1105(b), designated existing provisions as par. (1) and added par. (2).

1975—Subsec. (a) Pub. L. 93–618 substituted ''Commission'' for ''President'' and ''as provided in this section'' for ''as hereinafter provided''.

Subsec. (b). Pub. L. 93–618 designated existing provisions as first sentence of par. (1), substituted ''The Commission shall investigate any alleged violation of this section'' for ''To assist the President in making any decisions under this section the commission is authorized to investigate any alleged violation hereof'' in first sentence of par. (1) as so designated, and added remainder of par. (1) and pars. (2) and (3).

Subsec. (c). Pub. L. 93–618 substituted provisions covering determinations by the Commission and appeals to the United States Court of Customs and Patent Appeals for provisions covering all aspects of hearings and review as part of investigations of unfair practices in import trade.

Subsec. (d). Pub. L. 93–618 substituted provisions covering the exclusion of articles from entry, formerly covered in subsec. (e), for provisions directing that final findings of the Commission be transmitted with the record to the President, covered by subsec. (g).

Subsec. (e). Pub. L. 93–618 substituted provisions covering the entry of articles under bond during investigation, formerly covered in subsec. (f), for provisions covering the exclusion of articles from entry, covered by subsec. (d).

Subsec. (f). Pub. L. 93–618 added subsec. (f). Provisions of former subsec. (f) covering entry of articles under bond are covered by subsec. (e).

Subsec. (g). Pub. L. 93–618 substituted provisions covering referral to the President, formerly covered by subsec. (d), for provisions covering the continuance of exclusion, covered by subsec. (h).

Subsec. (h). Pub. L. 93–618 substituted provisions covering the period of effectiveness, formerly covered by subsec. (g), for provisions defining ''United States'', covered by subsec. (j).

Subsec. (i). Pub. L. 93–618 added subsec. (i).

Subsec. (j). Pub. L. 93–618 added subsec. (j) defining ''United States'', formerly covered by subsec. (h).

1958—Subsec. (c). Pub. L. 85–686 struck out ''under and in accordance with such rules as it may promulgate'' after ''commission shall make such investigation''. See section 1335 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 261(d)(1)(B)(ii) of Pub. L. 103–465 effective on 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.

Section 322 of title III of Pub. L. 103–465 provided that: ''The amendments made by this subtitle [subtitle C (§§321, 322) of title III of Pub. L. 103–465, enacting sections 1368 and 1659 of Title 28, Judiciary and Judicial Procedure, and amending this section and section 1446 of Title 28] apply—

''(1) with respect to complaints filed under section 337 of the Tariff Act of 1930 [19 U.S.C. 1337] on or after the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], or

''(2) in cases under such section 337 in which no complaint is filed, with respect to investigations initiated under such section on or after such date.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100–647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

Amendment by section 1214(h)(3) of Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

Section 1342(d) of Pub. L. 100–418 provided that:

''(1)(A) Subject to subparagraph (B), the amendments made by this section [amending this section and repealing section 1337a of this title] shall take effect on the date of the enactment of this Act [Aug. 23, 1988].

''(B) The United States International Trade Commission is not required to apply the provision in section 337(e)(2) of the Tariff Act of 1930 [19 U.S.C. 1337(e)(2)] (as amended by subsection (a)(3) of this section) relating to the posting of bonds until the earlier of—

''(i) the 90th day after such date of enactment; or

''(ii) the day on which the Commission issues interim regulations setting forth the procedures relating to such posting.

''(2) Notwithstanding any provision of section 337 of the Tariff Act of 1930, the United States International Trade Commission may extend, by not more than 90 days, the period within which the Commission is required to make a determination in an investigation conducted under such section 337 if—

''(A) the Commission would, but for this paragraph, be required to make such determination before the 180th day after the date of enactment of this Act; and

''(B) the Commission finds that the investigation is complicated.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(2) of Pub. L. 96–417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by section 106(b)(1) of Pub. L. 96–39 effective Jan. 1, 1980, see section 107 of Pub. L. 96–39, set out as an Effective Date note under section 1671 of this title.

Amendment by section 1105 of Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 341(c) of Pub. L. 93–618 provided that: ''The amendments made by this section [amending this section and section 1337 of this title] shall take effect on the 90th day after the date of the enactment of this Act [Jan. 3, 1975], except that, for purposes of issuing regulations under section 337 of the Tariff Act of 1930 [this section], such amendments shall take effect on the date of the enactment of this Act [Jan. 3, 1975]. For purposes of applying section 337(b) of the Tariff Act of 1930 [subsec. (b) of this section] (as amended by subsection (a) [as amended by section 341(a) of Pub. L. 93–618]) with respect to investigations being conducted by the International Trade Commission under section 337 of the Tariff Act [this section] on the day prior to the 90th day after the date of the enactment of this Act [Jan. 3, 1975], such investigations shall be considered as having been commenced on such 90th day.''

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CONGRESSIONAL FINDINGS AND PURPOSES RESPECTING PART 3 OF PUB. L. 100–418

Section 1341 of Pub. L. 100–418 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) United States persons that rely on protection of intellectual property rights are among the most advanced and competitive in the world; and

''(2) the existing protection under section 337 of the Tariff Act of 1930 [this section] against unfair trade practices is cumbersome and costly and has not provided United States owners of intellectual property rights with adequate protection against foreign companies violating such rights.

''(b) PURPOSE.—The purpose of this part [part 3 (§§ 1341, 1342) of subtitle C of title I of Pub. L. 100–418, amending this section, repealing section 1337a of this title, and enacting provisions set out as a note above] is to amend section 337 of the Tariff Act of 1930 to make it a more effective remedy for the protection of United States intellectual property rights.''

ASSIGNMENT OF CERTAIN FUNCTIONS

Memorandum of President of the United States, July 21, 2005, 70 F.R. 43251, provided:

Memorandum for the United States Trade Representative

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby assign to you the functions of the President under section 337(j)(1)(B), section 337(j)(2), and section 337(j)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1337(j)(1), (j)(2), and (j)(4)).

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 1337a. Repealed. Pub. L. 100–418, title I, § 1342(c), Aug. 23, 1988, 102 Stat. 1215

Section, act July 2, 1940, ch. 515, 54 Stat. 724, related to importation of products produced under process covered by claims of unexpired patent.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 23, 1988, see section 1342(d) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 1337 of this title.

§ 1338. Discrimination by foreign countries

(a) Additional duties

The President when he finds that the public interest will be served shall by proclamation specify and declare new or additional duties as hereinafter provided upon articles wholly or in part the growth or product of, or imported in a vessel of, any foreign country whenever he shall find as a fact that such country—

(1) Imposes, directly or indirectly, upon the disposition in or transportation in transit through or reexportation from such country of any article wholly or in part the growth or product of the United States any unreasonable charge, exaction, regulation, or limitation which is not equally enforced upon the like articles of every foreign country; or

(2) Discriminates in fact against the commerce of the United States, directly or indirectly, by law or administrative regulation or practice, by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction, or prohibition, in such manner as to place the commerce of the United States at a disadvantage compared with the commerce of any foreign country.

(b) Exclusion from importation

If at any time the President shall find it to be a fact that any foreign country has not only discriminated against the commerce of the United States, as aforesaid, but has, after the issuance of a proclamation as authorized in subdivision