Subsec. (b)(3). Pub. L. 103–465, § 233(a)(2)(B), substituted ''constructed export price'' for ''exporter's sales price''.

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.

§ 1673h. Establishment of product categories for short life cycle merchandise

(a) Establishment of product categories

(1) Petitions

(A) In general

An eligible domestic entity may file a petition with the Commission requesting that a product category be established with respect to short life cycle merchandise at any time after the merchandise becomes the subject of 2 or more affirmative dumping determinations.

(B) Contents

A petition filed under subparagraph (A) shall—

(i) identify the short life cycle merchandise that is the subject of the affirmative dumping determinations,

(ii) specify the short life cycle merchandise that the petitioner seeks to have included in the same product category as the merchandise that is subject to the affirmative dumping determinations,

(iii) specify any short life cycle merchandise the petitioner particularly seeks to have excluded from the product category,

(iv) provide reasons for the inclusions and exclusions specified under clauses (ii) and (iii), and

(v) identify such merchandise in terms of the designations used in the Harmonized Tariff Schedule of the United States.

(2) Determinations on sufficiency of petition

Upon receiving a petition under paragraph (1), the Commission shall—

(A) request the administering authority to confirm promptly the affirmative determinations on which the petition is based, and

(B) upon receipt of such confirmation, determine whether the merchandise covered by the confirmed affirmative determinations is short life cycle merchandise and whether the petitioner is an eligible domestic entity.

(3) Notice; hearings

If the determinations under paragraph (2)(B) are affirmative, the Commission shall—

(A) publish notice in the Federal Register that the petition has been received, and

(B) provide opportunity for the presentation of views regarding the establishment of the requested product category, including a public hearing if requested by any interested person.

(4) Determinations

(A) In general

By no later than the date that is 90 days after the date on which a petition is filed under paragraph (1), the Commission shall determine the scope of the product category into which the short life cycle merchandise that is the subject of the affirmative dumping determinations identified in such petition shall be classified for purposes of this section.

(B) Modifications not requested by petition

(i) In general

The Commission may, on its own initiative, make a determination modifying the scope of any product category established under subparagraph (A) at any time.

(ii) Notice and hearing

Determinations may be made under clause (i) only after the Commission has—

(I) published in the Federal Register notice of the proposed modification, and

(II) provided interested parties an opportunity for a hearing, and a period for the submission of written comments, on the classification of merchandise into the product categories to be affected by such determination.

(C) Basis of determinations

In making determinations under subparagraph (A) or (B), the Commission shall ensure that each product category consists of similar short life cycle merchandise which is produced by similar processes under similar circumstances and has similar uses.

(b) Definitions

For purposes of this section—

(1) Eligible domestic entity

The term ''eligible domestic entity'' means a manufacturer or producer in the United States, or a certified union or recognized union or group of workers which is representative of an industry in the United States, that manufactures or produces short life cycle merchandise that is—

(A) like or directly competitive with other merchandise that is the subject of 2 or more affirmative dumping determinations, or

(B) is similar enough to such other merchandise as to be considered for inclusion with such merchandise in a product monitoring category established under this section.

(2) Affirmative dumping determination

The term ''affirmative dumping determination'' means—

(A) any affirmative final determination made by the administering authority under section 1673d(a) of this title during the 8-year period preceding the filing of the petition under this section that results in the issuance of an antidumping duty order under section 1673e of this title which requires the deposit of estimated antidumping duties at a rate of not less than 15 percent ad valorem, or

(B) any affirmative preliminary determination that—

(i) is made by the administering authority under section 1673b(b) of this title during the 8-year period preceding the filing of the petition under this section in the course of an investigation for which no final determination is made under section 1673d of this title by reason of a suspension of the investigation under section 1673c of this title, and

(ii) includes a determination that the estimated average amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise is not less than 15 percent ad valorem.

(3) Subject of affirmative dumping determination

(A) In general

Short life cycle merchandise of a manufacturer shall be treated as being the subject of an affirmative dumping determination only if the administering authority—

(i) makes a separate determination of the amount by which the normal value of such merchandise of the manufacturer exceeds the export price (or the constructed export price) of such merchandise of the manufacturer, and

(ii) specifically identifies the manufacturer by name with such amount in the affirmative dumping determination or in an antidumping duty order issued as a result of the affirmative dumping determination.

(B) Exclusion

Short life cycle merchandise of a manufacturer shall not be treated as being the subject of an affirmative dumping determination if—

(i) such merchandise of the manufacturer is part of a group of merchandise to which the administering authority assigns (in lieu of making separate determinations described in subparagraph (A)(i)(I)) an amount determined to be the amount by which the normal value of the merchandise in such group exceeds the export price (or the constructed export price) of the merchandise in such group, and

(ii) the merchandise and the manufacturer are not specified by name in the affirmative dumping determination or in any antidumping duty order issued as a result of such affirmative dumping determination.

(4) Short life cycle merchandise

The term ''short life cycle merchandise'' means any product that the Commission determines is likely to become outmoded within 4 years, by reason of technological advances, after the product is commercially available. For purposes of this paragraph, the term ''outmoded'' refers to a kind of style that is no longer state-of-the-art.

(c) Transitional rules

(1) For purposes of this section and section 1673b(b)(1)(B) and (C) of this title, all affirmative dumping determinations described in subsection (b)(2)(A) of this section that were made after December 31, 1980, and before August 23, 1988, and all affirmative dumping determinations described in subsection (b)(2)(B) of this section that were made after December 31, 1984, and before August 23, 1988, with respect to each category of short life cycle merchandise of the same manufacturer shall be treated as one affirmative dumping determination with respect to that category for that manufacturer which was made on the date on which the latest of such determinations was made.

(2) No affirmative dumping determination that—

(A) is described in subsection (b)(2)(A) of this section and was made before January 1, 1981, or

(B) is described in subsection (b)(2)(B) of this section and was made before January 1, 1985,

may be taken into account under this section or section 1673b(b)(1)(B) and (C) of this title.

(June 17, 1930, ch. 497, title VII, § 739, as added Pub. L. 100–418, title I, § 1323(a), Aug. 23, 1988, 102 Stat. 1195; amended Pub. L. 101–382, title I, § 139(a)(2), Aug. 20, 1990, 104 Stat. 653; Pub. L. 103–465, title II, § 233(a)(1)(D), (2)(A)(v), Dec. 8, 1994, 108 Stat. 4898.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a)(1)(B)(v), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

A prior section, act June 17, 1930, ch. 497, title VII, § 739, as added July 26, 1979, Pub. L. 96–39, title I, § 101, 93 Stat. 174, related to duties of customs officers, prior to repeal by Pub. L. 98–573, title VI, § 610(a), Oct. 30, 1984, 98 Stat. 3031.

AMENDMENTS

1994—Subsec. (b)(2)(B)(ii), (3)(A)(i), (B)(i). Pub. L. 103–465 substituted ''normal value'' for ''foreign market value'' and ''export price (or the constructed export price)'' for ''United States price''.

1990—Subsec. (a)(1)(B)(v). Pub. L. 101–382 substituted ''Harmonized Tariff Schedule'' for ''Tariff Schedules''.

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.

§ 1673i. Repealed. Pub. L. 98–573, title VI, § 622(a)(1), Oct. 30, 1984, 98 Stat. 3039

Section, act June 17, 1930, ch. 497, title VII, § 740, as added July 26, 1979, Pub. L. 96–39, title I, § 101, 93 Stat. 175, provided that the antidumping duty imposed by section 1673 of this title was to be treated as a normal customs duty for drawback purposes. See section 1677h of this title.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 30, 1984, see section 626(a) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.