sion shall determine whether imports of the merchandise of the kind subject to the agreement will, upon termination of the agreement, materially injure, or threaten with material injury, an industry in the United States or materially retard the establishment of such an industry.

(b) Determinations

The determinations required to be made by the administering authority and the Commission under subsection (a) of this section shall be made under such procedures as the administering authority and the Commission, respectively, shall by regulation prescribe, and shall be treated as final determinations made under section 1671d of this title for purposes of judicial review under section 1516a of this title. If the determinations by each are affirmative, the administering authority shall—

(1) issue a countervailing duty order under section 1671e of this title effective with respect to merchandise entered on and after the date on which the agreement terminates; and

(2) order the suspension of liquidation of all entries of subject merchandise which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of the order in the Federal Register.

(c) Hearings

The determination proceedings required to be prescribed under subsection (b) of this section shall provide that the administering authority and the Commission must, upon the request of any interested party, hold a hearing in accordance with section 1677c of this title on the issues involved.

(June 17, 1930, ch. 497, title VII, § 762, as added Pub. L. 98–573, title VI, § 611(a)(4), Oct. 30, 1984, 98 Stat. 3032; amended Pub. L. 103–465, title II, §§ 233(a)(5)(Z), (AA), 270(a)(1)(J), Dec. 8, 1994, 108 Stat. 4900, 4917.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–465, §§ 233(a)(5)(Z), 270(a)(1)(J), inserted ''countervailable'' before ''subsidy'' in two places and substituted ''subject merchandise'' for ''merchandise subject to the agreement''.

Subsec. (b)(2). Pub. L. 103–465, § 233(a)(5)(AA), substituted ''subject merchandise'' for ''merchandise subject to the order''.

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 investigations initiated by petition or by the administering authority under parts I and II of this subtitle, or reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98–573, as amended, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

PART IV—GENERAL PROVISIONS

CODIFICATION

The designation ''PART IV'' was in the original ''Subtitle D'' and was editorially changed in order to conform the numbering format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.

§ 1677. Definitions; special rules

For purposes of this subtitle—

(1) Administering authority

The term ''administering authority'' means the Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this subtitle are transferred by law.

(2) Commission

The term ''Commission'' means the United States International Trade Commission.

(3) Country

The term ''country'' means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, may include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) Industry

(A) In general

The term ''industry'' means the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.

(B) Related parties

(i) If a producer of a domestic like product and an exporter or importer of the subject merchandise are related parties, or if a producer of the domestic like product is also an importer of the subject merchandise, the producer may, in appropriate circumstances, be excluded from the industry.

(ii) For purposes of clause (i), a producer and an exporter or importer shall be considered to be related parties, if—

(I) the producer directly or indirectly controls the exporter or importer,

(II) the exporter or importer directly or indirectly controls the producer,

(III) a third party directly or indirectly controls the producer and the exporter or importer, or

(IV) the producer and the exporter or importer directly or indirectly control a third party and there is reason to believe that the relationship causes the producer to act differently than a nonrelated producer.

For purposes of this subparagraph, a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.

(C) Regional industries

In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if—

(i) the producers within such market sell all or almost all of their production of the domestic like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of dumped imports or imports of merchandise benefiting from a countervailable subsidy into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the dumped imports or imports of merchandise benefiting from a countervailable subsidy. The term ''regional industry'' means the domestic producers within a region who are treated as a separate industry under this subparagraph.

(D) Product lines

The effect of dumped imports or imports of merchandise benefiting from a countervailable subsidy shall be assessed in relation to the United States production of a domestic like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the domestic like product has no separate identity in terms of such criteria, then the effect of the dumped imports or imports of merchandise benefiting from a countervailable subsidy shall be assessed by the examination of the production of the narrowest group or range of products, which includes a domestic like product, for which the necessary information can be provided.

(E) Industry producing processed agricultural products

(i) In general

Subject to clause (v), in an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if—

(I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and

(II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship).

(ii) Processing

For purposes of this subparagraph, the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if—

(I) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

(II) the processed agricultural product is produced substantially or completely from the raw product.

(iii) Relevant economic factors

For purposes of clause (i)(II), in addition to such other factors it considers relevant to the question of coincidence of economic interest, the Commission shall—

(I) if price is taken into account, consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and

(II) if added market value is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

(iv) Raw agricultural product

For purposes of this subparagraph, the term ''raw agricultural product'' means any farm or fishery product.

(v) Termination of this subparagraph

This subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(5) Countervailable subsidy

(A) In general

Except as provided in paragraph (5B), a countervailable subsidy is a subsidy described in this paragraph which is specific as described in paragraph (5A).

(B) Subsidy described

A subsidy is described in this paragraph in the case in which an authority—

(i) provides a financial contribution,

(ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994, or

(iii) makes a payment to a funding mechanism to provide a financial con-

tribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments,

to a person and a benefit is thereby conferred. For purposes of this paragraph and paragraphs (5A) and (5B), the term ''authority'' means a government of a country or any public entity within the territory of the country.

(C) Other factors

The determination of whether a subsidy exists shall be made without regard to whether the recipient of the subsidy is publicly or privately owned and without regard to whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise. The administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists under this paragraph.

(D) Financial contribution

The term ''financial contribution'' means—

(i) the direct transfer of funds, such as grants, loans, and equity infusions, or the potential direct transfer of funds or liabilities, such as loan guarantees,

(ii) foregoing or not collecting revenue that is otherwise due, such as granting tax credits or deductions from taxable income,

(iii) providing goods or services, other than general infrastructure, or

(iv) purchasing goods.

(E) Benefit conferred

A benefit shall normally be treated as conferred where there is a benefit to the recipient, including—

(i) in the case of an equity infusion, if the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made,

(ii) in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,

(iii) in the case of a loan guarantee, if there is a difference, after adjusting for any difference in guarantee fees, between the amount the recipient of the guarantee pays on the guaranteed loan and the amount the recipient would pay for a comparable commercial loan if there were no guarantee by the authority, and

(iv) in the case where goods or services are provided, if such goods or services are provided for less than adequate remuneration, and in the case where goods are purchased, if such goods are purchased for more than adequate remuneration.

For purposes of clause (iv), the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

(F) Change in ownership

A change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

(5A) Specificity

(A) In general

A subsidy is specific if it is an export subsidy described in subparagraph (B) or an import substitution subsidy described in subparagraph (C), or if it is determined to be specific pursuant to subparagraph (D).

(B) Export subsidy

An export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions.

(C) Import substitution subsidy

An import substitution subsidy is a subsidy that is contingent upon the use of domestic goods over imported goods, alone or as 1 of 2 or more conditions.

(D) Domestic subsidy

In determining whether a subsidy (other than a subsidy described in subparagraph (B) or (C)) is a specific subsidy, in law or in fact, to an enterprise or industry within the jurisdiction of the authority providing the subsidy, the following guidelines shall apply:

(i) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law.

(ii) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, the subsidy is not specific as a matter of law, if—

(I) eligibility is automatic,

(II) the criteria or conditions for eligibility are strictly followed, and

(III) the criteria or conditions are clearly set forth in the relevant statute, regulation, or other official document so as to be capable of verification.

For purposes of this clause, the term ''objective criteria or conditions'' means criteria or conditions that are neutral and that do not favor one enterprise or industry over another.

(iii) Where there are reasons to believe that a subsidy may be specific as a matter

of fact, the subsidy is specific if one or more of the following factors exist:

(I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.

(II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy.

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

In evaluating the factors set forth in subclauses (I), (II), (III), and (IV), the administering authority shall take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy, and the length of time during which the subsidy program has been in operation.

(iv) Where a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy, the subsidy is specific.

For purposes of this paragraph and paragraph (5B), any reference to an enterprise or industry is a reference to a foreign enterprise or foreign industry and includes a group of such enterprises or industries.

(5B) Categories of noncountervailable subsidies

(A) In general

Notwithstanding the provisions of paragraphs (5) and (5A), in the case of merchandise imported from a Subsidies Agreement country, a subsidy shall be treated as noncountervailable if the administering authority determines in an investigation under part I of this subtitle or a review under part III of this subtitle that the subsidy meets all of the criteria described in subparagraph (B), (C), or (D), as the case may be, or the provisions of subparagraph (E)(i) apply.

(B) Research subsidy

(i) In general

Except for a subsidy provided on the manufacture, production, or export of civil aircraft, a subsidy for research activities conducted by a person, or by a higher education or research establishment on a contract basis with a person, shall be treated as noncountervailable, if the subsidy covers not more than 75 percent of the costs of industrial research or not more than 50 percent of the costs of precompetitive development activity, and such subsidy is limited exclusively to—

(I) the costs of researchers, technicians, and other supporting staff employed exclusively in the research activity,

(II) the costs of instruments, equipment, land, or buildings that are used exclusively and permanently (except when disposed of on a commercial basis) for the research activity,

(III) the costs of consultancy and equivalent services used exclusively for the research activity, including costs for bought-in research, technical knowledge, and patents,

(IV) additional overhead costs incurred directly as a result of the research activity, and

(V) other operating costs (such as materials and supplies) incurred directly as a result of the research activity.

(ii) Definitions

For purposes of this subparagraph—

(I) Industrial research

The term ''industrial research'' means planned search or critical investigation aimed at the discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes, or services, or in bringing about a significant improvement to existing products, processes, or services.

(II) Precompetitive development activity

The term ''precompetitive development activity'' means the translation of industrial research findings into a plan, blueprint, or design for new, modified, or improved products, processes, or services, whether intended for sale or use, including the creation of a first prototype that would not be capable of commercial use. The term also may include the conceptual formulation and design of products, processes, or services alternatives and initial demonstration or pilot projects, if these same projects cannot be converted or used for industrial application or commercial exploitation. The term does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, or other ongoing operations even if those alterations may represent improvements.

(iii) Calculation rules

(I) In general

In the case of a research activity that spans both industrial research and precompetitive development activity, the allowable level of the noncountervailable subsidy shall not exceed 62.5 percent of the costs set forth in subclauses (I), (II), (III), (IV), and (V) of clause (i).

(II) Total eligible costs

The allowable level of a noncountervailable subsidy described in clause (i) shall be based on the total eligible costs incurred over the duration of a particular project.

(C) Subsidy to disadvantaged regions

(i) In general

A subsidy provided, pursuant to a general framework of regional development,

to a person located in a disadvantaged region within a country shall be treated as noncountervailable, if it is not specific (within the meaning of paragraph (5A)) within eligible regions and if the following conditions are met:

(I) Each region identified as disadvantaged within the territory of a country is a clearly designated, contiguous geographical area with a definable economic and administrative identity.

(II) Each region is considered a disadvantaged region on the basis of neutral and objective criteria indicating that the region is disadvantaged because of more than temporary circumstances, and such criteria are clearly stated in the relevant statute, regulation, or other official document so as to be capable of verification.

(III) The criteria described in subclause (II) include a measurement of economic development.

(IV) Programs provided within a general framework of regional development include ceilings on the amount of assistance that can be granted to a subsidized project. Such ceilings are differentiated according to the different levels of development of assisted regions, and are expressed in terms of investment costs or costs of job creation. Within such ceilings, the distribution of assistance is sufficiently broad and even to avoid the predominant use of a subsidy by, or the provision of disproportionately large amounts of a subsidy to, an enterprise or industry as described in paragraph (5A)(D).

(ii) Measurement of economic development

For purposes of clause (i), the measurement of economic development shall be based on one or more of the following factors:

(I) Per capita income, household per capita income, or per capita gross domestic product that does not exceed 85 percent of the average for the country subject to investigation or review.

(II) An unemployment rate that is at least 110 percent of the average unemployment rate for the country subject to investigation or review.

The measurement of economic development shall cover a 3-year period, but may be a composite measurement and may include factors other than those set forth in this clause.

(iii) Definitions

For purposes of this subparagraph—

(I) General framework of regional development

The term ''general framework of regional development'' means that the regional subsidy programs are part of an internally consistent and generally applicable regional development policy, and that regional development subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of a region.

(II) Neutral and objective criteria

The term ''neutral and objective criteria'' means criteria that do not favor certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy.

(D) Subsidy for adaptation of existing facilities to new environmental requirements

(i) In general

A subsidy that is provided to promote the adaptation of existing facilities to new environmental requirements that are imposed by statute or by regulation, and that result in greater constraints and financial burdens on the recipient of the subsidy, shall be treated as noncountervailable, if the subsidy—

(I) is a one-time nonrecurring measure,

(II) is limited to 20 percent of the cost of adaptation,

(III) does not cover the cost of replacing and operating the subsidized investment, a cost that must be fully borne by the recipient,

(IV) is directly linked and proportionate to the recipient's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings that may be achieved, and

(V) is available to all persons that can adopt the new equipment or production processes.

(ii) Existing facilities

For purposes of this subparagraph, the term ''existing facilities'' means facilities that have been in operation for at least 2 years before the date on which the new environmental requirements are imposed.

(E) Notified subsidy program

(i) General rule

If a subsidy is provided pursuant to a program that has been notified in accordance with Article 8.3 of the Subsidies Agreement, the subsidy shall be treated as noncountervailable and shall not be subject to investigation or review under this subtitle.

(ii) Exception

Notwithstanding clause (i), a subsidy shall be treated as countervailable if—

(I) the Trade Representative notifies the administering authority that a determination has been made pursuant to Article 8.4 or 8.5 of the Subsidies Agreement that the subsidy, or the program pursuant to which the subsidy was provided, does not satisfy the conditions and criteria of Article 8.2 of the Subsidies Agreement; and

(II) the subsidy is specific within the meaning of paragraph (5A).

(F) Certain subsidies on agricultural products

Domestic support measures that are provided with respect to products listed in

Annex 1 to the Agreement on Agriculture, and that the administering authority determines conform fully to the provisions of Annex 2 to that Agreement, shall be treated as noncountervailable. Upon request by the administering authority, the Trade Representative shall provide advice regarding the interpretation and application of Annex 2.

(G) Provisional application

(i) Subparagraphs (B), (C), (D), and (E) shall not apply on or after the first day of the month that is 66 months after the WTO Agreement enters into force, unless the provisions of such subparagraphs are extended pursuant to section 3572(c) of this title.

(ii) Subparagraph (F) shall not apply to imports from a WTO member country at the end of the 9-year period beginning on January 1, 1995. The Trade Representative shall determine the precise termination date for each WTO member country in accordance with paragraph (i) of Article 1 of the Agreement on Agriculture and such date shall be notified to the administering authority.

(6) Net countervailable subsidy

For the purpose of determining the net countervailable subsidy, the administering authority may subtract from the gross countervailable subsidy the amount of—

(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,

(B) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

(7) Material injury

(A) In general

The term ''material injury'' means harm which is not inconsequential, immaterial, or unimportant.

(B) Volume and consequent impact

In making determinations under sections 1671b(a), 1671d(b), 1673b(a), and 1673d(b) of this title, the Commission, in each case—

(i) shall consider—

(I) the volume of imports of the subject merchandise,

(II) the effect of imports of that merchandise on prices in the United States for domestic like products, and

(III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

In the notification required under section 1671d(d) or 1673d(d) of this title, as the case may be, the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

(C) Evaluation of relevant factors

For purposes of subparagraph (B)—

(i) Volume

In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) Price

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(iii) Impact on affected domestic industry

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices,

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment,

(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(V) in a proceeding under part II of this subtitle, the magnitude of the margin of dumping.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

(iv) Captive production

If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that—

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,

(II) the domestic like product is the predominant material input in the production of that downstream article, and

(III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

(D) Special rules for agricultural products

(i) The Commission shall not determine that there is no material injury or threat of material injury to United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(ii) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(E) Special rules

For purposes of this paragraph—

(i) Nature of countervailable subsidy

In determining whether there is a threat of material injury, the Commission shall consider information provided to it by the administering authority regarding the nature of the countervailable subsidy granted by a foreign country (particularly whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and the effects likely to be caused by the countervailable subsidy.

(ii) Standard for determination

The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(F) Threat of material injury

(i) In general

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors—

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this subtitle which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 1671d(b)(1) or 1673d(b)(1) of this title with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

(ii) Basis for determination

The Commission shall consider the factors set forth in clause (i) as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this subtitle. The presence or absence of any factor which the Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.

(iii) Effect of dumping in third-country markets

(I) In general

In investigations under part II of this subtitle, the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign manufacturer, exporter, or United States importer concerning this issue.

(II) WTO member market

For purposes of this clause, the term ''WTO member market'' means the market of any country which is a WTO member.

(III) European Communities

For purposes of this clause, the European Communities shall be treated as a foreign country.

(G) Cumulation for determining material injury

(i) In general

For purposes of clauses (i) and (ii) of subparagraph (C), and subject to clause (ii), the Commission shall cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which—

(I) petitions were filed under section 1671a(b) or 1673a(b) of this title on the same day,

(II) investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day, or

(III) petitions were filed under section 1671a(b) or 1673a(b) of this title and investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day,

if such imports compete with each other and with domestic like products in the United States market.

(ii) Exceptions

The Commission shall not cumulatively assess the volume and effect of imports under clause (i)—

(I) with respect to which the administering authority has made a preliminary negative determination, unless the administering authority subsequently made a final affirmative determination with respect to those imports before the Commission's final determination is made;

(II) from any country with respect to which the investigation has been terminated;

(III) from any country designated as a beneficiary country under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) for purposes of making a determination with respect to that country, except that the volume and effect of imports of the subject merchandise from such country may be cumulatively assessed with imports of the subject merchandise from any other country designated as such a beneficiary country to the extent permitted by clause (i); or

(IV) from any country that is a party to an agreement with the United States establishing a free trade area, which entered into force and effect before January 1, 1987, unless the Commission determines that a domestic industry is materially injured or threatened with material injury by reason of imports from that country.

(iii) Records in final investigations

In each final determination in which it cumulatively assesses the volume and effect of imports under clause (i), the Commission shall make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination in a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the significance of the administering authority's final determination, and shall include such comments and the administering authority's final determination in the record for the subsequent investigation.

(iv) Regional industry determinations

In an investigation which involves a regional industry, and in which the Commission decides that the volume and effect of imports should be cumulatively assessed under this subparagraph, such assessment shall be based upon the volume and effect of imports into the region or regions determined by the Commission. The provisions of clause (iii) shall apply to such investigations.

(H) Cumulation for determining threat of material injury

To the extent practicable and subject to subparagraph (G)(ii), for purposes of clause (i)(III) and (IV) of subparagraph (F), the Commission may cumulatively assess the volume and price effects of imports of the subject merchandise from all countries with respect to which—

(i) petitions were filed under section 1671a(b) or 1673a(b) of this title on the same day,

(ii) investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day, or

(iii) petitions were filed under section 1671a(b) or 1673a(b) of this title and investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day,

if such imports compete with each other and with domestic like products in the United States market.

(I) Consideration of post-petition information

The Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation under part I or II of this subtitle is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States.

(8) Subsidies Agreement; Agreement on Agriculture

(A) Subsidies Agreement

The term ''Subsidies Agreement'' means the Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of this title.

(B) Agreement on Agriculture

The term ''Agreement on Agriculture'' means the Agreement on Agriculture referred to in section 3511(d)(2) of this title.

(9) Interested party

The term ''interested party'' means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured or from which such merchandise is exported,

(C) a manufacturer, producer, or wholesaler in the United States of a domestic like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product, and

(G) in any investigation under this subtitle involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either—

(i) processors,

(ii) processors and producers, or

(iii) processors and growers,

but this subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(10) Domestic like product

The term ''domestic like product'' means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.

(11) Affirmative determinations by divided Commission

If the Commissioners voting on a determination by the Commission, including a determination under section 1675 of this title, are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is—

(A) material injury to an industry in the United States,

(B) threat of material injury to such an industry, or

(C) material retardation of the establishment of an industry in the United States,

by reason of imports of the merchandise, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

(12) Attribution of merchandise to country of manufacture or production

For purposes of part I of this subtitle, merchandise shall be treated as the product of the country in which it was manufactured or produced without regard to whether it is imported directly from that country and without regard to whether it is imported in the same condition as when exported from that country or in a changed condition by reason of remanufacture or otherwise.

(13) Repealed. Pub. L. 103–465, title II, § 222(i)(2), Dec. 8, 1994, 108 Stat. 4876

(14) Sold or, in the absence of sales, offered for sale

The term ''sold or, in the absence of sales, offered for sale'' means sold or, in the absence of sales, offered—

(A) to all purchasers in commercial quantities, or

(B) in the ordinary course of trade to one or more selected purchasers in commercial quantities at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(15) Ordinary course of trade

The term ''ordinary course of trade'' means the conditions and practices which, for a reasonable time prior to the exportation of the

subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

(A) Sales disregarded under section 1677b(b)(1) of this title.

(B) Transactions disregarded under section 1677b(f)(2) of this title.

(16) Foreign like product

The term ''foreign like product'' means merchandise in the first of the following categories in respect of which a determination for the purposes of part II of this subtitle can be satisfactorily made:

(A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise—

(i) produced in the same country and by the same person as the subject merchandise,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) produced in the same country and by the same person and of the same general class or kind as the subject merchandise,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.

(17) Usual commercial quantities

The term ''usual commercial quantities'', in any case in which the subject merchandise is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

(18) Nonmarket economy country

(A) In general

The term ''nonmarket economy country'' means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.

(B) Factors to be considered

In making determinations under subparagraph (A) the administering authority shall take into account—

(i) the extent to which the currency of the foreign country is convertible into the currency of other countries;[1]

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

(iv) the extent of government ownership or control of the means of production,

(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

(vi) such other factors as the administering authority considers appropriate.

(C) Determination in effect

(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.

(ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time.

(D) Determinations not in issue

Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under part II of this subtitle.

(E) Collection of information

Upon request by the administering authority, the Commissioner of Customs shall provide the administering authority a copy of all public and proprietary information submitted to, or obtained by, the Commissioner of Customs that the administering authority considers relevant to proceedings involving merchandise from nonmarket economy countries. The administering authority shall protect proprietary information obtained under this section from public disclosure in accordance with section 1677f of this title.

(19) Equivalency of leases to sales

In determining whether a lease is equivalent to a sale for purposes of this subtitle, the administering authority shall consider—

(A) the terms of the lease,

(B) commercial practice within the industry,

(C) the circumstances of the transaction,

(D) whether the product subject to the lease is integrated into the operations of the lessee or importer,

(E) whether in practice there is a likelihood that the lease will be continued or renewed for a significant period of time, and

(F) other relevant factors, including whether the lease transaction would permit avoidance of antidumping or countervailing duties.

(20) Application to governmental importations

(A) In general

Except as otherwise provided by this paragraph, merchandise imported by, or for the use of, a department or agency of the United States Government (including merchandise

[1] So in original. The semicolon probably should be a comma.

provided for under chapter 98 of the Harmonized Tariff Schedule of the United States) is subject to the imposition of countervailing duties or antidumping duties under this subtitle or section 1303 of this title.

(B) Exceptions

Merchandise imported by, or for the use of, the Department of Defense shall not be subject to the imposition of countervailing or antidumping duties under this subtitle if—

(i) the merchandise is acquired by, or for use of, such Department—

(I) from a country with which such Department had a Memorandum of Understanding which was in effect on January 1, 1988, and has continued to have a comparable agreement (including renewals) or superceding agreements, and

(II) in accordance with terms of the Memorandum of Understanding in effect at the time of importation, or

(ii) the merchandise has no substantial nonmilitary use.

(21) United States-Canada Agreement

The term ''United States-Canada Agreement'' means the United States-Canada Free-Trade Agreement.

(22) NAFTA

The term ''NAFTA'' means the North American Free Trade Agreement.

(23) Entry

The term ''entry'' includes, in appropriate circumstances as determined by the administering authority, a reconciliation entry created under a reconciliation process, defined in section 1401(s) of this title, that is initiated by an importer. The liability of an importer under an antidumping or countervailing duty proceeding for entries of merchandise subject to the proceeding will attach to the corresponding reconciliation entry or entries. Suspension of liquidation of the reconciliation entry or entries, for the purpose of enforcing this subtitle, is equivalent to the suspension of liquidation of the corresponding individual entries; but the suspension of liquidation of the reconciliation entry or entries for such purpose does not preclude liquidation for any other purpose.

(24) Negligible imports

(A) In general

(i) Less than 3 percent

Except as provided in clauses (ii) and (iv), imports from a country of merchandise corresponding to a domestic like product identified by the Commission are ''negligible'' if such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes—

(I) the filing of the petition under section 1671a(b) or 1673a(b) of this title, or

(II) the initiation of the investigation, if the investigation was initiated under section 1671a(a) or 1673a(a) of this title.

(ii) Exception

Imports that would otherwise be negligible under clause (i) shall not be negligible if the aggregate volume of imports of the merchandise from all countries described in clause (i) with respect to which investigations were initiated on the same day exceeds 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period.

(iii) Determination of aggregate volume

In determining aggregate volume under clause (ii) or (iv), the Commission shall not consider imports from any country specified in paragraph (7)(G)(ii).

(iv) Negligibility in threat analysis

Notwithstanding clauses (i) and (ii), the Commission shall not treat imports as negligible if it determines that there is a potential that imports from a country described in clause (i) will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, or that the aggregate volumes of imports from all countries described in clause (ii) will imminently exceed 7 percent of the volume of all such merchandise imported into the United States. The Commission shall consider such imports only for purposes of determining threat of material injury.

(B) Negligibility for certain countries in countervailing duty investigations

In the case of an investigation under section 1671 of this title, subparagraph (A) shall be applied to imports of subject merchandise from developing countries by substituting ''4 percent'' for ''3 percent'' in subparagraph (A)(i) and by substituting ''9 percent'' for ''7 percent'' in subparagraph (A)(ii).

(C) Computation of import volumes

In computing import volumes for purposes of subparagraphs (A) and (B), the Commission may make reasonable estimates on the basis of available statistics.

(D) Regional industries

In an investigation in which the Commission makes a regional industry determination under paragraph (4)(C), the Commission's examination under subparagraphs (A) and (B) shall be based upon the volume of subject merchandise exported for sale in the regional market in lieu of the volume of all subject merchandise imported into the United States.

(25) Subject merchandise

The term ''subject merchandise'' means the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, an order under this subtitle or section 1303 of this title, or a finding under the Antidumping Act, 1921.

(26) Section 1303

The terms ''section 1303'' and ''1303'' mean section 1303 of this title as in effect on the day

before the effective date of title II of the Uruguay Round Agreements Act.

(27) Suspension agreement

The term ''suspension agreement'' means an agreement described in section 1671c(b), 1671c(c), 1673c(b), 1673c(c), or 1673c(*l*) of this title.

(28) Exporter or producer

The term ''exporter or producer'' means the exporter of the subject merchandise, the producer of the subject merchandise, or both where appropriate. For purposes of section 1677b of this title, the term ''exporter or producer'' includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise.

(29) WTO Agreement

The term ''WTO Agreement'' means the Agreement defined in section 3501(9) of this title.

(30) WTO member and WTO member country

The terms ''WTO member'' and ''WTO member country'' mean a state, or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement.

(31) GATT 1994

The term ''GATT 1994'' means the General Agreement on Tariffs and Trade annexed to the WTO Agreement.

(32) Trade representative

The term ''Trade Representative'' means the United States Trade Representative.

(33) Affiliated persons

The following persons shall be considered to be ''affiliated'' or ''affiliated persons'':

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

(34) Dumped; dumping

The terms ''dumped'' and ''dumping'' refer to the sale or likely sale of goods at less than fair value.

(35) Dumping margin; weighted average dumping margin

(A) Dumping margin

The term ''dumping margin'' means the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.

(B) Weighted average dumping margin

The term ''weighted average dumping margin'' is the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.

(C) Magnitude of the margin of dumping

The magnitude of the margin of dumping used by the Commission shall be—

(i) in making a preliminary determination under section 1673b(a) of this title in an investigation (including any investigation in which the Commission cumulatively assesses the volume and effect of imports under paragraph (7)(G)(i)), the dumping margin or margins published by the administering authority in its notice of initiation of the investigation;

(ii) in making a final determination under section 1673d(b) of this title, the dumping margin or margins most recently published by the administering authority prior to the closing of the Commission's administrative record;

(iii) in a review under section 1675(b)(2) of this title, the most recent dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title, if any, or under section 1673b(b) or 1673d(a) of this title; and

(iv) in a review under section 1675(c) of this title, the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.

(36) Developing and least developed country

(A) Developing country

The term ''developing country'' means a country designated as a developing country by the Trade Representative.

(B) Least developed country

The term ''least developed country'' means a country which the Trade Representative determines is—

(i) a country referred to as a least developed country within the meaning of paragraph (a) of Annex VII to the Subsidies Agreement, or

(ii) any other country listed in Annex VII to the Subsidies Agreement, but only if the country has a per capita gross national product of less than $1,000 per annum as measured by the most recent data available from the World Bank.

(C) Publication of list

The Trade Representative shall publish in the Federal Register, and update as necessary, a list of—

(i) developing countries that have eliminated their export subsidies on an expe-

dited basis within the meaning of Article 27.11 of the Subsidies Agreement, and

(ii) countries determined by the Trade Representative to be least developed or developing countries.

(D) Factors to consider

In determining whether a country is a developing country under subparagraph (A), the Trade Representative shall consider such economic, trade, and other factors which the Trade Representative considers appropriate, including the level of economic development of such country (the assessment of which shall include a review of the country's per capita gross national product) and the country's share of world trade.

(E) Limitation on designation

A determination that a country is a developing or least developed country pursuant to this paragraph shall be for purposes of this subtitle only and shall not affect the determination of a country's status as a developing or least developed country with respect to any other law.

(June 17, 1930, ch. 497, title VII, § 771, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 176; amended Pub. L. 98–573, title VI, § 612(a), Oct. 30, 1984, 98 Stat. 3033; Pub. L. 99–514, title XVIII, § 1886(a)(9), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 100–418, title I, §§ 1312, 1316(b), 1326(a)–(c), 1327–1330, 1335, Aug. 23, 1988, 102 Stat. 1184, 1187, 1203–1206, 1210; Pub. L. 100–449, title IV, § 403(d), Sept. 28, 1988, 102 Stat. 1887; Pub. L. 100–647, title IX, § 9001(a)(5), Nov. 10, 1988, 102 Stat. 3807; Pub. L. 101–382, title I, § 139(a)(3), title II, § 224(a), (b), Aug. 20, 1990, 104 Stat. 653, 659, 660; Pub. L. 103–182, title IV, § 412(b), title VI, § 637(b), Dec. 8, 1993, 107 Stat. 2146, 2203; Pub. L. 103–465, title II, §§ 221(b), 222, 229(b), 233(a)(3), (4), (5)(BB)–(FF), (b), 251, 266, 267, 270(c)(2), (e), Dec. 8, 1994, 108 Stat. 4869, 4890, 4898–4902, 4915, 4917, 4918; Pub. L. 104–295, § 20(b)(7), (14), Oct. 11, 1996, 110 Stat. 3527.)

REFERENCES IN TEXT

The Caribbean Basin Economic Recovery Act, referred to in par. (7)(G)(ii)(III), is title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, as amended, which is classified principally to chapter 15 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Harmonized Tariff Schedule of the United States, referred to in par. (20)(A), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

Section 1303 of this title, referred to in pars. (20)(A), (25), and (26), was repealed, effective Jan. 1, 1995, by Pub. L. 103–465, title II, § 261(a), Dec. 8, 1994, 108 Stat. 4908. For savings provisions and treatment of references to section 1303 in other laws, see section 261(b), (d)(1)(C) of Pub. L. 103–465, set out as notes under section 1303 of this title.

The Antidumping Act, 1921, referred to in par. (25), is act May 27, 1921, ch. 14, title II, 42 Stat. 11, as amended, 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.

For the effective date of title II of the Uruguay Round Agreements Act, referred to in par. (26), as Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title.

AMENDMENTS

1996—Par. (16)(C)(i). Pub. L. 104–295, § 20(b)(7), which directed substitution of "subject merchandise" for "merchandise which is the subject of the investigation" in subpar. (B)(i), was executed by making the substitution in subpar. (C)(i) to reflect the probable intent of Congress.

Par. (30). Pub. L. 104–295, § 20(b)(14), substituted "Agreement" for "agreement" after "applies the WTO".

1994—Par. (1). Pub. L. 103–465, § 233(b)(2), substituted "Secretary of Commerce" for "Secretary of the Treasury".

Par. (4)(A). Pub. L. 103–465, § 222(a)(1), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "The term 'industry' means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product; except that in the case of wine and grape products subject to investigation under this subtitle, the term also means the domestic producers of the principal raw agricultural product (determined on either a volume or value basis) which is included in the like domestic product, if those producers allege material injury, or threat of material injury, as a result of imports of such wine and grape products."

Par. (4)(B). Pub. L. 103–465, § 222(a)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term 'industry' may be applied in appropriate circumstances by excluding such producers from those included in that industry."

Par. (4)(C). Pub. L. 103–465, § 270(c)(2), in concluding provisions, substituted "dumped imports or imports of merchandise benefiting from a countervailable subsidy" for "subsidized or dumped imports" in two places.

Pub. L. 103–465, §§ 222(a)(2), 233(a)(3)(A)(i), substituted "domestic like product" for "like product" in cl. (i) and concluding provisions, and inserted at end of concluding provisions "The term 'regional industry' means the domestic producers within a region who are treated as a separate industry under this subparagraph."

Par. (4)(D). Pub. L. 103–465, §§ 233(a)(3)(A)(i), 270(c)(2), substituted "domestic like product" for "like product" wherever appearing and "dumped imports or imports of merchandise benefiting from a countervailable subsidy" for "subsidized or dumped imports" in two places.

Pars. (5) to (5B). Pub. L. 103–465, § 251(a), added pars. (5) to (5B), and struck out former par. (5) which defined "subsidy".

Par. (6). Pub. L. 103–465, § 251(b), inserted "countervailable" before "subsidy" wherever appearing in heading and text.

Par. (7)(B)(i)(I). Pub. L. 103–465, § 233(a)(5)(BB), substituted "subject merchandise" for "merchandise which is the subject of the investigation".

Par. (7)(B)(i)(II), (III), (C)(ii)(I). Pub. L. 103–465, § 233(a)(3)(B), substituted "domestic like products" for "like products".

Par. (7)(C)(iii). Pub. L. 103–465, § 222(b)(3), substituted "subparagraph (B)(i)(III)" for "subparagraph (B)(iii)" in introductory provisions.

Par. (7)(C)(iii)(IV). Pub. L. 103–465, § 233(a)(3)(A)(ii), substituted "domestic like product" for "like product".

Par. (7)(C)(iii)(V). Pub. L. 103–465, § 222(b)(1), added subcl. (V).

Par. (7)(C)(iv). Pub. L. 103–465, § 222(b)(2), added cl. (iv) and struck out former cl. (iv) which directed that Commission cumulatively assess volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of domestic industry in United States market, with an exception for imports

which are products of country designated as beneficiary country under Caribbean Basin Economic Recovery Act.

Par. (7)(C)(v). Pub. L. 103–465, § 222(d)(1), struck out heading and text of cl. (v). Prior to amendment, text read as follows: ''The Commission is not required to apply clause (iv) or subparagraph (F)(iv) in any case in which the Commission determines that imports of the merchandise subject to investigation are negligible and have no discernable adverse impact on the domestic industry. For purposes of making such determination, the Commission shall evaluate all relevant economic factors regarding the imports, including, but not limited to, whether—

''(I) the volume and market share of the imports are negligible,

''(II) sales transactions involving the imports are isolated and sporadic, and

''(III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.

For purposes of this clause, the Commission may treat as negligible and having no discernable adverse impact on the domestic industry imports that are the product of any country that is a party to a free trade area agreement with the United States which entered into force and effect before January 1, 1987, if the Commission determines that the domestic industry is not being materially injured by reason of such imports.''

Par. (7)(E)(i). Pub. L. 103–465, § 266, amended heading and text of cl. (i) generally. Prior to amendment, text read as follows: ''In determining whether there is a threat of material injury, the Commission shall consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.''

Par. (7)(F)(i), (ii). Pub. L. 103–465, § 222(c), amended cls. (i) and (ii) generally, substituting present provisions for provisions which listed factors in determining as well as basis for determining that an industry is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise.

Par. (7)(F)(iii)(I), (II). Pub. L. 103–465, § 233(b)(1)(A), in subcl. (I), substituted ''WTO member'' for ''GATT member'', and in subcl. (II), substituted ''WTO member'' for ''GATT member'' in heading and text before ''market'', and ''WTO member.'' for ''signatory to The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).''

Par. (7)(F)(iv). Pub. L. 103–465, § 222(e)(1), struck out heading and text of cl. (iv). Prior to amendment, text read as follows: ''To the extent practicable and subject to subparagraph (C)(iv)(II) and (v), for purposes of clause (i)(III) and (IV) the Commission may cumulatively assess the volume and price effects of imports from two or more countries if such imports—

''(I) compete with each other, and with like products of the domestic industry, in the United States market, and

''(II) are subject to any investigation under section 1303, 1671, or 1673 of this title.''

Par. (7)(G), (H). Pub. L. 103–465, § 222(e)(2), added subpars. (G) and (H).

Par. (7)(I). Pub. L. 103–465, § 222(f), added subpar. (I).

Par. (8). Pub. L. 103–465, § 270(e), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''The terms 'Agreement on Subsidies and Countervailing Measures' and 'Agreement' mean the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures) approved under section 2503(a) of this title.''

Par. (9)(A). Pub. L. 103–465, §§ 222(g)(1), 233(a)(5)(CC), substituted ''subject merchandise'' for ''merchandise which is the subject of an investigation under this subtitle'' and inserted ''producers, exporters, or'' before ''importers''.

Par. (9)(B). Pub. L. 103–465, § 222(g)(2), inserted ''or from which such merchandise is exported'' after ''manufactured''.

Par. (9)(C) to (F). Pub. L. 103–465, § 233(a)(3)(A)(iii), substituted ''domestic like product'' for ''like product''.

Par. (10). Pub. L. 103–465, § 233(a)(3)(A)(iii), substituted ''domestic like product'' for ''like product'' in heading and text.

Par. (11). Pub. L. 103–465, § 221(b), inserted '', including a determination under section 1675 of this title,'' after ''determination by the Commission'' in introductory provisions.

Par. (13). Pub. L. 103–465, § 222(i)(2), struck out heading and text of par. (13). Text read as follows: ''For the purpose of determining United States price, the term 'exporter' includes the person by whom or for whose account the merchandise is imported into the United States if—

''(A) such person is the agent or principal of the exporter, manufacturer, or producer;

''(B) such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer;

''(C) the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or

''(D) any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 percent or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer, or producer.''

Par. (15). Pub. L. 103–465, § 222(h), substituted ''subject merchandise'' for ''merchandise which is the subject of an investigation'' and inserted at end ''The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

''(A) Sales disregarded under section 1677b(b)(1) of this title.

''(B) Transactions disregarded under section 1677b(f)(2) of this title.''

Par. (16). Pub. L. 103–465, § 233(a)(4), substituted ''Foreign like product'' for ''Such or similar merchandise'' as heading and ''foreign like product'' for ''such or similar merchandise'' in introductory provisions.

Par. (16)(A). Pub. L. 103–465, § 233(a)(5)(DD), substituted ''subject merchandise'' for ''merchandise which is the subject of an investigation''.

Par. (16)(B)(i). Pub. L. 103–465, § 233(a)(5)(EE), which directed the substitution of ''subject merchandise'' for ''merchandise which is the subject of an investigation'', was executed by making the substitution for text which contained the words ''the investigation'' rather than ''an investigation'', to reflect the probable intent of Congress.

Par. (17). Pub. L. 103–465, § 233(a)(5)(FF), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Par. (24). Pub. L. 103–465, § 222(d)(2), added par. (24).

Pars. (25) to (34). Pub. L. 103–465, § 222(i)(1), added pars. (25) to (34).

Par. (35). Pub. L. 103–465, § 229(b), added par. (35).

Par. (36). Pub. L. 103–465, § 267, added par. (36).

1993—Pars. (18), (21). Pub. L. 103–182, § 412(b)(1), redesignated par. (18), relating to United States-Canada Agreement, as (21).

Par. (22). Pub. L. 103–182, § 412(b)(2), added (22).

Par. (23). Pub. L. 103–182, § 637(b), added par. (23).

1990—Par. (7)(C)(iv). Pub. L. 101–382, § 224(a), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''For purposes of clauses (i) and (ii), the Com-

mission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market.''

Par. (7)(F)(iv). Pub. L. 101–382, § 224(b), substituted ''(C)(iv)(II) and (v)'' for ''(C)(v)''.

Par. (20)(A). Pub. L. 101–382, § 139(a)(3), substituted ''chapter 98 of the Harmonized Tariff Schedule'' for ''schedule 8 of the Tariff Schedules''.

1988—Par. (4)(E). Pub. L. 100–418, § 1326(a), added subpar. (E).

Par. (5). Pub. L. 100–418, § 1312, amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The term 'subsidy' has the same meaning as the term 'bounty or grant' as that term is used in section 1303 of this title, and includes, but is not limited to, the following:

''(A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

''(B) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

''(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

''(ii) The provision of goods or services at preferential rates.

''(iii) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

''(iv) The assumption of any costs or expenses of manufacture, production, or distribution.''

Par. (7)(B). Pub. L. 100–418, § 1328(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''In making its determinations under sections 1671b(a), 1671d(b), 1673b(a), and 1673d(b) of this title, the Commission shall consider, among other factors—

''(i) the volume of imports of the merchandise which is the subject of the investigation,

''(ii) the effect of imports of that merchandise on prices in the United States for like products, and

''(iii) the impact of imports of such merchandise on domestic producers of like products.''

Par. (7)(C). Pub. L. 100–418, § 1328(2), in heading substituted ''relevant factors'' for ''volume and of price effects'', in cl. (ii)(I) substituted ''underselling'' for ''undercutting'', and in cl. (iii) inserted ''domestic'' in heading and amended text generally. Prior to amendment, text of cl. (iii) read as follows: ''In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

''(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

''(II) factors affecting domestic prices, and

''(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.''

Par. (7)(C)(v). Pub. L. 100–418, § 1330(b), added cl. (v).

Par. (7)(F)(i)(IX). Pub. L. 100–418, § 1326(b), which directed that par. (7)(F) be amended by adding subcl. (IX), was executed by adding subcl. (IX) to par. (7)(F)(i) to reflect the probable intent of Congress.

Par. (7)(F)(i)(X). Pub. L. 100–418, § 1329(1)–(3), added subcl. (X).

Par. (7)(F)(iii). Pub. L. 100–418, § 1329(4), added cl. (iii).

Par. (7)(F)(iv). Pub. L. 100–418, § 1330(a), added cl. (iv).

Par. (9)(G). Pub. L. 100–418, § 1326(c), added subpar. (G).

Par. (18). Pub. L. 100–449 added par. (18) relating to United States-Canada Agreement.

Pub. L. 100–418, § 1316(b), added par. (18) relating to nonmarket economy country.

Par. (19). Pub. L. 100–647 redesignated par. (19), relating to application to governmental importations, as (20).

Pub. L. 100–418, § 1335, added par. (19) relating to application to governmental importations.

Pub. L. 100–418, § 1327, added par. (19) relating to equivalency of leases to sales.

Par. (20). Pub. L. 100–647 redesignated par. (19), relating to application to governmental importations, as (20).

1986—Par. (7)(F)(i). Pub. L. 99–514 substituted ''the merchandise'' for ''any merchandise'' in introductory provisions and ''final orders'' for ''find orders'' in subcl. (VIII).

1984—Par. (4)(A). Pub. L. 98–573, § 612(a)(1), inserted provision that in the case of wine and grape products subject to investigation under this subtitle, the term also means the domestic producers of the principal raw agricultural product (determined on either a volume or value basis) which is included in the like domestic product, if those producers allege material injury, or threat of material injury, as a result of imports of such wine and grape products.

Par. (7)(C)(iv). Pub. L. 98–623, § 612(a)(2)(A), added cl. (iv).

Par. (7)(F). Pub. L. 98–573, § 612(a)(2)(B), added subpar. (F).

Par. (9)(F). Pub. L. 98–573, § 612(a)(3), added subpar. (F).

Par. (14)(A), (B). Pub. L. 98–573, § 612(a)(4), substituted ''in commercial quantities'' for ''at wholesale''.

Par. (17). Pub. L. 98–573, § 612(a)(5), substituted ''commercial quantities'' for ''wholesale quantities''.

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 1993 AMENDMENT

Amendment by section 412(b) of Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of this title, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of this title, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 224(c) of Pub. L. 101–382 provided that: ''The amendments made by subsections (a) and (b) [amending this section] apply with respect to investigations (including investigations regarding products of Canadian origin) initiated under section 702 or 732 of the Tariff Act of 1930 [19 U.S.C. 1671a, 1673a] on or after the date of the enactment of this Act [Aug. 20, 1990].''

EFFECTIVE AND TERMINATION DATES 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 a note under section 58c of this title.

Amendment by Pub. L. 100–449 effective on date United States-Canada Free-Trade Agreement enters

into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of this title.

Amendment by sections 1312, 1316(b), 1326(a)–(c), and 1327–1329 of 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 an Effective Date of 1988 Amendment note under section 1671 of this title.

Amendment by section 1330 of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, see section 1337(c) of Pub. L. 100–418.

Amendment by section 1335 of Pub. L. 100–418 applicable with respect to entries, and withdrawals from warehouse for consumption, that are liquidated on or after Aug. 23, 1988, see section 1337(e) of Pub. L. 100–418.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984; but provisions of this subtitle not to be interpreted to prevent refiling of a petition under section 1671a or 1673a of this title that was filed before Oct. 30, 1984, if the purpose of refiling was to avail petitioner of amendment of par. (4)(A) of this section by Pub. L. 98–573, and such amendment of par. (4)(A) inapplicable to petitions filed (or refiled) under section 1671a or 1673a of this title after Sept. 30, 1986, see section 626(b)(1), (c)(1), (2) of Pub. L. 98–573, as amended, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

EFFECTIVE DATE

Part effective Jan. 1, 1980, see section 107 of Pub. L. 96–39, set out as a note under section 1671 of this title.

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.

All functions of the Secretary of the Treasury under this subtitle were transferred to the Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(C), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title, except that the Customs Service of the Department of the Treasury was to accept such deposits, bonds, or other security as deemed appropriate by the Secretary of Commerce, assess and collect such duties as directed by the Secretary of Commerce, and furnish such of its important records or copies thereof as requested by the Secretary incident to the functions transferred.

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS

For provisions relating to effect of termination of NAFTA country status on the provisions of sections 401 to 416 of Pub. L. 103–182, see section 3451 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.

§ 1677–1. Upstream subsidies

(a) "Upstream subsidy" defined

The term ''upstream subsidy'' means any countervailable subsidy, other than an export subsidy, that—

(1) is paid or bestowed by an authority (as defined in section 1677(5) of this title) with respect to a product (hereafter in this section referred to as an ''input product'') that is used in the same country as the authority in the manufacture or production of merchandise which is the subject of a countervailing duty proceeding;

(2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

In applying this subsection, an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries organized into a customs union outside the United States shall be treated as being one country if the countervailable subsidy is provided by the customs union.

(b) Determination of competitive benefit

(1) In general

Except as provided in paragraph (2), the administering authority shall decide that a competitive benefit has been bestowed when the price for the input product referred to in subsection (a)(1) of this section for such use is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

(2) Adjustments

If the administering authority has determined in a previous proceeding that a countervailable subsidy is paid or bestowed on the input product that is used for comparison under paragraph (1), the administering authority may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the effects of the countervailable subsidy, or (B) select in lieu of that price a price from another source.

(c) Inclusion of amount of countervailable subsidy

If the administering authority decides, during the course of a countervailing duty proceeding that an upstream countervailable subsidy is