verification of information, certification of submissions, and determinations required to be made on best information available.

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

§ 1677f. Access to information

(a) Information generally made available

(1) Public information function

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

(2) Progress of investigation reports

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

(3) Ex parte meetings

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

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

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

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

(4) Summaries; non-proprietary submissions

The administering authority and the Commission shall disclose—

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

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

(b) Proprietary information

(1) Proprietary status maintained

(A) In general

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

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

(ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this subtitle.

(B) Additional requirements

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

(i) either—

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

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

(ii) either—

(I) a statement which permits the administering authority or the Commis-

sion to release under administrative protective order, in accordance with subsection (c) of this section, the information submitted in confidence, or

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

(2) Unwarranted designation

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

(3) Section 1675 reviews

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

(c) Limited disclosure of certain proprietary information under protective order

(1) Disclosure by administering authority or Commission

(A) In general

Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during a proceeding. Customer names obtained during any investigation which requires a determination under section 1671d(b) or 1673d(b) of this title may not be disclosed by the administering authority under protective order until either an order is published under section 1671e(a) or 1673e(a) of this title as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names under protective order during any such investigation until a reasonable time prior to any hearing provided under section 1677c of this title.

(B) Protective order

The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(C) Time limitation on determinations

The administering authority or the Commission, as the case may be, shall determine whether to make information available under this paragraph—

(i) not later than 14 days (7 days if the submission pertains to a proceeding under section 1671b(a) or 1673b(a) of this title) after the date on which the information is submitted, or

(ii) if—

(I) the person that submitted the information raises objection to its release, or

(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 1671b(a) or 1673b(a) of this title) after the date on which the information is submitted.

(D) Availability after determination

If the determination under subparagraph (C) is affirmative, then—

(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date; and

(ii) the business proprietary information submitted to the administering authority or the Commission after the date of the determination shall be served as required by subsection (d) of this section.

(E) Failure to disclose

If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.

(2) Disclosure under court order

If the administering authority denies a request for information under paragraph (1), then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1) of this section,

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

(d) Service

Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order; however, a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

(e) Repealed. Pub. L. 103–465, title II, § 231(d)(1), Dec. 8, 1994, 108 Stat. 4897

(f) Disclosure of proprietary information under protective orders issued pursuant to the North American Free Trade Agreement or the United States-Canada Agreement

(1) Issuance of protective orders

(A) In general

If binational panel review of a determination under this subtitle is requested pursuant to article 1904 of the NAFTA or the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of the NAFTA or the United States-Canada Agreement, the administering authority or the Commission, as appropriate, may make available to authorized persons, under a protective order described in paragraph (2), a copy of all proprietary material in the administrative record made during the proceeding in question. If the administering authority or the Commission claims a privilege as to a document or portion of a document in the administrative record of the proceeding in question and a binational panel or extraordinary challenge committee finds that in camera inspection or limited disclosure of that document or portion thereof is required by United States law, the administering authority or the Commission, as appropriate, may restrict access to such document or portion thereof to the authorized persons identified by the panel or committee as requiring access and may require such persons to obtain access under a protective order described in paragraph (2).

(B) Authorized persons

For purposes of this subsection, the term ''authorized persons'' means—

(i) the members of, and the appropriate staff of, the binational panel or the extraordinary challenge committee, as the case may be, and the Secretariat,

(ii) counsel for parties to such panel or committee proceeding, and employees, and persons under the direction and control, of such counsel,

(iii) any officer or employee of the United States Government designated by the administering authority or the Commission, as appropriate, to whom disclosure is necessary in order to make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the NAFTA or the Agreement, and

(iv) any officer or employee of the Government of a free trade area country (as defined in section 1516a(f)(10) of this title) designated by an authorized agency of such country to whom disclosure is necessary in order to make decisions regarding the convening of extraordinary challenge committees under chapter 19 of the NAFTA or the Agreement.

(C) Review

A decision concerning the disclosure or nondisclosure of material under protective order by the administering authority or the Commission shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such decision on any question of law or fact by an action in the nature of mandamus or otherwise.

(2) Contents of protective order

Each protective order issued under this subsection shall be in such form and contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall ensure that

regulations issued pursuant to this paragraph shall be designed to provide an opportunity for participation in the binational panel proceeding, including any extraordinary challenge, equivalent to that available for judicial review of determinations by the administering authority or the Commission that are not subject to review by a binational panel.

(3) Prohibited acts

It is unlawful for any person to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of a protective order issued under this subsection or to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of an undertaking entered into with an authorized agency of a free trade area country (as defined in section 1516a(f)(10) of this title) to protect proprietary material during binational panel or extraordinary challenge committee review pursuant to article 1904 of the NAFTA or the United States-Canada Agreement.

(4) Sanctions for violation of protective orders

Any person, except a judge appointed to a binational panel or an extraordinary challenge committee under section 3432(b) of this title, who is found by the administering authority or the Commission, as appropriate, after notice and an opportunity for a hearing in accordance with section 554 of title 5 to have committed an act prohibited by paragraph (3) shall be liable to the United States for a civil penalty and shall be subject to such other administrative sanctions, including, but not limited to, debarment from practice before the administering authority or the Commission, as the administering authority or the Commission determines to be appropriate. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty and other sanctions shall be assessed by the administering authority or the Commission by written notice, except that assessment shall be made by the administering authority for violation, inducement of a violation or receipt of information with reason to know that such information was disclosed in violation, of an undertaking entered into by any person with an authorized agency of a free trade area country (as defined in section 1516a(f)(10) of this title).

(5) Review of sanctions

Any person against whom sanctions are imposed under paragraph (4) may obtain review of such sanctions by filing a notice of appeal in the United States Court of International Trade within 30 days from the date of the order imposing the sanction and by simultaneously sending a copy of such notice by certified mail to the administering authority or the Commission, as appropriate. The administering authority or the Commission shall promptly file in such court a certified copy of the record upon which such violation was found or such sanction imposed, as provided in section 2112 of title 28. The findings and order of the administering authority or the Commission shall be set aside by the court only if the court finds that such findings and order are not supported by substantial evidence, as provided in section 706(2) of title 5.

(6) Enforcement of sanctions

If any person fails to pay an assessment of a civil penalty or to comply with other administrative sanctions after the order imposing such sanctions becomes a final and unappealable order, or after the United States Court of International Trade has entered final judgment in favor of the administering authority or the Commission, an action may be filed in such court to enforce the sanctions. In such action, the validity and appropriateness of the final order imposing the sanctions shall not be subject to review.

(7) Testimony and production of papers

(A) Authority to obtain information

For the purpose of conducting any hearing and carrying out other functions and duties under this subsection, the administering authority and the Commission, or their duly authorized agents—

(i) shall have access to and the right to copy any pertinent document, paper, or record in the possession of any individual, partnership, corporation, association, organization, or other entity,

(ii) may summon witnesses, take testimony, and administer oaths,

(iii) and may require any individual or entity to produce pertinent documents, books, or records.

Any member of the Commission, and any person so designated by the administering authority, may sign subpoenas, and members and agents of the administering authority and the Commission, when authorized by the administering authority or the Commission, as appropriate, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(B) Witnesses and evidence

The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subparagraph (A) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena issued under subparagraph (A), an action may be filed in any district or territorial court of the United States to require the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization or other entity, issue any order requiring such individual or entity to appear before the administering authority or the Commission, or to produce documentary evidence if so ordered or to give evidence

concerning the matter in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(C) Mandamus

Any court referred to in subparagraph (B) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this subsection or any order of the administering authority or the Commission made in pursuance thereof.

(D) Depositions

For purposes of carrying out any functions or duties under this subsection, the administering authority or the Commission may order testimony to be taken by deposition. Such deposition may be taken before any person designated by the administering authority or Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization or other entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the administering authority or Commission, as provided in this paragraph.

(E) Fees and mileage of witnesses

Witnesses summoned before the administering authority or the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(g) Information relating to violations of protective orders and sanctions

The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c) or (d) of this section, and such information shall be treated as information described in section 552(b)(3) of title 5.

(h) Opportunity for comment by consumers and industrial users

The administering authority and the Commission shall provide an opportunity for industrial users of the subject merchandise and, if the merchandise is sold at the retail level, for representative consumer organizations, to submit relevant information to the administering authority concerning dumping or a countervailable subsidy, and to the Commission concerning material injury by reason of dumped or subsidized imports.

(i) Publication of determinations; requirements for final determinations

(1) In general

Whenever the administering authority makes a determination under section 1671a or 1673a of this title whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 1671b or 1673b of this title, a final determination under section 1671d of this title or section 1673d of this title, a preliminary or final determination in a review under section 1675 of this title, a determination to suspend an investigation under this subtitle, or a determination under section 1675b of this title, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.

(2) Contents of notice or determination

The notice or determination published under paragraph (1) shall include, to the extent applicable—

(A) in the case of a determination of the administering authority—

(i) the names of the exporters or producers of the subject merchandise or, when providing such names is impracticable, the countries exporting the subject merchandise to the United States,

(ii) a description of the subject merchandise that is sufficient to identify the subject merchandise for customs purposes,

(iii)(I) with respect to a determination in an investigation under part I of this subtitle or section 1675b of this title or in a review of a countervailing duty order, the amount of the countervailable subsidy established and a full explanation of the methodology used in establishing the amount, and

(II) with respect to a determination in an investigation under part II of this subtitle or in a review of an antidumping duty order, the weighted average dumping margins established and a full explanation of the methodology used in establishing such margins, and

(iv) the primary reasons for the determination; and

(B) in the case of a determination of the Commission—

(i) considerations relevant to the determination of injury, and

(ii) the primary reasons for the determination.

(3) Additional requirements for final determinations

In addition to the requirements set forth in paragraph (2)—

(A) the administering authority shall include in a final determination described in paragraph (1) an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the investigation or review (as the case may be), concerning the establishment of dumping or a countervailable subsidy, or the suspension of the investigation, with respect to which the determination is made; and

(B) the Commission shall include in a final determination of injury an explanation of the basis for its determination that address-

es relevant arguments that are made by interested parties who are parties to the investigation or review (as the case may be) concerning volume, price effects, and impact on the industry of imports of the subject merchandise.

(June 17, 1930, ch. 497, title VII, § 777, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 187; amended Pub. L. 98–573, title VI, § 619, Oct. 30, 1984, 98 Stat. 3038; Pub. L. 99–514, title XVIII, §§ 1886(a)(13), 1889(8), Oct. 22, 1986, 100 Stat. 2922, 2926; Pub. L. 100–418, title I, § 1332, Aug. 23, 1988, 102 Stat. 1207; Pub. L. 100–449, title IV, § 403(c), Sept. 28, 1988, 102 Stat. 1884; Pub. L. 101–382, title I, §§ 134(a)(4), 135(b), Aug. 20, 1990, 104 Stat. 650, 651; Pub. L. 103–182, title IV, § 412(c), Dec. 8, 1993, 107 Stat. 2146; Pub. L. 103–465, title II, §§ 226–228, 231(b), (d)(1), Dec. 8, 1994, 108 Stat. 4886–4888, 4896, 4897.)

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103–465, § 231(b), substituted ''shall disclose'' for ''may disclose'' in introductory provisions.

Subsec. (b)(1). Pub. L. 103–465, § 226(a)(1), amended par. (1) generally, designating first sentence as subpar. (A), rearranging provisions for clarity, and inserting provisions in cl. (i) relating to reviews under this subtitle covering same subject merchandise, and designating second sentence as subpar. (B) with corresponding redesignations of former subpars. as cls. and cls. as subcls.

Subsec. (b)(2). Pub. L. 103–465, § 226(b), inserted at end ''In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.''

Subsec. (b)(3). Pub. L. 103–465, § 226(a)(2), added par. (3).

Subsec. (e). Pub. L. 103–465, § 231(d)(1), struck out heading and text of subsec. (e). Text read as follows: ''Information shall be submitted to the administering authority or the Commission during the course of a proceeding on a timely basis and shall be subject to comment by other parties within such reasonable time as the administering authority or the Commission shall provide. If information is submitted without an adequate opportunity for other parties to comment thereon, the administering authority or the Commission may return the information to the party submitting it and not consider it.''

Subsecs. (h), (i). Pub. L. 103–465, §§ 227, 228, added subsecs. (h) and (i).

1993—Subsec. (f). Pub. L. 103–182, § 412(c)(1), inserted ''the North American Free Trade Agreement or'' in heading.

Subsec. (f)(1)(A). Pub. L. 103–182, § 412(c)(2), (3), inserted ''the NAFTA or'' before ''the United States-Canada Agreement'' in two places, in second sentence inserted ''or extraordinary challenge committee'' after ''binational panel'', and substituted ''identified by the panel or committee'' for ''identified by the panel''.

Subsec. (f)(1)(B). Pub. L. 103–182, § 412(c)(4), in cl. (iii), inserted ''the NAFTA or'' before ''the Agreement'' and in cl. (iv), inserted ''the NAFTA or'' before ''the Agreement'' and substituted ''Government of a free trade area country (as defined in section 1516a(f)(10) of this title) designated by an authorized agency of such country'' for ''Government of Canada designated by an authorized agency of Canada''.

Subsec. (f)(2). Pub. L. 103–182, § 412(c)(5), inserted '', including any extraordinary challenge,'' after ''binational panel proceeding''.

Subsec. (f)(3). Pub. L. 103–182, § 412(c)(6), (7), substituted ''agency of a free trade area country (as defined in section 1516a(f)(10) of this title)'' for ''agency of Canada'' and inserted ''or extraordinary challenge committee'' after ''binational panel'' and ''the NAFTA or'' before ''the United States-Canada Agreement''.

Subsec. (f)(4). Pub. L. 103–182, § 412(c)(7), (8), inserted '', except a judge appointed to a binational panel or an extraordinary challenge committee under section 3432(b) of this title,'' after ''Any person'' and substituted ''agency of a free trade area country (as defined in section 1516a(f)(10) of this title)'' for ''agency of Canada''.

1990—Subsec. (c)(1)(A). Pub. L. 101–382, § 135(b)(1), inserted at end ''Customer names obtained during any investigation which requires a determination under section 1671d(b) or 1673d(b) of this title may not be disclosed by the administering authority under protective order until either an order is published under section 1671e(a) or 1673e(a) of this title as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names under protective order during any such investigation until a reasonable time prior to any hearing provided under section 1677c of this title.''

Subsec. (d). Pub. L. 101–382, § 134(a)(4), redesignated subsec. (d), relating to disclosure of proprietary information, etc., as (f).

Subsec. (f). Pub. L. 101–382, § 134(a)(4), redesignated subsec. (d), relating to disclosure of proprietary information, etc., as (f).

Subsec. (f)(1)(A). Pub. L. 101–382, § 134(a)(4)(A), struck out ''(but not privileged material as defined by the rules of procedure referred to in article 1904(14) of the United States-Canada Agreement)'' after ''all proprietary material'' and inserted at end ''If the administering authority or the Commission claims a privilege as to a document or portion of a document in the administrative record of the proceeding in question and a binational panel finds that in camera inspection or limited disclosure of that document or portion thereof is required by United States law, the administering authority or the Commission, as appropriate, may restrict access to such document or portion thereof to the authorized persons identified by the panel as requiring access and may require such persons to obtain access under a protective order described in paragraph (2).''

Subsec. (f)(1)(B)(ii) to (iv). Pub. L. 101–382, § 134(a)(4)(B), inserted '', and persons under the direction and control,'' after ''employees'' in cl. (ii), substituted ''make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the Agreement, and'' for ''implement the United States-Canada Agreement with respect to such proceeding.'' in cl. (iii), and added cl. (iv).

Subsec. (f)(3). Pub. L. 101–382, § 134(a)(4)(C), struck out ''or'' after ''violate,'' in two places and inserted ''or knowingly to receive information the receipt of which constitutes a violation of,'' after ''the violation of,'' in two places.

Subsec. (f)(4). Pub. L. 101–382, § 134(a)(4)(D), inserted provisions relating to receipt of information with reason to know the information was disclosed in violation.

Subsec. (g). Pub. L. 101–382, § 135(b)(2), added subsec. (g).

1988—Subsec. (b)(1)(B)(ii). Pub. L. 100–418, § 1332(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''a statement that the information should not be released under administrative protective order.''

Subsec. (c)(1)(A). Pub. L. 100–418, § 1332(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Upon receipt of an application, (before or after receipt of the information requested) which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make proprietary information submitted by any other party to the investigation available under a protective order described in subparagraph (B).''

Subsec. (c)(1)(C) to (E). Pub. L. 100–418, § 1332(2)(B), added subpars. (C) to (E).

Subsec. (c)(2). Pub. L. 100–418, § 1332(3), struck out ''or the Commission denies a request for proprietary information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product,'' after ''information under paragraph (1),''.

Subsec. (d). Pub. L. 100–449 added subsec. (d) relating to disclosure of proprietary information, etc.

Pub. L. 100–418, § 1332(4), added subsec. (d) relating to service.

Subsec. (e). Pub. L. 100–418, § 1332(4), added subsec. (e).

1986—Subsec. (a)(4). Pub. L. 99–514, § 1886(a)(13)(A), substituted ''non-proprietary'' for ''nonconfidential'' in heading, and ''proprietary'' for ''confidential'' in two places in text.

Subsec. (b). Pub. L. 99–514, § 1886(a)(13)(A), substituted ''Proprietary'' for ''Confidential'' in heading.

Subsec. (b)(1). Pub. L. 99–514, § 1886(a)(13)(A), substituted ''Proprietary status'' for ''Confidentiality'' in heading, ''proprietary'' for ''confidential'' in two places in introductory provisions, and ''non-proprietary'' for ''nonconfidential'' in subpar. (A)(i).

Pub. L. 99–514, § 1889(8), made technical correction to directory language of Pub. L. 98–573, § 619(3), requiring no change in text. See 1984 Amendment note below.

Subsec. (b)(1)(B)(i). Pub. L. 99–514, § 1886(a)(13)(B), inserted ''or the Commission'' after ''authority''.

Subsec. (b)(2). Pub. L. 99–514, § 1886(a)(13)(A), substituted ''proprietary'' for ''confidential''.

Subsec. (c). Pub. L. 99–514, § 1886(a)(13)(A), substituted ''proprietary'' for ''confidential'' in heading and in pars. (1)(A) and (2).

1984—Subsec. (a)(3). Pub. L. 98–573, § 619(1), amended par. (3) generally, substituting in provisions preceding subpar. (A) ''of any ex parte meeting'' for ''of ex parte meetings'', in subpar. (A) ''a proceeding'' for ''an investigation'', in subpar. (B) ''or any person'' for ''and any person'' and ''that proceeding,'' for ''that investigation,'' and, in provisions following subpar. (B), ''if information relating to that proceeding was presented or discussed at such meeting. The record of such an'' for ''The record of the''.

Subsec. (b)(1). Pub. L. 98–573, § 619(2), in first sentence, inserted provision referring to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this subtitle.

Pub. L. 98–573, § 619(3), as amended by Pub. L. 99–514, § 1889(8), amended second sentence generally, and thereby substituted ''the Commission shall require'' for ''the Commission may require'', designated existing provisions as subpar. (A) and, in subpar. (A) as so designated, substituted ''either— (i) a nonconfidential summary'' for ''a non-confidential summary'', inserted designation ''(ii)'', substituted ''summary accompanied'' for ''summary, accompanied'', and added subpar. (B).

Subsec. (c)(1)(A). Pub. L. 98–573, § 619(4), inserted ''(before or after receipt of the information requested)''.

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 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 AND TERMINATION DATES OF 1988 AMENDMENTS

Amendment by Pub. L. 100–449 effective on date the 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 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.

EFFECTIVE DATE OF 1984 AMENDMENT

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

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.

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.

§ 1677f–1. Sampling and averaging; determination of weighted average dumping margin and countervailable subsidy rate

(a) In general

For purposes of determining the export price (or constructed export price) under section 1677a of this title or the normal value under section 1677b of this title, and in carrying out reviews under section 1675 of this title, the administering authority may—

(1) use averaging and statistically valid samples, if there is a significant volume of sales of the subject merchandise or a significant number or types of products, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(b) Selection of averages and samples

The authority to select averages and statistically valid samples shall rest exclusively with