to effect of repeals, Treaty with Cuba and certain laws unaffected.

Provisions of Tariff Act of 1930 corresponding to section 571, see section 1651(c) of this title; section 572, see section 1316 of this title; section 573, none.

§ 574. Exemption from taking other oaths

Nothing contained in title 34 of the Revised Statutes shall be construed to exempt the masters or owners of vessels from making and subscribing any oaths required by any laws of the United States not immediately relating to the collection of the duties on the importation of merchandise into the United States.

(R.S. § 3094.)

REFERENCES IN TEXT

Title 34 of the Revised Statutes, referred to in text, was in the original ''this Title'', meaning title 34 of the Revised Statutes, consisting of R.S. §§ 2517 to 3129, which are classified to sections 5, 6, 8, 9 to 11, 31, 32, 37, 129, 232, 233, 240, 257, 258, 282, 283, 286 to 294, 338 to 341, 391, 482, 507, 508, 528, 574 of this title, and sections 110 to 112, 123, 124 of Title 46, Appendix, Shipping. For complete classification of R.S. §§ 2517 to 3129 to the Code, see Tables.

CODIFICATION

R.S. § 3094 derived from act Mar. 2, 1799, ch. 22, § 110, 1 Stat. 703.

§§ 575, 576. Repealed. June 17, 1930, ch. 497, title IV, § 651(a)(1), 46 Stat. 762, eff. June 18, 1930

Sections, act Sept. 21, 1922, ch. 356, title IV, §§ 645, 647, 42 Stat. 990, related to effect of partial invalidity and citation of chapter.

Provisions of Tariff Act of 1930 corresponding to section 575, see section 1652 of this title.

§ 577. Repealed. Oct. 31, 1951, ch. 655, § 56(d), 65 Stat. 729

Section, act Mar. 8, 1902, ch. 140, § 8, 32 Stat. 55, made, ''except as otherwise provided by law'', the provisions of subtitle IV of this chapter applicable to all articles coming into the United States from the ''Philippine Archipelago''. Prior to this repeal, it had been omitted in view of the independence of the Philippines.

SAVINGS PROVISION

Subsec. (*l*) of section 56 of act Oct. 31, 1951, provided that the repeal of this section shall not affect any rights or liabilities existing hereunder on the effective date of such repeal [Oct. 31, 1951.].

§ 578. Repealed. June 17, 1930, ch. 497, title IV, § 651(a)(1), 46 Stat. 762, eff. June 18, 1930

Section, act May 29, 1928, ch. 852, § 708, 45 Stat. 881, related to definition of motor boat.

§ 579. Repealed. Aug. 2, 1956, ch. 887, § 4(a)(32), 70 Stat. 948

Section, R.S. § 960, provided that in a suit on bond for the recovery of duties the court should grant judgment unless defendant made an oath that an error was committed in the liquidation of the duties demanded. See section 1514 of this title.

§ 580. Interest in suits on bonds for recovery of duties

Upon all bonds, on which suits are brought for the recovery of duties, interest shall be allowed, at the rate of 6 per centum a year, from the time when said bonds became due.

(R.S. § 963.)

CODIFICATION

R.S. § 963 derived from act Mar. 2, 1799, ch. 22, § 65, 1 Stat. 676.

Section was formerly classified to section 787 of Title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, § 1, 62 Stat. 869.

CHAPTER 4—TARIFF ACT OF 1930

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(f) Marking of certain coffee and tea products.
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(h) Additional duties for failure to mark.
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(b) Enforcement procedures.
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1307. Convict-made goods; importation prohibited.
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1309. Supplies for certain vessels and aircraft.
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(g) Materials for construction and equipment of vessels built for foreigners.
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(i) Time limitation on exportation.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 81c, 3538 of this title; title 7 section 624; title 13 section 301; title 15 section 69d; title 16 section 1540; title 26 sections 993, 5007; title 33 section 2236; title 42 section 9163.

SUBTITLE I—HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

CODIFICATION

Titles I and II of act June 17, 1930, ch. 497, 46 Stat. 590, 672, which comprised the dutiable and free lists for articles imported into the United States, were formerly classified to sections 1001 and 1201 of this title, and were stricken by Pub. L. 87–456, title I, §101(a), May 24, 1962, 76 Stat. 72. The Revised Tariff Schedules, which were classified to section 1202 of this title, were strick-

en by Pub. L. 100–418, title I, § 1204(a), Aug. 23, 1988, 102 Stat. 1148, and were replaced by the Harmonized Tariff Schedule of the United States. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

CHANGE OF NAME

United States Tariff Commission renamed United States International Trade Commission by Pub. L. 93–618, title I, § 171, Jan. 3, 1975, 88 Stat. 2009, which is classified to section 2231 of this title.

ENACTMENT OF HARMONIZED TARIFF SCHEDULE

Pub. L. 100–418, title I, § 1204(a), Aug. 23, 1988, 102 Stat. 1148, provided that: ''The Tariff Act of 1930 [this chapter] is amended by striking out title I and inserting a new title I entitled 'Title I—Harmonized Tariff Schedule of the United States' (hereinafter in this subtitle [subtitle B, §§ 1201 to 1217, of title I, see Tables for classification] referred to as the 'Harmonized Tariff Schedule') which—

''(1) consists of—

''(A) the General Notes;

''(B) the General Rules of Interpretation;

''(C) the Additional U.S. Rules of Interpretation;

''(D) sections I to XXII, inclusive (encompassing chapters 1 to 99, and including all section and chapter notes, article provisions, and tariff and other treatment accorded thereto); and

''(E) the Chemical Appendix to the Harmonized Tariff Schedule;

all conforming to the nomenclature of the Convention and as set forth in Publication No. 2030 of the Commission entitled 'Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes' and Supplement No. 1 thereto; but

''(2) does not include the statistical annotations, notes, annexes, suffixes, check digits, units of quantity, and other matters formulated under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)), nor the table of contents, footnotes, index, and other matters inserted for ease of reference, that are included in such Publication No. 2030 or Supplement No. 1. thereto.''

[For effective date of Harmonized Tariff Schedule as Jan. 1, 1989, see section 1217(b) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.]

TARIFF CLASSIFICATION ACT OF 1962; ADOPTION OF REVISED TARIFF SCHEDULES; ADMINISTRATIVE AND SAVINGS PROVISIONS

Titles I and II of Pub. L. 87–456, May 24, 1962, 76 Stat. 72–75, as amended by Pub. L. 87–794, title II, § 257(g), Oct. 11, 1962, 76 Stat. 882; Pub. L. 100–418, title I, § 1213(b), Aug. 23, 1988, 102 Stat. 1155, provided for adoption of Revised Tariff Schedules of the United States and administrative and saving provisions.

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 1336 of this title.

§ 1202. Harmonized Tariff Schedule

PUBLICATION OF HARMONIZED TARIFF SCHEDULE

The Harmonized Tariff Schedule of the United States is not published in the Code. A current version of the Harmonized Tariff Schedule is maintained and published periodically by the United States International Trade Commission and is available for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

REFERENCE TO TARIFF SCHEDULES TO BE TREATED AS REFERENCE TO HARMONIZED TARIFF SCHEDULE

Reference in any law to ''Tariff Schedules of the United States'', ''the Tariff Schedules'', ''such Schedules'', and any other general reference to the old Schedules to be treated as reference to Harmonized Tariff Schedule, see section 3012 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 sections 7652, 9504; title 50 section 98h–4.

SUBTITLE II—SPECIAL PROVISIONS

PART I—MISCELLANEOUS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1401 of this title.

§ 1301. Repealed. Apr. 30, 1946, ch. 244, title V, § 511(1), 60 Stat. 158

Section, act June 17, 1930, ch. 497, title III, § 301, 46 Stat. 685, related to duties and taxes on Philippine articles coming to the United States and United States articles imported into the Philippine Islands. Subject matter is covered by Philippine Trade Act of 1946 (see Short Title note set out under section 1354 of Title 22, Foreign Relations and Intercourse).

EFFECTIVE DATE OF REPEAL

Repeal effective May 1, 1946, see section 512 of act Apr. 30, 1946, set out as an Effective Date note under section 1354 of Title 22, Foreign Relations and Intercourse.

§ 1301a. Repealed. Pub. L. 87–456, title III, § 301(a), May 24, 1962, 76 Stat. 75

Section, act June 17, 1930, ch. 497, title III, § 301, as added Sept. 1, 1954, ch. 1213, title IV, § 401, 68 Stat. 1139, related to rates of duty upon articles coming into the United States from its insular possessions.

§ 1302. Omitted

CODIFICATION

Section, acts June 17, 1930, ch. 497, title III, § 302, 46 Stat. 686; May 17, 1932, ch. 190, 47 Stat. 158, was incorporated as section 3361(b) of the Internal Revenue Code of 1939. See section 7653 of Title 26, Internal Revenue Code.

§ 1303. Repealed. Pub. L. 103–465, title II, § 261(a), Dec. 8, 1994, 108 Stat. 4908

Section, acts June 17, 1930, ch. 497, title III, § 303, 46 Stat. 687; Jan. 3, 1975, Pub. L. 93–618, title III, § 331(a), 88 Stat. 2049; Apr. 3, 1979, Pub. L. 96–6, § 1, 93 Stat. 10; July 26, 1979, Pub. L. 96–39, title I, §§ 103, 105(a), 93 Stat. 190, 193, provided for the levy of countervailing duties.

EFFECTIVE DATE OF REPEAL

Section 261(a) of title II of Pub. L. 103–465 provided that this section is repealed ''effective on the effective date of this title [Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title]''.

SAVINGS PROVISION

Section 261(b), (c) of title II of Pub. L. 103–465 provided that:

''(b) SAVINGS PROVISIONS.—

''(1) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, and other administrative actions—

''(A) which have been issued pursuant to an investigation conducted under section 303 of the Tariff Act of 1930 [19 U.S.C. 1303], and

''(B) which are in effect on the effective date of this title [Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title], or were final before such date and are to become effective on or after such date,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the administering authority, the International Trade Commission, or a court of competent jurisdiction, or by operation of law. Except as provided in paragraph (3), such orders or determinations shall be subject to review under section 751 of the Tariff Act of 1930 [19 U.S.C. 1675] and, to the extent applicable, investigation under section 753 of such Act [19 U.S.C. 1675b] (as added by this title).

''(2) PROCEEDINGS NOT AFFECTED.—The provisions of subsection (a) shall not affect any proceedings, including notices of proposed rulemaking, pending before the administering authority or the International Trade Commission on the effective date of this title with respect to such section 303 [19 U.S.C. 1303]. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, in accordance with such section 303 as in effect on the day before the effective date of this title and, except as provided in paragraph (3), shall be subject to review under section 751 of the Tariff Act of 1930 [19 U.S.C. 1675] and, to the extent applicable, investigation under section 753 of such Act [19 U.S.C. 1675b]. Orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, set aside, or revoked in accordance with law by the administering authority, a court of competent jurisdiction, or by operation of law. Nothing in this section shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

''(3) SUITS NOT AFFECTED.—The provisions of subsection (a) shall not affect the review pursuant to section 516A of the Tariff Act of 1930 [19 U.S.C. 1516a] of a countervailing duty order issued pursuant to an investigation conducted under section 303 of such Act [19 U.S.C. 1303] or a review of a countervailing duty order issued under section 751 of such Act [19 U.S.C. 1675], if such review is pending or the time for filing such review has not expired on the effective date of this title.

''(c) DEFINITION OF ADMINISTERING AUTHORITY.—For purposes of this section, the term 'administering authority' has the meaning given such term by section 771(1) of the Tariff Act of 1930 [19 U.S.C. 1677(1)].''

REFERENCES TO FORMER SECTION 1303

Section 261(d)(1)(C) of Pub. L. 103–365 provided that: ''Any reference to section 303 [19 U.S.C. 1303] in any other Federal law, Executive order, rule, or regulation shall be treated as a reference to section 303 of the Tariff Act of 1930 as in effect on the day before the effective date of title II of this Act [Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title].''

References to section 1303 in chapter 4 of this title defined to mean section 1303 as in effect on the day before Jan. 1, 1995, see section 1677(26) of this title.

§ 1304. Marking of imported articles and containers

(a) Marking of articles

Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—

(1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear;

(2) Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and

(3) Authorize the exception of any article from the requirements of marking if—

(A) Such article is incapable of being marked;

(B) Such article cannot be marked prior to shipment to the United States without injury;

(C) Such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;

(D) The marking of a container of such article will reasonably indicate the origin of such article;

(E) Such article is a crude substance;

(F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;

(G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

(I) Such article was produced more than twenty years prior to its importation into the United States;

(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: *Provided*, That this subdivision shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of sections 1351, 1352, 1353, 1354 of this title, as extended; or

(K) Such article cannot be marked after importation except at any expense which is

economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section.

(b) Marking of containers

Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a) of this section. If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

(c) Marking of certain pipe and fittings

(1) Except as provided in paragraph (2), no exception may be made under subsection (a)(3) of this section with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, engraving, or continuous paint stenciling.

(2) If, because of the nature of an article, it is technically or commercially infeasible to mark it by one of the five methods specified in paragraph (1), the article may be marked by an equally permanent method of marking or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles.

(d) Marking of compressed gas cylinders

No exception may be made under subsection (a)(3) of this section with respect to compressed gas cylinders designed to be used for the transport and storage of compressed gases whether or not certified prior to exportation to have been made in accordance with the safety requirements of sections 178.36 through 178.68 of title 49, Code of Federal Regulations, each of which shall be marked with the English name of the country of origin by means of die stamping, molding, etching, raised lettering, or an equally permanent method of marking.

(e) Marking of certain manhole rings or frames, covers, and assemblies thereof

No exception may be made under subsection (a)(3) of this section with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, engraving, or an equally permanent method of marking.

(f) Marking of certain coffee and tea products

The marking requirements of subsections (a) and (b) of this section shall not apply to articles described in subheadings 0901.21, 0901.22, 0902.10, 0902.20, 0902.30, 0902.40, 2101.10, and 2101.20 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

(g) Marking of spices

The marking requirements of subsections (a) and (b) of this section shall not apply to articles provided for under subheadings 0904.11, 0904.12, 0904.20, 0905.00, 0906.10, 0906.20, 0907.00, 0908.10, 0908.20, 0908.30, 0909.10, 0909.20, 0909.30, 0909.40, 0909.50, 0910.10, 0910.20, 0910.30, 0910.40, 0910.50, 0910.91, 0910.99, 1106.20, 1207.40, 1207.50, 1207.91, 1404.90, and 3302.10, and items classifiable in categories 0712.90.60, 0712.90.8080, 1209.91.2000, 1211.90.2000, 1211.90.8040, 1211.90.8050, 1211.90.8090, 2006.00.3000, 2918.13.2000, 3203.00.8000, 3301.90.1010, 3301.90.1020, and 3301.90.1050 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

(h) Additional duties for failure to mark

If at the time of importation any article (or its container, as provided in subsection (b) of this section) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) of this section) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

(i) Delivery withheld until marked

No imported article held in customs custody for inspection, examination, or appraisement shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (h) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

(j) Treatment of goods of NAFTA country

(1) Application of section

In applying this section to an article that qualifies as a good of a NAFTA country (as defined in section 3301(4) of this title) under the regulations issued by the Secretary to implement Annex 311 of the North American Free Trade Agreement—

(A) the exemption under subsection (a)(3)(H) of this section shall be applied by substituting ''reasonably know'' for ''necessarily know'';

(B) the Secretary shall exempt the good from the requirements for marking under subsection (a) of this section if the good—

(i) is an original work of art, or

(ii) is provided for under subheading 6904.10, heading 8541, or heading 8542 of the Harmonized Tariff Schedule of the United States; and

(C) subsection (b) of this section does not apply to the usual container of any good described in subsection (a)(3)(E) or (I) of this section or subparagraph (B)(i) or (ii) of this paragraph.

(2) Petition rights of NAFTA exporters and producers regarding marking determinations

(A) Definitions

For purposes of this paragraph:

(i) The term ''adverse marking decision'' means a determination by the Customs Service which an exporter or producer of merchandise believes to be contrary to Annex 311 of the North American Free Trade Agreement.

(ii) A person may not be treated as the exporter or producer of merchandise regarding which an adverse marking decision was made unless such person—

(I) if claiming to be the exporter, is located in a NAFTA country and is required to maintain records in that country regarding exportations to NAFTA countries; or

(II) if claiming to be the producer, grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles such merchandise in a NAFTA country.

(B) Intervention or petition regarding adverse marking decisions

If the Customs Service makes an adverse marking decision regarding any merchandise, the Customs Service shall, upon written request by the exporter or producer of the merchandise, provide to the exporter or producer a statement of the basis for the decision. If the exporter or producer believes that the decision is not correct, it may intervene in any protest proceeding initiated by the importer of the merchandise. If the importer does not file a protest with regard to the decision, the exporter or producer may file a petition with the Customs Service setting forth—

(i) a description of the merchandise; and

(ii) the basis for its claim that the merchandise should be marked as a good of a NAFTA country.

(C) Effect of determination regarding decision

If, after receipt and consideration of a petition filed by an exporter or producer under subparagraph (B), the Customs Service determines that the adverse marking decision—

(i) is not correct, the Customs Service shall notify the petitioner of the determination and all merchandise entered, or withdrawn from warehouse for consumption, more than 30 days after the date that notice of the determination under this clause is published in the weekly Custom Bulletin shall be marked in conformity with the determination; or

(ii) is correct, the Customs Service shall notify the petitioner that the petition is denied.

(D) Judicial review

For purposes of judicial review, the denial of a petition under subparagraph (C)(ii) shall be treated as if it were a denial of a petition of an interested party under section 1516 of this title regarding an issue arising under any of the preceding provisions of this section.

(k) Penalties

Any person who, with intent to conceal the information given thereby or contained therein, defaces, destroys, removes, alters, covers, obscures, or obliterates any mark required under the provisions of this chapter shall—

(1) upon conviction for the first violation of this subsection, be fined not more than $100,000, or imprisoned for not more than 1 year, or both; and

(2) upon conviction for the second or any subsequent violation of this subsection, be fined not more than $250,000, or imprisoned for not more than 1 year, or both.

(June 17, 1930, ch. 497, title III, § 304, 46 Stat. 687; June 25, 1938, ch. 679, § 3, 52 Stat. 1077; Aug. 8, 1953, ch. 397, § 4(c), 67 Stat. 509; Pub. L. 98–573, title II, § 207, Oct. 30, 1984, 98 Stat. 2976; Pub. L. 99–514, title XVIII, § 1888(1), Oct. 22, 1986, 100 Stat. 2924; Pub. L. 100–418, title I, § 1907(a)(1), Aug. 23, 1988, 102 Stat. 1314; Pub. L. 103–182, title II, § 207(a), Dec. 8, 1993, 107 Stat. 2096; Pub. L. 104–295, § 14(a), (b), Oct. 11, 1996, 110 Stat. 3521, 3522.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (f), (g), and (j)(1)(B)(ii), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions dealing with the subject matter of this section and former section 133 of this title were contained in act Oct. 3, 1913, ch. 16, § IV, F, subsecs. 1 and 2, 38 Stat. 194, superseding similar provisions of previous tariff acts. Those subsections were superseded by act Sept. 21, 1922, ch. 356, title III, § 304(a), 42 Stat. 947, and repealed by § 321 of that act. Section 304(a) of the act of 1922 was superseded by section 304 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1996—Subsecs. (f) to (h). Pub. L. 104–295, § 14(a), added subsecs. (f) and (g) and redesignated former subsec. (f)

as (h). Former subsecs. (g) and (h) redesignated (i) and (j), respectively.

Subsec. (i). Pub. L. 104–295, § 14(a)(1), (b), redesignated subsec. (g) as (i) and substituted ''subsection (h) of this section'' for ''subsection (f) of this section''.

Subsecs. (j), (k). Pub. L. 104–295, § 14(a)(1), redesignated subsecs. (h) and (i) as (j) and (k), respectively.

1993—Subsec. (c)(1). Pub. L. 103–182, § 207(a)(1), substituted ''engraving, or continuous paint stenciling'' for ''or engraving''.

Subsec. (c)(2). Pub. L. 103–182, § 207(a)(2), substituted ''five methods'' for ''four methods'' and struck out ''such as paint stenciling'' after ''method of marking''.

Subsec. (e). Pub. L. 103–182, § 207(a)(3), substituted ''engraving, or an equally permanent method of marking'' for ''or engraving''.

Subsecs. (h), (i). Pub. L. 103–182, § 207(a)(4), (5), added subsec. (h) and redesignated former subsec. (h) as (i).

1988—Subsec. (h). Pub. L. 100–418 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''If any person shall, with intent to conceal the information given thereby or contained therein, deface, destroy, remove, alter, cover, obscure, or obliterate any mark required under the provisions of this chapter, he shall, upon conviction, be fined not more than $5,000 or imprisoned not more than one year, or both.''

1986—Subsec. (c). Pub. L. 99–514 substituted ''(1) Except as provided in paragraph (2), no'' for ''No'' and added par. (2).

1984—Subsecs. (c) to (h). Pub. L. 98–573 added subsecs. (c) to (e), redesignated former subsecs. (c) to (e) as (f) to (h), respectively, and in subsec. (g), as redesignated, substituted ''subsection (f) of this section'' for ''subsection (c) of this section''.

1953—Subsec. (a)(3)(K). Act Aug. 8, 1953, added cl. (K).

1938—Act June 25, 1938, amended section generally.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 14(c) of Pub. L. 104–295 provided that: ''The amendments made by this section [amending this section] apply to goods entered, or withdrawn from warehouse for consumption, on or after the date of the enactment of this Act [Oct. 11, 1996].''

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], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1907(a)(2) of Pub. L. 100–418 provided that:

''(A) The amendment made by paragraph (1) [amending this section] applies with respect to acts committed on or after the date of the enactment of this Act [Aug. 23, 1988].

''(B) The conviction of a person under section 304(h) of the Tariff Act of 1930 [19 U.S.C. 1304(h)] for an act committed before the date of the enactment of this Act shall be disregarded for purposes of applying paragraph (2) of such subsection (as added by the amendment made by paragraph (1) of this subsection[)].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 214 of title II of Pub. L. 98–573 provided that:

''(a) For purposes of this section, the term '15th day' means the 15th day after the date of the enactment of this Act [Oct. 30, 1984].

''(b) Except as provided in subsections (c), (d), and (e), the amendments made by this title [enacting sections 58b, 1339, and 1627a of this title, amending sections 81c, 81*o*, 1313, 1330, 1431, 1498, 1555, 2192, 2251, 2253, and 2703 of this title, section 925 of Title 18, Crimes and Criminal Procedure, and section 162 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 2, 81c, 81*o*, and 1339 of this title, and section 162 of Title 26] shall take effect on the 15th day.

''(c)(1) The amendment made by section 204 [amending section 1441 of this title] shall apply with respect to vessels returning from the British Virgin Islands on or after the 15th day.

''(2) The amendments made by section 207 [amending this section] shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day; except for such of those articles that, on or before the 15th day, had been taken on board for transit to the customs territory of the United States.

''(3)(A) The amendment made by section 208 [amending section 1466 of this title] shall apply with respect to entries made in connection with arrivals of vessels on or after the 15th day.

''(B) Upon request therefor filed with the customs officer concerned on or before the 90th day after the date of the enactment of this Act [Oct. 30, 1984], any entry in connection with the arrival of a vessel used primarily for transporting passengers or property—

''(i) made before the 15th day but not liquidated as of January 1, 1983, or

''(ii) made before the 15th day but which is the subject of an action in a court of competent jurisdiction on September 19, 1983, and

''(iii) with respect to which there would have been no duty if the amendment made by section 208 applied to such entry,

shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, be liquidated or reliquidated as though such entry had been made on the 15th day.

''(4) The amendments made by section 209 [enacting section 1484a of this title and amending section 1202 of this title] shall apply with respect to articles launched into space from the customs territory of the United States on or after January 1, 1985.

''(5)(A) The amendment made by section 210(a) [amending section 1505 of this title] shall take effect on the 30th day after the date of the enactment of this Act [Oct. 30, 1984].

''(B) The amendment made by section 210(b) [amending section 1520 of this title] shall apply with respect to determinations made or ordered on or after the date of the enactment of this Act [Oct. 30, 1984].

''(d)(1) The amendments made by section 212 [amending sections 1520, 1564, and 1641 of this title and sections 1581, 1582, 2631, 2636, 2640, and 2643 of Title 28, Judiciary and Judicial Procedure] shall take effect upon the close of the 180th day following the date of the enactment of this Act [Oct. 30, 1984] with the following exceptions:

''(A) Section 641(c)(1)(B) and section 641(c)(2) of the Tariff Act of 1930, as added by such section [19 U.S.C. 1641(c)(1)(B), (2)], shall take effect three years after the date of the enactment of this Act [Oct. 30, 1984].

''(B) The amendments made to the Tariff Act of 1930 by subsection (c) of section 212 [no subsec. (c) of section 212 was enacted] shall take effect on such date of enactment [Oct. 30, 1984].

''(2) A license in effect on the date of enactment of this Act [Oct. 30, 1984] under section 641 of the Tariff Act of 1930 (as in effect before such date of enactment) shall continue in force as a license to transact customs business as a customs broker, subject to all the provisions of section 212 and such licenses shall be accepted as permits for the district or districts covered by that license.

''(3) Any proceeding for revocation or suspension of a license instituted under section 641 of the Tariff Act of 1930 before the date of the enactment of this Act [Oct. 30, 1984] shall continue and be governed by the law in effect at the time the proceeding was instituted.

''(4) If any provision of section 212 or its application to any person or circumstances is held invalid, it shall not affect the validity of the remaining provisions or their application to any other person or circumstances.

''(e) The amendments made by section 213 [enacting sections 1589a, 1613b, and 1616a of this title, amending sections 1602, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1618, and 1619 of this title and repealing section 7607 of Title 26, Internal Revenue Code] shall take effect October 15, 1984.''

EFFECTIVE DATE OF 1953 AMENDMENTS, ENACTMENTS, AND REPEALS

Section 1 of act Aug. 8, 1953, provided that such act [see Short Title of 1953 Amendment note set out under section 1654 of this title] is effective, except as otherwise specifically provided for, on and after the thirtieth day following the date of its enactment [Aug. 8, 1953].

The exception ''except as otherwise specifically provided for'' apparently refers to the amendments made to the provisions preceding subd. (1) of section 1308 of this title, and to section 1557(b) of this title, for which separate effective dates were provided as explained in notes under such sections.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

SAVINGS PROVISION

Section 23 of act Aug. 8, 1953, provided: ''Except as may be otherwise provided for in this Act [see Short Title of 1953 Amendment note set out under section 1654 of this title], the repeal of existing law or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal case prior to such repeal or modification, but all liabilities under such laws shall continue, except as otherwise specifically provided in this Act, and may be enforced in the same manner as if such repeal or modification had not been made.''

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs officers and employees, referred to in text, are under Department of the Treasury.

MARKING REQUIREMENTS FOR ARTICLES QUALIFYING AS GOODS OF NAFTA COUNTRY

Section 207(b) of Pub. L. 103–182 provided that: ''Articles that qualify as goods of a NAFTA country under regulations issued by the Secretary in accordance with Annex 311 of the Agreement [North American Free Trade Agreement] are exempt from the marking requirements promulgated by the Secretary of the Treasury under section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418 [102 Stat. 1315]), but are subject to the requirements of section 304 of the Tariff Act of 1930 (19 U.S.C. 1304).''

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1558, 1595a of this title.

§ 1305. Immoral articles; importation prohibited

(a) Prohibition of importation

All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision: *Provided further*, That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes: *Provided further*, That effective January 1, 1993, this section shall not apply to any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States.

(b) [1] Enforcement procedures

Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the appropriate customs officer to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States Court of International Trade from the decision of such customs officer. Upon the seizure of such book or matter, such customs officer shall transmit information thereof to the United States attorney of the district in which is situated either—

(1) the office at which such seizure took place; or

(2) the place to which such book or matter is addressed;

and the United States attorney shall institute proceedings in the district court for the forfeit-

[1] So in original. Two subsecs. (b) and (c) have been enacted. Second subsecs. (b) and (c) probably should be designated (e) and (f), respectively.

ure, confiscation, and destruction of the book or matter seized. Upon the adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited, it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits.

(c)[1] Institution of forfeiture proceedings

Notwithstanding the provisions of subsections (a) and (b) of this section, whenever a customs officer discovers any obscene material after such material has been imported or brought into the United States, or attempted to be imported or brought into the United States, he may refer the matter to the United States attorney for the institution of forfeiture proceedings under this section. Such proceedings shall begin no more than 30 days after the time the material is seized; except that no seizure or forfeiture shall be invalidated for delay if the claimant is responsible for extending the action beyond the allowable time limits or if proceedings are postponed pending the consideration of constitutional issues.

(d) Stay of forfeiture proceedings

Upon motion of the United States, a court shall stay such civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter.

(b)[1] Coordination of forfeiture proceedings with criminal proceedings

(1) Notwithstanding subsection (a) of this section, whenever the Customs Service is of the opinion that criminal prosecution would be appropriate or that further criminal investigation is warranted in connection with allegedly obscene material seized at the time of entry, the appropriate customs officer shall immediately transmit information concerning such seizure to the United States Attorney[2] of the district of the addressee's residence. No notice to the addressee or consignee concerning the seizure is required at the time of such transmittal.

(2) Upon receipt of such information, such United States attorney shall promptly determine whether in such attorney's opinion the referral of the matter for forfeiture under this section would materially affect the Government's ability to conduct a criminal investigation with respect to such seizure.

(3) If the United States attorney is of the opinion that no prejudice to such investigation will result from such referral, such attorney shall immediately so notify the Customs Service in writing. The appropriate customs officer shall immediately notify in writing the addressee or consignee of the seizure and shall transmit information concerning such seizure to the United States Attorney[2] of the district in which is situated the office at which such seizure has taken place. The actions described in paragraphs (1) through (3) of this subsection shall take place within sufficient time to allow for the filing of a forfeiture complaint within 14 days of the seizure unless the United States Attorney[2] of the district of the addressee's residence certifies in writing and includes specific, articulable facts demonstrating that the determination required in paragraph (2) of this subsection could not be made in sufficient time to comply with this deadline. In such cases, the actions described in paragraphs (1) through (3) of this subsection shall take place within sufficient time to allow for the filing of a forfeiture complaint within 21 days of seizure.

(4) If the United States attorney for the district of the addressee's residence concludes that material prejudice to such investigation will result from such referral, such United States attorney shall place on file, within 14 days of the date of seizure, a dated certification stating that it is the United States attorney's judgment that referral of the matter for forfeiture under this section would materially affect the Government's ability to conduct a criminal investigation with respect to the seizure. The certification shall set forth specific, articulable facts demonstrating that withholding referral for forfeiture is necessary.

(5)(A) As soon as the circumstances change so that withholding of referral for forfeiture is no longer necessary for purposes of the criminal investigation, the United States attorney shall immediately so notify the Customs Service in writing and shall furnish a copy of the certification described in paragraph (4) above to the Customs Service.

(B) In any matter referred to a United States attorney for possible criminal prosecution wherein subparagraph (5)(A) does not apply, the United States attorney shall immediately notify the Customs Service in writing concerning the disposition of the matter, whether by institution of a prosecution or a letter of declination, and shall also furnish a copy of the certification described in paragraph (4) of this subsection to the Customs Service.

(C) Upon receipt of the notification described in subparagraph (A) or (B) of this paragraph, the appropriate customs officer shall immediately notify the addressee or consignee of the seizure and shall transmit information concerning the seizure, including a copy of the certification described in paragraph (4) above and a copy of the notification described in subparagraph (A) or (B) of this paragraph, to the United States attorney of the district in which is situated the office at which such seizure has taken place, who shall institute forfeiture proceedings in accordance with subsection (a) hereof within 14 days of the date of the notification described in subparagraph (A) or (B) above. A copy of the certification described in paragraph (4) above and a copy of the notification described in subparagraph (A) or (B) of this paragraph shall be affixed to the complaint for forfeiture.

[2] So in original. Probably should not be capitalized.

(c)[3] Stay on motion

Upon motion of the United States, a court, for good cause shown, shall stay civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter whether in the same or in a different district.

(June 17, 1930, ch. 497, title III, § 305, 46 Stat. 688; June 25, 1948, ch. 645, § 21, 62 Stat. 862; June 25, 1948, ch. 646, § 1, 62 Stat. 869; Pub. L. 91–271, title III, § 301(a), June 2, 1970, 84 Stat. 287; Pub. L. 91–662, § 1, Jan. 8, 1971, 84 Stat. 1973; Pub. L. 96–417, title VI, § 601(2), Oct. 10, 1980, 94 Stat. 1744; Pub. L. 100–418, title I, § 1901(a), Aug. 23, 1988, 102 Stat. 1312; Pub. L. 100–449, title II, § 206, Sept. 28, 1988, 102 Stat. 1864; Pub. L. 100–690, title VII, § 7522(e)[d], Nov. 18, 1988, 102 Stat. 4500.)

PRIOR PROVISIONS

Provisions in substantially the same language as those in this section were made by act Oct. 3, 1913, ch. 16, § IV, subsections 1, 2, and 3, 38 Stat. 194, superseding similar provisions of previous tariff acts. Those subsections were superseded by act Sept. 21, 1922, ch. 356, title III, § 305, 42 Stat. 937, and repealed by section 321 of that act. Section 305 of act Sept. 21, 1922, was superseded by section 305 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–449 inserted proviso at end of first par. directing that, ''effective January 1, 1993, this section shall not apply to any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States''.

Pub. L. 100–418, § 1901(a)(1), designated second par. of subsec. (a) as subsec. (b) ''Enforcement procedures''.

Subsec. (b). Pub. L. 100–690, § 7522(e), added subsec. (b) relating to coordination of forfeiture proceedings with criminal proceedings.

Pub. L. 100–418, § 1901(a)(1), (2), designated second par. of subsec. (a) as subsec. (b) ''Enforcement procedures'' and amended second sentence generally. Prior to amendment, second sentence read as follows: ''Upon the seizure of such book or matter such customs officer shall transmit information thereof to the United States attorney of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized.''

Subsec. (c). Pub. L. 100–690, § 7522(e), added subsec. (c) relating to stay on motion.

Pub. L. 100–418, § 1901(a)(3), added subsec. (c) relating to institution of forfeiture proceedings.

Subsec. (d). Pub. L. 100–418 added subsec. (d) relating to stay of forfeiture proceedings.

1980—Subsec. (a). Pub. L. 96–417, in second undesignated par., redesignated the United States Customs Court as the United States Court of International Trade.

1971—Subsec. (a). Pub. L. 91–662 struck out ''for the prevention of conception or'' before ''for causing unlawful abortion''.

1970—Subsec. (a). Pub. L. 91–271 substituted references to the appropriate customs officer for references to the collector wherever appearing.

1948—Subsec. (b). Act June 25, 1948, eff. Sept. 1, 1948, repealed subsec. (b) which related to penalties against government officers. See section 552 of Title 18, Crimes and Criminal Procedure.

[3] So in original. Two subsecs. (b) and (c) have been enacted. Second subsecs. (b) and (c) probably should be designated (e) and (f), respectively.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorney'' for ''district attorney''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

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.

Section 1901(b) of Pub. L. 100–418 provided that: ''The amendments made by subsection (a) [amending this section] apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act [Aug. 23, 1988].''

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–662 effective Jan. 9, 1971, see section 7 of Pub. L. 91–662, set out as a note under section 552 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs officers, referred to in text, are under Department of the Treasury.

IMPORTATION OF RU–486

Memorandum of President of the United States, Jan. 22, 1993, 58 F.R. 7459, provided:

Memorandum for the Secretary of Health and Human Services

In Import Alert 66–47, the Food and Drug Administration (''FDA'') excluded the drug Mifepristine—commonly known as RU–486—from the list of drugs that individuals can import into the United States for their ''personal use,'' although the drugs have not yet been approved for distribution by the FDA. (*See* FDA Regulatory Procedures Manual, Chapter 9–71.) Import Alert 66–47 effectively bans the importation into this Nation of a drug that is used in other nations as a nonsurgical means of abortion.

I am informed that in excluding RU–486 from the personal use importation exemption, the FDA appears to have based its decision on factors other than an assessment of the possible health and safety risks of the drug. Accordingly, I hereby direct that you promptly instruct the FDA to determine whether there is sufficient evidence to warrant exclusion of RU–486 from the list of drugs that qualify for the personal use importation exemption. Furthermore, if the FDA concludes that RU–486 meets the criteria for the personal use importation exemption, I direct that you immediately take steps to rescind Import Alert 66–47.

In addition, I direct that you promptly assess initiatives by which the Department of Health and Human Services can promote the testing, licensing, and manufacturing in the United States of RU–486 or other antiprogestins.

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

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 614; title 28 section 1581.

§ 1306. Cattle, sheep, swine, and meats; importation prohibited in certain cases

(a) In general

Except as provided in subsection (b) of this section, if the Secretary of Agriculture determines that rinderpest or foot-and-mouth disease exists in any foreign country, he shall officially notify the Secretary of the Treasury and give public notice thereof, and thereafter, and until the Secretary of Agriculture gives notice in a similar manner that such disease no longer exists in such foreign country, the importation into the United States of cattle, sheep, or other ruminants, or swine, or of fresh, chilled, or frozen meat of such animals, from such foreign country, is prohibited: *Provided*, That wild ruminants or swine may be imported from any such country upon such conditions, including post entry conditions, to be prescribed in import permits or in regulations, as the Secretary may impose for the purpose of preventing the dissemination of said diseases into or within the United States: *And provided further*, That the subsequent distribution, maintenance, and exhibition of such animals in the United States shall be limited to zoological parks approved by said Secretary as meeting such standards as he may by regulation prescribe for the purpose of preventing the dissemination of said diseases into or within the United States. The Secretary may at any time seize and dispose of any such animals which are not handled in accordance with the conditions imposed by him or which are distributed to or maintained or exhibited at any place in the United States which is not then an approved zoological park, in such manner as he deems necessary for said purpose.

(b) Exception

The Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary determines appropriate, the importation of cattle, sheep, other ruminants, or swine (including embryos of the animals), or the fresh, chilled, or frozen meat of the animals, from a region if the Secretary determines that the region from which the animal or meat originated is, and is likely to remain, free from rinderpest and foot-and-mouth disease, or is, and is likely to remain, a region of low prevalence of rinderpest and foot-and-mouth disease.

(c) Regulations

The Secretary of Agriculture is authorized to make rules and regulations to carry out the purposes of this section, and in such rules and regulations the Secretary of Agriculture may prescribe the terms and conditions for the destruction of all cattle, sheep, and other ruminants, and swine, and of all meats, offered for entry and refused admission into the United States, unless such cattle, sheep, ruminants, swine, or meats be exported by the consignee within the time fixed therefor in such rules and regulations.

(June 17, 1930, ch. 497, title III, § 306, 46 Stat. 689; Pub. L. 85–867, Sept. 2, 1958, 72 Stat. 1685; Pub. L. 90–201, § 18, Dec. 15, 1967, 81 Stat. 600; Pub. L. 100–449, title III, § 301(f)(5), Sept. 28, 1988, 102 Stat. 1869; Pub. L. 103–182, title III, § 361(d)(1), Dec. 8, 1993, 107 Stat. 2123; Pub. L. 103–465, title IV, § 431(g), Dec. 8, 1994, 108 Stat. 4969.)

PRIOR PROVISIONS

Provisions concerning the importation of neat cattle and the hides of neat cattle were contained in act Oct. 3, 1913, ch. 16, § IV, H, subsections 1 and 2, 38 Stat. 195, superseding similar provisions of previous tariff acts. Those subsections were superseded by act Sept. 21, 1922, ch. 356, title III, § 306, 42 Stat. 937, and repealed by section 321 thereof. Section 306 of the 1922 act was superseded by section 306 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–465 inserted before period at end ", or is, and is likely to remain, a region of low prevalence of rinderpest and foot-and-mouth disease".

1993—Subsec. (a). Pub. L. 103–182, § 361(d)(1)(A), substituted heading for one which read "Rinderpest and foot-and-mouth disease" and "Except as provided in subsection (b) of this section, if the Secretary of Agriculture" for "If the Secretary of Agriculture".

Subsec. (b). Pub. L. 103–182, § 361(d)(1)(B), added subsec. (b) and struck out former subsec. (b) "Imports from Canada" which read as follows: "Notwithstanding subsection (a) of this section, the Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, the importation of cattle, sheep, or other ruminants, or swine (including embryos of such animals) or the fresh, chilled, or frozen meat of such animals from a region of Canada notwithstanding the existence of rinderpest or foot-and-mouth disease in Canada, if—

"(1) the United States and Canada have entered into an agreement delineating the criteria for recognizing that a geographical region of either country is free from rinderpest or foot-and-mouth disease; and

"(2) the appropriate official of the government of Canada certifies that the region of Canada from which the animal or meat originated is free from rinderpest and foot-and-mouth disease."

1988—Subsec. (b). Pub. L. 100–449 added subsec. (b).

1967—Subsec. (b). Pub. L. 90–201 repealed subsec. (b) prohibiting importation of meats unfit for human food. See section 620 of Title 21, Food and Drugs.

1958—Subsec. (a). Pub. L. 85–867 struck out "domestic" before "ruminants", substituted "meat of such animals" for "beef, veal, mutton, lamb, or pork", and inserted provisos prohibiting importation of wild ruminants or swine except under conditions preventing dissemination of livestock diseases and limiting distribution, maintenance and exhibition of such animals to approved zoological parks, and seizure and disposal provision.

Subsec. (c). Pub. L. 85–867 struck out "domestic" before "ruminants" in two places.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date of entry into force of the WTO Agreement with respect to the United States [Jan. 1, 1995], except as otherwise provided, see section 451 of Pub. L. 103–465, set out as an Effective Date note under section 3601 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

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.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–201 effective on expiration of sixty days after Dec. 15, 1967, see section 20(a) of Pub. L. 90–201, set out as an Effective Date note under section 601 of Title 21, Food and Drugs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 1540; title 21 section 136a.

§ 1307. Convict-made goods; importation prohibited

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

''Forced labor'', as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily.

(June 17, 1930, ch. 497, title III, § 307, 46 Stat. 689.)

PRIOR PROVISIONS

Provisions in the same language as the provisions in this section were made by act Oct. 3, 1913, ch. 16, § IV, I, 38 Stat. 195, superseding similar provisions of previous tariff acts. That subdivision was superseded by act Sept. 21, 1922, ch. 356, title III, § 307, 42 Stat. 937, and repealed by section 321 of that act. Section 307 of act Sept. 21, 1922, was superseded by section 307 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

REPORTING REQUIREMENT ON FORCED LABOR PRODUCTS DESTINED FOR UNITED STATES MARKET

Pub. L. 105–261, div. C, title XXXVII, § 3702, Oct. 17, 1998, 112 Stat. 2275, provided that:

''(a) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act [Oct. 17, 1998], the Commissioner of Customs shall prepare and transmit to the Congress a report on products made with forced labor that are destined for the United States market.

''(b) CONTENTS OF REPORT.—The report under subsection (a) shall include information concerning the following:

''(1) The extent of the use of forced labor in manufacturing products destined for the United States market.

''(2) The volume of products made with forced labor, destined for the United States market, that is in violation of section 307 of the Tariff Act of 1930 [19 U.S.C. 1307] or section 1761 of title 18, United States Code, and is seized by the United States Customs Service.

''(3) The progress of the United States Customs Service in identifying and interdicting products made with forced labor that are destined for the United States market.''

SENSE OF CONGRESS REQUESTING PRESIDENT TO INSTRUCT SECRETARY OF THE TREASURY TO ENFORCE SECTION 1307 WITHOUT DELAY

Pub. L. 100–418, title I, § 1906, Aug. 23, 1988, 102 Stat. 1313, related to Congressional findings of deplorable forced labor conditions in former Soviet Union and request of President to instruct Secretary of the Treasury to enforce this section without delay, prior to repeal by Pub. L. 103–199, title II, § 204(a), Dec. 17, 1993, 107 Stat. 2322.

§ 1308. Repealed. Pub. L. 87–456, title III, § 301(a), May 24, 1962, 76 Stat. 75

Section, acts June 17, 1930, ch. 497, title III, § 308, 46 Stat. 690; June 25, 1938, ch. 679, § 4, 52 Stat. 1079; Aug. 8, 1953, ch. 397, § 10(a)(1), (b) to (f), 67 Stat. 512; Aug. 28, 1954, ch. 1045, § 1, 68 Stat. 914; Aug. 28, 1957, Pub. L. 85–211, § 3, 71 Stat. 487; Apr. 16, 1958, Pub. L. 85–379, 72 Stat. 88; May 16, 1958, Pub. L. 85–414, § 1, 72 Stat. 118, prescribed articles for temporary free importation under bond for exportation.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as an Effective Date of Tariff Classification Act of 1962 note preceding section 1202 of this title.

§ 1309. Supplies for certain vessels and aircraft

(a) Exemption from customs duties and internal-revenue tax

Articles of foreign or domestic origin may be withdrawn, under such regulations as the Secretary of the Treasury may prescribe, from any customs bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal-revenue tax, or from any internal-revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal-revenue tax—

(1) for supplies (not including equipment) of (A) vessels or aircraft operated by the United States, (B) vessels of the United States employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or between Hawaii and any other part of the United States, or between Alaska and any other part of the United States, or (C) aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States; or

(2) for supplies (including equipment) or repair of (A) vessels of war of any foreign nation, or (B) foreign vessels employed in the fisheries

or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, where such trade by foreign vessels is permitted; or

(3) for supplies (including equipment), ground equipment, maintenance, or repair of aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, where trade by foreign aircraft is permitted. With respect to articles for ground equipment, the exemption hereunder shall apply only to duties and to taxes imposed upon or by reason of importation.

The provisions for free withdrawals made by this subsection shall not apply to petroleum products for vessels or aircraft in voyages or flights exclusively between Hawaii or Alaska and any airport or Pacific coast seaport of the United States.

(b) Drawback

Articles withdrawn from bonded warehouses, bonded manufacturing warehouses, continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone, imported articles, and articles of domestic manufacture or production, laden as supplies upon any such vessel or aircraft of the United States or laden as supplies (including equipment) upon, or used in the maintenance or repair of, any such foreign vessel or aircraft, shall be considered to be exported within the meaning of the drawback provisions of this chapter.

(c) Articles removed in, or returned to, the United States

Any article exempted from duty or tax, or in respect of which drawback has been allowed, under this section or section 1317 of this title and thereafter removed in the United States from any vessel or aircraft, or otherwise returned to the United States, shall be treated as an importation from a foreign country.

(d) Reciprocal privileges

The privileges granted by this section and section 1317 of this title in respect of aircraft registered in a foreign country shall be allowed only if the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of Commerce shall advise the Secretary of the Treasury that he has found that a foreign country has discontinued, or will discontinue, the allowance of such privileges, the privileges granted by this section and such section 1317 shall not apply thereafter in respect of aircraft registered in that foreign country.

(June 17, 1930, ch. 497, title III, §309, 46 Stat. 690; June 25, 1938, ch. 679, §5(a), 52 Stat. 1080; July 22, 1941, ch. 314, §3, 55 Stat. 602; Aug. 8, 1953, ch. 397, §11(a), 67 Stat. 514; Pub. L. 86–606, §5(a), July 7, 1960, 74 Stat. 361; Pub. L. 101–382, title III, §484A(b), Aug. 20, 1990, 104 Stat. 708.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, §IV, K, 38 Stat. 197, which superseded a like provision made by an amendment of R.S. §2982, by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §21, 36 Stat. 88. Section IV, K, of the act of 1913, and R.S. §2982 were superseded by act Sept. 21, 1922, ch. 356, title III, §309, 42 Stat. 938, and respectively repealed by sections 321 and 642 thereof. Section 309 of the act of 1922 was superseded by section 309 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–382 inserted ''imported articles,'' after ''foreign-trade zone,''.

1960—Subsec. (a). Pub. L. 86–606 inserted '', or between Hawaii and any other part of the United States or between Alaska and any other part of the United States'' after ''possessions'' wherever appearing, and made the provisions for free withdrawals inapplicable to petroleum products for vessels or aircraft in voyages or flights between Hawaii or Alaska and any airport or Pacific coast seaport of the United States.

1953—Subsec. (a). Act Aug. 8, 1953, extended the exemption from payment of duty and internal revenue tax theretofore available to supplies for certain vessels and aircraft withdrawn from bonded warehouses, bonded manufacturing warehouses, or continuous customs custody elsewhere to supplies withdrawn from foreign trade zones; accorded free entry for equipment withdrawn for foreign vessels; and enlarged the classes of vessels and aircraft theretofore covered to include all vessels and aircraft operated by the United States.

Subsec. (b). Act Aug. 8, 1953, made technical changes to conform with the changes made by such act in subsec. (a), including insertion of ''or from a foreign-trade zone,''.

1941—Subsec. (a). Act July 22, 1941, inserted ''or from any internal-revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal-revenue tax'' after ''internal-revenue tax''.

1938—Act June 25, 1938, amended section generally, adding subsecs. (c) and (d).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 484A(c) of Pub. L. 101–382 provided that: ''Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the amendments made by this section [amending this section and section 1313 of this title] shall apply to—

''(1) claims filed or liquidated on or after January 1, 1988, and

''(2) claims that are unliquidated, under protest, or in litigation on the date of enactment of this Act [Aug. 20, 1990].''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 5(b) of Pub. L. 86–606 provided that: ''The amendment made by this section [amending this section] shall apply only with respect to articles withdrawn as provided in section 309(a) of the Tariff Act of 1930, as amended [subsec. (a) of this section], on or after the date of the enactment of this Act [July 7, 1960].''

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise spe-

cifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1557 of this title; title 26 sections 5003, 5053, 5055, 5214.

§ 1310. Free importation of merchandise recovered from sunken and abandoned vessels

Whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe.

(June 17, 1930, ch. 497, title III, § 310, 46 Stat. 691.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § IV, L, 38 Stat. 197, superseding similar provisions of previous tariff acts. That section was superseded by act Sept. 21, 1922, ch. 356, title III, § 310, 42 Stat. 938, and repealed by section 321 of that act. Section 310 of act Sept. 21, 1922, was superseded by section 310 of act June 17, 1930, and repealed by section 651(a)(1) of the 1930 act.

§ 1311. Bonded manufacturing warehouses

All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further*, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

No flour, manufactured in a bonded manufacturing warehouse from wheat imported after ninety days after June 17, 1930, shall be withdrawn from such warehouse for exportation without payment of a duty on such imported wheat equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported.

Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

Articles or materials received into such bonded manufacturing warehouse or articles manufactured therefrom may be withdrawn or removed therefrom for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the appropriate customs officer of the port, who shall certify to such shipment and exportation, or ladening for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: *Provided*, That the by-products incident to the processes of manufacture, including waste derived from cleaning rice in bonded warehouses under the Act of March 24, 1874, ch. 65, 18 Stat. 24, in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would be assessed and collected by law if such waste or by-products were imported from a foreign country: *Provided*, That all waste material may be destroyed under Government supervision. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

A careful account shall be kept by the appropriate customs officer of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturer containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse for the sole purpose of export therefrom: *Provided*, That cigars manufactured in whole of tobacco imported from any one country, made and manufactured in such bonded manufacturing warehouses, may be withdrawn for home consumption upon the payment of the duties on such tobacco in its condition as imported under such regulations as the Secretary

of the Treasury may prescribe, and the payment of the internal-revenue tax accruing on such cigars in their condition as withdrawn, and the boxes or packages containing such cigars shall be stamped to indicate their character, origin of tobacco from which made, and place of manufacture.

The provisions of section 3433 of the Revised Statutes shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this chapter and to the merchandise conveyed therein.

Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section, and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses.

No article manufactured in a bonded warehouse from materials that are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, may be withdrawn from warehouse for exportation to a NAFTA country, as defined in section 3301(4) of this title, without assessment of a duty on the materials in their condition and quantity, and at their weight, at the time of importation into the United States. The duty shall be paid before the 61st day after the date of exportation, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

(1) the total amount of customs duties paid or owed on the materials on importation into the United States, or

(2) the total amount of customs duties paid on the article to the NAFTA country.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from such warehouse for exportation to Canada during the period such Agreement is in operation without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.

(June 17, 1930, ch. 497, title III, § 311, 46 Stat. 691; June 26, 1936, ch. 830, title IV, § 404, 49 Stat. 1960; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 96–39, title VIII, § 856(b), July 26, 1979, 93 Stat. 295; Pub. L. 97–446, title II, § 202, Jan. 12, 1983, 96 Stat. 2350; Pub. L. 100–449, title II, § 204(c)(1), Sept. 28, 1988, 102 Stat. 1862; Pub. L. 103–182, title II, § 203(b)(1), Dec. 8, 1993, 107 Stat. 2088.)

REFERENCES IN TEXT

Act March 24, 1874, referred to in text, which provided that ''importers' bonded warehouses, to be used for the storage and cleansing of imported rice intended for exportation to foreign countries, may be established at any port of entry in the United States, under such rules and regulations as the Secretary of the Treasury may prescribe'', was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

R.S. § 3433, referred to in text, was amended by act Feb. 27, 1877, ch. 69, 19 Stat. 248. The provisions of R.S. § 3433 as they existed prior to the amendment by act Feb. 27, 1877, were reenacted as section 10 of act Oct. 1, 1890, ch. 1244, 26 Stat. 614. Section 55 of said act Oct. 1, 1890, repealed all laws and parts of laws inconsistent therewith. The provisions of said section 10 of act Oct. 1, 1890, were incorporated into the Internal Revenue Code of 1939, as subsections (a), (b), (c), and (d)(1) of section 3177. See section 5521 of Title 26, Internal Revenue Code.

Section 204 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in text, is section 204 of Pub. L. 100–449, which is set out in a note under section 2112 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § IV, M, 38 Stat. 197, which was superseded by act Sept. 21, 1922, ch. 356, title III, § 311, 42 Stat. 938, and repealed by section 321 thereof. Section 311 of the 1922 act was superseded by section 311 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Section IV, M, of the act of 1913 superseded previous similar provisions of the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 23, 36 Stat. 88, which superseded those of the Dingley Tariff Act of July 24, 1897, ch. 11, § 15, 30 Stat. 207. Similar provisions were contained in the Wilson Tariff Act of Aug. 27, 1894, ch. 349, § 9, 28 Stat. 548.

AMENDMENTS

1993—Pub. L. 103–182 amended last par. generally. Prior to amendment, last par. read as follows: ''No article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from such warehouse for exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988, without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.''

1988—Pub. L. 100–449 added par. at end relating to articles withdrawn for exportation to Canada on and after Jan. 1, 1994, and to drawback-eligible goods under the United States-Canada Free-Trade Agreement Implementation Act of 1988.

1983—Pub. L. 97–446 struck out ''at an exterior port'' after ''bonded warehouse'' and ''immediate'' after ''sole purpose of'' in eighth par.

1979—Pub. L. 96–39, in par. relating to distilled spirits and wine, struck out provision that no internal revenue tax be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, and that no person rectifying distilled spirits or wines in such warehouses be subject by reason of such rectification to the payment of special tax as rectifier.

1970—Pub. L. 91–271 substituted references to the appropriate customs officer for references to the collector wherever appearing.

1936—Act June 26, 1936, inserted par. at end relating to distilled spirits and wine.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 applicable (1) with respect to exports from the United States to Canada on Jan. 1, 1996, if Canada is a NAFTA country on that date and after such date for so long as Canada continues to be a NAFTA country and (2) with respect to exports from the United States to Mexico on Jan. 1, 2001, if Mexico is a NAFTA country on that date and after such date for so long as Mexico continues to be a NAFTA country, see section 213(c) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

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.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 856(b) of Pub. L. 96–39 provided that: ''Effective January 1, 1980, the second proviso to the last paragraph of section 311 of the Tariff Act of 1930 [this section] is hereby repealed.''

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs officers, referred to in text, are under Department of the Treasury.

WITHDRAWAL OF DISTILLED SPIRITS TO MANUFACTURING BONDED WAREHOUSES; TRANSFERS TO WAREHOUSES PENDING EXPORTATION

Pub. L. 96–39, title VIII, §856(a), July 26, 1979, 93 Stat. 295, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of articles described in section 5522(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, 26 U.S.C. 5522(a)] (as in effect before its repeal by section 807(a)(50) of the Distilled Spirits Tax Revision Act of 1979 [section 807(50) of Pub. L. 96–39]) the first sentence of the eighth paragraph of section 311 of the Tariff Act of 1930 (19 U.S.C. 1311) shall be applied as if such first sentence did not include the phrase 'at an exterior port'.''

CROSS REFERENCES

Section to apply to any foreign trade agreement to extent such agreement assures to United States preferential rate of duty on wheat flour, see section 1352 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1352, 1508, 2703 of this title; title 18 section 2341; title 26 section 5214.

§ 1312. Bonded smelting and refining warehouses

(a) Bond; charges against bond

Any plant engaged in smelting or refining, or both, of metal-bearing materials as defined in this section may, upon the giving of satisfactory bond, be designated a bonded smelting or refining warehouse. Metal-bearing materials may be entered into a bonded smelting or refining warehouse without the payment of duties thereon and there smelted or refined, or both, together with metal-bearing materials of domestic or foreign origin. Upon arrival of imported metal-bearing materials at the warehouse they shall be sampled according to commercial methods and assayed, both under customs supervision. The bond shall be charged with a sum equal in amount to the duties which would be payable on such metal-bearing materials in their condition as imported if entered for consumption, and the bond charge shall be adjusted to reflect changes in the applicable rate of duty occurring while the imported materials are still covered by the bond.

(b) Cancellation of charges against bond

The several charges against such bond may be canceled in whole or in part—

(1) upon the exportation from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c) of this section; except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 3301(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

(A) the total amount of customs duties owed on the materials on importation into the United States, or

(B) the total amount of customs duties paid to the NAFTA country on the product, or

(2) upon payment of duties on the dutiable quantity of metal contained in the imported metal-bearing materials, or

(3) upon the transfer of the bond charges to another bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c) of this section, or

(4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of

smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c) of this section, and upon withdrawal from such other warehouse for exportation or domestic consumption the provisions of this section shall apply; except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 3301(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

(A) the total amount of customs duties owed on the materials on importation into the United States, or

(B) the total amount of customs duties paid to the NAFTA country on the product, or

(5) upon the transfer to another bonded smelting or refining warehouse without physical shipment of metal of bond charges representing a quantity of dutiable metal contained in imported metal-bearing materials less wastage provided for in subsection (c) of this section of the plant of initial treatment of such materials provided there is on hand at the warehouse to which the transfer is made sufficient like metal in any form to satisfy the transferred bond charges.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no charges against such bond may be canceled in whole or part upon an exportation to Canada under paragraph (1) or (4) during the period such Agreement is in operation except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988.

(c) Allowance on bond for wastage of metals

For purposes of paragraphs (1), (3), (4), and (5) of subsection (b) of this section, due allowances shall be made for wastage of metals other than copper, lead, and zinc, as ascertained from time to time by the Secretary of the Treasury.

(d) Credit for exportation of product other than refined metal

Upon the exportation of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being cancelled that would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury; except that in the case of a withdrawal for exportation to a NAFTA country, as defined in section 3301(4) of this title, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 3333(a) of this title, charges against the bond shall be paid before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited (subject to section 1508(b)(2)(B) of this title) in an amount not to exceed the lesser of—

(1) the total amount of customs duties paid or owed on the materials on importation into the United States, or

(2) the total amount of customs duties paid to the NAFTA country on the product.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no bond shall be credited under this subsection with respect to an exportation of a product to Canada during the period such Agreement is in operation except to the extent that the product is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988.

(e) General bond for two or more warehouses

Two or more smelting or refining warehouses may be included under one general bond and the quantities of each kind of metal subject to duty on hand at all of such warehouses may be aggregated to satisfy the bond obligation.

(f) Definitions

For purposes of this section—

(1) the term ''metal-bearing materials'' means metal-bearing ores and other metal-bearing materials provided for in chapter 26 of the Harmonized Tariff Schedule of the United States, metal waste and scrap and unwrought metal to be smelted or refined provided for in chapters 71 through 83 of the Harmonized Tariff Schedule of the United States, and metal compounds to be processed for the recovery of their metal content;

(2) the term ''smelting or refining'' embraces only pyrometallurgical, hydrometallurgical, electrometallurgical, chemical, or other processes—

(A) for the treatment of metal-bearing materials to reduce the metal content thereof to a metallic state in the course of recovering it in forms which if imported would be classifiable in chapters 71 through 83 of the Harmonized Tariff Schedule of the United States as unwrought metal, or in the form of oxides or other compounds which are obtained directly from the treatment of materials provided for in chapter 26 of the Harmonized Tariff Schedule of the United States, and

(B) for the treatment of unwrought metal or metal waste and scrap to remove impurities or undesired components; and

(3) the term ''product of smelting or refining'' means metals or metal-bearing materials

resulting directly from smelting or refining processes, but does not include metal-bearing ores of chapter 26 of the Harmonized Tariff Schedule of the United States.

(g) Supervision and cost of labor under this section

Labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer. The Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

(June 17, 1930, ch. 497, title III, § 312, 46 Stat. 692; Pub. L. 87–456, title III, § 301(b), May 24, 1962, 76 Stat. 75; Pub. L. 100–418, title I, § 1214(h)(1), Aug. 23, 1988, 102 Stat. 1157; Pub. L. 100–449, title II, § 204(c)(2), Sept. 28, 1988, 102 Stat. 1862; Pub. L. 103–182, title II, § 203(b)(2), Dec. 8, 1993, 107 Stat. 2088.)

REFERENCES IN TEXT

Sections 202 and 204 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in subsecs. (b) and (d), are sections 202 and 204 of Pub. L. 100–449, which are set out in a note under section 2112 of this title.

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

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § IV, N, subsection 1, 38 Stat. 198, which was superseded by act Sept. 21, 1922, ch. 356, title III, § 312, 42 Stat. 940, and repealed by section 321 thereof. Section 312 of the act of 1922 was superseded by section 312 of act June 17, 1930, and repealed by section 651(a)(1) of the 1930 act.

Provisions more or less similar were contained in the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 24, 36 Stat. 89, the Dingley Tariff Act of July 24, 1897, ch. 11, § 29, 30 Stat. 210, the McKinley Tariff Act of Oct. 1, 1890, ch. 1244, § 24, 26 Stat. 617, and the Wilson Tariff Act of Aug. 27, 1894, ch. 349, § 21, 28 Stat. 551.

Previous provisions for sampling lead ores were contained in act Mar. 2, 1895, ch. 189, § 1, 28 Stat. 933, prior to repeal by act Sept. 21, 1922, ch. 356, title III, § 321, 42 Stat. 947.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–182, § 203(b)(2)(B), inserted concluding provisions following par. (5).

Subsec. (b)(1). Pub. L. 103–182, § 203(b)(2)(A), struck out ''(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)'' after ''upon the exportation'' and inserted provisions excepting goods withdrawn for exportation to a NAFTA country.

Subsec. (b)(4). Pub. L. 103–182, § 203(b)(2)(A), struck out ''(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)'' after ''warehouse for exportation'' and inserted provisions excepting goods withdrawn for exportation to a NAFTA country.

Subsec. (d). Pub. L. 103–182, § 203(b)(2)(C), struck out ''(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the product is a drawback eligible good under section 204(a) of such Act of 1988)'' after ''Upon the exportation'' and inserted before concluding period provisions excepting goods withdrawn for exportation to a NAFTA country, including pars. (1) and (2), as well as sentence relating to conditions arising should Canada cease to be a NAFTA country.

1988—Subsec. (b)(1), (4). Pub. L. 100–449, § 204(c)(2)(A), inserted ''(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)'' after ''exportation''.

Subsec. (d). Pub. L. 100–449, § 204(c)(2)(B), inserted ''(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the product is a drawback eligible good under section 204(a) of such Act of 1988)'' after ''exportation''.

Subsec. (f)(1). Pub. L. 100–418, § 1214(h)(1)(A), substituted ''chapter 26 of the Harmonized Tariff Schedule of the United States'' for ''schedule 6, part 1, of the Tariff Schedules of the United States'' and ''chapters 71 through 83 of the Harmonized Tariff Schedule of the United States'' for ''schedule 6, part 2, of such schedules'' and struck out the quotation marks surrounding ''metal waste and scrap'' and ''unwrought metal''.

Subsec. (f)(2)(A). Pub. L. 100–418, § 1214(h)(1)(B), substituted ''chapters 71 through 83 of the Harmonized Tariff Schedule of the United States'' for ''part 2 of schedule 6'' and ''chapter 26 of the Harmonized Tariff Schedule of the United States'' for ''part 1 of schedule 6'' and struck out single quotation marks surrounding ''unwrought metal''.

Subsec. (f)(3). Pub. L. 100–418, § 1214(h)(1)(C), substituted ''of chapter 26 of the Harmonized Tariff Schedule of the United States'' for ''as defined in part 1 of schedule 6''.

1962—Pub. L. 87–456 amended section generally, and among other changes, substituted ''metal-bearing minerals'' for ''ores or crude metals'', authorized adjustment of the bond charge to reflect changes in the applicable rate of duty occurring while the imported materials are still covered by the bond, permitted two or more warehouses to be included under one general bond, prohibited allowances for wastage of copper, lead, and zinc, and defined ''metal-bearing materials'', ''smelting or refining'', and ''product of smelting or refining''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 applicable (1) with respect to exports from the United States to Canada on Jan. 1, 1996, if Canada is a NAFTA country on that date and after such date for so long as Canada continues to be a NAFTA country and (2) with respect to exports from the United States to Mexico on Jan. 1, 2001, if Mexico is a NAFTA country on that date and after such date for so long as Mexico continues to be a NAFTA country, see section 213(c) of Pub. L. 103–182, set out as an Effective Date note under section 3331 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 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–456 effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1508 of this title.

§ 1313. Drawback and refunds

(a) Articles made from imported merchandise

Upon the exportation or destruction under customs supervision of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used prior to such exportation or destruction, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation or destruction of flour or by-products produced from imported wheat. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(b) Substitution for drawback purposes

If imported duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported, but only if those articles have not been used prior to such exportation or destruction; but the total amount of drawback allowed upon the exportation or destruction under customs supervision of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

(c) Merchandise not conforming to sample or specifications

Upon the exportation, or destruction under the supervision of the Customs Service, of merchandise—

(1) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation;

(2) upon which the duties have been paid;

(3) which has been entered or withdrawn for consumption; and

(4) which, within 3 years after release from the custody of the Customs Service, has been returned to the custody of the Customs Service for exportation or destruction under the supervision of the Customs Service;

the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.

(d) Flavoring extracts; medicinal or toilet preparations; bottled distilled spirits and wines

Upon the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used.

Upon the exportation of bottled distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid or determined, there shall be allowed, under regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, a drawback equal in amount to the tax found to have been paid or determined on such bottled distilled spirits and wines. In the case of distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits and unless such spirits have been stamped or restamped, and marked, especially for export, under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(e) Imported salt for curing fish

Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted.

(f) Exportation of meats cured with imported salt

Upon the exportation of meats, whether packed or smoked, which have been cured in the United States with imported salt, there shall be refunded, upon satisfactory proof that such meats have been cured with imported salt, the duties paid on the salt so used in curing such exported meats, in amounts not less than $100.

(g) Materials for construction and equipment of vessels built for foreigners

The provisions of this section shall apply to materials imported and used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be articles exported.

(h) Jet aircraft engines

Upon the exportation of jet aircraft engines manufactured or produced abroad that have

been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, there shall be refunded, upon satisfactory proof that such imported merchandise has been so used, the duties which have been paid thereon, in amounts not less than $100.

(i) Time limitation on exportation

No drawback shall be allowed under the provisions of this section unless the completed article is exported within five years after importation of the imported merchandise.

(j) Unused merchandise drawback

(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

(A) is, before the close of the 3-year period beginning on the date of importation—

(i) exported, or

(ii) destroyed under customs supervision; and

(B) is not used within the United States before such exportation or destruction;

then upon such exportation or destruction 99 percent of the amount of each duty, tax, or fee so paid shall be refunded as drawback. The exporter (or destroyer) has the right to claim drawback under this paragraph, but may endorse such right to the importer or any intermediate party.

(2) Subject to paragraph (4), if there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic), that—

(A) is commercially interchangeable with such imported merchandise;

(B) is, before the close of the 3-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under customs supervision; and

(C) before such exportation or destruction—

(i) is not used within the United States, and

(ii) is in the possession of, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback under this paragraph, if that party—

(I) is the importer of the imported merchandise, or

(II) received from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the party the imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise (and any such transferred merchandise, regardless of its origin, will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise);

then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

(3) The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on—

(A) the imported merchandise itself in cases to which paragraph (1) applies, or

(B) the commercially interchangeable merchandise in cases to which paragraph (2) applies,

shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

(4) Effective upon the entry into force of the North American Free Trade Agreement, the exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act [19 U.S.C. 3301(4)], of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (8) of section 203(a) of that Act, shall not constitute an exportation for purposes of paragraph (2) [19 U.S.C. 3333(a)].

(k) Use of domestic merchandise acquired in exchange for imported merchandise of same kind and quality

For purposes of subsections (a) and (b) of this section, the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality shall be treated as the use of such imported merchandise if no certificate of delivery is issued with respect to such imported merchandise.

***(l)* Regulations**

Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, the authority for the electronic submission of drawback entries and the designation of the person to whom any refund or payment of drawback shall be made.

(m) Source of payment

Any drawback of duties that may be authorized under the provisions of this chapter shall be paid from the customs receipts of Puerto Rico, if the duties were originally paid into the Treasury of Puerto Rico.

(n) Refunds, waivers, or reductions under North American Free Trade Agreement Implementation Act

(1) For purposes of this subsection and subsection (*o*) of this section—

(A) the term ''NAFTA Act'' means the North American Free Trade Agreement Implementation Act [19 U.S.C. 3301 et seq.];

(B) the terms ''NAFTA country'' and ''good subject to NAFTA drawback'' have the same

respective meanings that are given such terms in sections 2(4) and 203(a) of the NAFTA Act [19 U.S.C. 3301(4), 3333(a)]; and

(C) a refund, waiver, or reduction of duty under paragraph (2) of this subsection or paragraph (1) of subsection (*o*) of this section is subject to section 1508(b)(2)(B) of this title.

(2) For purposes of subsections (a), (b), (f), (h), (p), and (q) of this section, if an article that is exported to a NAFTA country is a good subject to NAFTA drawback, no customs duties on the good may be refunded, waived, or reduced in an amount that exceeds the lesser of—

(A) the total amount of customs duties paid or owed on the good on importation into the United States, or

(B) the total amount of customs duties paid on the good to the NAFTA country.

(3) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsections (a), (b), (f), (h), (j)(2), and (q) of this section, the shipment to Canada during the period such Agreement is in operation of an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988 does not constitute an exportation.

(*o*) Vessels built for account of resident of NAFTA country

(1) For purposes of subsection (g) of this section, if—

(A) a vessel is built for the account and ownership of a resident of a NAFTA country or the government of a NAFTA country, and

(B) imported materials that are used in the construction and equipment of the vessel are goods subject to NAFTA drawback,

the amount of customs duties refunded, waived, or reduced on such materials may not exceed the lesser of the total amount of customs duties paid or owed on the materials on importation into the United States or the total amount of customs duties paid on the vessel to the NAFTA country.

(2) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsection (g) of this section, vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988.

(p) Substitution of finished petroleum derivatives

(1) In general

Notwithstanding any other provision of this section, if—

(A) an article (hereafter referred to in this subsection as the ''exported article'') of the same kind and quality as a qualified article is exported;

(B) the requirements set forth in paragraph (2) are met; and

(C) a drawback claim is filed regarding the exported article;

the amount of the duties paid on, or attributable to, such qualified article shall be refunded as drawback to the drawback claimant.

(2) Requirements

The requirements referred to in paragraph (1) are as follows:

(A) The exporter of the exported article—

(i) manufactured or produced the qualified article in a quantity equal to or greater than the quantity of the exported article,

(ii) purchased or exchanged, directly or indirectly, the qualified article from a manufacturer or producer described in subsection (a) or (b) of this section in a quantity equal to or greater than the quantity of the exported article,

(iii) imported the qualified article in a quantity equal to or greater than the quantity of the exported article, or

(iv) purchased or exchanged, directly or indirectly, an imported qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.

(B) In the case of the requirement described in subparagraph (A)(ii), the manufacturer or producer produced the qualified article in a quantity equal to or greater than the quantity of the exported article.

(C) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the exported article is exported during the period that the qualified article described in subparagraph (A)(i) or (A)(ii) (whichever is applicable) is manufactured or produced, or within 180 days after the close of such period.

(D) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the specific petroleum refinery or production facility which made the qualified article concerned is identified.

(E) In the case of the requirement of subparagraph (A)(iii) or (A)(iv), the exported article is exported within 180 days after the date of entry of an imported qualified article described in subparagraph (A)(iii) or (A)(iv) (whichever is applicable).

(F) Except as otherwise specifically provided in this subsection, the drawback claimant complies with all requirements of this section, including providing certificates which establish the drawback eligibility of articles for which drawback is claimed.

(G) The manufacturer, producer, importer, exporter, and drawback claimant of the qualified article and the exported article maintain all records required by regulation.

(3) "Qualified article" defined, etc.

For purposes of this subsection—

(A) The term ''qualified article'' means an article—

(i) described in—

(I) headings 2707, 2708, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902 of the Har-

monized Tariff Schedule of the United States, or

(II) headings 3901 through 3914 of such Schedule (as such headings apply to liquids, pastes, powders, granules, and flakes), and

(ii) which is—

(I) manufactured or produced as described in subsection (a) or (b) of this section from crude petroleum or a petroleum derivative, or

(II) imported duty-paid.

(B) An exported article is of the same kind and quality as the qualified article for which it is substituted under this subsection if it is a product that is commercially interchangeable with or referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article.

(C) The term ''drawback claimant'' means the exporter of the exported article or the refiner, producer, or importer of such article. Any person eligible to file a drawback claim under this subparagraph may designate another person to file such claim.

(4) Limitation on drawback

The amount of drawback payable under this subsection shall not exceed the amount of drawback that would be attributable to the article—

(A) manufactured or produced under subsection (a) or (b) of this section by the manufacturer or producer described in clause (i) or (ii) of paragraph (2)(A), or

(B) imported under clause (iii) or (iv) of paragraph (2)(A).

(q) Packaging material

Packaging material, when used on or for articles or merchandise exported or destroyed under subsection (a), (b), (c), or (j) of this section, shall be eligible under such subsection for refund, as drawback, of 99 percent of any duty, tax, or fee imposed under Federal law on the importation of such material.

(r) Filing drawback claims

(1) A drawback entry and all documents necessary to complete a drawback claim, including those issued by the Customs Service, shall be filed or applied for, as applicable, within 3 years after the date of exportation or destruction of the articles on which drawback is claimed, except that any landing certificate required by regulation shall be filed within the time limit prescribed in such regulation. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that the Customs Service was responsible for the untimely filing.

(2) A drawback entry for refund filed pursuant to any subsection of this section shall be deemed filed pursuant to any other subsection of this section should it be determined that drawback is not allowable under the entry as originally filed but is allowable under such other subsection.

(3)(A) The Customs Service may, notwithstanding the limitation set forth in paragraph (1), extend the time for filing a drawback claim for a period not to exceed 18 months, if—

(i) the claimant establishes to the satisfaction of the Customs Service that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster on or after January 1, 1994; and

(ii) the claimant files a request for such extension with the Customs Service—

(I) within 1 year from the last day of the 3-year period referred to in paragraph (1), or

(II) within 1 year after October 11, 1996,

whichever is later.

(B) If an extension is granted with respect to a request filed under this paragraph, the periods of time for retaining records set forth in subsection (t) of this section and section 1508(c)(3) of this title shall be extended for an additional 18 months or, in a case to which subparagraph (A)(ii) applies, for a period not to exceed 1 year from the date the claim is filed.

(C) For purposes of this paragraph, the term ''major disaster'' has the meaning given that term in section 5122(2) of title 42.

(s) Designation of merchandise by successor

(1) For purposes of subsection (b) of this section, a drawback successor may designate imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured by the drawback successor after the date of succession.

(2) For purposes of subsection (j)(2) of this section, a drawback successor may designate—

(A) imported merchandise which the predecessor, before the date of succession, imported; or

(B) imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise for which the predecessor received, before the date of succession, from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the predecessor such merchandise;

as the basis for drawback on merchandise possessed by the drawback successor after the date of succession.

(3) For purposes of this subsection, the term ''drawback successor'' means an entity to which another entity (in this subsection referred to as the ''predecessor'') has transferred by written agreement, merger, or corporate resolution—

(A) all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(B) the assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(4) No drawback shall be paid under this subsection until either the predecessor or the drawback successor (who shall also certify that it has the predecessor's records) certifies that—

(A) the transferred merchandise was not and will not be claimed by the predecessor, and

(B) the predecessor did not and will not issue any certificate to any other person that would enable that person to claim drawback.

(t) Drawback certificates

Any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this chapter, with the retention period beginning on the date that such certificate is issued.

(u) Eligibility of entered or withdrawn merchandise

Imported merchandise that has not been regularly entered or withdrawn for consumption shall not satisfy any requirement for use, exportation, or destruction under this section.

(v) Multiple drawback claims

Merchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.

(w) Limited applicability for certain agricultural products

(1) In general

No drawback shall be available with respect to an agricultural product subject to the over-quota rate of duty established under a tariff-rate quota, except pursuant to subsection (j)(1) of this section.

(2) Application to tobacco

Notwithstanding paragraph (1), drawback shall also be available pursuant to subsection (a) of this section with respect to any tobacco subject to the over-quota rate of duty established under a tariff-rate quota.

(June 17, 1930, ch. 497, title III, § 313, 46 Stat. 693; May 17, 1932, ch. 190, 47 Stat. 158; June 26, 1936, ch. 830, title IV, §§ 402, 403, 49 Stat. 1960; Aug. 8, 1951, ch. 297, 65 Stat. 175; Aug. 8, 1953, ch. 397, § 12, 67 Stat. 515; Aug. 6, 1956, ch. 1021, § 2, 70 Stat. 1076; Pub. L. 85–673, § 1, Aug. 18, 1958, 72 Stat. 624; Pub. L. 90–630, § 2(b), Oct. 22, 1968, 82 Stat. 1328; Pub. L. 91–692, § 3(a), Jan. 12, 1971, 84 Stat. 2076; Pub. L. 96–609, title II, § 201(a), Dec. 28, 1980, 94 Stat. 3560; Pub. L. 98–573, title II, § 202, Oct. 30, 1984, 98 Stat. 2973; Pub. L. 99–514, title XVIII, § 1888(2), Oct. 22, 1986, 100 Stat. 2924; Pub. L. 100–449, title II, § 204(c)(3), Sept. 28, 1988, 102 Stat. 1862; Pub. L. 101–382, title I, § 134(a)(1), (2), title III, § 484A(a), Aug. 20, 1990, 104 Stat. 649, 707; Pub. L. 103–182, title II, § 203(b)(3), (c), title VI, § 632(a), Dec. 8, 1993, 107 Stat. 2089, 2092, 2192; Pub. L. 103–465, title IV, §§ 404(e)(5)(A), 422(d), Dec. 8, 1994, 108 Stat. 4961, 4965; Pub. L. 104–295, §§ 7, 10, 21(e)(4), Oct. 11, 1996, 110 Stat. 3518, 3519, 3530.)

REFERENCES IN TEXT

The North American Free Trade Agreement Implementation Act, referred to in subsec. (n)(1)(A), is Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

Section 204 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in subsecs. (n)(3) and (*o*)(2), is section 204 of Pub. L. 100–449, which is set out in a note under section 2112 of this title.

The Harmonized Tariff Schedule of the United States, referred to in subsec. (p)(3)(A)(i), (B), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § IV, O, 38 Stat. 200, which was superseded by act Sept. 21, 1922, ch. 356, title III, § 313, 42 Stat. 940, and repealed by section 321 thereof. Section 313 of the 1922 act was superseded by section 313 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Earlier provisions relating to this subject were made by the Tariff Acts of Oct. 1, 1890, ch. 1244, § 25, 26 Stat. 617; Aug. 27, 1894, ch. 349, § 22, 28 Stat. 551; July 24, 1897, ch. 11, § 30, 30 Stat. 211; and Aug. 5, 1909, ch. 6, § 25, 36 Stat. 90, which superseded provisions of a similar nature contained in R.S. §§ 3019, 3020, 3026, as amended by act Mar. 10, 1880, ch. 37, 21 Stat. 67, and said sections 3019, 3020, and 3026, were also repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

The provisions of section IV, O, of the act of 1913, similar to subdivision (g) of this section concerning materials used in the construction and equipment of vessels built for foreign account, superseded a similar provision of act June 26, 1884, ch. 121, § 17, 23 Stat. 57.

The provisions of subsec. (e) of this section concerning imported salt used in curing fish superseded somewhat similar provisions in R.S. § 3022, which was repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

Section 642 of the act of Sept. 21, 1922, also repealed sections 3015 to 3026, inclusive, 3028 to 3047, inclusive, and 3049 to 3057, inclusive of the Revised Statutes, which were concerned with the subject of drawback.

R.S. § 3048, which was not repealed, read as follows: ''So much money as may be necessary for the payment of debentures or drawbacks and allowances which may be authorized and payable, is hereby appropriated for that purpose out of any money in the Treasury, to be expended under the direction of the Secretary of that Department, according to the laws authorizing debentures or drawbacks and allowances. The collectors of the customs shall be the disbursing agents to pay such debentures, drawbacks, and allowances. All debenture certificates issued according to law shall be received in payment of duties at the customhouse where the same have been issued, the laws regulating drawbacks having been complied with.''

Permanent appropriations to pay debentures and other charges arising from duties, drawbacks, bounties, and allowances were also contained in R.S. § 3689, incorporated in section 711 of former Title 31, Money and Finance, prior to repeal effective July 1, 1935, by act June 26, 1934, ch. 756, §§ 1, 2, 48 Stat. 1225.

AMENDMENTS

1996—Subsec. (j)(2). Pub. L. 104–295, § 21(e)(4)(A), realigned margins.

Subsec. (r)(3). Pub. L. 104–295, § 7, added par. (3).

Subsec. (s)(2)(B). Pub. L. 104–295, § 10, substituted ''predecessor'' for ''successor'' in two places.

Subsec. (t). Pub. L. 104–295, § 21(e)(4)(B), made technical amendment to reference in original act which appears as reference to this chapter.

1994—Subsec. (w). Pub. L. 103–465, § 422(d), designated existing provisions as par. (1), inserted heading, and added par. (2).

Pub. L. 103–465, § 404(e)(5)(A), added subsec. (w).

1993—Subsec. (a). Pub. L. 103–182, § 632(a)(1), inserted ''or destruction under customs supervision'' after ''Upon the exportation'', ''provided that those articles have not been used prior to such exportation or destruction,'' after ''use of imported merchandise,'', and ''or destruction'' after ''refunded upon the exportation'', and substituted ''by-products produced from imported wheat'' for ''by-products produced from wheat imported after ninety days after June 17, 1930''.

Subsec. (b). Pub. L. 103–182, § 632(a)(2), substituted ''any other merchandise (whether imported or domestic)'' for ''duty-free or domestic merchandise'', inserted '', or destruction under customs supervision,'' after ''there shall be allowed upon the exportation'', substituted ''production of the exported or destroyed articles'' for ''production of the exported articles'', inserted '', but only if those articles have not been used prior to such exportation or destruction'' after ''merchandise used therein been imported'' and ''or destruction under customs supervision'' after ''but the total amount of drawback allowed upon the exportation''.

Subsec. (c). Pub. L. 103–182, § 632(a)(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from customs custody, unless the Secretary authorizes in writing a longer time, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties.''

Subsec. (j). Pub. L. 103–182, § 203(c)(1), (2), substituted ''Subject to paragraph (4), if'' for ''If'' in par. (2) and added par. (4). See Construction of 1993 Amendment note below.

Pub. L. 103–182, § 632(a)(4), amended subsec. (j) generally, substituting present provisions for provisions which authorized drawbacks for imported merchandise which, upon either exportation or destruction, was in the same condition as when imported.

Subsec. (*l*). Pub. L. 103–182, § 632(a)(5), substituted ''the authority for the electronic submission of drawback entries'' for ''the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 1309(b) of this title shall be filed and completed,''.

Subsecs. (n), (*o*). Pub. L. 103–182, § 203(b)(3), amended subsecs. (n) and (*o*) generally, substituting present provisions for provisions which related to, in subsec. (n), drawback-eligible goods under United States-Canada Free-Trade Agreement Implementation Act of 1988 and, in subsec. (*o*), vessels built for Canadian account or for Government of Canada.

Subsec. (p). Pub. L. 103–182, § 632(a)(6), amended subsec. (p) generally, substituting present provisions for provisions relating to substitution of crude petroleum or petroleum derivatives.

Subsecs. (q) to (v). Pub. L. 103–182, § 632(a)(7), added subsecs. (q) to (v).

1990—Subsec. (n). Pub. L. 101–382, § 134(a)(1), inserted '', except an article'' before ''made from'' and substituted comma for ''of 1988'' before ''does not''.

Subsec. (*o*). Pub. L. 101–382, § 134(a)(2), inserted at end ''This subsection shall apply to vessels delivered to Canadian account or owner, or to the Government of Canada, on and after January 1, 1994 (or, if later, the date proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988).''

Subsec. (p). Pub. L. 101–382, § 484A(a), added subsec. (p).

1988—Subsecs. (n), (*o*). Pub. L. 100–449 added subsecs. (n) and (*o*).

1986—Subsec. (j)(2), (3). Pub. L. 99–514, § 1888(2)(A), redesignated par. (3) as (2) and redesignated par. (4) relating to imported packaging material as (3).

Subsec. (j)(4). Pub. L. 99–514, § 1888(2), redesignated par. (4) relating to imported packaging material as (3) and amended par. (4) relating to the performing of incidental operations generally. Prior to amendment, such par. (4) read as follows: ''The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on the imported merchandise itself, not amounting to manufacture or production for drawback purposes under the preceding provisions of this section, shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B).''

1984—Subsec. (j)(2) to (4). Pub. L. 98–573, § 202(1), redesignated par. (2), relating to the performing of incidental operations, as (4), and inserted after par. (1) new pars. (3) and (4).

Subsecs. (k) to (m). Pub. L. 98–573, § 202(2), (3), added subsec. (k) and redesignated former subsecs. (k) and (*l*) as (*l*) and (m), respectively.

1980—Subsecs. (j) to (*l*). Pub. L. 96–609, § 201(a), added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (*l*), respectively.

1971—Subsecs. (h) to (k). Pub. L. 91–692 added subsec. (h) and redesignated former subsecs. (h) to (j) as (i) to (k), respectively.

1968—Subsec. (d). Pub. L. 90–630 permitted, under Treasury regulations, the drawback of tax with regard to distilled spirits exported as ships' stores where the stamping, restamping, or marking is done after the spirits have been removed from the original bottling plant.

1958—Subsec. (b). Pub. L. 85–673 substituted ''merchandise'' for ''sugar, or metal, or ore containing metal, or flaxseed or linseed, or flaxseed or linseed oil, or printing papers coated or uncoated,'' after ''duty-paid'' and ''allowable had the''.

1956—Subsec. (b). Act Aug. 6, 1956, inserted ''or printing papers, coated or uncoated,'' after ''linseed oil,'' wherever appearing.

1953—Subsec. (b). Act Aug. 8, 1953, § 12(a), extended from one year to three years the period during which substitution for drawback purposes may be made.

Subsec. (c). Act Aug. 8, 1953, § 12(b), extended the period during which the merchandise can be returned to customs custody for exportation from thirty days to ninety days or such longer period as the Secretary of the Treasury may allow; and provided for the refunding of duties in cases where the merchandise upon which the duties have been paid was sent to the consignee without his consent.

Subsec. (h). Act Aug. 8, 1953, § 12(c), substituted reference to ''this section'' for ''this section or of section 152a of this title (relating to drawback on shipments to the Philippine Islands),''; struck out another reference to the Philippine Islands; and substituted ''five years'' for ''three years''.

Subsec. (i). Act Aug. 8, 1953, § 12(c), broadened the authority of the Secretary of the Treasury to make such regulations for the administration of the drawback provisions as may be necessary.

1951—Subsec. (b). Act Aug. 8, 1951, extended the provisions of such subsection to flaxseed and linseed, and flaxseed and linseed oil, and omitted ''(or shipment to the Philippine Islands)'' before ''of any such articles''.

1936—Subsec. (d). Act June 26, 1936, inserted second par.

Change of Name

''Puerto Rico'' substituted in subsec. (j) for ''Porto Rico'' pursuant to act May 17, 1932, which is classified to section 731a of Title 48, Territories and Insular Possessions.

Effective Date of 1994 Amendment

Section 404(e)(5)(B) of Pub. L. 103–465 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on the earlier of the date of entry into force of the WTO Agreement with respect to the United States [Jan. 1, 1995] or January 1, 1995.''

Amendment by section 422(d) of Pub. L. 103–465 effective Sept. 13, 1995, see section 422(e) of Pub. L. 103–465, set out as a note under section 1314i of Title 7, Agriculture.

Effective Date of 1993 Amendment

Amendment by section 203(b)(3) of Pub. L. 103–182 applicable (1) with respect to exports from the United States to Canada on Jan. 1, 1996, if Canada is a NAFTA country on that date and after such date for so long as Canada continues to be a NAFTA country and (2) with respect to exports from the United States to Mexico on

Jan. 1, 2001, if Mexico is a NAFTA country on that date and after such date for so long as Mexico continues to be a NAFTA country, see section 213(c) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

Amendment by section 203(c) 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], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

Section 632(b) of Pub. L. 103–182 provided that: ''Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the amendment made by paragraph (6) of subsection (a) [amending this section] shall apply to—

''(1) claims filed or liquidated on or after January 1, 1988, and

''(2) claims that are unliquidated, under protest, or in litigation on the date of the enactment of this Act [Dec. 8, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 484A(a) of Pub. L. 101–382 applicable to claims filed or liquidated on or after Jan. 1, 1988, and claims that are unliquidated, under protest, or in litigation on Aug. 20, 1990, see section 484A(c) of Pub. L. 101–382, set out as a note under section 1309 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

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.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 201(b) of Pub. L. 96–609 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of the enactment of this Act [Dec. 28, 1980].''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 3(b) of Pub. L. 91–692 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to articles exported on or after the date of the enactment of this Act [Jan. 12, 1971].''

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90–630, see section 4 of Pub. L. 90–630, set out as a note under section 5008 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2 of Pub. L. 85–673 provided that: ''The amendment made by the first section of this Act [amending this section] shall be effective with respect to articles exported on or after the 30th day after the date of the enactment of this Act [Aug. 18, 1958].''

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 203(c) of Pub. L. 103–182 to be made after amendment by section 632(a) of Pub. L. 103–182 is executed, see section 212 of Pub. L. 103–182, set out as a note under section 58c of this title.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Internal Revenue, referred to in this section, is an officer of Department of the Treasury.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1508 of this title; title 7 section 5676.

§ 1313a. Appropriations for refunds, drawbacks, bounties, etc.

There are appropriated such amounts as hereafter may be necessary for refund or payment of custom collections or receipts, and payment of debentures or drawbacks, bounties, and allowances, as authorized by law.

(June 30, 1949, ch. 286, title I, 63 Stat. 360.)

CODIFICATION

Section was not enacted as part of the Tariff Act of 1930 which comprises this chapter.

§ 1314. Repealed. June 25, 1938, ch. 679, § 35, 52 Stat. 1092, eff. July 25, 1938

Section, act June 17, 1930, ch. 497, title III, §314, 46 Stat. 695, related to reimportation of tax-free exports.

§ 1315. Effective date of rates of duty

(a) Articles entered or withdrawn from warehouse for consumption

Except as otherwise specially provided for, the rate or rates of duty imposed by or pursuant to this chapter or any other law on any article entered for consumption or withdrawn from warehouse for consumption shall be the rate or rates in effect when the documents comprising the entry for consumption or withdrawal from warehouse for consumption and any estimated or liquidated duties then required to be paid have been deposited with the Customs Service by written, electronic or such other means as the Secretary by regulation shall prescribe, except that—

(1) any article released under an informal mail entry shall be subject to duty at the rate or rates in effect when the preparation of the entry is completed;

(2) any article which is not subject to a quantitative or tariff-rate quota and which is

covered by an entry for immediate transportation made at the port of original importation under section 1552 of this title, if entered for consumption at the port designated by the consignee, or his agent, in such transportation entry without having been taken into the custody of the appropriate customs officer under section 1490 of this title, shall be subject to the rate or rates in effect when the transportation entry was accepted at the port of original importation; and

(3) any article for which duties may, under section 1505 of this title, be paid at a time later than the time of making entry shall be subject to the rate or rates in effect at the time of entry.

(b) Articles removed from intended place of release

Any article which has been entered for consumption but which, before release from custody of the Customs Service, is removed from the port or other place of intended release because of inaccessibility, overcarriage, strike, act of God, or unforeseen contingency, shall be subject to duty at the rate or rates in effect when the entry for consumption and any required duties were deposited in accordance with subsection (a) of this section, but only if the article is returned to such port or place within ninety days after the date of removal and the identity of the article as that covered by the entry is established in accordance with regulations prescribed by the Secretary of the Treasury.

(c) Quantity of merchandise at time of importation

Insofar as duties are based upon the quantity of any merchandise, such duties shall, except as provided in chapter 98 of the Harmonized Tariff Schedule of the United States and section 1562 of this title (relating respectively to certain beverages and to manipulating warehouses), be levied and collected upon the quantity of such merchandise at the time of its importation.

(d) Effective date of administrative rulings resulting in higher rates

No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the Federal Register of notice of such ruling; but this provision shall not apply with respect to the imposition of antidumping duties, or the imposition of countervailing duties under section 1303 of this title (as in effect on the day before the effective date of title II of the Uruguay Round Agreements Act) or section 1671 of this title. This subsection shall not apply with respect to increases in rates of duty resulting from the enactment of the Harmonized Tariff Schedule of the United States to replace the Tariff Schedules of the United States.

(June 17, 1930, ch. 497, title III, § 315, 46 Stat. 695; June 25, 1938, ch. 679, § 6, 52 Stat. 1081; Aug. 8, 1953, ch. 397, § 3(a), 67 Stat. 508; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 93–618, title III, § 331(c), Jan. 3, 1975, 88 Stat. 2053; Pub. L. 95–410, title I, § 101, title II, § 204, Oct. 3, 1978, 92 Stat. 888, 900; Pub. L. 96–39, title XI, § 1106(e), July 26, 1979, 93 Stat. 312; Pub. L. 100–418, title I, § 1213(c), Aug. 23, 1988, 102 Stat. 1155; Pub. L. 103–182, title VI, § 633, Dec. 8, 1993, 107 Stat. 2198; Pub. L. 103–465, title II, § 261(d)(1)(B)(i), Dec. 8, 1994, 108 Stat. 4909.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States and the Tariff Schedules of the United States, referred to in subsecs. (c) and (d), are not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

For the effective date of title II of the Uruguay Round Agreements Act [Pub. L. 103–465], referred to in subsec. (d), as Jan. 1, 1995, see section 291 of Pub. L. 103–465, set out as an Effective Date of 1994 Amendment note under section 1671 of this title.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–465 inserted ''(as in effect on the day before the effective date of title II of the Uruguay Round Agreements Act) or section 1671 of this title'' after ''section 1303 of this title''.

1993—Subsec. (a). Pub. L. 103–182, § 633(1), substituted ''Customs Service by written, electronic or such other means as the Secretary by regulation shall prescribe,'' for ''appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury,'' in introductory provisions.

Subsec. (b). Pub. L. 103–182, § 633(2), substituted ''custody of the Customs Service'' for ''customs custody''.

Subsec. (c). Pub. L. 103–182, § 633(3), substituted ''chapter 98 of the Harmonized Tariff Schedule of the United States'' for ''paragraph 813''.

1988—Subsec. (d). Pub. L. 100–418 inserted at end ''This subsection shall not apply with respect to increases in rates of duty resulting from the enactment of the Harmonized Tariff Schedule of the United States to replace the Tariff Schedules of the United States.''

1979—Subsec. (d). Pub. L. 96–39 amended directory language of Pub. L. 93–618, § 331(c), to correct a typographical error, and did not involve any change in text. See 1975 Amendment note below.

1978—Subsec. (a)(3). Pub. L. 95–410, § 101, added par. (3).

Subsec. (d). Pub. L. 95–410, § 204, substituted ''publication in the Federal Register'' for ''publication in the weekly Treasury Decisions''.

1975—Subsec. (d). Pub. L. 93–618, as amended by Pub. L. 96–39, inserted ''or the imposition of countervailing duties under section 1303 of this title'' after ''antidumping duties''.

1970—Subsec. (a). Pub. L. 91–271 substituted reference to the appropriate customs officer for reference to the collector.

1953—Act Aug. 8, 1953, amended section generally by dividing section into subsections, and by changing the provisions set out as subsecs. (a) and (b) to clarify such provisions with respect to effective dates of rates of duty.

1938—Act June 25, 1938, amended section generally, among which changes it inserted provisions set out as subsecs. (c) and (d).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 261(d)(2) of title II of Pub. L. 103–465 provided that: ''The amendments made by this subsection [amending this section and sections 1337, 1671, 1677i, 2192, and 2194 of this title and provisions set out as a note under section 1303 of this title] shall take effect on the effective date of this title [Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title].

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or

after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 331(d) of Pub. L. 93–618, as amended by Pub. L. 103–465, title II, § 261(d)(1)(A)(i), Dec. 8, 1994, 108 Stat. 4909, provided that:

''(1) The amendments made by this section [amending this section and sections 1303 and 1516 of this title] shall take effect on the date of the enactment of this Act [Jan. 3, 1975.]

''(2) For purposes of applying the provisions of section 303(a)(4) of the Tariff Act of 1930 [section 1303(a)(4) of this title] (as amended by subsection (a)) with respect to any investigation which was initiated before the date of the enactment of this Act [Jan. 3, 1975] under section 303 of such Act (as in effect before such date), such investigation shall be treated as having been initiated on the day after such date of enactment under section 303(a)(3)(B) of such Act.''

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs officers, referred to in text, are under Department of the Treasury.

§ 1316. Omitted

CODIFICATION

Section, act June 17, 1930, ch. 497, title III, § 316, 46 Stat. 695, prohibiting the construction of this chapter so as to abrogate or affect the treaty between the United States and Cuba concluded on Dec. 11, 1902, was omitted in view of the termination of such treaty on Aug. 21, 1963 (see note below), and section 401 of Pub. L. 87–456, title IV, May 24, 1962, 76 Stat. 78, set out as a note under section 1351 of this title. Section 401(d) of Pub. L. 87–456 declares sections 124 and 125 of this title as inapplicable so long as section 401(a) of Pub. L. 87–456, declaring Cuba as a nation dominated or controlled by the foreign government or foreign organization controlling the world communist movement, applies.

TREATY BETWEEN UNITED STATES AND CUBA

The treaty concluded between the United States and the Republic of Cuba on Dec. 11, 1902, referred to in text, was terminated Aug. 21, 1963, pursuant to notice given by the United States on Aug. 21, 1962. See Bevans, Treaties, and Other International Agreements of the United States of America, 1776 to 1949, vol. VI, page 1106.

§ 1317. Tobacco products; supplies for certain vessels and aircraft

(a) Exportation of tobacco products

The shipment or delivery of manufactured tobacco, snuff, cigars, or cigarettes, for consumption beyond the jurisdiction of the internal-revenue laws of the United States, as defined by section 2197(a) of title 26, shall be deemed exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such articles without payment of duty or internal-revenue tax.

(b) Exportation of supplies for certain vessels and aircraft

The shipment or delivery of any merchandise for use as supplies (including equipment) upon, or in the maintenance or repair of any vessel or aircraft described in subdivision (2) or (3) of section 1309(a) of this title, or for use as ground equipment for any such aircraft, shall be deemed an exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such merchandise without the payment of duty or internal-revenue tax. With respect to merchandise for use as ground equipment, such shipment or delivery shall not be deemed an exportation within the meaning of the internal-revenue laws relating to taxes other than those imposed upon or by reason of importation.

(June 17, 1930, ch. 497, title III, § 317, 46 Stat. 696; June 25, 1938, ch. 679, § 5(b), 52 Stat. 1081; Aug. 8, 1953, ch. 397, § 11(b), 67 Stat. 514.)

REFERENCES IN TEXT

Section 2197(a) of title 26, referred to in subsec. (a), is a reference to section 2197(a) of the Internal Revenue Code of 1939, which was repealed by section 7851 of Title 26, Internal Revenue Code.

AMENDMENTS

1953—Subsec. (b). Act Aug. 8, 1953, extended to foreign vessels the exemption from payment of duty and internal revenue tax theretofore available for supplies used in the maintenance or repair of aircraft; and provided an exemption for ground equipment for foreign-flag aircraft from duties and taxes imposed on, by reason of, importation.

1938—Act June 25, 1938, amended section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

REPEALS

Insofar as subsec. (a) of this section related exclusively to Internal Revenue it was repealed and incorporated as section 2197(b) of the Internal Revenue Code of 1939. See section 4(a) of enacting sections of Internal Revenue Code of 1939. Section 2197(b) of I. R. C. 1939 was replaced by section 5704(b) of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1309 of this title.

§ 1318. Emergencies

Whenever the President shall by proclamation declare an emergency to exist by reason of a state of war, or otherwise, he may authorize the Secretary of the Treasury to extend during the continuance of such emergency the time herein prescribed for the performance of any act, and may authorize the Secretary of the Treasury to permit, under such regulations as the Secretary of the Treasury may prescribe, the importation free of duty of food, clothing, and medical, surgical, and other supplies for use in emergency relief work. The Secretary of the Treasury shall report to the Congress any action taken under the provisions of this section.

(June 17, 1930, ch. 497, title III, § 318, 46 Stat. 696.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 622, 42 Stat. 988, which was superseded by section 318 of the Tariff Act of 1930, comprising this section, and repealed by section 651(a)(1) of said 1930 Act.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury under this section with respect to functions transferred to Secretary of Commerce in sections 1303 and 1671 et seq. of this title by section 5(a)(1)(C) of Reorg. Plan No. 3 of 1979 transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(E), 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, to be exercised in consultation with Secretary of the Treasury.

PROC. NO. 2948. MERCHANDISE IN GENERAL-ORDER AND BONDED WAREHOUSES

Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41, provided:

[Whereas clauses omitted]

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the authority vested in me by the foregoing provision of section 318 of the Tariff Act of 1930 [this section] do hereby authorize the Secretary of the Treasury, until the termination of the national emergency proclaimed on December 16, 1950, or until it shall be determined by the President and declared by his proclamation that such action is no longer necessary, whichever is earlier:

(1) To extend the one-year period prescribed in section 491, *supra*, as amended [section 1491 of this title], for not more than one year from and after the expiration of such one-year period in any case in which such period has already expired or shall hereafter expire during the continuance of the said national emergency;

(2) To extend the three-year period prescribed in sections 557 and 559, *supra*, as amended [sections 1557 and 1559 of this title], for not more than one year from and after the expiration of such three-year period in any case in which such period has already expired or shall hereafter expire during the continuance of the said national emergency; and

(3) To extend further the one-year period prescribed in section 491, *supra*, as amended [section 1491 of this title], and the three-year period prescribed in sections 557 and 559, *supra*, as amended [sections 1557 and 1559 of this title], for additional periods of not more than one year each from and after the expiration of the immediately preceding extension in any case in which such extension shall expire during the continuance of the said national emergency:

Provided, however, that in each and every case under numbered paragraphs (1), (2), and (3) above in which the merchandise is charged against an entry bond the Secretary of the Treasury shall require that the principal on such bond, in order to obtain the benefit of any extension which may be granted under the authority of this proclamation, shall furnish to the collector of customs at the port where the bond is on file either the agreement of the sureties on the bond to remain bound under the terms and conditions of the bond to the same extent as if no extension had been granted, or an additional bond with acceptable sureties to cover the period of extension; and that, in each and every case in which the merchandise remains charged against a carrier's bond the Secretary of the Treasury shall require that the principal on such bond shall agree to the extension and shall furnish to the collector of customs at the port where the charge was made the agreement of the sureties on the bond to remain bound under the terms and conditions of the bond to the same extent as if no extension had been granted; and

Provided further, that as a condition to the granting of any extension or further extension of the periods prescribed in sections 491, 557, and 559 of the Tariff Act of 1930, *supra*, as amended [sections 1491, 1557 and 1559 of this title], under numbered paragraphs (1), (2), or (3) above the Secretary of the Treasury may require that there shall be furnished to the collector of customs in the district in which the warehouse is located, in connection with the application for such extension, the consent of the warehouse proprietor to such extension or, in the alternative, proof of payment of all charges or amounts due or owing to such warehouse proprietor for the storage or handling of the imported merchandise; and

Provided further, that the extensions of one year authorized by this proclamation shall not apply to any case in which the period sought to be extended expired prior to December 16, 1950, or in which the merchandise in question has been sold by the Government as abandoned.

This proclamation supersedes Proclamation No. 2599 of November 4, 1943, as amended by Proclamation No. 2712 of December 3, 1946, but it shall not be construed (1) as invalidating any action heretofore taken under the provisions of the said Proclamation No. 2599 or under the provisions of that proclamation as amended by the said Proclamation No. 2712, or (2) as imposing the conditions set forth in the second proviso above upon the granting of extensions for which applications are pending on the date of this proclamation.

HARRY S TRUMAN.

§ 1319. Duty on coffee imported into Puerto Rico

The Legislature of Puerto Rico is empowered to impose tariff duties upon coffee imported into Puerto Rico, including coffee grown in a foreign country coming into Puerto Rico from the United States. Such duties shall be collected and accounted for as now provided by law in the case of duties collected in Puerto Rico.

(June 17, 1930, ch. 497, title III, § 319, 46 Stat. 696; May 17, 1932, ch. 190, 47 Stat. 158.)

CHANGE OF NAME

''Puerto Rico'' substituted in text for ''Porto Rico'' pursuant to act May 17, 1932, which is classified to section 731a of Title 48, Territories and Insular Possessions.

ACTIONS UNDER CARIBBEAN BASIN ECONOMIC RECOVERY PROGRAM NOT TO AFFECT PUERTO RICAN DUTIES ON IMPORTED COFFEE

Pub. L. 98–67, title II, § 214(e), Aug. 5, 1983, 97 Stat. 393, provided that: ''No action pursuant to this title [19

U.S.C. 2701 et seq.] may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. 1319) on coffee imported into Puerto Rico.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2463 of this title.

§ 1319a. Duty on coffee; ratification of duties imposed by Legislature of Puerto Rico

The taxes and duties imposed by the Legislature of Puerto Rico by Joint Resolution Numbered 59 approved by the Governor of Puerto Rico May 5, 1930, and by Act Numbered 77 approved by the Governor of Puerto Rico May 5, 1931, as amended by Act Numbered 7 approved by the Governor April 9, 1934, including therein such taxes and duties on coffee brought into Puerto Rico from any State or Territory or district or possession of the United States, or other place subject to the jurisdiction of the United States, are legalized and ratified, and the collection of all such taxes and duties made under or by authority of either of said acts of the Puerto Rican Legislature, including such taxes and duties on coffee brought into Puerto Rico from any State, Territory, district, or possession of the United States, or other place subject to the jurisdiction of the United States, is legalized, ratified, and confirmed as fully to all intents and purposes as if the same had, by prior Act of Congress, been specifically authorized and directed.

(June 18, 1934, ch. 604, 48 Stat. 1017; Aug. 20, 1935, ch. 578, 49 Stat. 665.)

CODIFICATION

Section was not enacted as part of Tariff Act of 1930 which constitutes this chapter.

AMENDMENTS

1935—Act Aug. 20, 1935, amended section generally.

§ 1320. Repealed. Aug. 8, 1953, ch. 397, § 6(b), 67 Stat. 510

Section, act June 17, 1930, ch. 497, title III, § 320, 46 Stat. 696, related to reciprocal agreements covering advertising matter.

EFFECTIVE DATE OF REPEAL; SAVINGS PROVISION

Repeal effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

§ 1321. Administrative exemptions

(a) Disregard of minor discrepancies in collection of taxes and duties; admission of articles free of duty or tax; limit on amount of exemption

The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is authorized, under such regulations as he shall prescribe, to—

(1) disregard a difference of an amount specified by the Secretary by regulation, but not less than $20, between the total estimated duties, fees, and taxes deposited, or the total duties, fees, and taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties, fees, taxes, and interest actually accruing thereon;

(2) admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty shall not exceed an amount specified by the Secretary by regulation, but not less than—

(A) $100 in the case of articles sent as bona fide gifts from persons in foreign countries to persons in the United States ($200 in the case of articles sent as bona fide gifts from persons in the Virgin Islands, Guam, and American Samoa), or

(B) $200 in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States who are not entitled to any exemption from duty under subheading 9804.00.30, 9804.00.65, or 9804.00.70 of title I of this Act,[1] or

(C) $200 in any other case.

The privilege of this subdivision (2) shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision (2); and

(3) waive the collection of duties, fees, taxes, and interest due on entered merchandise when such duties, fees, taxes, or interest are less than $20 or such greater amount as may be specified by the Secretary by regulation.

(b) Reduction or modification of exemption

The Secretary of the Treasury is authorized by regulations to prescribe exceptions to any exemption provided for in subsection (a) of this section whenever he finds that such action is consistent with the purpose of subsection (a) of this section or is necessary for any reason to protect the revenue or to prevent unlawful importations.

(June 17, 1930, ch. 497, title III, § 321, as added June 25, 1938, ch. 679, § 7, 52 Stat. 1081; amended Aug. 8, 1953, ch. 397, § 13, 67 Stat. 515; Pub. L. 87–261, § 2(c), Sept. 21, 1961, 75 Stat. 541; Pub. L. 89–62, § 2, June 30, 1965, 79 Stat. 208; Pub. L. 93–618, title VI, § 610(a), Jan. 3, 1975, 88 Stat. 2075; Pub. L. 95–410, title II, § 205, Oct. 3, 1978, 92 Stat. 900; Pub. L. 97–446, title I, § 115(b), Jan. 12, 1983, 96 Stat. 2335; Pub. L. 100–418, title I, § 1214(h)(2), Aug. 23, 1988, 102 Stat. 1157; Pub. L. 103–182, title VI, § 651, Dec. 8, 1993, 107 Stat. 2209; Pub. L. 104–295, § 3(a)(8), (12), Oct. 11, 1996, 110 Stat. 3516.)

REFERENCES IN TEXT

Title I of this Act, referred to in subsec. (a)(2)(B), means title I of act June 17, 1930, as amended, which contained the Tariff Schedules of the United States and which formerly were set out under section 1202 of this title. The Tariff Schedules of the United States were replaced by the Harmonized Tariff Schedule of the United States. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–295, § 3(a)(12)(A), substituted ''duties, fees, taxes, and interest actually accruing'' for ''duties, fees, and taxes actually accruing''.

Subsec. (a)(2)(B). Pub. L. 104–295, § 3(a)(8), inserted '', 9804.00.65,'' after ''9804.00.30''.

[1] See References in Text note below.

Subsec. (a)(3). Pub. L. 104–295, § 3(a)(12)(B), substituted ''taxes, and interest'' for ''and taxes'' and ''taxes, or interest'' for ''or taxes''.

1993—Subsec. (a)(1). Pub. L. 103–182, § 651(1), substituted ''of an amount specified by the Secretary by regulation, but not less than $20,'' for ''of less than $10'', inserted '', fees,'' after ''duties'' wherever appearing, and struck out ''and'' at end.

Subsec. (a)(2). Pub. L. 103–182, § 651(2), substituted ''shall not exceed an amount specified by the Secretary by regulation, but not less than—'' for ''shall not exceed—'' in introductory provisions, substituted ''$100'' and ''$200'' for ''$50'' and ''$100'', respectively, in subpar. (A), substituted ''$200'' for ''$25'' in subpar. (B), substituted ''$200'' for ''$5'' in subpar. (C), and substituted ''; and'' for period at end.

Subsec. (a)(3). Pub. L. 103–182, § 651(3), added par. (3).

Subsec. (b). Pub. L. 103–182, § 651(4), struck out ''to diminish any dollar amount specified in subsection (a) of this section and'' after ''authorized by regulations'' and substituted ''subsection (a) of this section'' for ''such subsection'' in two places.

1988—Subsec. (a)(2)(B). Pub. L. 100–418 substituted ''subheading 9804.00.30 or 9804.00.70'' for ''item 812.25 or 813.31''.

1983—Subsec. (a)(2)(A). Pub. L. 97–446 substituted ''$50'' for ''$25'' and ''$100'' for ''$40''.

1978—Subsec. (a)(1). Pub. L. 95–410, § 205(a), substituted ''$10'' for ''$3'' and ''duties and taxes'' for ''duties or taxes'' in three places.

Subsec. (a)(2). Pub. L. 95–410, § 205(b)(1)–(3), substituted in: subpar. (A), ''$25'' and ''$40'' for ''$10'' and ''$20''; subpar. (B), ''$25'' for ''$10''; and subpar. (C), ''$5'' for ''$1''.

1975—Subsec. (a)(2)(A). Pub. L. 93–618 inserted ''($20, in the case of articles sent as bona fide gifts from persons in the Virgin Islands, Guam, and American Samoa)'' after ''United States''.

1965—Subsec. (a)(2). Pub. L. 89–62 substituted ''fair retail value in the country of shipment'' for ''value'' in the material preceding subpar. (A) and ''item 812.25 or 813.31 of section 1202 of this title'' for ''paragraph 1798(b)(2) or (c)(2) of section 1201 of this title'' in subpar. (B).

1961—Subsec. (a). Pub. L. 87–261 inserted ''(b)(2) or'' after ''paragraph 1798''.

1953—Act Aug. 8, 1953, (1) divided section into subsections; (2) increased from $1 to $3 the difference between deposited or assessed duties and actual duties which may be disregarded by the collector; (3) permitted free entry of bona fide gifts from persons outside the United States up to $10; (4) allowed persons to bring with them articles up to $10 in value for their personal use; (5) continued to allow free entry up to $1 in other cases; and (6) enabled the Secretary of the Treasury to reduce these amounts if he found such action necessary to protect the revenue.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 3(b) of Pub. L. 104–295 provided that: ''The amendments made by this section [amending this section and sections 1401, 1431, 1504, 1508, 1509, 1515, 1592, and 1631 of this title and repealing section 1707 of this title] shall apply as of December 8, 1993.''

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1983 AMENDMENT

Section 115(c) of Pub. L. 97–446 provided that: ''The amendments made by this section [amending the Tariff Schedules and this section] shall apply with respect to returning residents of the United States who arrive in the United States on or after the 15th day after the date of the enactment of this Act [Jan. 12, 1983].''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 610(b) of Pub. L. 93–618 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after the date of enactment of this Act [Jan. 3, 1975].''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 4 of Pub. L. 89–62 provided in part that: ''The amendments made by section 2 [amending this section] shall apply with respect to articles arriving in the United States on or after October 1, 1965.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 2(d) of Pub. L. 87–261 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and former section 1201 of this title] shall apply with respect to persons arriving in the United States on or after the 30th day after the date of the enactment of this Act [Sept. 21, 1961].''

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

EFFECTIVE DATE

Section effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as an Effective Date of 1938 Amendment note under section 1401 of this title.

§ 1322. International traffic and rescue work; United States-Mexico Boundary Treaty of 1970

(a) Vehicles and other instruments of international traffic except communications satellites

Vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury. The authority delegated to the Secretary by this subsection shall not extend to communications satellites and components and parts thereof.

(b) Rescue and relief equipment; personal property related to use of land under United States-Mexico Boundary Treaty of 1970; forfeit of articles to United States

The Secretary of the Treasury may provide by regulation or instruction for the admission, without entry and without the payment of any duty or tax imposed upon or by reason of importation, of—

(1) aircraft, equipment, supplies, and spare parts for use in searches, rescues, investigations, repairs, and salvage in connection with accidental damage to aircraft;

(2) fire-fighting and rescue and relief equipment and supplies for emergent temporary use in connection with conflagrations;

(3) rescue and relief equipment and supplies for emergent temporary use in connection with floods and other disasters; and

(4) personal property related to the use and enjoyment of a separated tract of land as described in article III of the Treaty To Resolve Pending Boundary Differences and Maintain

the Rio Grande and Colorado Rivers as the International Boundary between the United States of America and the United Mexican States signed on November 23, 1970.

Any articles admitted under the authority of this subsection and used otherwise than for a purpose herein expressed, or not exported in such time and manner as may be prescribed in the regulations or instructions herein authorized, shall be forfeited to the United States.

(June 17, 1930, ch. 497, title III, § 322, as added Aug. 8, 1953, ch. 397, § 14, 67 Stat. 516; amended Pub. L. 92–549, title I, § 107, Oct. 25, 1972, 86 Stat. 1162; Pub. L. 98–573, title I, §§ 124(c), 127(b), Oct. 30, 1984, 98 Stat. 2959.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (a), are classified generally to this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–573, § 127(b), substituted ''excepted'' for ''granted the customary exceptions''.

Pub. L. 98–573, § 124(c), inserted ''The authority delegated to the Secretary by this subsection shall not extend to communications satellites and components and parts thereof.''

1972—Pub. L. 92–549, § 107(a), inserted ''United States-Mexico Boundary Treaty of 1970'' in section catchline.

Subsec. (b)(4). Pub. L. 92–549, § 107(b), added cl. (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 195(a), (b), (d) of Pub. L. 98–573 provided that:

''(a) Except as provided in section 126 and in subsections (b) and (c), the amendments made by subtitles B, C, and D [amending this section and sections 1202 and 1504 of this title] shall apply with respect to articles entered on or after the 15th day after the date of the enactment of this Act [Oct. 30, 1984].

''(b)(1) The amendment made by sections 117 and 124 [amending this section] shall apply with respect to articles entered on or after January 1, 1985.

''(2) The amendments made by section 127 [amending this section] shall apply with respect to articles entered on or after a date to be proclaimed by the President which shall be consonant with the entering into force for the United States of the Customs Convention on Containers, 1972.

''(d) For purposes of this section—

''(1) The term 'entered' means entered, or withdrawn from warehouse for consumption in the customs territory of the United States.

''(2) The term 'entry' includes any withdrawal from warehouse.''

EFFECTIVE DATE

Section effective on and after thirtieth day following Aug. 8, 1953, see note set out under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 46 App. section 883.

§ 1323. Conservation of fishery resources

Upon the convocation of a conference on the use or conservation of international fishery resources, the President shall, by all appropriate means at his disposal, seek to persuade countries whose domestic fishing practices or policies affect such resources, to engage in negotiations in good faith relating to the use or conservation of such resources. If, after such efforts by the President and by other countries which have agreed to engage in such negotiations, any other country whose conservation practices or policies affect the interests of the United States and such other countries, has in the judgment of the President, failed or refused to engage in such negotiations in good faith, the President may, if he is satisfied that such action is likely to be effective in inducing such country to engage in such negotiations in good faith, increase the rate of duty on any fish (in any form) which is the product of such country, for such time as he deems necessary, to a rate not more than 50 percent above the rate existing on July 1, 1934.

(June 17, 1930, ch. 497, title III, § 323, as added Pub. L. 87–794, title II, § 257(i), Oct. 11, 1962, 76 Stat. 883.)

PART II—UNITED STATES INTERNATIONAL TRADE COMMISSION

§ 1330. Organization of Commission

(a) Membership

The United States International Trade Commission (referred to in this subtitle as the ''Commission'') shall be composed of six commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. No person shall be eligible for appointment as a commissioner unless he is a citizen of the United States, and, in the judgment of the President, is possessed of qualifications requisite for developing expert knowledge of international trade problems and efficiency in administering the duties and functions of the Commission. A person who has served as a commissioner for more than 5 years (excluding service as a commissioner before January 3, 1975) shall not be eligible for reappointment as a commissioner. Not more than three of the commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable.

(b) Terms of office

The terms of office of the commissioners holding office on January 3, 1975, which (but for this sentence) would expire on June 16, 1975, June 16, 1976, June 16, 1977, June 16, 1978, June 16, 1979, and June 16, 1980, shall expire on December 16, 1976, June 16, 1978, December 16, 1979, June 16, 1981, December 16, 1982, and June 16, 1984, respectively. The term of office of each commissioner appointed after such date shall expire 9 years from the date of the expiration of the term for which his predecessor was appointed, except that—

(1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and

(2) any commissioner may continue to serve as a commissioner after an expiration of his term of office until his successor is appointed and qualified.

(c) Chairman and vice chairman; quorum

(1) The chairman and the vice chairman of the Commission shall be designated by the President from among the members of the Commission not ineligible, under paragraph (3), for des-

ignation. The President shall notify the Congress of his designations under this paragraph. If, as of the date on which a term begins under paragraph (2), the President has not designated the chairman of the Commission for such term, the Commissioner[1] who, as of such date—

(A) is a member of a different political party than the chairman of the Commission for the immediately preceding term, and

(B) has the longest period of continuous service as a commissioner,

shall serve as chairman of the Commission for the portion of such term preceding the date on which an individual designated by the President takes office as chairman.

(2) After June 16, 1978, the terms of office for the chairman and vice chairman of the Commission shall be as follows:

(A) The first term of office occurring after such date shall begin on June 17, 1978, and end at the close of June 16, 1980.

(B) Each term of office thereafter shall begin on the day after the closing date of the immediately preceding term of office and end at the close of the 2-year period beginning on such day.

(3)(A) The President may not designate as the chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member, or who has less than 1 year of continuous service as a commissioner as of the date such designation is being made.

(B) The President may not designate as the vice chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman for that term is a member.

(C) If any commissioner does not complete a term as chairman or vice chairman by reason of death, resignation, removal from office as a commissioner, or expiration of his term of office as a commissioner, the President shall designate as the chairman or vice chairman, as the case may be, for the remainder of such term a commissioner who is a member of the same political party. Designation of a chairman under this subparagraph may be made without regard to the 1-year continuous service requirement under subparagraph (A).

(4) The vice chairman shall act as chairman in case of the absence or disability of the chairman. During any period in which there is no chairman or vice chairman, the commissioner having the longest period of continuous service as a commissioner shall act as chairman.

(5) No commissioner shall actively engage in any business, vocation, or employment other than that of serving as a commissioner.

(6) A majority of the commissioners in office shall constitute a quorum, but the Commission may function notwithstanding vacancies.

(d) Effect of divided vote in certain cases

(1) In a proceeding in which the Commission is required to determine—

(A) under section 2252 of this title, whether increased imports of an article are a substantial cause of serious injury, or the threat thereof, as described in subsection (b)(1) of that section (hereafter in this subsection referred to as ''serious injury''), or

(B) under section 2436 of this title, whether market disruption exists.

and the commissioners voting are equally divided with respect to such determination, then the determination, agreed upon by either group of commissioners may be considered by the President as the determination of the Commission.

(2) If under section 2252(b) or 2436 of this title there is an affirmative determination of the Commission, or a determination of the Commission which the President may consider an affirmative determination under paragraph (1), that serious injury or market disruption exists, respectively, and a majority of the commissioners voting are unable to agree on a finding or recommendation described in section 2252(e)(1) of this title or the finding described in section 2436(a)(3) of this title, as the case may be (hereafter in this subsection referred to as a ''remedy finding''), then—

(A) if a plurality of not less than three commissioners so voting agree on a remedy finding, such remedy finding shall, for purposes of section 2253 of this title, be treated as the remedy finding of the Commission, or

(B) if two groups, both of which include not less than 3 commissioners, each agree upon a remedy finding and the President reports under section 2254(a) of this title that—

(i) he is taking the action agreed upon by one such group, then the remedy finding agreed upon by the other group shall, for purposes of section 2253 of this title, be treated as the remedy finding of the Commission, or

(ii) he is taking action which differs from the action agreed upon by both such groups, or that he will not take any action, then the remedy finding agreed upon by either such group may be considered by the Congress as the remedy finding of the Commission and shall, for purposes of section 2253 of this title, be treated as the remedy finding of the Commission.

(3) In any proceeding to which paragraph (1) applies in which the commissioners voting are equally divided on a determination that serious injury exists, or that market disruption exists, the Commission shall report to the President the determination of each group of commissioners. In any proceeding to which paragraph (2) applies, the Commission shall report to the President the remedy finding of each group of commissioners voting.

(4) In a case to which paragraph (2)(B)(ii) applies, for purposes of section 2253(a) of this title, notwithstanding section 2192(a)(1)(A) of this title, the second blank space in the joint resolution described in such section 2192(a)(1)(A) of this title shall be filled with the appropriate date and the following: ''The action which shall take effect under section 203(a) of the Trade Act of 1974 is the finding or recommendation agreed upon by Commissioners _____, _____, and _____.'' The three blank

[1] So in original. Probably should not be capitalized.

spaces shall be filled with the names of the appropriate Commissioners.

(5) Whenever, in any case in which the Commission is authorized to make an investigation upon its own motion, upon complaint, or upon application of any interested party, one-half of the number of commissioners voting agree that the investigation should be made, such investigation shall thereupon be carried out in accordance with the statutory authority covering the matter in question. Whenever the Commission is authorized to hold hearings in the course of any investigation and one-half of the number of commissioners voting agree that hearings should be held, such hearings shall thereupon be held in accordance with the statutory authority covering the matter in question.

(e) Authorization of appropriations

(1) For the fiscal year beginning October 1, 1976, and each fiscal year thereafter, there are authorized to be appropriated to the Commission only such sums as may hereafter be provided by law.

(2)(A) There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) not to exceed the following:

(i) $41,170,000 for fiscal year 1991.

(ii) $44,052,000 for fiscal year 1992.

(B) Not to exceed $2,500 of the amount authorized to be appropriated for any fiscal year under subparagraph (A) may be used, subject to the approval of the Chairman of the Commission, for reception and entertainment expenses.

(C) No part of any sum that is appropriated under the authority of subparagraph (A) may be used by the Commission in the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.

(3) There are authorized to be appropriated to the Commission for each fiscal year after September 30, 1977, in addition to any other amount authorized to be appropriated for such fiscal year, such sums as may be necessary for increases authorized by law in salary, pay, retirement, and other employee benefits.

(f) Treatment of Commission under Paperwork Reduction Act

The Commission shall be considered to be an independent regulatory agency for purposes of chapter 35 of title 44.

(June 17, 1930, ch. 497, title III, § 330, 46 Stat. 696; Aug. 7, 1953, ch. 348, title II, § 201, 67 Stat. 472; Pub. L. 93–618, title I, §§ 172(a), (b), 175(b), Jan. 3, 1975, 88 Stat. 2009–2011; Pub. L. 94–455, title XVIII, § 1801(a), (b), Oct. 4, 1976, 90 Stat. 1762; Pub. L. 95–106, §§ 1, 2(a), Aug. 17, 1977, 91 Stat. 867; Pub. L. 95–430, Oct. 10, 1978, 92 Stat. 1020; Pub. L. 97–456, § 1(a), Jan. 12, 1983, 96 Stat. 2503; Pub. L. 98–573, title II, § 248(c), title VII, § 701, Oct. 30, 1984, 98 Stat. 2998, 3043; Pub. L. 99–272, title XIII, § 13021, Apr. 7, 1986, 100 Stat. 305; Pub. L. 100–203, title IX, § 9502, Dec. 22, 1987, 101 Stat. 1330–380; Pub. L. 100–418, title I, §§ 1401(b)(4), 1611, 1612, Aug. 23, 1988, 102 Stat. 1240, 1262; Pub. L. 100–647, title IX, § 9001(a)(15), Nov. 10, 1988, 102 Stat. 3808; Pub. L. 101–207, § 2, Dec. 7, 1989, 103 Stat. 1833; Pub. L. 101–382, title I, § 101, Aug. 20, 1990, 104 Stat. 633; Pub. L. 102–185, § 1(a)(1), (2), (c)(1), Dec. 4, 1991, 105 Stat. 1280.)

REFERENCES IN TEXT

Section 203(a) of the Trade Act of 1974, referred to in subsec. (d)(4), is classified to section 2253(a) of this title.

CODIFICATION

Provisions of subsec. (c) which prescribed the annual basic compensation of the commissioners were omitted to conform to the provisions of the Executive Schedule. See sections 5314 and 5315 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 8, 1916, ch. 463, § 700, 39 Stat. 795. That section was superseded by section 330 of act June 17, 1930, comprising this section.

AMENDMENTS

1991—Subsec. (c)(1). Pub. L. 102–185, § 1(c)(1), inserted at end ''If, as of the date on which a term begins under paragraph (2), the President has not designated the chairman of the Commission for such term, the Commissioner who, as of such date—

''(A) is a member of a different political party than the chairman of the Commission for the immediately preceding term, and

''(B) has the longest period of continuous service as a commissioner,

shall serve as chairman of the Commission for the portion of such term preceding the date on which an individual designated by the President takes office as chairman.''

Subsec. (c)(3)(A). Pub. L. 102–185, § 1(a)(2)(A), inserted '', or who has less than 1 year of continuous service as a commissioner as of the date such designation is being made'' before the period.

Pub. L. 102–185, § 1(a)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The President may not designate as the chairman of the Commission for any term—

''(i) either of the two commissioners with the shortest period of service on the Commission as of the beginning date of the term of office for which the designation of chairman is to be made; or

''(ii) any commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member.''

Subsec. (c)(3)(C). Pub. L. 102–185, § 1(a)(2)(B), inserted at end ''Designation of a chairman under this subparagraph may be made without regard to the 1-year continuous service requirement under subparagraph (A).''

Pub. L. 102–185, § 1(a)(1)(B), struck out at end ''Designation of a chairman under this subparagraph may be made without regard to the limitation set forth in subparagraph (A)(i).''

1990—Subsec. (e)(2). Pub. L. 101–382 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) for fiscal year 1990 not to exceed $39,943,000; of which not to exceed $2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses. No part of any sum that is appropriated under the authority of this paragraph may be used by the Commission for the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.''

1989—Subsec. (e)(2). Pub. L. 101–207 substituted ''1990'' for ''1988'' and ''$39,943,000'' for ''$35,386,000''.

1988—Subsec. (c)(3)(A)(i). Pub. L. 100–647 substituted ''with the shortest period of service on'' for ''most recently appointed to''.

Pub. L. 100–418, §1611, which directed that subsec. (c)(A)(i) of this section be amended by substituting ''with the shortest period of service on'' for ''most recently appointed to'', was probably intended to be an amendment to subsec. (c)(3)(A)(i). See amendment by Pub. L. 100–647 above.

Subsec. (d)(1)(A). Pub. L. 100–418, §1401(b)(4)(A), substituted ''2252'' for ''2251''.

Subsec. (d)(2). Pub. L. 100–418, §1401(b)(4)(B)(i), (iii), in introductory provisions substituted ''2252(b)'' and ''2252(e)(1)'' for ''2251'' and ''2251(d)(1)'', respectively.

Subsec. (d)(2)(A). Pub. L. 100–418, §1401(b)(4)(B)(iv), substituted ''section 2253 of this title'' for ''sections 2252 and 2253 of this title''.

Subsec. (d)(2)(B). Pub. L. 100–418, §1401(b)(4)(B)(iv), (v), in introductory provisions substituted ''section 2254(a) of this title'' for ''section 2253(b) of this title'' and, in cls. (i) and (ii), substituted ''section 2253 of this title'' for ''sections 2252 and 2253 of this title''.

Subsec. (d)(4). Pub. L. 100–418, §1401(b)(4)(C), substituted ''section 2253(a) of this title'' for ''section 2253(c)(1) of this title'' and ''section 203(a) of the Trade Act of 1974'' for ''section 203(c)(1) of the Trade Act of 1974''.

Subsec. (f). Pub. L. 100–418, §1612, added subsec. (f).

1987—Subsec. (e)(2). Pub. L. 100–203 substituted ''for fiscal year 1988 not to exceed $35,386,000'' for ''fiscal year 1986 not to exceed $28,901,000''.

1986—Subsec. (e)(2). Pub. L. 99–272 amended first sentence generally, substituting ''for fiscal year 1986 not to exceed $28,901,000'' for ''for fiscal year 1985 not to exceed $28,410,000''.

1984—Subsec. (d)(4). Pub. L. 98–573, §248(c), substituted ''the joint resolution described in such section 2192(a)(1)(A)'' for ''the concurrent resolution described in such section 2192''.

Subsec. (e)(2). Pub. L. 98–573, §701, substituted authorization of appropriation of not more than $28,410,000 for fiscal year 1985 for necessary expenses, including the rental of conference rooms in the District of Columbia and elsewhere for provision authorizing appropriation of not more than $19,737,000 for necessary expenses for fiscal year 1983, and inserted provision that not more than $2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses.

1983—Subsec. (e)(2). Pub. L. 97–456 substituted authorization of appropriation of not exceeding $19,737,000 for fiscal 1983 for authorization not exceeding $12,963,000 for fiscal 1979, and inserted provision relating to reimbursement by agencies of the executive branch for studies requested by them.

1978—Subsec. (e)(2). Pub. L. 95–430 substituted provisions authorizing $12,963,000 to be appropriated for the necessary expenses of the Commission for fiscal year 1979 for provisions authorizing $11,522,000 to be appropriated for similar expenses for fiscal year 1978.

1977—Subsec. (c). Pub. L. 95–106, §2(a), inserted provisions in par. (1) for the Congressional notification of Presidential designations, substituted, in par. (2), provisions covering the expiration of terms of office after June 16, 1978, for provisions covering the expiration of terms of office on and after June 17, 1975, added par. (3), and redesignated as pars. (4) to (6) provisions formerly contained in par. (1).

Subsec. (e). Pub. L. 95–106, §1, designated existing provisions as par. (1) and added pars. (2) and (3).

1976—Subsec. (b). Pub. L. 94–455, §1801(a), inserted provisions that any commissioner may continue to serve as a commissioner after an expiration of his term of office until his successor is appointed and qualified.

Subsec. (d)(1). Pub. L. 94–455, §1801(b)(2), substituted provisions relating to consideration by the President of determinations of the Commission as to whether increased imports of an article are a substantial cause of serious injury or threat or whether market disruption exists for provisions relating to consideration by the President of findings of the Commission in connection with any authority conferred upon the President by law to make changes in import restrictions.

Subsec. (d)(2) to (5). Pub. L. 94–455, §1801(b), added pars. (2) to (4) and redesignated former par. (2) as (5).

1975—Subsec. (a). Pub. L. 93–618, §172(a), substituted ''United States International Trade Commission'' for ''United States Tariff Commission'' and inserted provision that a person who has served as a commissioner for more than five years (excluding service as a commissioner before January 3, 1975) shall not be eligible for reappointment as a commissioner.

Subsec. (b). Pub. L. 93–618, §172(a), lengthened the term of office from 6 years to 9 years for commissioners appointed after Jan. 3, 1975, and substituted Dec. 16, 1976, June 16, 1978, Dec. 16, 1979, June 16, 1981, Dec. 16, 1982, and June 16, 1984, for June 16, 1975, June 16, 1976, June 16, 1977, June 16, 1978, June 16, 1979, and June 16, 1980, respectively, as the expiration dates for the terms of office of commissioners serving on Jan. 3, 1975.

Subsec. (c). Pub. L. 93–618, §172(b), designated existing provisions as par. (1), inserted ''Except as provided in paragraph (2),'' before ''The'', and added par. (2).

Subsec. (e). Pub. L. 93–618, §175(b), added subsec. (e).

1953—Subsec. (d). Act Aug. 7, 1953, added subsec. (d).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 1(a)(3) of Pub. L. 102–185 provided that:

''(A) MODIFICATION.—The amendments made by paragraph (1) [amending this section] shall apply to terms beginning on and after June 17, 1990.

''(B) 1-YEAR REQUIREMENT.—The amendments made by paragraph (2) [amending this section] shall apply to terms beginning on and after June 17, 1996.''

Section 1(c)(2) of Pub. L. 102–185 provided that: ''The amendment made by this subsection [amending this section] shall take effect on the 10th day following the date of the enactment of this Act [Dec. 4, 1991].''

EFFECTIVE DATE OF 1988 AMENDMENTS

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

Amendment by section 1401(b)(4) of Pub. L. 100–418 effective Aug. 23, 1988, and applicable with respect to investigations initiated under part 1 (§2251 et seq.) of subchapter II of chapter 12 of this title on or after that date, see section 1401(c) of Pub. L. 100–418, set out as a note under section 2251 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 248(c) of Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 2(b) of Pub. L. 95–106 provided that: ''The amendment made by this section [amending this section] shall apply with respect to the designation of chairmen and vice chairmen of the United States International Trade Commission for terms beginning after June 16, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1801(c) of Pub. L. 94–455 provided that: ''The amendments made by subsection (b) [amending this section] shall apply to determinations, findings, and recommendations made under sections 201 and 406 of the Trade Act of 1974 [sections 2251 and 2436 of this title] after the date of the enactment of this Act [Oct. 4, 1976].''

APPOINTMENT OF CHAIRMAN IN 1992

Section 1(b) of Pub. L. 102–185 provided that: ''In the case of the term of the chairman of the United States

International Trade Commission beginning June 17, 1992—

"(1) section 330(c)(3)(A) of the Tariff Act of 1930 [19 U.S.C. 1330(c)(3)(A)] shall not apply, and

"(2) the President shall designate as chairman a Commissioner who is a member of the same political party as the chairman of the Commission serving on June 16, 1986."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2231, 2253, 3353, 3371 of this title.

§ 1331. General powers

(a) Administration

(1)(A) Except as provided in paragraph (2), the chairman of the Commission shall—

(i) appoint and fix the compensation of such employees of the Commission as he deems necessary (other than the personal staff of each commissioner), including the secretary,

(ii) procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, and

(iii) exercise and be responsible for all other administrative functions of the Commission.

(B) The chairman of the Commission may accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Commission.

(C) Any decision by the chairman under subparagraph (A) or (B) shall be subject to disapproval by a majority vote of all the commissioners in office.

(2) Subject to approval by a majority vote of all the commissioners in office, the chairman may—

(A) terminate the employment of any supervisory employee of the Commission whose duties involve substantial personal responsibility for Commission matters and who is compensated at a rate equal to, or in excess of, the rate for grade GS–15 of the General Schedule in section 5332 of title 5, and

(B) formulate the annual budget of the Commission.

(3) No member of the Commission, in making public statements with respect to any policy matter for which the Commission has responsibility, shall represent himself as speaking for the Commission, or his views as being the views of the Commission, with respect to such matter except to the extent that the Commission has adopted the policy being expressed.

(b) Application of civil service law

Except for employees excepted under civil service rules, all employees of the commission shall be appointed from lists of eligibles to be supplied by the Director of the Office of Personnel Management and in accordance with the civil service law.

(c) Expenses

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman (except that in the case of a commissioner, or the personal staff of any commissioner, such vouchers may be approved by that commissioner).

(d) Principal office at Washington

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country.

(e) Office at New York

The commission is authorized to establish and maintain an office at the port of New York for the purpose of directing or carrying on any investigation, receiving and compiling statistics, selecting, describing, and filing samples of articles, and performing any of the duties or exercising any of the powers imposed upon it by law.

(f) Official seal

The commission is authorized to adopt an official seal, which shall be judicially noticed.

(June 17, 1930, ch. 497, title III, § 331, 46 Stat. 697; Pub. L. 95–106, § 3(a), (b), Aug. 17, 1977, 91 Stat. 868; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 97–456, § 1(b), Jan. 12, 1983, 96 Stat. 2503.)

REFERENCES IN TEXT

The civil service law, referred to in subsec. (b), is set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsec. (a), provisions which specified a salary of $7,500 per year for the secretary to the commission have been omitted as obsolete and superseded. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, § 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees. Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

In subsec. (b), the words "Except for employees excepted under the civil service rules" substituted for "With the exception of the secretary, a clerk to each commissioner, and such special experts as the commission may from time to time find necessary for the conduct of its work". Appointments are now subject to the civil service laws unless specifically excepted by such laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5.

PRIOR PROVISIONS

Provisions similar to subsecs. (a) to (e) of this section were contained in act Sept. 8, 1916, ch. 463, § 701, 39 Stat. 975. That section was superseded by section 331 of act June 17, 1930, comprising this section.

Provisions similar to those in subsecs. (f) and (g) of this section were contained in act Sept. 21, 1922, ch. 356, title III, § 318, 42 Stat. 947. That section was superseded

by section 331 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 97–456 designated existing provisions relating to the chairman's exercise of and responsibility for all administrative functions as subpar. (A), redesignated former subpars. (A) through (C) as cls. (i) through (iii), added subpar. (B), designated provisions relating to disapproval by a majority of the commissioners of any decision by the chairman as subpar. (C), and in (C) as so designated, substituted ''subparagraph (A) or (B)'' for ''this paragraph'' after ''chairman under''.

1977—Subsec. (a). Pub. L. 95–106, § 3(a), designated existing provisions as par. (1), substituted provisions authorizing the chairman to perform certain required functions subject to approval by the Commission for provisions authorizing the Commission to perform certain required functions and inserted provisions requiring the chairman to exercise and be responsible for all other administrative functions of the Commission, and added pars. (2) and (3).

Subsec. (c). Pub. L. 95–106, § 3(b)(1), substituted ''approved by the chairman (except that in the case of a commissioner, or the personal staff of any commissioner, such vouchers may be approved by that commissioner)'' for ''approved by the Commission''.

Subsec. (d). Pub. L. 95–106, § 3(b)(2), redesignated subsecs. (e) to (g) as (d) to (f), respectively. Former subsec. (d), relating to offices and supplies, was struck out.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3(c) of Pub. L. 95–106 provided that: ''The amendments made by this section [amending this section] take effect on the date of enactment of this Act [Aug. 17, 1977].''

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec. (b) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1332. Investigations

(a) Investigations and reports

It shall be the duty of the commission to investigate the administration and fiscal and industrial effects of the customs laws of this country, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, to investigate the operation of customs laws, including their relation to the Federal revenues, their effect upon the industries and labor of the country, and to submit reports of its investigations as hereafter provided.

(b) Investigations of tariff relations

The commission shall have power to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.

(c) Investigation of Paris Economy Pact

The commission shall have power to investigate the Paris Economy Pact and similar organizations and arrangements in Europe.

(d) Information for President and Congress

In order that the President and the Congress may secure information and assistance, it shall be the duty of the commission to—

(1) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of the United States of articles of the United States, whenever in the opinion of the commission it is practicable;

(2) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of foreign countries of articles imported into the United States, whenever in the opinion of the commission such conversion costs or costs of production are necessary for comparison with conversion costs or costs of production in the United States and can be reasonably ascertained;

(3) Select and describe articles which are representative of the classes or kinds of articles imported into the United States and which are similar to or comparable with articles of the United States; select and describe articles of the United States similar to or comparable with such imported articles; and obtain and file samples of articles so selected, whenever the commission deems it advisable;

(4) Ascertain import costs of such representative articles so selected;

(5) Ascertain the grower's, producer's, or manufacturer's selling prices in the principal growing, producing, or manufacturing centers of the United States of the articles of the United States so selected; and

(6) Ascertain all other facts which will show the differences in or which affect competition between articles of the United States and imported articles in the principal markets of the United States.

(e) Definitions

When used in this subdivision and in subdivision (d) of this section—

(1) The term ''article'' includes any commodity, whether grown, produced, fabricated, manipulated, or manufactured;

(2) The term ''import cost'' means the transaction value of the imported merchandise determined in accordance with section 1401a(b) of this title plus, when not included in the transaction value, all necessary expenses, exclusive of customs duties, of bringing such merchandise to the United States.

(f) Omitted

(g) Reports to President and Congress

The commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Rep-

resentatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress. However, the Commission may not release information which the Commission considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. The Commission shall report to Congress on the first Monday of December of each year after June 17, 1930, a statement of the methods adopted and all expenses incurred, a summary of all reports made during the year, and a list of all votes taken by the commission during the year, showing those commissioners voting in the affirmative and the negative on each vote and those commissioners not voting on each vote and the reasons for not voting. Each such annual report shall include a list of all complaints filed under section 1337 of this title during the year for which such report is being made, the date on which each such complaint was filed, and the action taken thereon, and the status of all investigations conducted by the commission under such section during such year and the date on which each such investigation was commenced.

(June 17, 1930, ch. 497, title III, § 332, 46 Stat. 698; Pub. L. 93–618, title I, § 173, title III, § 341(b), Jan. 3, 1975, 88 Stat. 2010, 2056; Pub. L. 96–39, title II, § 202(a)(1), July 26, 1979, 93 Stat. 201; Pub. L. 100–418, title I, § 1613, Aug. 23, 1988, 102 Stat. 1262; Pub. L. 100–647, title IX, § 9001(a)(16), Nov. 10, 1988, 102 Stat. 3808.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (a), are classified generally to this title.

CODIFICATION

Subsection (f) directed the Tariff Commission to ascertain the cost of crude petroleum during three years preceding 1930.

PRIOR PROVISIONS

Provisions similar to subsections (a), (b), and (g) of this section were contained in act Sept. 8, 1916, ch. 463, §§ 702 to 704, 39 Stat. 796. Those sections were superseded by section 332 of act June 17, 1930, comprising this section.

Provisions similar to those in subdivision (c) of this section were contained in act Sept. 8, 1916, ch. 463, § 708, 39 Stat. 798. That section was superseded by section 332 of act June 17, 1930, comprising this section.

Provisions similar to subdivisions (d) and (e) of this section were contained in act Sept. 21, 1922, ch. 356, title III, § 318, 42 Stat. 947. Section 318 of act 1922 was superseded by section 332 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of said 1930 act.

Act Oct. 3, 1913, ch. 16, § IV, R, 38 Stat. 201, directed President to ascertain certain facts and report to Congress when imports amounted to less than 5 per centum of domestic consumption, prior to repeal by act Sept. 21, 1922, ch. 356, title III, § 321, 42 Stat. 947.

AMENDMENTS

1988—Subsec. (g). Pub. L. 100–647 substituted ''report to Congress on the first'' for ''report to Congress. on the first''.

Pub. L. 100–418 substituted ''. However, the Commission may not release information which the Commission considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. The Commission shall report to Congress.'' for '', and shall report to Congress''.

1979—Subsec. (e)(2). Pub. L. 96–39 substituted ''the transaction value of the imported merchandise determined in accordance with section 1401a(b) of this title plus, when not included in the transaction value, all necessary expenses, exclusive of customs duties, of bringing such merchandise to the United States'' for ''the price at which an article is freely offered for sale in the ordinary course of trade in the usual wholesale quantities for exportation to the United States plus, when not included in such price, all necessary expenses, exclusive of customs duties, of bringing such imported article to the United States''.

1975—Subsec. (g). Pub. L. 93–618 substituted ''a summary of all reports made during the year, and a list of all votes taken by the commission during the year, showing those commissioners voting in the affirmative and the negative on each vote and those commissioners not voting on each vote and the reasons for not voting'' for ''and a summary of all reports made during the year'', and inserted last sentence relating to complaints included in annual reports.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1979 AMENDMENT

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

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–618 effective on 90th day after Jan. 3, 1975, see section 341(c) of Pub. L. 93–618, set out as a note under section 1337 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (g) of this section regarding reports by United States International Trade Commission to President delegated to United States Trade Representative, see section 5–301 of Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of this title.

CONTINUATION OF REPORTS WITH RESPECT TO SYNTHETIC ORGANIC CHEMICALS

Pub. L. 95–106, § 5, Aug. 17, 1977, 91 Stat. 869, directed International Trade Commission to make, for each calendar year ending before Jan. 1, 1981, reports with respect to synthetic organic chemicals similar in scope to reports made with respect to such chemicals for calendar year 1976.

REVIEW OF CUSTOMS TARIFF SCHEDULES

Act Sept. 1, 1954, ch. 1213, title I, § 101, 68 Stat. 1136, as amended Aug. 2, 1956, ch. 894, 70 Stat. 955; May 19, 1958, Pub. L. 85–418, § 3, 72 Stat. 120, provided for a complete study by the Tariff Commission for the purpose of clarifying and simplifying the tariff classification, with a report to go to the President and to the chairmen of the appropriate committees of Congress no later than Jan. 1, 1959. See section 1332 of this title.

CROSS REFERENCES

Importation of intoxicating liquors into any State, Territory, or possession in violation of its laws prohib-

ited, see section 2 of the 21st Amendment to the Constitution.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2252, 2463, 3011, 3437 of this title; title 16 section 742h.

§ 1332a. Importation of red cedar shingles

(a) Investigation by Commission

The United States International Trade Commission is directed to conduct an investigation as soon as practicable after the close of the calendar year 1939 and each calendar year thereafter, for the purpose of ascertaining the quantities of red cedar shingles shipped by producers in the United States and the quantities of imported red cedar shingles entered for consumption, or withdrawn from warehouse for consumption, during each of the three calendar years immediately preceding any such investigation.

(b) Duty on imported shingles; amount

If the Commission finds, on the basis of an investigation under subdivision (a) of this section, that in any calendar year after 1938 the quantity of imported red cedar shingles entered for consumption, or withdrawn from warehouse for consumption, was in excess of 30 per centum of the combined total for such year of the respective quantities ascertained in such investigation, it shall so report to the President. If the President approves the report of the Commission, he shall so proclaim, and on and after the day following the filing of such proclamation with the Division of the Federal Register and so long as any trade agreement entered into under the authority of section 1351 of this title, shall be in effect with respect to the importation into the United States of red cedar shingles, there shall be a duty upon imported red cedar shingles entered for consumption, or withdrawn from warehouse for consumption, in any calendar year in excess of 30 per centum of the annual average for the preceding three calendar years of the combined total of the quantity of such shingles shipped by producers in the United States and of the quantity of such imported shingles entered for consumption, or withdrawn from warehouse for consumption. The rate of such duty shall be 25 cents per square. Any duty imposed under this section shall be treated for the purposes of all provisions of law relating to customs revenue as a duty imposed by section 1001[1] of this title, and shall not apply to shingles entered for consumption before the duty becomes applicable.

(c) Exemptions from duty

The quantity of red cedar shingles entitled to exemption from any duty imposed pursuant to this section shall be ascertained for each quota period by the Commission and reported to the Secretary of the Treasury.

(July 1, 1940, ch. 499, 54 Stat. 708; Pub. L. 93–618, title I, § 171(b), Jan. 3, 1975, 88 Stat. 2009.)

REFERENCES IN TEXT

Section 1001 of this title, referred to in subsec. (b), was struck out by Pub. L. 87–456, title I, § 101(a), May 24, 1962, 76 Stat. 72.

[1] See References in Text note below.

CODIFICATION

Section was not enacted as a part of the Tariff Act of 1930 which comprises this chapter.

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–618 substituted ''United States International Trade Commission'' for ''United States Tariff Commission''.

§ 1333. Testimony and production of papers

(a) Authority to obtain information

For the purposes of carrying out its functions and duties in connection with any investigation authorized by law, the commission or its duly authorized agent or agents (1) shall have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, copartnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, (2) may summon witnesses, take testimony, and administer oaths, (3) may require any person, firm, copartnership, corporation, or association to produce books or papers relating to any matter pertaining to such investigation, and (4) may require any person, firm, copartnership, corporation, or association, to furnish in writing, in such detail and in such form as the commission may prescribe, information in their possession pertaining to such investigation. Any member of the commission may sign subpenas, and members and agents of the commission, when authorized by the commission, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) Witnesses and evidence

Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. And in case of disobedience to a subpena the commission may invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Mandamus

At the request of the commission, any such court shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this part or any order of the commission made in pursuance thereof.

(d) Depositions

The commission may order testimony to be taken by deposition in any proceeding or investigation pending before the commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to

administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person, firm, copartnership, corporation, or association, 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 commission, as hereinbefore provided.

(e) Fees and mileage of witnesses

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same, except employees of the commission, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States.

(f) Statements under oath

The commission is authorized, in order to ascertain any facts required by subdivision (d) of section 1332 of this title to require any importer and any American grower, producer, manufacturer, or seller to file with the commission a statement, under oath, giving his selling prices in the United States of any article imported, grown, produced, fabricated, manipulated, or manufactured by him.

(g) Representation in court proceedings

The Commission shall be represented in all judicial proceedings by attorneys who are employees of the Commission or, at the request of the Commission, by the Attorney General of the United States.

(h) Administrative protective orders

Any correspondence, private letters of reprimand, and other documents and files relating to violations or possible violations of administrative protective orders issued by the Commission in connection with investigations or other proceedings under this subtitle shall be treated as information described in section 552(b)(3) of title 5.

(June 17, 1930, ch. 497, title III, § 333, 46 Stat. 699; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 85–686, § 9(a), (b), Aug. 20, 1958, 72 Stat. 679; Pub. L. 91–452, title II, § 229, Oct. 15, 1970, 84 Stat. 930; Pub. L. 93–618, title I, § 174, Jan. 3, 1975, 88 Stat. 2011; Pub. L. 101–382, title I, § 135(a), Aug. 20, 1990, 104 Stat. 651.)

CODIFICATION

As originally enacted subsec. (b) contained a reference to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted ''the district court of the United States for the District of Columbia'' for ''the Supreme Court of the District of Columbia'', and act June 25, 1948, as amended by act May 24, 1949, substituted ''United States District Court for the District of Columbia'' for ''district court of the United States for the District of Columbia''. However, the words ''United States District Court for the District of Columbia'' have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that ''There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district'', and section 88 of Title 28 which states that ''the District of Columbia constitutes one judicial district''.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 8, 1916, ch. 463, § 706, 39 Stat. 797, as amended by act Sept. 21, 1922, ch. 356, title III, § 318(f), 42 Stat. 947. These acts were superseded by section 333 of act June 17, 1930, comprising this section, and section 318(f) of the 1922 act was repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1990—Subsec. (h). Pub. L. 101–382 added subsec. (h).

1975—Subsec. (c). Pub. L. 93–618, § 174(1), substituted ''At the request of'' for ''Upon application of the Attorney General of the United States, at the request of''.

Subsec. (g). Pub. L. 93–618, § 174(2), added subsec. (g).

1970—Subsec. (e). Pub. L. 91–452 struck out provisions relating to the immunity from prosecution of any natural person compelled to testify or produce evidence in obedience to the subpoena of the commission.

1958—Subsec. (a). Pub. L. 85–686, § 9(a), substituted ''For the purposes of carrying out its functions and duties in connection with any investigation authorized by law'' for ''For the purposes of carrying Part II of this subtitle into effect'', inserted provisions empowering the commission to require any person, firm, copartnership, corporation, or association to furnish in writing, in such detail and in such form as the commission may prescribe, information in their possession pertaining to an investigation.

Subsec. (d). Pub. L. 85–686, § 9(b), substituted ''pending before the commission'' for ''pending under Part II of this subtitle''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

Writ of mandamus abolished in United States district courts, but relief available by appropriate action or motion, see rule 81.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

§ 1334. Cooperation with other agencies

The commission shall in appropriate matters act in conjunction and cooperation with the Treasury Department, the Department of Commerce, the Federal Trade Commission, or any other departments, or independent establishments of the Government, and such departments and independent establishments of the Government shall cooperate fully with the commission for the purposes of aiding and assisting in its work, and, when directed by the President, shall furnish to the commission, on its request, all records, papers, and information in their possession relating to any of the subjects of investigation by the commission and shall detail, from time to time, such officials and employees to said commission as he may direct.

(June 17, 1930, ch. 497, title III, § 334, 46 Stat. 700.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 8, 1916, ch. 463, § 707, 39 Stat. 797. That section was superseded by section 334 of act June 17, 1930, comprising this section.

TRANSFER OF FUNCTIONS

Executive and administrative functions of Federal Trade Commission transferred, with certain reservations, to Chairman of such Commission by Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1335. Rules and regulations

The commission is authorized to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

(June 17, 1930, ch. 497, title III, § 335, as added Aug. 20, 1958, Pub. L. 85–686, § 9(c)(2), 72 Stat. 680.)

PRIOR PROVISIONS

A prior section 335 of act June 17, 1930, related to disclosure of trade secrets and prescribed penalty therefor, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 1905 of Title 18, Crimes and Criminal Procedure.

§ 1336. Equalization of costs of production

(a) Change of classification or duties

In order to put into force and effect the policy of Congress by this chapter intended, the commission (1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the commission there is good and sufficient reason therefor, upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article. In the course of the investigation the commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at such hearings. The commission shall report to the President the results of the investigation and its findings with respect to such differences in costs of production. If the commission finds it shown by the investigation that the duties expressly fixed by statute do not equalize the differences in the costs of production of the domestic article and the like or similar foreign article when produced in the principal competing country, the commission shall specify in its report such increases or decreases in rates of duty expressly fixed by statute (including any necessary change in classification) as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total increase or decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute.

(b) Repealed. Pub. L. 96–39, title II, § 202(a)(2)(A), July 26, 1979, 93 Stat. 202

(c) Proclamation by the President

The President shall by proclamation approve the rates of duty and changes in classification specified in any report of the commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the commission to be necessary to equalize such differences in costs of production.

(d) Effective date of rates and changes

Commencing thirty days after the date of any presidential proclamation of approval the increased or decreased rates of duty and changes in classification specified in the report of the commission shall take effect.

(e) Ascertainment of differences in costs of production

In ascertaining under this section the differences in costs of production, the commission shall take into consideration, in so far as it finds it practicable:

(1) In the case of a domestic article

(A) The cost of production as hereinafter in this section defined; (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; and (C) other relevant factors that constitute an advantage or disadvantage in competition.

(2) In the case of a foreign article

(A) The cost of production as hereinafter in this section defined, or, if the commission finds that such cost is not readily ascertainable, the commission may accept as evidence thereof, or as supplemental thereto, the weighted average of the invoice prices or values for a representative period and/or the average wholesale selling price for a representative period (which price shall be that at which the article is freely offered for sale to all purchasers in the principal market or markets of the principal competing country or countries in the ordinary course of trade and in the usual wholesale quantities in such market or markets); (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; (C) other relevant factors that constitute an advantage or disadvantage in competition, including advantages granted to the foreign producers by a government, person, partnership, corporation, or association in a foreign country.

(f) Modification of changes in duty

Any increased or decreased rate of duty or change in classification which has taken effect as above provided may be modified or terminated in the same manner and subject to the same conditions and limitations (including time of taking effect) as is provided in this section in the case of original increases, decreases, or changes.

(g) Prohibition against transfers from the free list to the dutiable list or from the dutiable list to the free list

Nothing in this section shall be construed to authorize a transfer of an article from the dutiable list to the free list or from the free list to the dutiable list, nor a change in form of duty. Whenever it is provided in any paragraph of Subtitle I of this chapter, or in any amendatory

act, that the duty or duties shall not exceed a specified ad valorem rate upon the articles provided for in such paragraph, no rate determined under the provisions of this section upon such articles shall exceed the maximum ad valorem rate so specified.

(h) Definitions

For the purpose of this section—

(1) The term ''domestic article'' means an article wholly or in part the growth or product of the United States; and the term ''foreign article'' means an article wholly or in part the growth or product of a foreign country.

(2) The term ''United States'' includes the several States and Territories and the District of Columbia.

(3) The term ''foreign country'' means any empire, country, dominion, colony, or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions).

(4) The term ''cost of production'', when applied with respect to either a domestic article or a foreign article, includes, for a period which is representative of conditions in production of the article: (A) The price or cost of materials, labor costs, and other direct charges incurred in the production of the article and in the processes or methods employed in its production; (B) the usual general expenses, including charges for depreciation or depletion which are representative of the equipment and property employed in the production of the article and charges for rent or interest which are representative of the cost of obtaining capital or instruments of production; and (C) the cost of containers and coverings of whatever nature, and other costs, charges, and expenses incident to placing the article in condition packed ready for delivery.

(i) Rules and regulations of President

The President is authorized to make all needful rules and regulations for carrying out his functions under the provisions of this section.

(j) Repealed. Pub. L. 96–39, title II, § 202(a)(2)(D), July 26, 1979, 93 Stat. 202

(k) Investigations prior to June 17, 1930

All uncompleted investigations instituted prior to June 17, 1930, under the provisions of sections 154 to 159[1] of this title, including investigations in which the President has not proclaimed changes in classification or increases or decreases in rates of duty, shall be dismissed without prejudice; but the information and evidence secured by the commission in any such investigation may be given due consideration in any investigation instituted under the provisions of this section.

(June 17, 1930, ch. 497, title III, § 336, 46 Stat. 701; Aug. 2, 1956, ch. 887, § 2(d), 70 Stat. 946; Pub. L. 85–686, § 9(c)(1), Aug. 20, 1958, 72 Stat. 679; Pub. L. 96–39, title II, § 202(a)(2), July 26, 1979, 93 Stat. 202.)

REFERENCES IN TEXT

Sections 154 to 159 of this title, referred to in subsec. (k), were repealed by section 651(a)(1) of act June 17, 1930.

[1] See References in Text note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title III, § 315, 42 Stat. 941. That section was superseded by section 336 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–39, § 202(a)(2)(A), struck out subsec. (b) which related to the setting of ad valorem rates based upon the American selling price of domestic articles as would be necessary to equalize differences in the costs of production.

Subsec. (c). Pub. L. 96–39, § 202(a)(2)(B), substituted ''changes in classification specified in any report'' for ''changes in classification and in basis of value specified in any report''.

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

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

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

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

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

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

EFFECTIVE DATE OF 1979 AMENDMENT

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

EFFECTIVE DATE OF 1956 AMENDMENT

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

CROSS REFERENCES

Section not to apply to any article with respect to which a foreign trade agreement has been concluded pursuant to section 1351 et seq. of this title, see section 1352 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1352, 1484 of this title.

§ 1337. Unfair practices in import trade

(a) Unlawful activities; covered industries; definitions

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

(A) Unfair methods of competition and unfair acts in the importation of articles (other

than articles provided for in subparagraphs (B), (C), and (D)) into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of which is—

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

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

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

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

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

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

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

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

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

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

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

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

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

(b) Investigation of violations by Commission

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

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

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

(c) Determinations; review

The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section, except that the Commission may, by issuing a consent order or on the basis of an agreement between the private parties to the investigation, including an agreement to present the matter for arbitration, terminate any such investigation, in whole or in part, without making such a determination. Each determination under subsection (d) or (e) of this section shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5. All legal and equitable defenses may be presented in all cases. A respondent may raise any counterclaim in a manner prescribed by the Commission. Immediately after a counterclaim is received by the Commission, the respondent

raising such counterclaim shall file a notice of removal with a United States district court in which venue for any of the counterclaims raised by the party would exist under section 1391 of title 28. Any counterclaim raised pursuant to this section shall relate back to the date of the original complaint in the proceeding before the Commission. Action on such counterclaim shall not delay or affect the proceeding under this section, including the legal and equitable defenses that may be raised under this subsection. Any person adversely affected by a final determination of the Commission under subsection (d), (e), (f), or (g) of this section may appeal such determination, within 60 days after the determination becomes final, to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of title 5. Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), (f), and (g) of this section with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5. Determinations by the Commission under subsections (e), (f), and (j) of this section with respect to forfeiture of bonds and under subsection (h) of this section with respect to the imposition of sanctions for abuse of discovery or abuse of process shall also be reviewable in accordance with section 706 of title 5.

(d) Exclusion of articles from entry

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

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

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

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

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

(1) If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the Commission later determines that the respondent has violated the provisions of this section, the bond may be forfeited to the complainant.

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

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

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

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

(1) In addition to, or in lieu of, taking action under subsection (d) or (e) of this section, the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly com-

petitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e) of this section, as the case may be. If a temporary cease and desist order is issued in addition to, or in lieu of, an exclusion order under subsection (e) of this section, the Commission may require the complainant to post a bond, in an amount determined by the Commission to be sufficient to protect the respondent from any injury, as a prerequisite to the issuance of an order under this subsection. If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent. The Commission shall prescribe the terms and conditions under which the bonds may be forfeited under this paragraph.

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

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

(1) If—

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

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

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

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

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

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

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

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

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

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

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

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

(i) Forfeiture

(1) In addition to taking action under subsection (d) of this section, the Commission may issue an order providing that any article imported in violation of the provisions of this section be seized and forfeited to the United States if—

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

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

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

(i) such order, and

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

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

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

(4) The Secretary of the Treasury shall provide—

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

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

(j) Referral to President

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

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

(B) transmit to the President a copy of such determination and the action taken under subsection (d), (e), (f), (g), or (i) of this section,

with respect thereto, together with the record upon which such determination is based.

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

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

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

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

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

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

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

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

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

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

(*l*) Importation by or for United States

Any exclusion from entry or order under subsection (d), (e), (f), (g), or (i) of this section, in cases based on a proceeding involving a patent, copyright, or mask work under subsection (a)(1) of this section, shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, an owner of the patent, copyright, or mask work adversely affected shall be entitled to reasonable and entire compensation in an action before the United States Court of Federal Claims pursuant to the procedures of section 1498 of title 28.

(m) "United States" defined

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

(n) Disclosure of confidential information

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

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

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

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

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

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

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

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

(B) an officer or employee of the United States Government who is directly involved in

[1] See References in Text note below.

the review under subsection (j) of this section, or

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

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

References in Text

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

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

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

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

Codification

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

Prior Provisions

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

Amendments

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

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

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

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

Subsec. (b)(1). Pub. L. 103–465, § 321(a)(1)(B), substituted third and fourth sentences for ''The Commission shall conclude any such investigation, and make its determination under this section, at the earliest practicable time, but not later than one year (18 months in more complicated cases) after the date of publication of notice of such investigation. The Commission shall publish in the Federal Register its reasons for designating any investigation as a more complicated investigation. For purposes of the one-year and 18-month periods prescribed by this subsection, there shall be excluded any period of time during which such investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.''

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 261(d)(1)(B)(ii) of Pub. L. 103–465 effective on effective date of title II of Pub. L. 103–465, Jan. 1, 1995, see section 261(d)(2) of Pub. L. 103–465, set out as a note under section 1315 of this title.

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

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

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

EFFECTIVE DATE OF 1988 AMENDMENTS

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1979 AMENDMENT

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

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

EFFECTIVE DATE OF 1975 AMENDMENT

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

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

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

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

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

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

''(b) PURPOSE.—The purpose of this part [part 3 (§§ 1341, 1342) of subtitle C of title I of Pub. L. 100–418, amending this section, repealing section 1337a of this

title, and enacting provisions set out as a note above] is to amend section 337 of the Tariff Act of 1930 to make it a more effective remedy for the protection of United States intellectual property rights.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1332, 1339, 1514, 2171, 2252 of this title; title 17 sections 910, 1328; title 28 sections 1295, 1368, 1446, 1659.

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

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

EFFECTIVE DATE OF REPEAL

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

§ 1338. Discrimination by foreign countries

(a) Additional duties

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

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

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

(b) Exclusion from importation

If at any time the President shall find it to be a fact that any foreign country has not only discriminated against the commerce of the United States, as aforesaid, but has, after the issuance of a proclamation as authorized in subdivision (a) of this section, maintained or increased its said discriminations against the commerce of the United States, the President is authorized, if he deems it consistent with the interests of the United States, to issue a further proclamation directing that such products of said country or such articles imported in its vessels as he shall deem consistent with the public interests shall be excluded from importation into the United States.

(c) Application of proclamation

Any proclamation issued by the President under the authority of this section shall, if he deems it consistent with the interests of the United States, extend to the whole of any foreign country or may be confined to any subdivision or subdivisions thereof; and the President shall, whenever he deems the public interests require, suspend, revoke, supplement, or amend any such proclamation.

(d) Duties to offset commercial disadvantages

Whenever the President shall find as a fact that any foreign country places any burden or disadvantage upon the commerce of the United States by any of the unequal impositions or discriminations aforesaid, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty as he shall determine will offset such burden or disadvantage, not to exceed 50 per centum ad valorem or its equivalent, on any products of, or on articles imported in a vessel of, such foreign country; and thirty days after the date of such proclamation there shall be levied, collected, and paid upon the articles enumerated in such proclamation when imported into the United States from such foreign country such new or additional rate or rates of duty; or, in case of articles declared subject to exclusion from importation into the United States under the provisions of subdivision (b) of this section, such articles shall be excluded from importation.

(e) Duties to offset benefits to third country

Whenever the President shall find as a fact that any foreign country imposes any unequal imposition or discrimination as aforesaid upon the commerce of the United States, or that any benefits accrue or are likely to accrue to any industry in any foreign country by reason of any such imposition or discrimination imposed by any foreign country other than the foreign country in which such industry is located, and whenever the President shall determine that any new or additional rate or rates of duty or any prohibition hereinbefore provided for do not effectively remove such imposition or discrimination and that any benefits from any such imposition or discrimination accrue or are likely to accrue to any industry in any foreign country, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty upon the articles wholly or in part the growth or product of any such industry as he shall determine will offset such benefits, not to exceed 50 per centum ad valorem or its equivalent, upon importation from any foreign country into the United States of such articles; and on and after thirty days after the date of any such proclamation such new or additional rate or rates of duty so specified and declared in such proclamation shall be levied, collected, and paid upon such articles.

(f) Forfeiture of articles

All articles imported contrary to the provisions of this section shall be forfeited to the United States and shall be liable to be seized, prosecuted, and condemned in like manner and under the same regulations, restrictions, and provisions as may from time to time be established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws. Whenever the provisions of this chapter shall be applicable to im-

portations into the United States of articles wholly or in part the growth or product of any foreign country, they shall be applicable thereto whether such articles are imported directly or indirectly.

(g) Ascertainment by Commission of discriminations

It shall be the duty of the commission to ascertain and at all times to be informed whether any of the discriminations against the commerce of the United States enumerated in subdivisions (a), (b), and (e) of this section are practiced by any country; and if and when such discriminatory acts are disclosed, it shall be the duty of the commission to bring the matter to the attention of the President, together with recommendations.

(h) Rules and regulations of Secretary of the Treasury

The Secretary of the Treasury with the approval of the President shall make such rules and regulations as are necessary for the execution of such proclamations as the President may issue in accordance with the provisions of this section.

(i) "Foreign country" defined

When used in this section the term ''foreign country'' means any empire, country, dominion, colony or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions), within which separate tariff rates or separate regulations of commerce are enforced.

(June 17, 1930, ch. 497, title III, § 338, 46 Stat. 704.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title III, § 317, 42 Stat. 944. That section was superseded by section 338 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1337 of this title.

§ 1339. Trade Remedy Assistance Office

(a) Establishment; public information

There is established in the Commission a separate office to be known as the Trade Remedy Assistance Office which shall provide full information to the public upon request and shall, to the extent feasible, provide assistance and advice to interested parties concerning—

(1) remedies and benefits available under the trade laws, and

(2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits.

(b) Procedural assistance by Office and other agencies

The Trade Remedy Assistance Office, in coordination with each agency responsible for administering a trade law, shall provide technical and legal assistance and advice to eligible small businesses to enable them—

(1) to prepare and file petitions and applications (other than those which, in the opinion of the Office, are frivolous); and

(2) to seek to obtain the remedies and benefits available under the trade laws, including any administrative review or administrative appeal thereunder.

(c) Definitions

For purposes of this section—

(1) The term ''eligible small business'' means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. In determining whether a business concern is an ''eligible small business'', the agency may consult with the Small Business Administration, and shall consult with any other agency that has provided assistance under subsection (b) of this section to that business concern. An agency decision regarding whether a business concern is an eligible small business for purposes of this section is not reviewable by any other agency or by any court.

(2) The term ''trade laws'' means—

(A) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to injury caused by import competition);

(B) chapters 2 and 3 of such title II [19 U.S.C. 2271 et seq., 2341 et seq.] (relating to adjustment assistance for workers and firms);

(C) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

(D) subtitle IV of this chapter (relating to the imposition of countervailing duties and antidumping duties);

(E) section 1862 of this title (relating to the safeguarding of national security); and

(F) section 1337 of this title (relating to unfair practices in import trade).

(June 17, 1930, ch. 497, title III, § 339, as added Pub. L. 98–573, title II, § 221[(a)], Oct. 30, 1984, 98 Stat. 2989; Pub. L. 99–514, title XVIII, § 1888(3), Oct. 22, 1986, 100 Stat. 2924; Pub. L. 100–418, title I, § 1614, Aug. 23, 1988, 102 Stat. 1263.)

REFERENCES IN TEXT

The Trade Act of 1974, referred to in subsec. (c)(2)(A) to (C), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapters 1, 2, and 3 of title II of the Trade Act of 1974 are classified generally to parts 1 (§ 2251 et seq.), 2 (§ 2271 et seq.), and 3 (§ 2341 et seq.) of subchapter II of chapter 12 of this title, respectively. Chapter 1 of title III of the Trade Act of 1974 is classified generally to subchapter III (§ 2411 et seq.) of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

PRIOR PROVISIONS

A prior section 339 of act June 17, 1930, related to effect of repeal and reenactment of laws relating to Tariff Commission upon status of appropriations, employees, and privileges, prior to repeal by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 648.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–418, § 1614(1), substituted ''a separate office to be known as the Trade'' for ''a Trade'', and ''upon request and shall, to the extent feasible, provide assistance and advice to interested parties'' for '', upon request,'' in introductory provisions.

Subsec. (b). Pub. L. 100–418, § 1614(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Each agency responsible for administering a trade law shall provide technical assistance to eligible small businesses to enable them to prepare and file petitions and applications (other than those which, in the opinion of the agency, are frivolous) to obtain the remedies and benefits that may be available under that law.''

1986—Subsec. (c)(2)(A). Pub. L. 99–514 substituted ''injury'' for ''relief''.

EFFECTIVE DATE

Section 221(b) of Pub. L. 98–573 provided that: ''Section 339 of the Tariff Act of 1930 [this section] (as added by subsection (a)) shall take effect on the 90th day after the date of the enactment of this Act [Oct. 30, 1984].''

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.

§ 1340. Omitted

CODIFICATION

Section, act June 17, 1930, ch. 497, title III, § 340, 46 Stat. 706, related to preparation of a certain report by commission to Congress. See Tariff Commission Reports, No. 46, Parts 1 to 8.

§ 1341. Interference with functions of Commission

(a) Interfering with or influencing the Commission or its employees

It shall be unlawful for any person (1) to prevent or attempt to prevent, by force, intimidation, threat, or in any other manner, any member or employee of the commission from exercising the functions imposed upon the commission by this subtitle, or (2) to induce, or attempt to induce, by like means any such member or employee to make any decision or order, or to take any action, with respect to any matter within the authority of the commission.

(b) Penalty

Any person who violates any of the provisions of this section shall, upon conviction thereof, be fined not more than $1,000 or imprisonment for not more than one year, or both.

(c) "Person" defined

As used in this section the term ''person'' includes an individual, corporation, association, partnership, or any other organization or group of individuals.

(June 17, 1930, ch. 497, title III, § 341, 46 Stat. 707.)

PART III—PROMOTION OF FOREIGN TRADE

§ 1351. Foreign trade agreements

(a) Authority of President; modification and decrease of duties; altering import restrictions

(1) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—

(A) To enter into foreign trade agreements with foreign governments or instrumentalities thereof: *Provided*, That the enactment of the Trade Agreements Extension Act of 1955 shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.

(B) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder.

(2) No proclamation pursuant to paragraph (1)(B) of this subsection shall be made—

(A) Increasing by more than 50 per centum any rate of duty existing on July 1, 1934; except that a specific rate of duty existing on July 1, 1934, may be converted to its ad valorem equivalent based on the value of imports of the article concerned during the calendar year 1934 (determined in the same manner as provided in subparagraph (D)(ii)) and the proclamation may provide an ad valorem rate of duty not in excess of 50 per centum above such ad valorem equivalent.

(B) Transferring any article between the dutiable and free lists.

(C) In order to carry out a foreign trade agreement entered into by the President before June 12, 1955, or with respect to which notice of intention to negotiate was published in the Federal Register on November 16, 1954, decreasing by more than 50 per centum any rate of duty existing on January 1, 1945.

(D) In order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955, and before July 1, 1958, decreasing (except as provided in subparagraph (C) of this paragraph) any rate of duty below the lowest of the following rates:

(i) The rate 15 per centum below the rate existing on January 1, 1955.

(ii) In the case of any article subject to an ad valorem rate of duty above 50 per centum (or a combination of ad valorem rates aggregating more than 50 per centum), the rate 50 per centum ad valorem (or a combination of

ad valorem rates aggregating 50 per centum). In the case of any article subject to a specific rate of duty (or a combination of rates including a specific rate) the ad valorem equivalent of which has been determined by the President to have been above 50 per centum during a period determined by the President to be a representative period, the rate 50 per centum ad valorem or the rate (or a combination of rates), however stated, the ad valorem equivalent of which the President determines would have been 50 per centum during such period. The standards of valuation contained in section 1401a of this title (as in effect, with respect to the article concerned, during the representative period) shall be utilized by the President, to the maximum extent he finds such utilization practicable, in making the determinations under the preceding sentence.

(E) In order to carry out a foreign trade agreement entered into by the President on or after July 1, 1958, decreasing any rate of duty below the lowest of the rates provided for in paragraph (4)(A) of this subsection.

(3)(A) Subject to the provisions of subparagraphs (B) and (C) of this paragraph and of subparagraph (B) of paragraph (4) of this subsection, the provisions of any proclamation made under paragraph (1)(B) of this subsection, and the provisions of any proclamation of suspension under paragraph (5) of this subsection, shall be in effect from and after such time as is specified in the proclamation.

(B) In the case of any decrease in duty to which paragraph (2)(D) of this subsection applies—

(i) if the total amount of the decrease under the foreign trade agreement does not exceed 15 per centum of the rate existing on January 1, 1955, the amount of decrease becoming initially effective at one time shall not exceed 5 per centum of the rate existing on January 1, 1955;

(ii) except as provided in clause (i), not more than one-third of the total amount of the decrease under the foreign trade agreement shall become initially effective at one time; and

(iii) no part of the decrease after the first part shall become initially effective until the immediately previous part shall have been in effect for a period or periods aggregating not less than one year.

(C) No part of any decrease in duty to which the alternative specified in paragraph (2)(D)(i) of this subsection applies shall become initially effective after the expiration of the three-year period which begins on July 1, 1955. If any part of such decrease has become effective, then for purposes of this subparagraph any time thereafter during which such part of the decrease is not in effect by reason of legislation of the United States or action thereunder shall be excluded in determining when the three-year period expires.

(D) If (in order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955) the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed any limitation specified in paragraph (2)(C) or (D) or paragraph (4)(A) or (B) of this subsection or subparagraph (B) of this paragraph by not more than whichever of the following is lesser:

(i) The difference between the limitation and the next lower whole number, or

(ii) One-half of 1 per centum ad valorem.

In the case of a specific rate (or of a combination of rates which includes a specific rate), the one-half of 1 per centum specified in clause (ii) of the preceding sentence shall be determined in the same manner as the ad valorem equivalent of rates not stated wholly in ad valorem terms is determined for the purposes of paragraph (2)(D)(ii) of this subsection.

(4)(A) No proclamation pursuant to paragraph (1)(B) of this subsection shall be made, in order to carry out a foreign trade agreement entered into by the President on or after July 1, 1958, decreasing any rate of duty below the lowest of the following rates:

(i) The rate which would result from decreasing the rate existing on July 1, 1958, by 20 per centum of such rate.

(ii) Subject to paragraph (2)(B) of this subsection, the rate 2 per centum ad valorem below the rate existing on July 1, 1958.

(iii) The rate 50 per centum ad valorem or, in the case of any article subject to a specific rate of duty or to a combination of rates including a specific rate, any rate (or combination of rates), however stated, the ad valorem equivalent of which has been determined as 50 per centum ad valorem.

The provisions of clauses (ii) and (iii) of this subparagraph and of subparagraph (B)(ii) of this paragraph shall, in the case of any article, subject to a combination of ad valorem rates of duty, apply to the aggregate of such rates; and, in the case of any article, subject to a specific rate of duty or to a combination of rates including a specific rate, such provisions shall apply on the basis of the ad valorem equivalent of such rate or rates, during a representative period (whether or not such period includes July 1, 1958), determined in the same manner as the ad valorem equivalent of rates not stated wholly in ad valorem terms is determined for the purpose of paragraph (2)(D)(ii) of this subsection.

(B)(i) In the case of any decrease in duty to which clause (i) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed 10 per centum of the rate of duty existing on July 1, 1958, or, in any case in which the rate has been increased since that date, exceed such 10 per centum or one-third of the total amount of the decrease under the foreign trade agreement, whichever is the greater.

(ii) In the case of any decrease in duty to which clause (ii) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed 1 per centum ad valorem or, in any case in which the rate has been increased since July 1, 1958, exceed such 1 per centum or one-third of the total

amount of the decrease under the foreign trade agreement, whichever is the greater.

(iii) In the case of any decrease in duty to which clause (iii) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed one-third of the total amount of the decrease under the foreign trade agreement.

(C) In the case of any decrease in duty to which subparagraph (A) of this paragraph applies (i) no part of a decrease after the first part shall become initially effective until the immediately previous part shall have been in effect for a period or periods aggregating not less than one year, nor after the first part shall have been in effect for a period or periods aggregating more than three years, and (ii) no part of a decrease shall become initially effective after the expiration of the four-year period which begins on July 1, 1962. If any part of a decrease has become effective, then for the purposes of clauses (i) and (ii) of the preceding sentence any time thereafter during which such part of the decrease is not in effect by reason of legislation of the United States or action thereunder shall be excluded in determining when the three-year period or the four-year period, as the case may be, expires.

(5) Repealed. Pub. L. 87–794, title II, § 257(b), Oct. 11, 1962, 76 Stat. 882.

(6) The President may at any time terminate, in whole or in part, any proclamation made pursuant to this section.

(b) Cuba; preferential customs treatment; decrease of rates

Nothing in this section or the Trade Expansion Act of 1962 [19 U.S.C. 1801 et seq.] shall be construed to prevent the application, with respect to rates of duty established under this section or the Trade Expansion Act of 1962 pursuant to agreements with countries other than Cuba, of the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, or to preclude giving effect to an agreement with Cuba concluded under this section or the Trade Expansion Act of 1962, modifying the existing preferential customs treatment of any article the growth, produce, or manufacture of Cuba. Nothing in this chapter or the Trade Expansion Act of 1962 shall be construed to preclude the application to any product of Cuba (including products preferentially free of duty) of a rate of duty not higher than the rate applicable to the like products of other foreign countries (except the Philippines), whether or not the application of such rate involves any preferential customs treatment. No rate of duty on products of Cuba shall be decreased—

(1) In order to carry out a foreign trade agreement entered into by the President before June 12, 1955, by more than 50 per centum of the rate of duty existing on January 1, 1945, with respect to products of Cuba.

(2) In order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955, and before July 1, 1962, below the applicable alternative specified in subsection (a)(2)(C) or (D) or (4)(A) of this section (subject to the applicable provisions of subsection (a)(3)(B), (C), and (D) and (4)(B) and (C) of this section), each such alternative to be read for the purposes of this paragraph as relating to the rate of duty applicable to products of Cuba. With respect to products of Cuba, the limitation of subsection (a)(2)(D)(ii) or (4)(A)(iii) of this section may be exceeded to such extent as may be required to maintain an absolute margin of preference to which such products are entitled.

(3) In order to carry out a foreign trade agreement entered into after June 30, 1962, and before July 1, 1967, below the lowest rate permissible by applying title II of the Trade Expansion Act of 1962 [19 U.S.C. 1821 et seq.] to the rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on July 1, 1962, with respect to such product.

(c) Definitions

(1) As used in this section, the term ''duties and other import restrictions'' includes (A) rate and form of import duties and classification of articles, and (B) limitations, prohibitions, charges, and exactions other than duties, imposed on importation or imposed for the regulation of imports.

(2) For purposes of this section—

(A) Except as provided in subsection (d) of this section, the terms ''existing on July 1, 1934'', ''existing on January 1, 1945'', ''existing on January 1, 1955'', and ''existing on July 1, 1958'' refer to rates of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on the date specified, except rates in effect by reason of action taken pursuant to section 1362 of this title.

(B) The term ''existing'' without the specification of any date, when used with respect to any matter relating to the conclusion of, or proclamation to carry out, a foreign trade agreement, means existing on the day on which that trade agreement is entered into.

(d) Rate basis for additional increases or decreases; restoration of terminated treaties forbidden

(1) When any rate of duty has been increased or decreased for the duration of war or an emergency, by agreement or otherwise, any further increase or decrease shall be computed upon the basis of the post-war or post-emergency rate carried in such agreement or otherwise.

(2) Where under a foreign trade agreement the United States has reserved the unqualified right to withdraw or modify, after the termination of war or an emergency, a rate on a specific commodity, the rate on such commodity to be considered as ''existing on January 1, 1945'' for the purpose of this section shall be the rate which would have existed if the agreement had not been entered into.

(3) No proclamation shall be made pursuant to this section for the purpose of carrying out any foreign trade agreement the proclamation with respect to which has been terminated in whole by the President prior to July 5, 1945.

(e) Repealed. Pub. L. 87–794, title II, § 257(b), Oct. 11, 1962, 76 Stat. 882

(f) Information and advice from industry, agriculture, and labor

It is declared to be the sense of the Congress that the President, during the course of negotiating any foreign trade agreement under this section, should seek information and advice with respect to such agreement from representatives of industry, agriculture, and labor.

(June 17, 1930, ch. 497, title III, § 350, as added June 12, 1934, ch. 474, § 1, 48 Stat. 943; amended June 7, 1943, ch. 118, § 2, 57 Stat. 125; July 5, 1945, ch. 269, §§ 2, 3, 59 Stat. 410; Sept. 26, 1949, ch. 585, §§ 4, 6, 63 Stat. 698; June 21, 1955, ch. 169, § 3, 69 Stat. 162; Pub. L. 85–686, § 3, Aug. 20, 1958, 72 Stat. 673; Pub. L. 87–794, title II, § 257(a), (b), Oct. 11, 1962, 76 Stat. 881, 882; Pub. L. 96–39, title II, § 202(a)(3), July 26, 1979, 93 Stat. 202.)

REFERENCES IN TEXT

The Trade Agreements Extension Act of 1955, referred to in subsec. (a)(1)(A), is act June 21, 1955, ch. 169, 69 Stat. 162, which is classified to sections 1351(a), (b), (c), (e), 1352(c), 1352a, 1363(b), and 1364(a), (b), (e) of this title. For complete classification of this Act to the Code, see Short Title of 1955 Amendment note set out under section 1654 of this title and Tables.

Paragraph (5) of this subsection, referred to in subsec. (a)(3)(A), was repealed by Pub. L. 87–794, title III, § 257(b), Oct. 11, 1962, 76 Stat. 882.

The Trade Expansion Act of 1962, referred to in subsec. (b), is Pub. L. 87–794, Oct. 11, 1962, 76 Stat. 872, as amended, which is classified generally to chapter 7 (§ 1801 et seq.) of this title. Title II of the Trade Expansion Act of 1962, also referred to in subsec. (b), is classified generally to subchapter II (§ 1821 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 1362 of this title, referred to in subsec. (c)(2)(A), related to suspension or withdrawal of concessions from Communistic areas and was repealed by Pub. L. 87–794, title II, § 257(e)(1), Oct. 11, 1962, 76 Stat. 882.

AMENDMENTS

1979—Subsec. (a)(2)(D)(ii). Pub. L. 96–39 struck out reference to standards of valuation contained in section 1402 of this title.

1962—Subsec. (a)(5). Pub. L. 87–794, § 257(b), repealed par. (5) which provided that, subject to the provisions of section 1362 of this title, duties and other import restrictions proclaimed pursuant to this section shall apply to all articles the growth, produce, or manufacture of all foreign countries, whether imported directly or indirectly, and required the President to suspend the application to articles the growth, produce, or manufacture of any country because of its discriminatory treatment of American commerce or because of other acts (including the operations of international cartels) or policies which in his opinion tend to defeat the purposes of this section.

Subsec. (b). Pub. L. 87–794, § 257(a), inserted references to the Trade Expansion Act of 1962 in first and second sentences, substituted ''1955, and before July 1, 1962'' for ''1955'' in par. (2), and added par. (3).

Subsec. (e). Pub. L. 87–794, § 257(b), repealed subsec. (e) which related to reports to Congress by the President and the Tariff Commission.

1958—Subsec. (a)(2)(A). Pub. L. 85–686, § 3(a)(1), substituted ''any rate of duty existing on July 1, 1934'' for ''any rate of duty existing on July 1, 1945'', and inserted provisions permitting conversion of a specific rate of duty existing on July 1, 1934, to its ad valorem equivalent, and allowing an ad valorem rate of duty not in excess of 50 per centum above such ad valorem equivalent.

Subsec. (a)(2)(D). Pub. L. 85–686, § 3(a)(2), (3), inserted ''and before July 1, 1958,'' after ''June 12, 1955'', in opening par., and substituted ''section 1401a or 1402 of this title (as in effect, with respect to the article concerned,'' for ''section 1402 of this title (as in effect''.

Subsec. (a)(2)(E). Pub. L. 85–686, § 3(a)(4), added subpar. (E).

Subsec. (a)(3)(A). Pub. L. 85–686, § 3(a)(5), inserted ''and of subparagraph (B) of paragraph 4 of this subsection'' after ''subparagraphs (B) and (C) of this paragraph'', and substituted ''suspension under paragraph (5)'' for ''suspension under paragraph (4)''.

Subsec. (a)(3)(D). Pub. L. 85–686, § 3(a)(6), inserted ''or paragraph (4)(A) or (B)'' after ''paragraph (2)(C) or (D)''.

Subsec. (a)(4) to (6). Pub. L. 85–686, § 3(a)(7), (8), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (b). Pub. L. 85–686, § 3(b)(1), substituted ''an agreement with Cuba'' for ''an exclusive agreement with Cuba'' in opening par.

Subsec. (b)(2). Pub. L. 85–686, § 3(b)(2), inserted ''or (4)(A)'' after ''subsection (a)(2)(C) or (D)'', ''and (4)(B) and (C)'' after ''subsection (a)(3)(B), (C), and (D)'', and ''or (4)(A)(iii)'' after ''subsection (a)(2)(D)(ii)''.

Subsec. (c)(2)(A). Pub. L. 85–686, § 3(c), defined ''existing on July 1, 1934'' and ''existing on July 1, 1958''.

Subsec. (e)(1). Pub. L. 85–686, § 3(d), provided for the inclusion in the report of the results of action taken to obtain removal of foreign trade restrictions (including discriminatory restrictions) against United States exports, remaining restrictions, and the measures available to seek their removal in accordance with the objectives of this section.

Subsec. (f). Pub. L. 85–686, § 3(e), added subsec. (f).

1955—Subsec. (a). Act June 21, 1955, § 3(a), among other changes, authorized the President to reduce tariff rates existing on January 1, 1955 by a total of 15 percent in stages of not more than 5 percent of such rates, or to reduce those rates which are higher than 50 percent of the value of an import to a rate not less than 50 percent, in stages of not more than one-third of the reduction in any one year.

Subsec. (b). Act June 21, 1955, § 3(b), made applicable to Cuban products the new limits of authority to reduce tariffs.

Subsec. (c). Act June 21, 1955, § 3(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Act June 21, 1955, § 3(d), added subsec. (e).

1949—Subsec. (a). Act Sept. 26, 1949, struck out obsolete language referring to the depression which existed at the time of the original enactment of section.

Subsec. (b). Act Sept. 26, 1949, substituted period for colon following Cuba, struck out proviso which followed, and inserted in lieu thereof the last two sentences.

1945—Subsec. (a)(2). Act July 5, 1945, struck out ''existing'' after ''per centum any'', and inserted '', however established, existing on January 1, 1945 (even though temporarily suspended by Act of Congress),'' after ''rate of duty''.

Subsec. (b). Act July 5, 1945, struck out ''payable'' after ''That the duties'', and substituted ''however established, existing on January 1, 1945 (even though temporarily suspended by Act of Congress).'' for ''now payable thereon'' in proviso.

Subsec. (d). Act July 5, 1945, added subsec. (d).

1943—Subsec. (a)(2). Act June 7, 1943, inserted matter within parentheses in proviso.

EFFECTIVE DATE OF 1979 AMENDMENT

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

TREATY BETWEEN UNITED STATES AND CUBA

The treaty concluded between the United States and the Republic of Cuba, on Dec. 11, 1902, referred to in

subsec. (b) of the text, was terminated Aug. 21, 1963, pursuant to notice given by the United States on Aug. 21, 1962. See Bevans, Treaties and Other International Agreements of the United States of America, 1776–1949, vol. VI, page 1106.

TARIFF TREATMENT OF CUBAN PRODUCTS

Section 401 of Pub. L. 87–456, title IV, May 24, 1962, 76 Stat. 78, provided that:

''(a) Cuba is hereby declared to be a nation described in section 5 of the Trade Agreements Extension Act of 1951, as amended (19 U.S.C. 1362, relating to imports from nations and areas dominated or controlled by the foreign government or foreign organization controlling the world Communist movement). Articles which are—

''(1) the growth, produce, or manufacture of Cuba, and

''(2) imported on or after the date of enactment of this Act [May 24, 1962],

shall be denied the benefits of concessions contained in any trade agreement entered into under the authority of section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351).

''(b) Nothing in subsection (a) shall affect the rates of duty or the customs or excise treatment of articles the growth, produce, or manufacture of any country other than Cuba.

''(c) Subsection (a) shall not apply on or after the date on which the President proclaims that he has determined that Cuba is no longer dominated or controlled by the foreign government or foreign organization controlling the world Communist movement.

''(d) The Act of December 17, 1903 (19 U.S.C. 124, 125), and section 316 of the Tariff Act of 1930, as amended (19 U.S.C. 1316), both relating to the implementation of the treaty with Cuba concluded on December 11, 1902, shall not apply during the period during which subsection (a) applies.''

ADMINISTRATION OF TRADE AGREEMENTS PROGRAM

For provisions relating to the administration of the trade agreements program, see Ex. Ord. No. 11846, Mar. 27, 1975, 40 F.R. 14291, set out as a note under section 2111 of this title.

CONGRESSIONAL APPROVAL OR DISAPPROVAL OF GENERAL AGREEMENT ON TARIFFS AND TRADE

Section 10 of Pub. L. 85–686 provided that: ''The enactment of this Act [enacting section 1335 of this title, amending sections 1333, 1336, 1337, 1351, 1352a, 1360 and 1364 of this title, and enacting notes set out under sections 1351 and 1352 of this title] shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.''

REDUCTION OF PROTECTION RESULTING FROM 1956 AMENDMENTS

Section 2(e) of act Aug. 2, 1956, ch. 887, 70 Stat. 946, provided that: ''In any action relating to tariff adjustments by executive action, including action taken pursuant to section 350 of the Tariff Act of 1930, as amended [this section] the United States Tariff Commission [now United States International Trade Commission] and each officer of the executive branch of the Government concerned shall give full consideration to any reduction in the level of tariff protection which has resulted or is likely to result from the amendment of section 402 of the Tariff Act of 1930 made by this Act [sections 1401a and 1402 of this title].''

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

COMMISSION ON FOREIGN ECONOMIC POLICY

Act Aug. 7, 1953, ch. 348, title III, §§301–310, 67 Stat. 473–475, as amended by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 657, provided for the establishment of a Commission on Foreign Economic Policy to examine and report on the subjects of international trade and its enlargement consistent with a sound domestic economy, our foreign economic policy, and the trade aspects of our national security and total foreign policy, and to recommend appropriate policies and measures. The Commission was to submit a report on its findings within 60 days after the second session of the 83rd Congress was convened, and was to expire 90 days after the submission of its report to Congress.

EXTENSION OF PRESIDENTIAL AUTHORITY

Authority of President to enter into trade agreements under this section extended until close of Dec. 31, 1962, see note under section 1352 of this title.

EXECUTIVE ORDER NO. 9832

Ex. Ord. No. 9832, Feb. 25, 1947, 12 F.R. 1363, revoked by Ex. Ord. No. 10004, Oct. 6, 1948, 13 F.R. 5851.

EXECUTIVE ORDER NO. 10004

Ex. Ord. No. 10004, Oct. 6, 1948, 13 F.R. 5851, superseded by Ex. Ord. No. 10082, Oct. 5, 1949, 14 F.R. 6105.

EXECUTIVE ORDER NO. 10082

Ex. Ord. No. 10082, Oct. 5, 1949, 14 F.R. 6105, as amended by Ex. Ord. No. 10170, Oct. 13, 1950, 15 F.R. 6901, which related to administrative procedures for reciprocal trade-agreements program, was revoked by Ex. Ord. No. 11075, Jan. 15, 1963, 28 F.R. 473, set out as a note under section 1801 of this title.

EXECUTIVE ORDER NO. 10741

Ex. Ord. No. 10741, Nov. 26, 1957, 22 F.R. 9451, which established the Trade Policy Committee, was revoked by Ex. Ord. No. 11075, Jan. 15, 1963, 28 F.R. 473, set out as a note under section 1801 of this title.

CROSS REFERENCES

Congressional approval or disapproval of GATT, see section 1366 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1304, 1352, 1360, 1361, 1862, 1881, 1981, 2135, 3105 of this title; title 16 section 742g; title 22 section 1357.

§ 1352. Equalization of costs of production

(a) Application to importation of articles under foreign-trade agreement

The provisions of section 1336 of this title shall not apply to any article with respect to the importation of which into the United States a foreign-trade agreement has been concluded pursuant to this part or the Trade Expansion Act of 1962 [19 U.S.C. 1801 et seq.] or the Trade Act of 1974 [19 U.S.C. 2101 et seq.] or to any provision of any such agreement. The third paragraph of section 1311 of this title shall apply to any agreement concluded pursuant to this part or the Trade Expansion Act of 1962 or the Trade Act of 1974 to the extent only that such agreement assures to the United States a rate of duty on wheat flour produced in the United States which is preferential in respect to the lowest rate of duty imposed by the country with which such agreement has been concluded on like flour produced in any other country; and upon the withdrawal of wheat flour from bonded manufacturing warehouses for exportation to the country with which such agreement has been concluded, there shall be levied, collected, and paid on the imported wheat used, a duty equal to the amount of such assured preference.

(b) Termination of foreign trade agreement

Every foreign trade agreement concluded pursuant to this part shall be subject to termination, upon due notice to the foreign government concerned, at the end of not more than three years from the date on which the agreement comes into force, and, if not then terminated, shall be subject to termination thereafter upon not more than six months' notice.

(c) Termination of authority of President

The authority of the President to enter into foreign trade agreements under section 1351 of this title shall terminate on June 30, 1958.

(June 12, 1934, ch. 474, § 2, 48 Stat. 944; Mar. 1, 1937, ch. 22, 50 Stat. 24; Apr. 12, 1940, ch. 96, 54 Stat. 107; June 7, 1943, ch. 118, § 1, 57 Stat. 125; July 5, 1945, ch. 269, § 1, 59 Stat. 410; Sept. 26, 1949, ch. 585, § 3, 63 Stat. 698; June 16, 1951, ch. 141, §§ 2, 9(a), 65 Stat. 72, 75; Aug. 7, 1953, ch. 348, title I, § 101, 67 Stat. 472; July 1, 1954, ch. 445, § 1, 68 Stat. 360; June 21, 1955, ch. 169, § 2, 69 Stat. 162; Pub. L. 87–794, title II, § 257(d), Oct. 11, 1962, 76 Stat. 882; Pub. L. 93–618, title VI, § 602(a), Jan. 3, 1975, 88 Stat. 2072; Pub. L. 96–39, title XI, § 1106(h)(2), July 26, 1979, 93 Stat. 313.)

REFERENCES IN TEXT

The Trade Expansion Act of 1962, referred to in subsec. (a), is Pub. L. 87–794, Oct. 11, 1962, 76 Stat. 872, as amended, which is classified generally to chapter 7 (§ 1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Trade Act of 1974, referred to in subsec. (a), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to chapter 12 (§ 2101 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–39 amended directory language of Pub. L. 93–618, § 602(a), to correct a typographical error, and did not involve any change in text. See 1975 Amendment note below.

1975—Subsec. (a). Pub. L. 93–618, as amended by Pub. L. 96–39, inserted reference to the Trade Act of 1974.

1962—Subsec. (a). Pub. L. 87–794 inserted references to agreements concluded pursuant to the Trade Expansion Act of 1962.

1955—Subsec. (c). Act June 21, 1955, substituted "June 30, 1958" for "June 12, 1955".

1954—Subsec. (c). Act July 1, 1954, substituted "1955" for "1954".

1953—Subsec. (c). Act Aug. 7, 1953, substituted "1954" for "1953".

1951—Subsec. (a). Act June 16, 1951, substituted "section 1336 of this title" for "sections 1336 and 1516(b) of this title".

Subsec. (c). Act June 16, 1951, substituted "1953" for "1951".

1949—Subsec. (c). Act Sept. 26, 1949, § 3, substituted "1953" for "1948".

1945—Subsec. (c). Act. July 5, 1945, substituted "1948" for "1945".

1943—Subsec. (c). Joint Res. June 7, 1943, substituted "1945" for "1943".

1940—Subsec. (c). Joint Res. Apr. 12, 1940, substituted "1943" for "1940".

1937—Subsec. (c). Act Mar. 1, 1937, substituted "1937" for "1934".

REPEALS

Act Sept. 26, 1949, § 2, repealed act June 26, 1948, ch. 678, § 2, 62 Stat. 1053, which had extended the President's authority from June 12, 1948, until the close of June 30, 1949.

EXTENSION OF PRESIDENTIAL AUTHORITY

Section 257(c) of Pub. L. 87–794 extended authority of President to enter into foreign trade agreements under section 350 of the Tariff Act of 1930 (section 1351 of this title) from close of June 30, 1962, until close of Dec. 31, 1962.

Section 2 of Pub. L. 85–686, Aug. 20, 1958, 72 Stat. 673, extended authority of President to enter into foreign trade agreements under section 350 of the Tariff Act of 1930 (section 1351 of this title) from close of June 30, 1958, until close of June 30, 1962.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1304, 1360, 1366 of this title.

§ 1352a. Repealed. Pub. L. 87–794, title II, § 257(f), Oct. 11, 1962, 76 Stat. 882

Section, acts July 1, 1954, ch. 445, § 2, 68 Stat. 360; June 21, 1955, ch. 169, § 7, 69 Stat. 166; Aug. 20, 1958, Pub. L. 85–686, § 8(a), 72 Stat. 678, related to restriction on decrease of duties, impairment of national security, investigations and reports, and reports to Congress. See section 1801 et seq. of this title.

ACTIONS COMMENCED PRIOR TO OCTOBER 11, 1962

Section 257(f) of Pub. L. 87–794 provided in part that: "Any action (including any investigation begun) under section 2 [section 1352a of this title] before the date of the enactment of this Act [Oct. 11, 1962] shall be considered as having been taken or begun under section 232 [section 1862 of this title]."

§ 1353. Indebtedness of foreign countries, effect on

Nothing in this part shall be construed to give any authority to cancel or reduce, in any manner, any of the indebtedness of any foreign country to the United States.

(June 12, 1934, ch. 474, § 3, 48 Stat. 944.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1304 of this title.

§ 1354. Notice of intention to negotiate agreement; opportunity to be heard; President to seek information and advice

Before any foreign trade agreement is concluded with any foreign government or instrumentality thereof under the provisions of this part, reasonable public notice of the intention to negotiate an agreement with such government or instrumentality shall be given in order that any interested person may have an opportunity to present his views to the President, or to such agency as the President may designate, under such rules and regulations as the President may prescribe; and before concluding such agreement the President shall request the International Trade Commission to make the investigation and report provided for by section 1360 of this title, and shall seek information and advice with respect to such agreement from the Departments of State, Agriculture, Commerce, and Defense, and from such other sources as he may deem appropriate.

(June 12, 1934, ch. 474, § 4, 48 Stat. 945; July 5, 1945, ch. 269, § 4, 59 Stat. 411; Aug. 10, 1949, ch. 412, § 12(a), 63 Stat. 591; Sept. 26, 1949, ch. 585, § 5, 63

Stat. 698; June 16, 1951, ch. 141, § 3(c), 65 Stat. 73; Pub. L. 93–618, title I, § 171(b), Jan. 3, 1975, 88 Stat. 2009.)

AMENDMENTS

1975—Pub. L. 93–618 substituted ''United States International Trade Commission'' for ''United States Tariff Commission''.

1951—Act June 16, 1951, provided that the President request the Tariff Commission to make the investigation and report.

1949—Act Sept. 26, 1949, changed the Tariff Commission's functions under these sections from investigatory to advisory functions.

1945—Act July 5, 1945, inserted ''War, Navy,'' after ''Departments of State''.

CHANGE OF NAME

National Military Establishment changed to Department of Defense by act Aug. 10, 1949.

REPEALS

Act Sept. 26, 1949, § 2, repealed act June 26, 1948, ch. 678, § 3(c), 62 Stat. 1054, formerly cited as a credit to this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1304, 1360, 1366 of this title.

§§ 1355, 1356. Repealed. Pub. L. 89–23, § 7, May 22, 1965, 79 Stat. 113

Sections, act Apr. 11, 1941, ch. 59, §§ 1, 2, 55 Stat. 133, 134, related to the importation of coffee under Inter-American Coffee Agreement. See sections 1356a to 1356e of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective May 22, 1965, the date the President made the determination required by section 8 of Pub. L. 89–23, set out as a note under section 1356a of this title.

§§ 1356a to 1356j. Omitted

CODIFICATION

Sections were omitted. See sections 1356k and 1356*l* of this title.

Section 1356a, Pub. L. 89–23, § 2, May 22, 1965, 79 Stat. 112, authorized the President, for a period not to exceed October 1, 1968, to carry out the provisions of the International Coffee Agreement, 1962.

Section 1356b, Pub. L. 89–23, § 3, May 22, 1965, 79 Stat. 112, defined ''coffee'' for section 1356a of this title.

Section 1356c, Pub. L. 89–23, § 4, May 22, 1965, 79 Stat. 112, authorized delegation of Presidential powers and duties and required protection of consumer interests under sections 1356a to 1356e of this title.

Section 1356d, Pub. L. 89–23, § 5, May 22, 1965, 79 Stat. 113, required the President to submit an annual report to Congress on the International Coffee Agreement, 1962.

Section 1356e, Pub. L. 89–23, § 6, May 22, 1965, 79 Stat. 113, authorized appropriations for sections 1356a to 1356e of this title and limited contributions for administration of the International Coffee Agreement, 1962.

Section 1356f, Pub. L. 90–634, title III, § 302, Oct. 24, 1968, 82 Stat. 1348; Pub. L. 91–694, § 1, Jan. 12, 1971, 84 Stat. 2077; Pub. L. 92–262, Mar. 24, 1972, 86 Stat. 113, authorized the President, for a period not to exceed October 1, 1973, to carry out the provisions of the International Coffee Agreement, 1968.

Section 1356g, Pub. L. 90–634, title III, § 303, Oct. 24, 1968, 82 Stat. 1348, defined ''coffee'' for section 1356f of this title.

Section 1356h, Pub. L. 90–634, title III, § 304, Oct. 24, 1968, 82 Stat. 1348, authorized delegation of Presidential powers and duties and required protection of consumer interests under sections 1356f to 1356j of this title and provided for remedial action under the International Coffee Agreement, 1968.

Section 1356i, Pub. L. 90–634, title III, § 305, Oct. 24, 1968, 82 Stat. 1349, required the President to submit an annual report to Congress on the International Coffee Agreement, 1968.

Section 1356j, Pub. L. 90–634, title III, § 306, Oct. 24, 1968, 82 Stat. 1349, provided procedures to prevent discrimination against vessels registered under laws of the United States in shipping coffee to the United States.

§ 1356k. Importation of coffee under International Coffee Agreement, 1983; Presidential powers and duties

On and after the entry into force of the International Coffee Agreement, 1983, and before October 1, 1989, the President is authorized, in order to carry out and enforce the provisions of that agreement—

(1) to regulate the entry of coffee for consumption, or withdrawal of coffee from warehouse for consumption, or any other form of entry or withdrawal of coffee such as for transportation or exportation, including whenever quotas are in effect pursuant to the agreement, (A) the limitation of entry, or withdrawal from warehouse, of coffee imported from countries which are not members of the International Coffee Organization, and (B) the prohibition of entry of any shipment from any member of the International Coffee Organization of coffee which is not accompanied either by a valid certificate of origin, a valid certificate of reexport, a valid certificate of reshipment, or a valid certificate of transit, issued by a qualified agency in such form as required under the agreement;

(2) to require that every export or reexport of coffee from the United States shall be accompanied by a valid certificate of origin or a valid certificate of reexport, issued by a qualified agency of the United States designated by him, in such form as required under the agreement;

(3) to require the keeping of such records, statistics, and other information, and the rendering of such reports, relating to the importation, distribution, prices, and consumption of coffee as he may from time to time prescribe; and

(4) to take such other action, and issue and enforce such rules and regulations, as he may consider necessary or appropriate in order to implement the obligations of the United States under the agreement.

(Pub. L. 96–599, § 2, Dec. 24, 1980, 94 Stat. 3491; Pub. L. 97–276, § 161, Oct. 2, 1982, 96 Stat. 1204; Pub. L. 97–446, § 154, Jan. 12, 1983, 96 Stat. 2345; Pub. L. 98–120, § 1, Oct. 12, 1983, 97 Stat. 809; Pub. L. 100–418, title I, § 1123(a), Aug. 23, 1988, 102 Stat. 1146.)

REFERENCES IN TEXT

The International Coffee Agreement, 1983, referred to in text, was entered into force for the United States provisionally Oct. 1, 1983, and definitively Sept. 11, 1985.

CODIFICATION

Section was enacted as part of the International Coffee Agreement Act of 1980, and not as part of the Tariff Act of 1930 which comprises this chapter.

AMENDMENTS

1988—Pub. L. 100–418 substituted ''October 1, 1989'' for ''October 1, 1986''.

1983—Pub. L. 98–120 in provisions preceding par. (1) substituted '', 1983'' for ''1976'' and ''before October 1, 1986'' for ''for such period prior to October 1, 1983 as the agreement remains in effect''.

Pub. L. 97–446 substituted ''October 1, 1983'' for ''the expiration of this joint resolution''.

1982—Pub. L. 97–276 substituted ''the expiration of this joint resolution'' for ''October 1, 1982''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1123(b) of Pub. L. 100–418 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect January 1, 1987.''

SHORT TITLE

Section 1 of Pub. L. 96–599 provided that: ''This Act [enacting this section and sections 1356*l* to 1356n of this title] may be cited as the 'International Coffee Agreement Act of 1980'.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1356*l* of this title.

§ 1356*l*. "Coffee" defined

As used in this section and section 1356k of this title, the term ''coffee'' means coffee as defined in article 3 of the International Coffee Agreement, 1983.

(Pub. L. 96–599, § 3, Dec. 24, 1980, 94 Stat. 3491; Pub. L. 98–120, § 1(1), Oct. 12, 1983, 97 Stat. 809.)

CODIFICATION

Section was enacted as part of the International Coffee Agreement Act of 1980, and not as part of the Tariff Act of 1930 which comprises this chapter.

AMENDMENTS

1983—Pub. L. 98–120 substituted '', 1983'' for ''1976''.

§§ 1356m, 1356n. Repealed. Pub. L. 105–362, title XIV, § 1401(a), Nov. 10, 1998, 112 Stat. 3294

Section 1356m, Pub. L. 96–599, § 4, Dec. 24, 1980, 94 Stat. 3492, related to delegation of Presidential powers and duties, protection of interests of United States consumers, and remedial action with respect to the International Coffee Agreement Act of 1980.

Section 1356n, Pub. L. 96–599, § 5, Dec. 24, 1980, 94 Stat. 3492; Pub. L. 98–120, § 1(1), Oct. 12, 1983, 97 Stat. 809, related to annual report by the President to Congress on the International Coffee Agreement, 1983.

§§ 1357 to 1359. Repealed. Sept. 26, 1949, ch. 585, § 2, 63 Stat. 698

Sections, act June 26, 1948, ch. 678, §§ 3(a), (b), 4, 5, 62 Stat. 1053, 1054, related to the investigatory functions of the Tariff Commission and the report by the President to Congress.

§ 1360. Investigation before trade negotiations

(a) Report by International Trade Commission

Before entering into negotiations concerning any proposed foreign trade agreement under section 1351 of this title, the President shall furnish the United States International Trade Commission (hereinafter in sections 1352(a), (c), 1354, and 1360 to 1367 of this title, and section 624(b) of title 7, referred to as the ''Commission'') with a list of all articles imported into the United States to be considered for possible modification of duties and other import restrictions, imposition of additional import restrictions, or continuance of existing customs or excise treatment. Upon receipt of such list the Commission shall make an investigation and report to the President the findings of the Commission with respect to each such article as to (1) the limit to which such modification, imposition, or continuance may be extended in order to carry out the purpose of said section without causing or threatening serious injury to the domestic industry producing like or directly competitive articles; and (2) if increases in duties or additional import restrictions are required to avoid serious injury to the domestic industry producing like or directly competitive articles the minimum increases in duties or additional import restrictions required. Such report shall be made by the Commission to the President not later than six months after the receipt of such list by the Commission. No such foreign trade agreement shall be entered into until the Commission has made its report to the President or until the expiration of the six-month period.

(b) Procedures and determinations

(1) In the course of any investigation pursuant to this section the Commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at such hearings. If in the course of any such investigation the Commission shall find with respect to any article on the list upon which a tariff concession has been granted that an increase in duty or additional import restriction is required to avoid serious injury to the domestic industry producing like or directly competitive articles, the Commission shall promptly institute an investigation with respect to that article pursuant to section 1364 of this title.

(2) In each such investigation the Commission shall, to the extent practicable and without excluding other factors, ascertain for the last calendar year preceding the investigation the average invoice price on a country-of-origin basis (converted into currency of the United States in accordance with the provisions of section 5151 of title 31) at which the foreign article was sold for export to the United States, and the average prices at which the like or directly competitive domestic articles were sold at wholesale in the principal markets of the United States. The Commission shall also, to the extent practicable, estimate for each article on the list the maximum increase in annual imports which may occur without causing serious injury to the domestic industry producing like or directly competitive articles. The Commission shall request the executive departments and agencies for information in their possession concerning prices and other economic data from the principal supplier foreign country of each such article.

(June 16, 1951, ch. 141, § 3(a), (b), 65 Stat. 72; Pub. L. 85–686, § 4, Aug. 20, 1958, 72 Stat. 675; Pub. L. 93–618, title I, § 171(b), Jan. 3, 1975, 88 Stat. 2009.)

REFERENCES IN TEXT

Sections 1362 to 1365 of this title, included in the reference in subsec. (a) to sections 1360 to 1367 of this title, were repealed by Pub. L. 87–749, title II, § 257(e)(1), Oct. 11, 1962, 76 Stat. 882; section 1367 of this title was repealed by Pub. L. 87–456, title III, § 303(c), May 24, 1962, 76 Stat. 78.

CODIFICATION

Section was not enacted as part of the Tariff Act of 1930 which comprises this chapter.

Section is comprised of subsecs. (a) and (b) of section 3 of act June 16, 1951. Subsec. (c) of the 1951 act amended section 1354 of this title.

In subsec. (b)(2), ''section 5151 of title 31'' was substituted for ''section 522 of the Tariff Act of 1930 [31 U.S.C. 372]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–618 substituted ''United States International Trade Commission'' for ''United States Trade Commission''.

1958—Subsec. (a). Pub. L. 85–686, § 4(a), substituted ''six months'' for ''120 days'', and ''six-month'' for ''120-day''.

Subsec. (b). Pub. L. 85–686, § 4(b), (c), redesignated existing provisions as par. (1), inserted provision to require the Commission to promptly institute an investigation pursuant to section 1364 of this title when the Commission finds with respect to any article on the list upon which a tariff concession has been granted that an increase in duty or additional import restriction is required to avoid serious injury to the domestic industry producing like or directly competitive articles, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1354, 1361, 1366 of this title.

§ 1361. Action by President; reports to Congress

(a) Transmittal by President of trade agreement and message to Congress

Within thirty days after any trade agreement under section 1351 of this title has been entered into which, when effective, will (1) require or make appropriate any modification of duties or other import restrictions, the imposition of additional import restrictions, or the continuance of existing customs or excise treatment, which modification, imposition, or continuance will exceed the limit to which such modification, imposition, or continuance may be extended without causing or threatening serious injury to the domestic industry producing like or directly competitive articles as found and reported by the United States International Trade Commission under section 1360 of this title, or (2) fail to require or make appropriate the minimum increase in duty or additional import restrictions required to avoid such injury, the President shall transmit to Congress a copy of such agreement together with a message accurately identifying the article with respect to which such limits or minimum requirements are not complied with, and stating his reasons for the action taken with respect to such article. If either the Senate or the House of Representatives, or both, are not in session at the time of such transmission, such agreement and message shall be filed with the Secretary of the Senate or the Clerk of the House of Representatives, or both, as the case may be.

(b) Transmittal by Commission of copy of report to the President to Congressional committees

Promptly after the President has transmitted such foreign trade agreement to Congress the Commission shall deposit with the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, a copy of the portions of its report to the President dealing with the articles with respect to which such limits or minimum requirements are not complied with.

(June 16, 1951, ch. 141, § 4, 65 Stat. 73; Pub. L. 93–618, title I, § 171(b), Jan. 3, 1975, 88 Stat. 2009.)

CODIFICATION

Section was not enacted as part of the Tariff Act of 1930 which comprises this chapter.

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–618 substituted ''United States International Trade Commission'' for ''Tariff Commission''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1360, 1366 of this title.

§§ 1362 to 1365. Repealed. Pub. L. 87–794, title II, § 257(e)(1), Oct. 11, 1962, 76 Stat. 882

Section 1362, act June 16, 1951, ch. 141, § 5, 65 Stat. 73, related to suspension or withdrawal of concessions from Communistic areas. See section 1801 et seq. of this title.

Section 1363, acts June 16, 1951, ch. 141, § 6, 65 Stat. 73; June 21, 1955, ch. 169, § 4, 69 Stat. 165, provided for an escape clause for future agreements, and insertion in past agreements.

Section 1364, acts June 16, 1951, ch. 141, § 7, 65 Stat. 74; Aug. 7, 1953, ch. 348, title I, § 102, 67 Stat. 472; June 21, 1955, ch. 169, §§ 5, 6, 69 Stat. 166; Aug. 20, 1958, Pub. L. 85–686, §§ 5(a), (b)(1), (c), 6, 72 Stat. 676, related to the operation of the escape clause.

Section 1365, act June 16, 1951, ch. 141, § 8(a), 65 Stat. 75, provided for emergency action for perishable agricultural products.

PRESIDENTIAL ACTION IN EFFECT ON OCTOBER 11, 1962

Section 257(e)(2) of Pub. L. 87–794 provided that: ''Action taken by the President under section 5 of such Act [former section 1362 of this title] and in effect on the date of the enactment of this Act [Oct. 11, 1962] shall be considered as having been taken by the President under section 231 [section 1861 of this title].''

CONTINUATION OF INVESTIGATIONS

Section 257(e)(3) of Pub. L. 87–794 provided that: ''Any investigation by the Tariff Commission [now the United States International Trade Commission] under section 7 of such Act [former section 1364 of this title] which is in progress on the date of the enactment of this Act [Oct. 11, 1962] shall be continued under section 301 [section 1901 of this title] as if the application by the interested party were a petition under such section for tariff adjustment under section 351 [section 1981 of this title]. For purposes of section 301(f) [section 1901(f) of this title], such petition shall be treated as having been filed on the date of the enactment of this Act [Oct. 11, 1962].''

§ 1366. General Agreement on Tariff and Trade unaffected

The enactment of sections 1352(a), (c), 1354, and 1360 to 1367 of this title, and section 624(f) of title 7, shall not be construed to determine or

indicate the approval or disapproval by the Congress of the Executive Agreement known as the General Agreement on Tariffs and Trade.

(June 16, 1951, ch. 141, § 10, 65 Stat. 75.)

REFERENCES IN TEXT

Sections 1362 to 1365 of this title, included in the reference to sections 1360 to 1367 of this title, were repealed by Pub. L. 87–749, title II, § 257(e)(1), Oct. 11, 1962, 76 Stat. 882; section 1367 of this title was repealed by Pub. L. 87–456, title III, § 303(c), May 24, 1962, 76 Stat. 78.

CODIFICATION

Section was not enacted as part of the Tariff Act of 1930 which comprises this chapter.

PRIOR PROVISIONS

Similar provisions were contained in act July 1, 1954, ch. 445, § 3, 68 Stat. 360, other sections of which amended section 1352(c) of this title and enacted section 1352a of this title; and in act Aug. 7, 1953, ch. 348, title I, § 103, 67 Stat. 472, which act amended section 624(b) of title 7, and sections 1330(d), 1352(c) and former section 1364(a) of this title, and enacted provisions set out as notes under sections 1351 and 1364 of this title.

CONGRESSIONAL APPROVAL OR DISAPPROVAL OF GENERAL AGREEMENT ON TARIFFS AND TRADE

Section 10 of Pub. L. 85–686 provided that: ''The enactment of this Act [enacting section 1335 of this title, amending sections 1333, 1336, 1337, 1351, 1352a, 1360, and former section 1364 of this title, and enacting notes set out under sections 1352 and 1366 of this title] shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1360 of this title.

§ 1367. Repealed. Pub. L. 87–456, title III, § 303(c), May 24, 1962, 76 Stat. 78

Section, act June 16, 1951, ch. 141, § 11, 65 Stat. 75, required the President to take such measures as may be necessary to prevent the importation of ermine, fox, kolinsky, marten, mink, muskrat, and weasel furs and skins which are the product of the Union of Soviet Socialist Republics or of Communist China.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963, see section 501(a) of Pub. L. 87–456, set out as a note preceding section 1202 of this title.

SUBTITLE III—ADMINISTRATIVE PROVISIONS

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in title 15 section 69d.

PART I—DEFINITIONS AND NATIONAL CUSTOMS AUTOMATION PROGRAM

SUBPART A—DEFINITIONS

§ 1401. Miscellaneous

When used in this subtitle or in part I of subtitle II of this chapter—

(a) Vessel

The word ''vessel'' includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft.

(b) Vehicle

The word ''vehicle'' includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft.

(c) Merchandise

The word ''merchandise'' means goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments as defined in section 5312 of title 31.

(d) Person

The word ''person'' includes partnerships, associations, and corporations.

(e) Master

The word ''master'' means the person having the command of the vessel.

(f) Day

The word ''day'' means the time from eight o'clock antemeridian to five o'clock postmeridian.

(g) Night

The word ''night'' means the time from five o'clock postmeridian to eight o'clock antemeridian.

(h) United States

The term ''United States'' includes all Territories and possessions of the United States except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(i) Officer of the customs; customs officer

The terms ''officer of the customs'' and ''customs officer'' mean any officer of the United States Customs Service of the Treasury Department (also hereinafter referred to as the ''Customs Service'') or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

(j) Customs waters

The term ''customs waters'' means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States.

(k) Hovering vessel

The term ''hovering vessel'' means—

(1) any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United

States in violation of the laws of the United States; and

(2) any vessel which has visited a vessel described in paragraph (1).

(*l*) Secretary

The term ''Secretary'' means the Secretary of the Treasury or his delegate.

(m) Controlled substance

The term ''controlled substance'' has the meaning given that term in section 802(6) of title 21. For purposes of this chapter, a controlled substance shall be treated as merchandise the importation of which into the United States is prohibited, unless the importation is authorized under—

(1) an appropriate license or permit; or

(2) the Controlled Substances Import and Export Act [21 U.S.C. 951 et seq.].

(n) Electronic transmission

The term ''electronic transmission'' means the transfer of data or information through an authorized electronic data interchange system consisting of, but not limited to, computer modems and computer networks.

(*o*) Electronic entry

The term ''electronic entry'' means the electronic transmission to the Customs Service of—

(1) entry information required for the entry of merchandise, and

(2) entry summary information required for the classification and appraisement of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

(p) Electronic data interchange system

The term ''electronic data interchange system'' means any established mechanism approved by the Commissioner of Customs through which information can be transferred electronically.

(q) National Customs Automation Program

The term ''National Customs Automation Program'' means the program established under section 1411 of this title.

(r) Import activity summary statement

The term ''import activity summary statement'' refers to data or information transmitted electronically to the Customs Service, in accordance with such regulations as the Secretary prescribes, at the end of a specified period of time which enables the Customs Service to assess properly the duties, taxes and fees on merchandise imported during that period, collect accurate statistics and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(s) Reconciliation

The term ''reconciliation'' means an electronic process, initiated at the request of an importer, under which the elements of an entry (other than those elements related to the admissibility of the merchandise) that are undetermined at the time the importer files or transmits the documentation or information required by section 1484(a)(1)(B) of this title, or the import activity summary statement, are provided to the Customs Service at a later time. A reconciliation is treated as an entry for purposes of liquidation, reliquidation, recordkeeping, and protest.

(June 17, 1930, ch. 497, title IV, § 401, 46 Stat. 708; Aug. 5, 1935, ch. 438, title II, § 201, 49 Stat. 521; June 25, 1938, ch. 679, § 2, 52 Stat. 1077; Proc. No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; June 30, 1955, ch. 258, § 2(a)(3), 69 Stat. 242; Pub. L. 91–271, title III, § 301(c), June 2, 1970, 84 Stat. 288; Pub. L. 99–570, title III, § 3111, Oct. 27, 1986, 100 Stat. 3207–80; Pub. L. 103–182, title VI, § 634, Dec. 8, 1993, 107 Stat. 2198; Pub. L. 104–295, §§ 3(a)(6)(A), 18(a), Oct. 11, 1996, 110 Stat. 3515, 3524.)

REFERENCES IN TEXT

The Controlled Substances Import and Export Act, referred to in subsec. (m)(2), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

CODIFICATION

Section is based on the designated subsections of section 401 of act June 17, 1930, as amended. The last undesignated paragraph of section 401, as added by section 201 of act Aug. 5, 1935, is classified to section 1432a of this title.

Words ''the Philippine Islands'' formerly set out in subsec. (h) were omitted on authority of Proc. No. 2695, which is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse, and in which the President proclaimed the independence of the Philippines.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 401, 42 Stat. 948, which superseded R.S. §§ 2766 and Section 401 of the 1922 act was superseded by section 401 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 Act.

Section III of the Underwood Tariff Act of Oct. 3, 1913, ch. 16, 38 Stat. 181, amending the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 131, was repealed by section 643 of the act of Sept. 21, 1922, ch. 356, title IV, 42 Stat. 989.

Section III, by subdivision A thereof, amended the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 131, as previously amended, to read as set forth in section III, subdivisions B–CC. By that amendment and reenactment, the Customs Administrative Act of June 10, 1890, and the amendments thereof by act July 24, 1897, ch. 11, § 32, 30 Stat. 211, act May 17, 1898, ch. 341, 30 Stat. 417, Act Dec. 15, 1902, ch. 1, 32 Stat. 753, act May 27, 1908, ch. 205, 35 Stat. 403, and the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 91, were superseded, except the provisions thereof mentioned in a proviso of section IV, S, of that act.

The Customs Administrative Act of June 10, 1890, as originally enacted and as amended previous to the Payne-Aldrich Tariff Act, consisted of thirty sections, of which section 30 prescribed the time when the act should go into effect. Of the preceding twenty-nine sections of the original act, section 15 providing for review by the courts of decisions of the Board of General Appraisers, was omitted from the act as further amended by the Payne-Aldrich Tariff Act, and the remaining twenty-eight sections were amended thereby, constituting sections 1–28 thereof. A new section, designated as section 29, was added by the Payne-Aldrich Tariff Act, which created a Court of Customs Appeals and prescribed its jurisdiction and powers, proceedings, etc. Its provisions were incorporated in and superseded

by chapter 8 of the Judicial Code of March 3, 1911. Another new section, designated as section 30, was also added by the Payne-Aldrich Tariff Act, which provided for the appointment of an Assistant Attorney-General, a Deputy Assistant Attorney-General, and attorneys, in charge of matters of reappraisement, etc., of imported goods and litigation incident thereto. Section 30 was incorporated into the Code as section 296 of former Title 5, Executive Departments and Government Officers and Employees, and subsequently repealed by Pub. L. 89–554, Sept. 6, 1966, § 8(a), 80 Stat. 632.

AMENDMENTS

1996—Subsec. (s). Pub. L. 104–295, § 18(a), amended first sentence generally. Prior to amendment, first sentence read as follows: ''The term 'reconciliation' means an electronic process, initiated at the request of an importer, under which the elements of an entry, other than those elements related to the admissibility of the merchandise, that are undetermined at the time of entry summary are provided to the Customs Service at a later time.''

Pub. L. 104–295, § 3(a)(6)(A), inserted ''recordkeeping,'' after ''reliquidation,''.

1993—Subsec. (k). Pub. L. 103–182, § 634(1), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows:

''(1) The term 'hovering vessel' means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue.

''(2) For the purposes of sections 1432, 1433, 1434, 1448, 1585, and 1586 of this title, any vessel which—

''(A) has visited any hovering vessel;

''(B) has received merchandise while in the customs waters beyond the territorial sea; or

''(C) has received merchandise while on the high seas;

shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.''

Subsecs. (n) to (s). Pub. L. 103–182, § 634(2), added subsecs. (n) to (s).

1986—Subsec. (c). Pub. L. 99–570, § 3111(1), inserted '', and monetary instruments as defined in section 5312 of title 31''.

Subsec. (k). Pub. L. 99–570, § 3111(2), (3), designated existing provisions as par. (1) and added par. (2).

Subsec. (m). Pub. L. 99–570, § 3111(4), added subsec. (m).

1970—Subsec. (h). Pub. L. 91–271, § 301(c)(1), (2), struck out subsec. (h) which defined ''collector'', and redesignated subsec. (k) as (h).

Subsec. (i). Pub. L. 91–271, § 301(c)(1), (2), struck out subsec. (i) which defined ''comptroller of customs'', redesignated subsec. (*l*) as (i), and, as so redesignated, defined ''customs officer''.

Subsec. (j). Pub. L. 91–271, § 301(c)(1), (2), struck out subsec. (j) which defined ''appraiser'', and redesignated subsec. (m) as (j).

Subsec. (k). Pub. L. 91–271, § 301(c)(1), (2), redesignated subsec. (n) as (k). Former subsec. (k) redesignated (h).

Subsec. (*l*). Pub. L. 91–271, § 301(c)(2), (3), added subsec. (*l*). Former subsec. (*l*) redesignated (i).

Subsecs. (m), (n). Pub. L. 91–271, § 301(c)(2), redesignated subsecs. (m) and (n) as (j) and (k), respectively.

1955—Subsec. (k). Act June 30, 1955, inserted ''Johnston Island''.

1938—Subsec. (k). Act June 25, 1938, inserted ''Wake Island, Midway Islands, Kingman Reef'' before ''and the island of Guam''.

1935—Subsecs. (*l*) to (n). Act Aug. 5, 1935, added subsecs. (*l*) to (n).

CHANGE OF NAME

United States Customs Service substituted for Bureau of Customs in subsec. (i) pursuant to Treasury Department Order 165–23, Apr. 4, 1973, eff. Aug. 1, 1973, 38 F.R. 13037. See, also, section 308 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 3(a)(6)(A) of Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2(d) of act June 30, 1955, provided that: ''The amendments made by this section [amending this section, sections 1557, 1562, and 1709 of this title, and sections 542, 544, and 545 of Title 18, Crimes and Criminal Procedure] shall take effect on the day following the day on which this Act is enacted [July 1, 1955].''

EFFECTIVE DATE OF 1938 AMENDMENT

Section 37 of act June 25, 1938, provided that: ''Sections 31 and 34 of this Act [amending section 1001 of this title] shall take effect on the date of enactment of this Act [June 25, 1938]. Except as otherwise specially provided in this Act, the remainder of this Act [amending this section and sections 1001, 1201, 1304, 1308, 1309, 1315, 1317, 1402, 1451, 1459, 1460, 1484, 1485, 1491, 1499, 1501, 1516, 1520, 1524, 1553, 1557, 1558, 1559, 1562, 1563, 1603, 1607, 1609, 1613, 1623, and 1709 of this title, enacting sections 1321, 1467, and 1528 of this title, and amending section 331 of former Title 46, Shipping] shall take effect on the thirtieth day following the date of its enactment.''

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1677 of this title; title 10 section 374; title 18 section 553; title 22 section 6005; title 46 App. section 1155.

§ 1401a. Value

(a) Generally

(1) Except as otherwise specifically provided for in this chapter, imported merchandise shall be appraised, for the purposes of this chapter, on the basis of the following:

(A) The transaction value provided for under subsection (b) of this section.

(B) The transaction value of identical merchandise provided for under subsection (c) of this section, if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2) of this section.

(C) The transaction value of similar merchandise provided for under subsection (c) of this section, if the value referred to in subparagraph (B) cannot be determined.

(D) The deductive value provided for under subsection (d) of this section, if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).

(E) The computed value provided for under subsection (e) of this section, if the value referred to in subparagraph (D) cannot be determined.

(F) The value provided for under subsection (f) of this section, if the value referred to in subparagraph (E) cannot be determined.

(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to imported merchandise, the merchandise shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Secretary shall prescribe. If the computed value of the merchandise cannot subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1)(D).

(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

(b) Transaction value of imported merchandise

(1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(A) the packing costs incurred by the buyer with respect to the imported merchandise;

(B) any selling commission incurred by the buyer with respect to the imported merchandise;

(C) the value, apportioned as appropriate, of any assist;

(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

(2)(A) The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this chapter only if—

(i) there are no restrictions on the disposition or use of the imported merchandise by the buyer other than restrictions that—

(I) are imposed or required by law,

(II) limit the geographical area in which the merchandise may be resold, or

(III) do not substantially affect the value of the merchandise;

(ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined with respect to the imported merchandise;

(iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment therefor can be made under paragraph (1)(E); and

(iv) the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable, for purposes of this subsection, under subparagraph (B).

(B) The transaction value between a related buyer and seller is acceptable for the purposes of this subsection if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates—

(i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States; or

(ii) the deductive value or computed value for identical merchandise or similar merchandise;

but only if each value referred to in clause (i) or (ii) that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.

(C) In applying the values used for comparison purposes under subparagraph (B), there shall be taken into account differences with respect to the sales involved (if such differences are based on sufficient information whether supplied by the buyer or otherwise available to the customs officer concerned) in—

(i) commercial levels;

(ii) quantity levels;

(iii) the costs, commissions, values, fees, and proceeds described in paragraph (1); and

(iv) the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(3) The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1):

(A) Any reasonable cost or charge that is incurred for—

(i) the construction, erection, assembly, or maintenance of, or the technical assistance

provided with respect to, the merchandise after its importation into the United States; or

(ii) the transportation of the merchandise after such importation.

(B) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable.

(4) For purposes of this subsection—

(A) The term ''price actually paid or payable'' means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(B) Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and seller after the date of the importation of the merchandise into the United States shall be disregarded in determining the transaction value under paragraph (1).

(c) Transaction value of identical merchandise and similar merchandise

(1) The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value for purposes of this chapter under subsection (b) of this section but adjusted under paragraph (2) of this subsection) of imported merchandise that is—

(A) with respect to the merchandise being appraised, either identical merchandise or similar merchandise, as the case may be; and

(B) exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(2) Transaction values determined under this subsection shall be based on sales of identical merchandise or similar merchandise, as the case may be, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise at either a different commercial level or in different quantities, or both, shall be used, but adjusted to take account of any such difference. Any adjustment made under this paragraph shall be based on sufficient information. If in applying this paragraph with respect to any imported merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, such imported merchandise shall be appraised on the basis of the lower or lowest of such values.

(d) Deductive value

(1) For purposes of this subsection, the term ''merchandise concerned'' means the merchandise being appraised, identical merchandise, or similar merchandise.

(2)(A) The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (3)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(i) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(ii) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This clause shall apply to appraisement of merchandise only if the importer so elects and notifies the customs officer concerned of that election within such time as shall be prescribed by the Secretary.

(B) For purposes of subparagraph (A), the unit price at which merchandise is sold in the greatest aggregate quantity is the unit price at which such merchandise is sold to unrelated persons, at the first commercial level after importation (in cases to which subparagraph (A)(i) or (ii) applies) or after further processing (in cases to which subparagraph (A)(iii) applies) at which such sales take place, in a total volume that is (i) greater than the total volume sold at any other unit price, and (ii) sufficient to establish the unit price.

(3)(A) the price determined under paragraph (2) shall be reduced by an amount equal to—

(i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(ii) the actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);

(iv) the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the

value of, such merchandise for which vendors in the United States are ordinarily liable; and

(v) (but only in the case of a price determined under paragraph (2)(A)(iii)) the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to cost of such processing.

(B) For purposes of applying paragraph (A)—

(i) the deduction made for profits and general expenses shall be based upon the importer's profits and general expenses, unless such profits and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind, in which case the deduction shall be based on the usual profit and general expenses reflected in such sales, as determined from sufficient information; and

(ii) any State or local tax imposed on the importer with respect to the sale of imported merchandise shall be treated as a general expense.

(C) The price determined under paragraph (2) shall be increased (but only to the extent that such costs are not otherwise included) by an amount equal to the packing costs incurred by the importer or the buyer, as the case may be, with respect to the merchandise concerned.

(D) For purposes of determining the deductive value of imported merchandise, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned shall be disregarded.

(e) Computed value

(1) The computed value of imported merchandise is the sum of—

(A) the cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(C) any assist, if its value is not included under subparagraph (A) or (B); and

(D) the packing costs.

(2) For purposes of paragraph (1)—

(A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and

(B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

(f) Value if other values cannot be determined or used

(1) If the value of imported merchandise cannot be determined, or otherwise used for the purposes of this chapter, under subsections (b) through (e) of this section, the merchandise shall be appraised for the purposes of this chapter on the basis of a value that is derived from the methods set forth in such subsections, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

(2) Imported merchandise may not be appraised, for the purposes of this chapter, on the basis of—

(A) the selling price in the United States of merchandise produced in the United States;

(B) a system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(C) the price of merchandise in the domestic market of the country of exportation;

(D) a cost of production, other than a value determined under subsection (e) of this section for merchandise that is identical merchandise or similar merchandise to the merchandise being appraised;

(E) the price of merchandise for export to a country other than the United States;

(F) minimum values for appraisement; or

(G) arbitrary or fictitious values.

This paragraph shall not apply with respect to the ascertainment, determination, or estimation of foreign market value or United States price under subtitle IV of this chapter.

(g) Special rules

(1) For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:

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

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

(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(D) Partners.

(E) Employer and employee.

(F) 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.

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

(2) For purposes of this section, merchandise (including, but not limited to, identical merchandise and similar merchandise) shall be treated as being of the same class or kind as other merchandise if it is within a group or range of merchandise produced by a particular industry or industry sector.

(3) For purposes of this section, information that is submitted by an importer, buyer, or pro-

ducer in regard to the appraisement of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term ''generally accepted accounting principles'' refers to any generally recognized consensus or substantial authoritative support regarding—

(A) which economic resources and obligations should be recorded as assets and liabilities;

(B) which changes in assets and liabilities should be recorded;

(C) how the assets and liabilities and changes in them should be measured;

(D) what information should be disclosed and how it should be disclosed; and

(E) which financial statements should be prepared.

The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

(h) Definitions

As used in this section—

(1)(A) The term ''assist'' means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(B) No service or work to which subparagraph (A)(iv) applies shall be treated as an assist for purposes of this section if such service or work—

(i) is performed by an individual who is domiciled within the United States;

(ii) is performed by that individual while he is acting as an employee or agent of the buyer of the imported merchandise; and

(iii) is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(C) For purposes of this section, the following apply in determining the value of assists described in subparagraph (A)(iv):

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

(2) The term ''identical merchandise'' means—

(A) merchandise that is identical in all respects to, and was produced in the same country and by the same person as, the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i) of this section, regardless of whether merchandise meeting such requirements can be found), merchandise that is identical in all respects to, and was produced in the same country as, but not produced by the same person as, the merchandise being appraised.

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(3) The term ''packing costs'' means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(4) The term ''similar merchandise'' means—

(A) merchandise that—

(i) was produced in the same country and by the same person as the merchandise being appraised,

(ii) is like the merchandise being appraised in characteristics and component material, and

(iii) is commercially interchangeable with the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i) of this section, regardless of whether merchandise meeting such requirements can be found), merchandise that—

(i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

(ii) meets the requirement set forth in subparagraph (A)(ii) and (iii).

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(5) The term ''sufficient information'', when required under this section for determining—

(A) any amount—

(i) added under subsection (b)(1) of this section to the price actually paid or payable,

(ii) deducted under subsection (d)(3) of this section as profit or general expense or value from further processing, or

(iii) added under subsection (e)(2) of this section as profit or general expense;

(B) any difference taken into account for purposes of subsection (b)(2)(C) of this section; or

(C) any adjustment made under subsection (c)(2) of this section;

means information that establishes the accuracy of such amount, difference, or adjustment.

(June 17, 1930, ch. 497, title IV, §402, as added Aug. 2, 1956, ch. 887, §2(a), 70 Stat. 943; amended Pub. L. 96–39, title II, §201(a), July 26, 1979, 93 Stat. 194; Pub. L. 96–490, §2, Dec. 2, 1980, 94 Stat. 2556.)

AMENDMENTS

1980—Subsec. (b)(2)(B). Pub. L. 96–490 amended par. (B) generally, omitting cl. (iii) which provided that ''the transaction value determined under this subsection in sales to unrelated buyers of merchandise, for exportation to the United States, that is identical in all respects to the imported merchandise but was not produced in the country in which the imported merchandise was produced'', and omitting the provision relating to cl. (iii) which provided that ''No two sales to unrelated buyers may be used for comparison for purposes of clause (iii) unless the sellers are unrelated.''

1979—Pub. L. 96–39 completely revised statutory standards for appraising the value of imported merchandise to conform to Customs Valuation Agreement, incorporating, as part of that revision, a new format of five methods of determining customs value in subsecs. (b) through (f), a group of special rules in subsec. (g), and definition of terms in subsec. (h).

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2 of Pub. L. 96–490 provided in part that the amendment made by that section is ''effective on the latest of—

''(1) the date on which the amendments made by title II of the Trade Agreements Act of 1979 (except the amendments made by section 223(b)) take effect [July 1, 1980],

''(2) the date on which the President accepts the Protocol [to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade] for the United States [Dec. 30, 1980], or

''(3) the date on which the President determines that the European Economic Community has implemented the Protocol under its laws [Jan. 1, 1981],

and effective with respect to merchandise exported to the United States on or after that date''.

[For delegation of authority of the President to make the determinations required by pars. (1) to (3), above, to the United States Trade Representative, see Memorandum of the President, Dec. 17, 1980, 45 F.R. 83467.]

[For determination of the United States Trade Representative that the conditions of pars. (1) to (3), above, were satisfied effective on Jan. 1, 1981, see Determination of United States Trade Representative, 46 F.R. 1073.]

EFFECTIVE DATE OF 1979 AMENDMENT; TRANSITION TO NEW VALUATION STANDARDS

Section 204 of title II of Pub. L. 96–39 provided that: ''(a) EFFECTIVE DATE OF AMENDMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this title [amending the Tariff Schedules of the United States (see Publication of Tariff Schedules note under section 1202 of this title), sections 1332, 1336, 1351, 1401a, 1500, and 2481 of this title, and section 993 of Title 26, Internal Revenue Code, repealing section 1402 of this title, and enacting provisions set out as notes under sections 1202, 1401a, and 2111 of this title] (except the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States] shall take effect on—

''(A) January 1, 1981, if the Agreement enters into force with respect to the United States by that date; or

''(B) if subparagraph (A) does not apply, that date after January 1, 1981, on which the Agreement enters into such force;

and shall apply with respect to merchandise that is exported to the United States on or after whichever of such dates applies.

''(2) EARLIER EFFECTIVE DATE UNDER CERTAIN CIRCUMSTANCES.—If the President determines before January 1, 1981, that—

''(A) the European Economic Community has accepted the obligations of the Agreement with respect to the United States; and

''(B) each of the member states of the European Economic Community has implemented the Agreement under its laws;

the President shall by proclamation announce such determination and the amendments made by this title (except the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States] shall take effect on the date specified in the proclamation [July 1, 1980] (but not before July 1, 1980) and shall apply with respect to merchandise that is exported to the United States on or after such date; except that unless the Agreement enters into force with respect to the United States by January 1, 1981, all provisions of law that were amended by such amendments are revived (as in effect on the day before such amendments took effect) on January 1, 1981, and such provisions—

''(i) shall remain in effect until the date on which the Agreement enters into force with respect to the United States (and on such date the amendments made by this title (except the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States]) are revived and shall apply with respect to merchandise exported to the United States on or after such date); and

''(ii) shall apply with respect to merchandise exported to the United States on or after January 1, 1981, and before the date on which the Agreement enters into such force.

''(b) APPLICATION OF OLD LAW VALUATION STANDARDS.—For purposes of the administration of the customs laws, all merchandise (other than merchandise to which subsections (a) and (c) apply) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

''(c) SPECIAL TREATMENT FOR CERTAIN RUBBER FOOTWEAR.—The amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States] shall take effect July 1, 1981, or, if later, the date on which the Agreement enters into force with respect to the United States, and shall apply, together with the other amendments made by this title, to rubber footwear exported to the United States on or after such date. For purposes of the administration of the customs laws, all rubber footwear (other than rubber footwear to which the preceding sentence applies) shall be appraised on the same basis, and in the same manner, as if the amendments made by this title had not been enacted.

''(d) DEFINITION.—For purposes of this section, the term 'rubber footwear' means articles described in item 700.60 of the Tariff Schedules of the United States (as in effect on the day before the day on which the amendments made by section 223(b) [amending schedule 7, part 1, subpart A of the Tariff Schedules of the United States] take effect).''

[For Presidential proclamation specifying in accordance with subsec. (a)(2), above, that the amendments by

title II of Pub. L. 96–39 are effective July 1, 1980, see sections 5(b) and 2(a) of Proc. No. 4768, June 28, 1980, 45 F.R. 45136, 45137, set out as a note under section 2111 of this title.]

EFFECTIVE DATE

Section 8 of act Aug. 2, 1956, provided that: ''This Act [enacting this section and provisions set out in notes under this section and sections 2, 160, 1351, and 1402 of this title, amending sections 1001, 1402, 1500, and 1583 of this title, and sections 372 and 711 of former Title 31, Money and Finance, and repealing sections 12 to 18, 21 to 24, 26 to 28, 30, 40, 53 to 57, 59, 61, 62, 67, 376, 379, 390, 494, 526, 541, 542, 549, and 579 of this title] shall be effective on and after the day following the date of its enactment [Aug. 2, 1956], except that section 2 [enacting this section and provisions set out in note under section 1351 of this title, and amending sections 1001, 1336, and 1402 of this title] shall be effective only as to articles entered, or withdrawn from warehouse, for consumption on or after the thirtieth day following the publication of the final list provided for in section 6(a) of this Act [set out in note under section 1402 of this title], and section 3 [amending section 372 of former Title 31] shall be effective as to entries filed on or after the thirtieth day following the date of enactment of this Act [Aug. 2, 1956].''

PRESIDENTIAL REPORT TO CONGRESS ON OPERATION OF AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE OVER 2-YEAR PERIOD

Section 203 of Pub. L. 96–39 provided that: ''As soon as practicable after the close of the 2-year period beginning on the date on which the amendments made by this title (other than section 223(b), relating to certain rubber footwear) take effect [see Effective Date of 1979 Amendment note set out above], the President shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade approved under section 2(a) [section 2503(a) of this title] (hereinafter in this subtitle referred to as the 'Agreement'), both domestically and internationally, during that period.''

LIST OF ARTICLES TO BE VALUED; PRELIMINARY LIST; ADDITIONS; FINAL LIST; TRANSMITTAL TO CONGRESSIONAL COMMITTEES

Section 6 of act Aug. 2, 1956, provided that:

''(a) The Secretary of the Treasury shall determine and make public a list of the articles which shall be valued in accordance with section 402a, Tariff Act of 1930, as amended by this Act [former section 1402 of this title], as follows:

''As soon as practicable after the enactment of this Act [Aug. 2, 1956] the Secretary shall make public a preliminary list of the imported articles which he shall have determined, after such investigation as he deems necessary, would have been appraised in accordance with section 402 of the Tariff Act of 1930, as amended by this Act [this section], at average values for each article which are 95 (or less) per centum of the average values at which such article was actually appraised during the fiscal year 1954. If within sixty days after the publication of such preliminary list any manufacturer, producer, or wholesaler in the United States presents to the Secretary his reason for belief that any imported articles not specified in such list and like or similar to articles manufactured, produced, or sold at wholesale by him would have been appraised in accordance with such section 402 [section 1401a of this title] at average values which are 95 (or less) per centum of the average values at which they were or would have been appraised under section 402a, Tariff Act of 1930, as amended by this Act, the Secretary shall cause such investigation of the matter to be made as he deems necessary. If in the opinion of the Secretary the reason for belief is substantiated by the investigation, the articles involved shall be added to the preliminary list and such list, including any additions so made thereto, shall be published as a final list. Every article so specified in the final list which is entered, or withdrawn from warehouse, for consumption on or after the thirtieth day following the date of publication of the final list shall be appraised in accordance with the provisions of section 402a, Tariff Act of 1930, as amended by this Act.

''(b) The final list published in accordance with the provisions of subsection (a), together with explanatory data, shall be transmitted promptly to the chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58c, 1332, 1351, 1500, 2112, 2481 of this title; title 26 sections 904, 927, 993.

§ 1402. Repealed. Pub. L. 96–39, title II, § 201(b), July 26, 1979, 93 Stat. 201

Section, acts June 17, 1930, ch. 497, title IV, § 402a, formerly § 402, 46 Stat. 708; June 25, 1938, ch. 679, § 8, 52 Stat. 1081, renumbered and amended Aug. 2, 1956, ch. 887, § 2(a), (f), 70 Stat. 943, 946; June 2, 1970, Pub. L. 91–271, title III, § 301(d), 84 Stat. 288, provided an alternative basis for valuation of articles designated by the Secretary of Treasury as provided for by act Aug. 2, 1956, ch. 887, § 6(a), 70 Stat. 948, as either the foreign value or the export value, whichever is higher, or if the appropriate customs officer determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the United States value, or if the appropriate customs officer determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production, or in the case of an article with respect to which there is in effect under section 1336 of this title a rate of duty based upon the American selling price of a domestic article, then the American selling price of such article, defined foreign value, export value, United States value, cost of production, and American selling price, and provided for review of the decision of the appropriate customs officer.

Provisions similar to those of this section were contained in act Oct. 3, 1913, ch. 16, § III, L and R, 38 Stat. 185, 189, and in act May 27, 1921, ch. 14, title III, §§ 301–304, 42 Stat. 15, 16, all of which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 402, 42 Stat. 949, and were repealed by section 643 thereof. Section 402 of the 1922 act was superseded by section 402 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Earlier provisions on the subject were contained in R.S. §§ 2905–2907, and 2952, prior to repeal by act June 10, 1890, ch. 407, § 29, 26 Stat. 141; and in act June 10, 1890, ch. 407, §§ 11 and 19, 26 Stat. 136, 139, as amended by act July 24, 1897, ch. 11, § 32, 30 Stat. 211, and act Aug. 5, 1909, ch. 6, § 28, 36 Stat. 97, 101, prior to repeal by act Oct. 3, 1913, ch. 16, § IV, S, 38 Stat. 201.

R.S. § 2906, requiring the collector to cause the actual market value, or wholesale price at the period of exportation, to be appraised, and providing that such appraised value should be considered the value upon which duty should be assessed, and R.S. § 2913, relative to the appraisement of gloves protected by trademark, were repealed by section 642 of the act of Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1980, see section 204(a)(2) of Pub. L. 96–39, set out as an Effective Date of 1979 Amendment note under section 1401a of this title.

SUBPART B—NATIONAL CUSTOMS AUTOMATION PROGRAM

§ 1411. National Customs Automation Program

(a) Establishment

The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the ''Program'') which shall be an automated and electronic system for processing commercial importations and shall include the following existing and planned components:

(1) Existing components:

(A) The electronic entry of merchandise.

(B) The electronic entry summary of required information.

(C) The electronic transmission of invoice information.

(D) The electronic transmission of manifest information.

(E) Electronic payments of duties, fees, and taxes.

(F) The electronic status of liquidation and reliquidation.

(G) The electronic selection of high risk entries for examination (cargo selectivity and entry summary selectivity).

(2) Planned components:

(A) The electronic filing and status of protests.

(B) The electronic filing (including remote filing under section 1414 of this title) of entry information with the Customs Service at any location.

(C) The electronic filing of import activity summary statements and reconciliation.

(D) The electronic filing of bonds.

(E) The electronic penalty process.

(F) The electronic filing of drawback claims, records, or entries.

(G) Any other component initiated by the Customs Service to carry out the goals of this subpart.

(b) Participation in Program

The Secretary shall by regulation prescribe the eligibility criteria for participation in the Program. Participation in the Program is voluntary.

(June 17, 1930, ch. 497, title IV, § 411, as added Pub. L. 103–182, title VI, § 631(2), Dec. 8, 1993, 107 Stat. 2188.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1413, 1641 of this title.

§ 1412. Program goals

The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that—

(1) is uniform and consistent;

(2) is as minimally intrusive upon the normal flow of business activity as practicable; and

(3) improves compliance.

(June 17, 1930, ch. 497, title IV, § 412, as added Pub. L. 103–182, title VI, § 631(2), Dec. 8, 1993, 107 Stat. 2189.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1413 of this title.

§ 1413. Implementation and evaluation of Program

(a) Overall Program plan

(1) In general

Before the 180th day after December 8, 1993, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth—

(A) a general description of the ultimate configuration of the Program;

(B) a description of each of the existing components of the Program listed in section 1411(a)(1) of this title; and

(C) estimates regarding the stages on which planned components of the Program listed in section 1411(a)(2) of this title will be brought on-line.

(2) Additional information

In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding—

(A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 1412 of this title; and

(B) the effects that the existing components are currently having, and the effects that the planned components will likely have, on—

(i) importers, brokers, and other users of the Program, and

(ii) Customs Service occupations, operations, processes, and systems.

(b) Implementation plan, testing, and evaluation

(1) Implementation plan

For each of the planned components of the Program listed in section 1411(a)(2) of this title, the Secretary shall—

(A) develop an implementation plan;

(B) test the component in order to assess its viability;

(C) evaluate the component in order to assess its contribution toward achieving the program goals; and

(D) transmit to the Committees the implementation plan, the testing results, and an evaluation report.

In developing an implementation plan under subparagraph (A) and evaluating components under subparagraph (C), the Secretary shall publish a request for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(2) Implementation

(A) The Secretary may implement on a permanent basis any Program component referred to in paragraph (1) on or after the date which is 30 days after paragraph (1)(D) is complied with.

(B) For purposes of subparagraph (A), the 30 days shall be computed by excluding—

(i) the days either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House is not in session.

(3) Evaluation and report

The Secretary shall—

(A) develop a user satisfaction survey of parties participating in the Program;

(B) evaluate the results of the user satisfaction survey on a biennial basis (fiscal years) and transmit a report to the Committees on the evaluation by no later than the 90th day after the close of each 2d fiscal year;

(C) with respect to the existing Program component listed in section 1411(a)(1)(G) of this title transmit to the Committees—

(i) a written evaluation of such component before the 180th day after December 8, 1993, and before the implementation of the planned Program components listed in section 1411(a)(2)(B) and (C) of this title, and

(ii) a report on such component for each of the 3 full fiscal years occurring after December 8, 1993, which report shall be transmitted not later than the 90th day after the close of each such year; and

(D) not later than the 90th day after the close of fiscal year 1994, and annually thereafter through fiscal year 2000, transmit to the Committees a written evaluation with respect to the implementation and effect on users of each of the planned Program components listed in section 1411(a)(2) of this title.

In carrying out the provisions of this paragraph, the Secretary shall publish requests for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(c) Committees

For purposes of this section, the term ''Committees'' means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(June 17, 1930, ch. 497, title IV, § 413, as added Pub. L. 103–182, title VI, § 631(2), Dec. 8, 1993, 107 Stat. 2189; amended Pub. L. 104–295, § 21(e)(15), Oct. 11, 1996, 110 Stat. 3531.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–295 made technical amendment to reference in original act which appears in text as reference to December 8, 1993.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1641 of this title.

§ 1414. Remote location filing

(a) Core entry information

(1) In general

A Program participant may file electronically an entry of merchandise with the Customs Service from a location other than the district designated in the entry for examination (hereafter in this section referred to as a ''remote location'') if—

(A) the Customs Service is satisfied that the participant has the capabilities referred to in paragraph (2)(A) regarding such method of filing; and

(B) the participant elects to file from the remote location.

(2) Requirements

(A) In general

In order to qualify for filing from a remote location, a Program participant must have the capability to provide, on an entry-by-entry basis, for the following:

(i) The electronic entry of merchandise.

(ii) The electronic entry summary of required information.

(iii) The electronic transmission of invoice information (when required by the Customs Service).

(iv) The electronic payment of duties, fees, and taxes.

(v) Such other electronic capabilities within the existing or planned components of the Program as the Secretary shall by regulation require.

(B) Restriction on exemption from requirements

The Customs Service may not permit any exemption or waiver from the requirements established by this section for participation in remote entry filing.

(3) Conditions on filing under this section

The Secretary may prohibit a Program participant from participating in remote location filing, and may remove a Program participant from participation in remote location filing, if the participant—

(i) fails to meet all the compliance requirements and operational standards of remote location filing; or

(ii) fails to adhere to all applicable laws and regulations.

(4) Alternative filing

Any Program participant that is eligible to file entry information electronically from a remote location but chooses not to do so in the case of any entry must file any paper documentation for the entry at the designated location referred to in subsection (d) of this section.

(b) Additional entry information

(1) In general

A Program participant that is eligible under subsection (a) of this section to file entry information from a remote location may, if the Customs Service is satisfied that the participant meets the requirements under paragraph (2), also electronically file from the remote location additional information that is required by the Customs Service to be presented before the acceptance of entry summary information and at the time of acceptance of entry summary information.

(2) Requirements

The Secretary shall publish, and periodically update, a list of those capabilities within the

existing and planned components of the Program that a Program participant must have for purposes of this subsection.

(3) Filing of additional information

(A) If information electronically acceptable

A Program participant that is eligible under paragraph (1) to file additional information from a remote location shall electronically file all such information that the Customs Service can accept electronically.

(B) Alternative filing

If the Customs Service cannot accept additional information electronically, the Program participant shall file the paper documentation with respect to the information at the appropriate filing location.

(C) Appropriate location

For purposes of subparagraph (B), the ''appropriate location'' is—

(i) before January 1, 1999, a designated location; and

(ii) after December 31, 1998—

(I) if the paper documentation is required for release, a designated location; or

(II) if the paper documentation is not required for release, a remote location designated by the Customs Service or a designated location.

(D) Other

A Program participant that is eligible under paragraph (1) to file additional information electronically from a remote location but chooses not to do so must file the paper documentation with respect to the information at a designated location.

(c) Post-entry summary information

A Program participant that is eligible to file electronically entry information under subsection (a) of this section and additional information under subsection (b) of this section from a remote location may file at any remote location designated by the Customs Service any information required by the Customs Service after entry summary.

(d) Definitions

As used in this section:

(1) The term ''designated location'' means a customs office located in the customs district designated by the entry filer for purposes of customs examination of the merchandise.

(2) The term ''Program participant'' means, with respect to an entry of merchandise, any party entitled to make the entry under section 1484(a)(2)(B) of this title.

(June 17, 1930, ch. 497, title IV, § 414, as added Pub. L. 103–182, title VI, § 631(2), Dec. 8, 1993, 107 Stat. 2191.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1411 of this title.

PART II—REPORT, ENTRY, AND UNLADING OF VESSELS AND VEHICLES

§ 1431. Manifests

(a) In general

Every vessel required to make entry under section 1434 of this title or obtain clearance under section 91 of title 46, Appendix, shall have a manifest that complies with the requirements prescribed under subsection (d) of this section.

(b) Production of manifest

Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d) of this section. A manifest may be supplemented by bill of lading data supplied by the issuer of such bill. If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs Service may take appropriate action against any of the parties.

(c) Public disclosure of certain manifest information

(1) Except as provided in subparagraph (2), the following information, when contained in a vessel vessel[1] or aircraft manifest, shall be available for public disclosure:

(A) The name and address of each importer or consignee and the name and address of the shipper to such importer or consignee, unless the importer or consignee has made a biennial certification, in accordance with procedures adopted by the Secretary of the Treasury, claiming confidential treatment of such information.

(B) The general character of the cargo.

(C) The number of packages and gross weight.

(D) The name of the vessel, aircraft, or carrier.

(E) The seaport or airport of loading.

(F) The seaport or airport of discharge.

(G) The country of origin of the shipment.

(H) The trademarks appearing on the goods or packages.

(2) The information listed in paragraph (1) shall not be available for public disclosure if—

(A) the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure is likely to pose a threat of personal injury or property damage; or

(B) the information is exempt under the provisions of section 552(b)(1) of title 5.

(3) The Secretary of the Treasury, in order to allow for the timely dissemination and publication of the information listed in paragraph (1), shall establish procedures to provide access to manifests. Such procedures shall include provisions for adequate protection against the public disclosure of information not available for public disclosure from such manifests.

(d) Regulations

(1) In general

The Secretary shall by regulation—

(A) specify the form for, and the information and data that must be contained in, the

[1] So in original.

manifest required by subsection (a) of this section;

(B) allow, at the option of the individual producing the manifest and subject to paragraph (2), letters and documents shipments to be accounted for by summary manifesting procedures;

(C) prescribe the manner of production for, and the delivery for electronic transmittal of, the manifest required by subsection (a) of this section; and

(D) prescribe the manner for supplementing manifests with bill of lading data under subsection (b) of this section.

(2) Letters and documents shipments

For purposes of paragraph (1)(B)—

(A) the Customs Service may require with respect to letters and documents shipments—

(i) that they be segregated by country of origin, and

(ii) additional examination procedures that are not necessary for individually manifested shipments;

(B) standard letter envelopes and standard document packs shall be segregated from larger document shipments for purposes of customs inspections; and

(C) the term ''letters and documents'' means—

(i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,

(ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, and

(iii) personal correspondence, whether on paper, cards, photographs, tapes, or other media.

(June 17, 1930, ch. 497, title IV, § 431, 46 Stat. 710; Aug. 8, 1953, ch. 397, § 15, 67 Stat. 516; Pub. L. 98–573, title II, § 203, Oct. 30, 1984, 98 Stat. 2974; Pub. L. 100–690, title VII, § 7367(c)(1), Nov. 18, 1988, 102 Stat. 4479; Pub. L. 103–182, title VI, § 635, Dec. 8, 1993, 107 Stat. 2199; Pub. L. 104–153, § 11, July 2, 1996, 110 Stat. 1389; Pub. L. 104–295, § 3(a)(3), Oct. 11, 1996, 110 Stat. 3515.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (d)(2)(C)(i), (ii), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

R.S. §§ 2806, 2807 (as amended by act June 3, 1902, ch. 86, § 1, 27 Stat. 41), and 2808, requiring manifests, and prescribing their contents, were superseded by act Sept. 21, 1922, ch. 356, title IV, § 431, 42 Stat. 950, and repealed by section 642 thereof. Section 431 of the 1922 act was superseded by section 431 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. § 2805, relative to the administration of oaths required by that chapter, was superseded to a great extent by the Customs Administrative Act of June 10, 1890, ch. 407, § 22, 26 Stat. 140, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 102, and by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, § IV, S., 38 Stat. 201, which abolished all oaths administered by officers of the customs, except as provided in those acts and repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–295 substituted ''a vessel manifest'' for ''such manifest'' in introductory provisions.

Pub. L. 104–153 inserted ''vessel or aircraft'' before ''manifest'' in introductory provisions, amended subpars. (D) to (F) generally, substituting ''vessel, aircraft, or carrier'' for ''vessel or carrier'' in subpar. (D) and ''seaport or airport'' for ''port'' in subpars. (E) and (F), and added subpar. (H).

1993—Subsecs. (a) and (b). Pub. L. 103–182, § 635(1), amended subsecs. (a) and (b) generally, substituting present provisions for provisions relating to, in subsec. (a), the requirement, form, and contents of manifests and, in subsec. (b), the signing and delivery of manifests.

Subsec. (d). Pub. L. 103–182, § 635(2), added subsec. (d).

1988—Subsec. (c)(1)(G). Pub. L. 100–690 substituted ''country of origin'' for ''country or origin''.

1984—Subsec. (a). Pub. L. 98–573, § 203(1), inserted ''; and the names of the shippers of such merchandise'' in par. Third.

Subsec. (c). Pub. L. 98–573, § 203(2), added subsec. (c).

1953—Act Aug. 8, 1953, designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment to this section effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

REGULATIONS

Section 14 of Pub. L. 104–153 provided that: ''Not later than 6 months after the date of the enactment of this Act [July 2, 1996], the Secretary of the Treasury shall prescribe such regulations or amendments to existing regulations that may be necessary to carry out the amendments made by sections 9, 10, 11, 12, and 13 of this Act [amending this section, sections 1484 and 1526 of this title, and section 80302 of Title 49, Transportation].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1436 of this title; title 18 section 965.

§§ 1432, 1432a. Repealed. Pub. L. 103–182, title VI, § 690(b)(1), (c)(5), Dec. 8, 1993, 107 Stat. 2223

Section 1432, acts June 17, 1930, ch. 497, title IV, § 432, 46 Stat. 710; June 2, 1970, Pub. L. 91–271, title III, § 301(b), 84 Stat. 287, required that the manifest of any vessel arriving from foreign port or place separately specify articles to be retained on board as sea stores, ship's stores, bunker coal, or bunker oil and provided for forfeiture and penalties for omitted articles.

Section 1432a, act June 17, 1930, ch. 497, title IV, § 401 (part), as added Aug. 5, 1935, ch. 438, title II, § 201, 49 Stat. 521, provided that any vessel which had visited any hovering vessel would be deemed to have arrived from a foreign port or place, for purposes of certain provisions of law. Section 690(c)(5) of Pub. L. 103–182

which directed the repeal of the ''last undesignated paragraph of section 201 of the Act of August 5, 1935 (19 U.S.C. 1432a)'', was executed by repealing this section, which was based on the last undesignated paragraph of section 401 of act June 17, 1930, as added by section 201 of act Aug. 5, 1935, to reflect the probable intent of Congress.

§ 1433. Report of arrival of vessels, vehicles, and aircraft

(a) Vessel arrival

(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

(A) any vessel from a foreign port or place;

(B) any foreign vessel from a domestic port;

(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made; or

(D) any vessel which has visited a hovering vessel or received merchandise while outside the territorial sea;

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

(2) The Secretary may by regulation—

(A) prescribe the manner in which arrivals are to be reported under paragraph (1); and

(B) extend the time in which reports of arrival must be made, but not later than 24 hours after arrival.

(b) Vehicle arrival

(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

(A) report the arrival; and

(B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

to the customs officer at the customs facility designated for that crossing point.

(c) Aircraft arrival

The pilot of any aircraft arriving in the United States or the Virgin Islands from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

(d) Presentation of documentation

The master, person in charge of a vehicle, or aircraft pilot shall present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data, documents, papers, or manifests as the Secretary may by regulation prescribe.

(e) Prohibition on departures and discharge

Unless otherwise authorized by law, a vessel, aircraft or vehicle after arriving in the United States or Virgin Islands may, but only in accordance with regulations prescribed by the Secretary—

(1) depart from the port, place, or airport of arrival; or

(2) discharge any passenger or merchandise (including baggage).

(June 17, 1930, ch. 497, title IV, § 433, 46 Stat. 711; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 99–570, title III, § 3112, Oct. 27, 1986, 100 Stat. 3207–80; Pub. L. 103–182, title VI, § 652, Dec. 8, 1993, 107 Stat. 2209.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 433, 42 Stat. 951. That section was superseded by section 433 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. § 2774, requiring a report of arrival, and a further report in the form of a manifest, and imposing a penalty for violations was superseded by act Sept. 21, 1922, ch. 356, title IV, § 433, 42 Stat. 951, and repealed by section 642 of that act.

R.S. § 2772, relative to report and entry by the master of every vessel, bound to a port of delivery; section 2775, requiring a special report by the master of any vessel having on board distilled spirits or wines; and section 2832, relative to report of arrival of vessels proceeding to the ports of Natchez or Vicksburg, were also repealed by section 642 of the act of Sept. 21, 1922, ch. 356.

AMENDMENTS

1993—Subsec. (a)(1)(D). Pub. L. 103–182, § 652(1), added subpar. (D).

Subsec. (d). Pub. L. 103–182, § 652(2), substituted ''present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data,'' for ''present to customs officers such''.

Subsec. (e). Pub. L. 103–182, § 652(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands—

''(1) depart from the port, place, or airport of arrival; or

''(2) discharge any passenger or merchandise (including baggage);

only in accordance with regulations prescribed by the Secretary.''

1986—Pub. L. 99–570 amended section generally. Prior to amendment, section read as follows: ''Within twenty-four hours after the arrival of any vessel from a foreign port or place, or of a foreign vessel from a domestic port, or of a vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made, at any port or place within the United States at which such vessel shall come to, the master shall, unless otherwise provided by law, report the arrival of the vessel at the nearest customhouse, under such regulations as the Commissioner of Customs may prescribe.''

TRANSFER OF FUNCTIONS

''Commissioner of Customs'' substituted in text for ''Secretary of Commerce'' on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1436, 1441, 1448, 1459 of this title; title 46 section 12109.

§ 1434. Entry; vessels

(a) Formal entry

Within 24 hours (or such other period of time as may be provided under subsection (c)(2) of this section) after the arrival at any port or place in the United States of—

(1) any vessel from a foreign port or place;

(2) any foreign vessel from a domestic port;

(3) any vessel of the United States having on board bonded merchandise or foreign merchandise for which entry has not been made; or

(4) any vessel which has visited a hovering vessel or has delivered or received merchandise while outside the territorial sea;

the master of the vessel shall, unless otherwise provided by law, make formal entry at the nearest customs facility or such other place as the Secretary may prescribe by regulation.

(b) Preliminary entry

The Secretary may by regulation permit the master to make preliminary entry of the vessel with the Customs Service in lieu of formal entry or before formal entry is made. In permitting preliminary entry, the Customs Service shall board a sufficient number of vessels to ensure compliance with the laws it enforces.

(c) Regulations

The Secretary may by regulation—

(1) prescribe the manner and format in which entry under subsection (a) of this section or subsection (b) of this section, or both, must be made, and such regulations may provide that any such entry may be made electronically pursuant to an electronic data interchange system;

(2) provide that—

(A) formal entry must be made within a greater or lesser time than 24 hours after arrival, but in no case more than 48 hours after arrival, and

(B) formal entry may be made before arrival; and

(3) authorize the Customs Service to permit entry or preliminary entry of any vessel to be made at a place other than a designated port of entry, under such conditions as may be prescribed.

(June 17, 1930, ch. 497, title IV, § 434, 46 Stat. 711; Aug. 5, 1935, ch. 438, title III. § 301, 49 Stat. 527; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103–182, title VI, § 653, Dec. 8, 1993, 107 Stat. 2210.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 434, 42 Stat. 951. That section was superseded by section 434 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions for deposit of the register and other papers previous to entry, and for their return to the master or owner of the vessel on clearance of the vessel, were contained in R.S. § 2790, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 434, 42 Stat. 951, and repealed by section 642 of that act.

R.S. § 2836, relative to the entry of vessels arriving within the districts of Petersburg or Richmond (abolished by the Plan of Reorganization of the Customs Service set forth in a note to section 1 of this title) was also repealed by section 642 of act Sept. 21, 1922, ch. 356.

Special provisions for Astoria and Portland were contained in R.S. §§ 2588–2590, which were also repealed by section 642 of the act of Sept. 21, 1922, ch. 356.

R.S. § 2835, prescribing the duties of masters of vessels bound up James River, Virginia, in regard to deposit of manifests, etc., was repealed by act Mar. 3, 1897, ch. 389, § 16, 29 Stat. 691.

Special provisions to facilitate the entry of steamships running in an established line in foreign trade, made by act June 5, 1894, ch. 92, § 1, 28 Stat. 85, and extended to steamships trading between Porto Rico and Hawaii and the United States by act May 31, 1900, ch. 600, 31 Stat. 249, were repealed by section 6 of act Feb. 13, 1911, ch. 46, the preceding sections of which act made more comprehensive provisions for preliminary entry of any vessel from a foreign port, and for the lading or unlading of such vessels at night. Sections 1 to 4 of said act of 1911, were repealed by section 643 of the act of Sept. 21, 1922, ch. 356.

AMENDMENTS

1993—Pub. L. 103–182 amended section generally. Prior to amendment, section read as follows: ''Except as otherwise provided by law, and under such regulations as the Commissioner of Customs may prescribe, the master of a vessel of the United States arriving in the United States from a foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the appropriate customs officer the vessel's crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register, or document in lieu thereof, and that the manifest was made out in accordance with section 1431 of this title.''

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

1935—Act Aug. 5, 1935, inserted ''or document in lieu thereof'' after ''indicated in the register''.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

''Commissioner of Customs'' substituted in text for ''Secretary of Commerce'' on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1431, 1436, 1438, 1441, 1448 of this title.

§ 1435. Repealed. Pub. L. 103–182, title VI, § 690(b)(2), Dec. 8, 1993, 107 Stat. 2223

Section, act June 17, 1930, ch. 497, title IV, § 435, 46 Stat. 711, set forth entry requirements for foreign vessels arriving within limits of any customs collection district.

§ 1435a. Transferred

CODIFICATION

Section, act May 4, 1934, ch. 212, 48 Stat. 663, was transferred to section 91a of former Title 46, Shipping, and subsequently repealed by Pub. L. 103–182, title VI, § 690(c)(7), Dec. 8, 1993, 107 Stat. 2223.

§ 1435b. Repealed. Pub. L. 103–182, title VI, § 690(c)(6), Dec. 8, 1993, 107 Stat. 2223

Section, acts June 16, 1937, ch. 362, 50 Stat. 303; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 2, 1970, Pub. L. 91–271, title III, § 320, 84 Stat. 293, related to clearance of vessels arriving on Sundays, holidays, or at night.

§ 1436. Penalties for violations of arrival, reporting, entry, and clearance requirements

(a) Unlawful acts

It is unlawful—

(1) to fail to comply with section 1431, 1433, or 1434 of this title or section 91 of title 46, Appendix;

(2) to present or transmit, electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest to the Customs Service under section 1431, 1433(d), or 1434 of this title or section 91 of title 46, Appendix, without revealing the facts;

(3) to fail to make entry or to obtain clearance as required by section 1434 or 1644 of this title, section 91 of title 46, Appendix, or section 1644a(b)(1) or (c)(1) of this title; or

(4) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of paragraphs (1) through (3).

(b) Civil penalty

Any master, person in charge of a vehicle, or aircraft pilot who commits any violation listed in subsection (a) of this section is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

(c) Criminal penalty

In addition to being liable for a civil penalty under subsection (b) of this section, any master, person in charge of a vehicle, or aircraft pilot who intentionally commits any violation listed in subsection (a) of this section is, upon conviction, liable for a fine of not more than $2,000 or imprisonment for 1 year, or both; except that if the conveyance has, or is discovered to have had, on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

(d) Additional civil penalty

If any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for a civil penalty equal to the value of the merchandise and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of any controlled substance listed in section 1584 of this title, the master, individual in charge of a vehicle, or pilot shall be liable to the penalties prescribed in that section.

(June 17, 1930, ch. 497, title IV, § 436, 46 Stat. 711; Aug. 5, 1935, ch. 438, title II, § 202, 49 Stat. 521; Pub. L. 99–570, title III, § 3113(a), Oct. 27, 1986, 100 Stat. 3207–81; Pub. L. 103–182, title VI, § 611, Dec. 8, 1993, 107 Stat. 2170; Pub. L. 104–295, § 21(e)(3), Oct. 11, 1996, 110 Stat. 3530.)

CODIFICATION

In subsec. (a)(3), ''section 1644a(b)(1) or (c)(1) of this title'' substituted for ''section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1509)'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 2834, as amended by act Mar. 3, 1897, ch. 389, § 15, 29 Stat. 691, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 436, 42 Stat. 951, and was repealed by section 642 thereof. Section 436 of the 1922 act was superseded by section 436 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–295 substituted ''1431'' for ''1431(e)'' and struck out ''or'' after semicolon at end.

1993—Pub. L. 103–182, § 611(2), substituted ''entry, and clearance'' for ''and entry'' in section catchline.

Subsec. (a)(1). Pub. L. 103–182, § 611(1)(A), substituted ''section 1431, 1433, or 1434 of this title or section 91 of title 46, Appendix'' for ''section 1433 of this title''.

Subsec. (a)(2), (3). Pub. L. 103–182, § 611(1)(B), (C), amended pars. (2) and (3) generally. Prior to amendment, pars. (2) and (3) read as follows:

''(2) to present any forged, altered, or false document, paper, or manifest to a customs officer under section 1433(d) of this title without revealing the facts;

''(3) to fail to make entry as required by section 1434, 1435, or 1644 of this title or section 1509 of title 49, Appendix; or''.

1986—Pub. L. 99–570 amended section generally. Prior to amendment, section read as follows: ''Every master who fails to make the report or entry provided for in sections 1433, 1434, or 1435 of this title shall, for each offense, be liable to a fine of not more than $1,000 and, if the vessel have, or be discovered to have had, on board any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or any spirits, wines, or other alcoholic liquors, such master shall be subject to an additional fine of not more than $2,000 or to imprisonment for not more than one year, or to both such fine and imprisonment.

''Every master who presents a forged, altered, or false document or paper on making entry of a vessel as required by section 1434 or 1435 of this title, knowing the same to be forged, altered, or false and without revealing the fact, shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than $5,000 nor less than $50 or to imprisonment for not more than two years, or to both such fine and imprisonment.''

1935—Act Aug. 5, 1935, inserted provisions relating to additional penalty for vessel carrying nonimportable merchandise or liquor and added second par.

§ 1437. Repealed. Pub. L. 103–182, title VI, § 690(b)(3), Dec. 8, 1993, 107 Stat. 2223

Section, act June 17, 1930, ch. 497, title IV, § 437, 46 Stat. 711, provided for return of register or document to master or owner of vessel upon clearance.

§ 1438. Unlawful return of foreign vessel's papers

It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of section 1434 of this title, or regulations issued thereunder, until such master shall produce to him a clearance in due form from the Customs Service in the port in which such vessel has entered. Any consul offending against the provisions of this section shall be liable to a fine of not more than $5,000.

(June 17, 1930, ch. 497, title IV, § 438, 46 Stat. 712; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103–182, title VI, § 654, Dec. 8, 1993, 107 Stat. 2210.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 438, 42 Stat. 952. That section was superseded by section 438 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1993—Pub. L. 103–182 substituted ''section 1434'' for ''section 1435'', inserted '', or regulations issued thereunder,'' before ''until such master'', and substituted ''the Customs Service in the port in which such vessel has entered'' for ''the appropriate customs officer of the port where such vessel has been entered''.

1970—Pub. L. 91–271 substituted reference to appropriate customs officers for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§§ 1439, 1440. Repealed. Pub. L. 103–182, title VI, § 690(b)(4), (5), Dec. 8, 1993, 107 Stat. 2223

Section 1439, acts June 17, 1930, ch. 497, title IV, § 439, 46 Stat. 712; Aug. 8, 1953, ch. 397, § 2(b), 67 Stat. 507, required master of a vessel from a foreign port or place, immediately upon arrival, to mail or deliver to designated employee a copy of manifest and any corrections thereto.

Section 1440, acts June 17, 1930, ch. 497, title IV, § 440, 46 Stat. 712; Aug. 8, 1953, ch. 397, § 2(c), 67 Stat. 508, required master of a vessel to make post entry of any baggage or merchandise not included on manifest and to mail or deliver such entry to designated employee.

§ 1441. Exceptions to vessel entry and clearance requirements

The following vessels shall not be required to make entry under section 1434 of this title or to obtain clearance under section 91 of title 46, Appendix:

(1) Vessels of war and public vessels employed for the conveyance of letters and dispatches and not permitted by the laws of the nations to which they belong to be employed in the transportation of passengers or merchandise in trade.

(2) Passenger vessels making three trips or oftener a week between a port of the United States and a foreign port, or vessels used exclusively as ferryboats, carrying passengers, baggage, or merchandise: *Provided*, That the master of any such vessel shall be required to report such baggage and merchandise to the appropriate customs officer within twenty-four hours after arrival.

(3) Any vessel carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, if—

(A) the vessel does not in any way violate the customs or navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of the vessel, if there is on board any article required by law to be entered, reports the article to the Customs Service immediately upon arrival.

(4) Any United States documented vessel with recreational endorsement or any undocumented United States pleasure vessel not engaged in trade, if—

(A) the vessel complies with the reporting requirements of section 1433 of this title, and with the customs and navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of, and any other person on board, the vessel, if the master or such person has on board any article required by law to be entered or declared, reports such article to the Customs Service immediately upon arrival.

(5) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: *Provided*, That the master, owner, or agent of such vessel shall report under oath to the appropriate customs officer the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board.

(6) Tugs documented under chapter 121 of title 46 with a Great Lakes endorsement[1] when towing vessels which are required by law to enter and clear.

(June 17, 1930, ch. 497, title IV, § 441, 46 Stat. 712; Aug. 5, 1935, ch. 438, title III, § 302, 49 Stat. 527; Aug. 14, 1937, ch. 620, § 1, 50 Stat. 638; Sept. 1, 1954, ch. 1213, title V, § 501(b), 68 Stat. 1140; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 98–573, title II, § 204, Oct. 30, 1984, 98 Stat. 2974; Pub. L. 103–182, title VI, § 655, Dec. 8, 1993, 107 Stat. 2210; Pub. L. 104–295, § 21(e)(5), Oct. 11, 1996, 110 Stat. 3530.)

REFERENCES IN TEXT

The customs laws of the United States, referred to in pars. (3)(A) and (4)(A), are classified generally to this title.

The navigation laws of the United States, referred to in pars. (3)(A) and (4)(A), are classified generally to Title 33, Navigation and Navigable Waters.

Tugs documented under chapter 121 of title 46 with a Great Lakes endorsement, referred to in par. (6), probably means tugs documented with a Great Lakes endorsement pursuant to section 12107 of Title 46, Shipping, which was repealed by Pub. L. 104–324, title XI, § 1115(a), Oct. 19, 1996, 110 Stat. 3972.

PRIOR PROVISIONS

Provisions somewhat similar to those in par. (1) of this section were contained in R.S. § 2791. R.S. § 3123 provided that steam-tugs duly enrolled and licensed to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, when exclusively employed in towing vessels, should not be required to report and clear at the custom-house but that when employed in towing rafts or other vessels without sale or steam motive-power, not required to be enrolled or licensed they should report and clear in the same manner as other vessels. Both sections were superseded and more closely assimilated to this section by act Sept. 21, 1922, ch. 356,

[1] See References in Text note below.

title IV, § 441, 42 Stat. 952, and repealed by section 642 thereof. Section 441 of the 1922 act was superseded by section 441 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1996—Pars. (1), (2), (4), (5). Pub. L. 104–295 substituted period for semicolon at end of pars. (1), (2), and (4) and substituted period for ''; and'' at end of par. (5).

1993—Pub. L. 103–182, § 655(1), (5), substituted catchline for one which read ''Vessels not required to enter'' and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The following vessels shall not be required to make entry at the customhouse:''.

Par. (3). Pub. L. 103–182, § 655(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, and licensed yachts or undocumented American pleasure vessels not engaged in trade: *Provided*, That such vessels do not in any way violate the customs or navigation laws of the United States and have not visited any hovering vessel: *Provided further*, That the master of any such vessel which has on board any article required by law to be entered shall be required to report such article to the appropriate customs officer within twenty-four hours after arrival.''

Pars. (4), (5). Pub. L. 103–182, § 655(3), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Par. (6). Pub. L. 103–182, § 655(3), (4), redesignated par. (5) as (6) and substituted ''documented under chapter 121 of title 46 with a Great Lakes endorsement'' for ''enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers''.

1984—Par. (3). Pub. L. 98–573 amended par. (3) generally, inserting provision referring to vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning.

1970—Pars. (2) to (4). Pub. L. 91–271 substituted references to appropriate customs officer for references to collector wherever appearing.

1954—Par. (3). Act Sept. 1, 1954, exempted undocumented American pleasure vessels from entry requirements, and provided that both yachts and undocumented pleasure vessels report to the collector of customs, within 24 hours after arrival, all articles, whether dutiable or not, for which a customs entry is required.

1937—Par. (4). Act Aug. 14, 1937, substituted ''sea stores, or ship's stores'' for ''or necessary sea stores'' wherever appearing.

1935—Par. (3). Act. Aug. 5, 1935, inserted ''And not visiting any hovering vessel, nor having at any time or, if forfeited to the United States or to a foreign government, at any time after forfeiture, become liable to seizure and forfeiture for any violation of the laws of the United States''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 applicable with respect to vessels returning from the British Virgin Islands on or after 15th day after Oct. 30, 1984, see section 214(a), (c)(1) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1937 AMENDMENT

Section 2 of act Aug. 14, 1937, provided as follows: ''The amendment made by this Act [amending this section] shall take effect on the day following the date of its enactment [Aug. 14, 1937].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1448 of this title.

§ 1442. Residue cargo

Any vessel having on board merchandise shown by the manifest to be destined to a foreign port or place may, after the report and entry of such vessel under the provisions of this chapter, proceed to such foreign port of destination with the cargo so destined therefor, without unlading the same and without the payment of duty thereon. Any vessel arriving from a foreign port or place having on board merchandise shown by the manifest to be destined to a port or ports in the United States other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to port or from district to district for the unlading thereof.

(June 17, 1930, ch. 497, title IV, § 442, 46 Stat. 713.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. §§ 2776 (as amended by act June 26, 1884, ch. 121, § 29, 23 Stat. 59), 2777–2779, 2782, and 2783, all of which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 442, 42 Stat. 952, and were repealed by section 642 thereof. Section 442 of the 1922 act was superseded by section 442 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions authorizing the Secretary of the Treasury to require bonds in cases of vessels carrying goods destined for ports other than port of entry were contained in the 1922 act and prior acts. These provisions were omitted from this section. General provisions authorizing the Secretary to require bonds where not specifically required are contained in section 1623 of this title.

Special provisions concerning Astoria and Portland were contained in R.S. §§ 2588 and 2590, prior to repeal by section 642 of the act of Sept. 21, 1922, ch. 356.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1449 of this title.

§§ 1443 to 1445. Repealed. Pub. L. 103–182, title VI, § 690(b)(6), Dec. 8, 1993, 107 Stat. 2223

Section 1443, acts June 17, 1930, ch. 497, title IV, § 443, 46 Stat. 713; June 2, 1970, Pub. L. 91–271, title III, § 301(b), 84 Stat. 287, related to manifests and permits for merchandise arriving for delivery in different districts or ports of entry.

Section 1444, acts June 17, 1930, ch. 497, title IV, § 444, 46 Stat. 713; June 2, 1970, Pub. L. 91–271, title III, § 301(b), 84 Stat. 287, required master to report his arrival at another port to a customs officer within twenty-four hours and to produce copies of permit and manifest.

Section 1445, acts June 17, 1930, ch. 497, title IV, § 445, 46 Stat. 713; June 2, 1970, Pub. L. 91–271, title III, § 301(b), 84 Stat. 287, set forth penalties for failure of master to obtain or produce permit or manifest.

§ 1446. Supplies and stores retained on board

Vessels arriving in the United States from foreign ports may retain on board, without the payment of duty, all coal and other fuel supplies, ships' stores, sea stores, and the legitimate equipment of such vessels. Any such supplies, ships' stores, sea stores, or equipment landed and delivered from such vessel shall be considered and treated as imported merchandise: *Provided*, That bunker coal, bunker oil, ships' stores, sea stores, or the legitimate equipment of vessels belonging to regular lines plying

between foreign ports and the United States, which are delayed in port for any cause, may be transferred under a permit by the appropriate customs officer and under customs supervision from the vessel so delayed to another vessel of the same line and owner, and engaged in the foreign trade, without the payment of duty thereon.

(June 17, 1930, ch. 497, title IV, § 446, 46 Stat. 713; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 446, 42 Stat. 953. That section was superseded by section 446 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions similar to those in the last sentence of this section concerning sea stores and equipment, were contained in R.S. § 2797, as amended by act Mar. 3, 1897, ch. 389, § 17, 29 Stat. 691. A provision that steam vessels might retain coal on board without being required to land it or pay duty was contained in R.S. § 2798. Provision for collection of duty on excessive quantities of sea stores was made by R.S. § 2796. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1447. Place of entry and unlading

It shall be unlawful to make entry of any vessel or to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: *Provided*, That upon good cause therefor being shown, the Commissioner of Customs may permit entry of any vessel to be made at a place other than a port of entry designated by him, under such conditions as he shall prescribe: *And provided further*, That any vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unlading such cargo, under the supervision of customs officers if the Customs Service considers the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest.

(June 17, 1930, ch. 497, title IV, § 447, 46 Stat. 714; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103–182, title VI, § 649(a), Dec. 8, 1993, 107 Stat. 2208.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 447, 42 Stat. 953. That section was superseded by section 447 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions concerning the place of entry and unlading of foreign vessels and vessels from foreign ports were contained in R.S. §§ 2770 and 2771, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

Special provisions concerning the place of lading and unlading vessels laden with the products of Canada, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island were contained in R.S. § 3129, prior to repeal by section 642 of the 1922 act.

R.S. § 2897 authorized Secretary of the Treasury, under regulations by him prescribed, to permit unloading of salt, imported from foreign places, on right bank of Mississippi River, opposite New Orleans, at any point on said bank between upper and lower corporate limits of said city, prior to repeal by act Mar. 3, 1897, ch. 389, § 16, 29 Stat. 691.

AMENDMENTS

1993—Pub. L. 103–182 substituted ''the Customs Service considers'' for ''the appropriate customs officer shall consider''.

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs personnel, referred to in text, are under Department of the Treasury.

''Commissioner of Customs'' substituted in text for ''Secretary of Commerce'' on authority of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1449 of this title.

§ 1448. Unlading

(a) Permits and preliminary entries

Except as provided in section 1441 of this title (relating to vessels not required to enter or clear), no merchandise, passengers, or baggage shall be unladen from any vessel required to make entry under section 1434 of this title, or vehicle required to report arrival under section 1433 of this title, until entry of such vessel or report of the arrival of such vehicle has been made and a permit for the unlading of the same issued or transmitted pursuant to an electronic data interchange system by the Customs Service. After the entry of any vessel or report of the arrival of any vehicle, the Customs Service may issue a permit, electronically pursuant to an authorized electronic data interchange system or otherwise, to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefor having been issued.

The owner or master of any vessel or vehicle, or agent thereof, shall notify the Customs Service of any merchandise or baggage so unladen for which entry is not made within the time prescribed by law or regulation. The Secretary shall by regulation prescribe administrative penalties not to exceed $1,000 for each bill of lading for which notice is not given. Any such administrative penalty shall be subject to mitigation and remittance under section 1618 of this title. Such unentered merchandise or baggage shall be the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier's control in accordance with section 1490 of this title.

(b) Special delivery permit

The Secretary of the Treasury is authorized to provide by regulations for the issuing of special permits for delivery, prior to formal entry therefor, of perishable articles and other articles, the immediate delivery of which is necessary.

(June 17, 1930, ch. 497, title IV, § 448, 46 Stat. 714; Pub. L. 91–271, title III, § 301(e), June 2, 1970, 84 Stat. 288; Pub. L. 103–182, title VI, § 656, Dec. 8, 1993, 107 Stat. 2211.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 448, 42 Stat. 953. That section was superseded by section 448 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions similar to those in this section concerning preliminary entries, and a further provision that on making such entry lading might proceed by both day and night, were contained in act Feb. 13, 1911, ch. 46, § 2, 36 Stat. 900, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

Provisions for the estimation of duties, and the issuance of permits for delivery of merchandise, and provisions prescribing the contents of such permits, were contained in R.S. § 2869, (as amended by act June 5, 1894, ch. 92, § 2, 28 Stat. 86) and § 2870, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

Provisions as to the removal of merchandise brought in any vessel from a foreign port or place, from the wharf or place where it might be landed or put, before it had been weighed, gauged, measured, etc., were contained in R.S. § 2882, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Pub. L. 103–182 in first sentence, substituted ''enter or clear)'' for ''enter)'' and ''required to make entry under section 1434 of this title, or vehicle required to report arrival under section 1433 of this title,'' for ''or vehicle arriving from a foreign port or place'', inserted ''or transmitted pursuant to an electronic data interchange system'' after ''issued'', and substituted ''the Customs Service.'' for ''the appropriate customs officer: *Provided*, That the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall not excuse the master from making formal entry of his vessel at the customhouse, as provided by this chapter.'', in second sentence, struck out '', preliminary or otherwise,'' after ''After the entry'', substituted ''the Customs Service'' for ''such customs officer'', and inserted '', electronically pursuant to an authorized electronic data interchange system or otherwise,'' after ''may issue a permit'', and substituted last four sentences for former last sentence which read as follows: ''Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by such customs officer, as provided in section 1484 of this title, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage, until entry thereof is made.''

1970—Subsec. (a). Pub. L. 91–271 substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 58c of this title.

§ 1449. Unlading at port of entry

Except as provided in sections 1442 and 1447 of this title (relating to residue cargo and to bulk cargo respectively), merchandise and baggage imported in any vessel by sea shall be unladen at the port of entry to which such vessel is destined, unless (1) such vessel is compelled by any cause to put into another port of entry, and the Customs Service issues a permit for the unlading of such merchandise or baggage at such port, or (2) the Secretary of the Treasury, because of an emergency existing at the port of destination, authorizes such vessel to proceed to another port of entry. Merchandise and baggage so unladen may be entered in the same manner as other imported merchandise or baggage and may be treated as unclaimed merchandise or baggage and stored at the expense and risk of the owner thereof, or may be reladen without entry upon the vessel from which it was unladen for transportation to its destination.

(June 17, 1930, ch. 497, title IV, § 449, 46 Stat. 714; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103–182, title VI, § 649(b), Dec. 8, 1993, 107 Stat. 2208.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 449, 42 Stat. 954. That section was superseded by section 449 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions concerning protests and reports by vessels compelled by distress of weather or other necessity to put into a port of the United States; permits for the unlading thereof; the storage of the goods; the disposal of perishable goods; variances between the report, and the delivery of the cargo, and the reloading of such vessels, and a special provision for Spanish vessels arriving in distress, were contained in R.S. §§ 2891–2895. Provisions for report and entry of vessels prevented by ice from getting to the port or place at which her cargo was intended to be delivered, and for the unlading or landing of the cargo, were contained in R.S. § 2896. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Pub. L. 103–182 substituted ''Customs Service issues a permit for the unlading of such merchandise or baggage at such port,'' for ''appropriate customs officer

of such port issues a permit for the unlading of such merchandise or baggage,''.

1970—Pub. L. 91–271 substituted reference to appropriate customs officers for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1450. Unlading on Sundays, holidays, or during overtime hours

No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladen from the carrying aircraft, vessel or vehicle on Sunday, a holiday, or during overtime hours, except under special license granted by the appropriate customs officer under such regulations as the Secretary of the Treasury may prescribe.

(June 17, 1930, ch. 497, title IV, § 450, 46 Stat. 715; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103–66, title XIII, § 13811(b)(2), Aug. 10, 1993, 107 Stat. 670.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 2872, as amended by the act of June 26, 1884, ch. 121, § 25, 23 Stat. 59, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 450, 42 Stat. 954, and was repealed by section 642 thereof. Section 450 of the 1922 act was superseded by section 450 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. § 2871 providing for the granting of a special license to unlade at night, and the amendment thereof by act June 30, 1906, ch. 3909, 34 Stat. 633, were repealed by section 6 of act Feb. 13, 1911, ch. 46, and provision for the grant of a special license to lade or unlade at night, and the grant of permits for immediate lading and unlading of vessels admitted to preliminary entry, etc., was made, in sections 1 and 4 of that act, which were repealed by section 643 of the act of Sept. 21, 1922, ch. 356.

A special provision on the subject matter of this section for the northern, northeastern and northwestern frontiers was contained in R.S. § 3120, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248, prior to repeal by section 642 of the act of Sept. 21, 1922, ch. 356.

AMENDMENTS

1993—Pub. L. 103–66 in section catchline substituted ''during overtime hours'' for ''at night'', and in text substituted ''during overtime hours'' for ''at night'' and inserted ''aircraft,'' before ''vessel''.

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to customs inspectional services provided on or after Jan. 1, 1994, see section 13811(c) of Pub. L. 103–66, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

CROSS REFERENCES

Overtime compensation, see section 5541 et seq. of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1451 of this title; title 5 section 5549.

§ 1451. Extra compensation

Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 267 of this title. In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of such vessels or vehicles for a period not to exceed one year. Upon a request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the appropriate customs officer shall assign sufficient customs officers or employees if available to perform any such services which may lawfully be performed by them during regular hours of business, but only if the person requesting such services deposits sufficient money to pay, or gives a bond in an amount to be fixed by the[1] such customs officer, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unlading at night or on Sunday or a holiday. Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tours of duty at nights or on Sundays or holidays when such assignments are in the public interest: *Provided*, That the provisions of this section, sections 1450 and 1452 of this title, and the provisions of section 267 of this title insofar as such section 267 of this title requires payment of compensation by the master, owner, agent, or consignee of a vessel or conveyance, shall not apply to the owner, operator, or agent of a highway vehicle, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, nor to the lading or unlading of merchandise, baggage, or persons arriving in or departing from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry. At ports of entry and customs stations where any merchandise, baggage, or persons shall arrive in or depart from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mex-

[1] So in original. The word ''the'' probably should not appear.

ico, the appropriate customs officer, under such regulations as the Secretary of the Treasury may prescribe, shall assign customs officers and employees to duty at such times during the twenty-four hours of each day, including Sundays and holidays, as the Secretary of the Treasury in his discretion may determine to be necessary to facilitate the inspection and passage of such merchandise, baggage, or persons. Officers and employees assigned to such duty at night or on Sunday or a holiday shall be paid compensation in accordance with existing law as interpreted by the United States Supreme Court in the case of the United States v. Howard C. Myers (320 U.S. 561); but all compensation payable to such customs officers and employees shall be paid by the United States without requiring any license, bond, obligation, financial undertaking, or payment in connection therewith on the part of any owner, operator, or agent of any such highway vehicle, bridge, tunnel, or ferry, or other person. As used in this section, the term ''ferry'' shall mean a passenger service operated with the use of vessels which arrive in the United States on regular schedules at intervals of at least once each hour during any period in which customs service is to be furnished without reimbursement as above provided.

(June 17, 1930, ch. 497, title IV, § 451, 46 Stat. 715; June 25, 1938, ch. 679, § 9, 52 Stat. 1082; June 3, 1944, ch. 233, § 1, 58 Stat. 269; Sept. 1, 1954, ch. 1213, title V, § 503, 68 Stat. 1141; Pub. L. 91–271, title III, § 301(f), June 2, 1970, 84 Stat. 288.)

PRIOR PROVISIONS

Provisions similar to those in this section, but applying also to the issuance of a permit for immediate lading or unlading after preliminary entry, were contained in act Feb. 13, 1911, ch. 46, § 3, 36 Stat. 900, which was superseded in part by act Sept. 21, 1922, ch. 356, title IV, § 451, 42 Stat. 954, and was repealed by section 643 thereof. Section 451 of the 1922 act was superseded by section 451 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1970—Pub. L. 91–271 substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

1954—Act Sept. 1, 1954, permitted the deposit of sufficient money to cover costs of night, Sunday, or holiday service in lieu of filing of bond.

1944—Act June 3, 1944, inserted proviso.

1938—Act June 25, 1938, amended third sentence generally.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Maximum charges for inspection and quarantine overtime services, notwithstanding provisions of this section, see section 80503 of Title 49, Transportation.

Overtime compensation, see section 5541 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 58c of this title; title 5 section 5549; title 49 section 80503.

§ 1451a. Repealed. Pub. L. 103–66, title XIII, § 13811(b)(1), Aug. 10, 1993, 107 Stat. 670

Section, act June 3, 1944, ch. 233, § 2, 58 Stat. 270, provided that certain extra compensation of customs officers and employees assigned to performance of inspectional services in connection with traffic over highways, toll bridges, etc. on Sundays or holidays prior to June 3, 1944, was to be payable by the U.S. without reimbursement by the applicant for such services and that any reimbursement which had accrued and been collected since Jan. 6, 1941, was to be refunded.

EFFECTIVE DATE OF REPEAL

Repeal applicable to customs inspectional services provided on or after Jan. 1, 1994, see section 13811(c) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 267 of this title.

§ 1452. Lading on Sundays, holidays, or at night

No merchandise or baggage entered for transportation under bond or for exportation with the benefit of drawback, or other merchandise or baggage required to be laden under customs supervision, shall be laden on any vessel or vehicle at night or on Sunday or a holiday, except under special license therefor to be issued by the appropriate customs officer under the same conditions and limitations as pertain to the unlading of imported merchandise or merchandise being transported in bond.

(June 17, 1930, ch. 497, title IV, § 452, 46 Stat. 715; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 452, 42 Stat. 955. That section was superseded by section 452 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

CROSS REFERENCES

Overtime compensation, see section 5541 et seq. of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1451 of this title; title 5 section 5549.

§ 1453. Lading and unlading of merchandise or baggage; penalties

If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the appropriate customs officer, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture, and if the value thereof is $500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forfeiture.

(June 17, 1930, ch. 497, title IV, § 453, 46 Stat. 716; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 453, 42 Stat. 955. That section was superseded by section 453 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions imposing penalties and forfeitures for violation of R.S. § 2872, which required a special license for unloading or delivering merchandise otherwise than in open day, were contained in R.S. §§ 2873 and 2874, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1454. Unlading of passengers; penalty

If any passenger is unladen from any vessel or vehicle without a special license or permit therefor issued by the appropriate customs officer, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, shall each be liable to a penalty of $1,000 for the first passenger and $500 for each additional such passenger so unladen.

(June 17, 1930, ch. 497, title IV, § 454, 46 Stat. 716; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 99–570, title III, § 3114, Oct. 27, 1986, 100 Stat. 3207–82.)

AMENDMENTS

1986—Pub. L. 99–570 substituted "$1,000 for the first passenger and $500 for each additional such passenger" for "$500 for each such passenger".

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1455. Boarding and discharging inspectors

The appropriate customs officer for the district in which any vessel or vehicle arrives from a foreign port or place may put on board of such vessel or vehicle while within such district, and if necessary while going from one district to another, one or more inspectors or other customs officers to examine the cargo and contents of such vessel or vehicle and superintend the unlading thereof, and to perform such other duties as may be required by law or the customs regulations for the protection of the revenue. Such inspector or other customs officer may, if he shall deem the same necessary for the protection of the revenue, secure the hatches or other communications or outlets of such vessel or vehicle with customs seals or other proper fastenings while such vessel is not in the act of unlading and such fastenings shall not be removed without permission of the inspector or other customs officer. Such inspector or other customs officer may require any vessel or vehicle to discontinue or suspend unlading during the continuance of unfavorable weather or any conditions rendering the discharge of cargo dangerous or detrimental to the revenue. Any officer, owner, agent of the owner, or member of the crew of any such vessel who obstructs or hinders any such inspector or other customs officer in the performance of his duties, shall be liable to a penalty of not more than $500.

(June 17, 1930, ch. 497, title IV, § 455, 46 Stat. 716; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 454, 42 Stat. 955. That section was superseded by section 455 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions on the subject matter of this section were contained in R.S. §§ 2834 (as amended by act Mar. 3, 1897, ch. 389, § 15, 29 Stat. 691), 2875, and 3070; and special provisions for particular ports in sections 2588, 2590 and 2832. Provisions as to the duties of inspectors, the records to be kept and returns to be made by them and the comparison of their returns with the manifests and entries, were contained in R.S. §§ 2876, 2877, 2888 and 2889. All the foregoing sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1456. Compensation and expenses of inspectors between ports; reimbursement

The compensation of any inspector or other customs officer, stationed on any vessel or vehicle while proceeding from one port to another and returning therefrom, shall be reimbursed to the Government by the master or owner of such vessel, together with the actual expense of such inspector or customs officer for subsistence, or in lieu of such expenses such vessel or vehicle may furnish such inspector or customs officer, the accommodations usually supplied to passengers.

(June 17, 1930, ch. 497, title IV, § 456, 46 Stat. 716.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 455, 42 Stat. 955. That section was superseded by section 456 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions on the subject matter of this section were contained in R.S. § 2878, and particular provisions for certain ports in sections 2588 and 2833. Section 2878 contained a further provision prohibiting inspectors from performing any other duties or service than what was required by that title. All these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

§ 1457. Time for unlading

Whenever any merchandise remains on board any vessel or vehicle from a foreign port more than twenty-five days after the date on which report of said vessel or vehicle was made, the appropriate customs officer may take possession of such merchandise and cause the same to be unladen at the expense and risk of the owners thereof, or may place one or more inspectors or other customs officers on board of said vessel or vehicle to protect the revenue. The compensation and expenses of any such inspector or customs officer for subsistence while on board of such vessel or vehicle shall be reimbursed to the Government by the owner or master of such vessel or vehicle.

(June 17, 1930, ch. 497, title IV, § 457, 46 Stat. 716; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. §§ 2879, 2880 and 2969 (as amended by act May 9, 1896, ch. 164, 29 Stat. 115), which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 456, 42 Stat. 955, and were repealed by section 642 thereof. Section 456 of the 1922 act was superseded by section 457 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1458. Bulk cargo, time for unlading

The limitation of time for unlading shall not extend to vessels laden exclusively with merchandise in bulk consigned to one consignee and arriving at a port for orders, but if the master of such vessel requests a longer time to discharge its cargo, the compensation of the inspectors or other customs officers whose services are required in connection with the unlading shall, for every day consumed in unlading in excess of twenty-five days from the date of the vessel's entry, be reimbursed by the master or owner of such vessel.

(June 17, 1930, ch. 497, title IV, § 458, 46 Stat. 717.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 458, 42 Stat. 956. That section was superseded by section 458 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section, but applicable only to vessels laden with specified articles, were contained in R.S. § 2881, as amended by act June 3, 1892, ch. 86, § 2, 27 Stat. 41, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

§ 1459. Reporting requirements for individuals

(a) Individuals arriving other than by conveyance

Except as otherwise authorized by the Secretary, individuals arriving in the United States other than by vessel, vehicle, or aircraft shall—

(1) enter the United States only at a border crossing point designated by the Secretary; and

(2) immediately—

(A) report the arrival, and

(B) present themselves, and all articles accompanying them for inspection;

to the customs officer at the customs facility designated for that crossing point.

(b) Individuals arriving by reported conveyance

Except as otherwise authorized by the Secretary, passengers and crew members aboard a conveyance the arrival in the United States of which was made or reported in accordance with section 1433 or 1644 of this title or section 1644a(b)(1) or (c)(1) of this title, or in accordance with applicable regulations, shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer. Upon departing the conveyance, the passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.

(c) Individuals arriving by unreported conveyance

Except as otherwise authorized by the Secretary, individuals aboard a conveyance the arrival in the United States of which was not made or reported in accordance with the laws or regulations referred to in subsection (b) of this section shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.

(d) Departure from designated customs facilities

Except as otherwise authorized by the Secretary, any person required to report to a designated customs facility under subsection (a), (b), or (c) of this section may not depart that facility until authorized to do so by the appropriate customs officer.

(e) Unlawful acts

It is unlawful—

(1) to fail to comply with subsection (a), (b), or (c) of this section;

(2) to present any forged, altered, or false document or paper to a customs officer under subsection (a), (b), or (c) of this section without revealing the facts;

(3) to violate subsection (d) of this section; or

(4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d) of this section.

(f) Civil penalty

Any individual who violates any provision of subsection (e) of this section is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation.

(g) Criminal penalty

In addition to being liable for a civil penalty under subsection (f) of this section, any individual who intentionally violates any provision of subsection (e) of this section is, upon conviction, liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.

(June 17, 1930, ch. 497, title IV, § 459, 46 Stat. 717; June 25, 1938, ch. 679, § 10(a), 52 Stat. 1082; Pub. L. 99–570, title III, § 3115(a), Oct. 27, 1986, 100 Stat. 3207–82.)

CODIFICATION

In subsec. (b), ''section 1644a(b)(1) or (c)(1) of this title'' substituted for ''section 1109 of the Federal Aviation Act of 1958'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 459, 42 Stat. 956. That section was superseded by section 459 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. § 3109, as amended by act Feb. 17, 1898, ch. 26, § 4, 30 Stat. 248, was omitted from the Code as superseded by this section. It read as follows: ''The master of any foreign vessel, laden or in ballast, arriving, whether by sea or otherwise, in the waters of the United States from any foreign territory adjacent to the northern, northeastern, or northwestern frontiers of the United States, shall report at the office of any collector or deputy collector of the customs, which shall be nearest to the point at which such vessel may enter such waters; and such vessel shall not transfer her cargo or passengers to another vessel or proceed farther inland, either to unlade or take in cargo, without a special permit from such collector or deputy collector, issued under and in accordance with such general or special regulations as the Secretary of the Treasury may, in his discretion, from time to time prescribe. This section shall also apply to trade with or through Alaska. For any violation of this section such vessel shall be seized and forfeited.''

Provisions concerning the manner of importation, landing and unlading except in districts on the northern, northwestern and western boundaries, were contained in R.S. § 3095, as amended by act April 27, 1904, ch. 1625, § 1, 33 Stat. 362.

Additional provisions concerning importations on the northern and northwestern boundaries, reports, manifests, entries, etc., were contained in R.S. §§ 3096 and 3097.

Provisions for the delivery of a manifest by the master of vessels, except registered vessels, and the person in charge of boats, vehicles, etc., coming from any foreign territory adjacent to the United States, were contained in R.S. § 3098.

R.S. § 3121, provided that the master of any vessel with cargo, passengers, or baggage from any foreign port, should obtain a permit and comply with existing laws before discharging or landing the same.

R.S. § 3128, made special provision for landing of merchandise imported by steamboat on Lake Champlain.

All of the foregoing sections of the Revised Statutes (3095–3098, 3109, 3121 and 3128) with the exception of R.S. § 3109, were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1986—Pub. L. 99–570 amended section generally. Prior to amendment, section read as follows: ''The master of any vessel of less than five net tons carrying merchandise and the person in charge of any vehicle arriving in the United States from contiguous country, shall immediately report his arrival to the customs officer at the port of entry or customhouse which shall be nearest to the place at which such vessel or vehicle shall cross the boundary line or shall enter the territorial waters of the United States, and if such vessel or vehicle have on board any merchandise, shall produce to such customs officer a manifest as required by law, and no such vessel or vehicle shall proceed farther inland nor shall discharge or land any merchandise, passengers, or baggage without receiving a permit therefor from such customs officer. Any person importing or bringing merchandise into the United States from a contiguous country otherwise than in a vessel or vehicle shall immediately report his arrival to the customs officer at the port of entry or customhouse which shall be nearest to the place at which he shall cross the boundary line and shall present such merchandise to such customs officer for inspection.''

1938—Act June 25, 1938, substituted provisions requiring any person importing merchandise from a contiguous country otherwise than in a vessel to report his arrival at the nearest customshouse and present such merchandise for inspection for provisions setting penalties of $100 for for the failure of the master of any vessel to report its arrival in the United States, forfeiture of vessel and goods for unlading without a permit, and $500 for the unlading of any passenger without a permit.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

§ 1460. Repealed. Pub. L. 99–570, title III, § 3115(b), Oct. 27, 1986, 100 Stat. 3207–83

Section, acts June 17, 1930, ch. 497, title IV, § 460, 46 Stat. 717; June 25, 1938, ch. 679, § 10(b), 52 Stat. 1082, related to penalties for failure to report or file manifest.

§ 1461. Inspection of merchandise and baggage

All merchandise and baggage imported or brought in from any contiguous country, except as otherwise provided by law or by regulations of the Secretary of the Treasury, shall be unladen in the presence of and be inspected by a customs officer at the first port of entry at which the same shall arrive; and such officer may require the owner, or his agent, or other person having charge or possession of any trunk, traveling bag, sack, valise, or other container, or of any closed vehicle, to open the same for inspection, or to furnish a key or other means for opening the same.

(June 17, 1930, ch. 497, title IV, § 461, 46 Stat. 717.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 3100, as amended by act Feb. 18, 1875, ch. 80, § 1, 18 Stat. 319, and act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 461, 42 Stat. 956, and was repealed by section 642 thereof. Section 461 of the 1922 act was superseded by section 461 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1462. Forfeiture

If such owner, agent, or other person shall fail to comply with his demand, the officer shall re-

tain such trunk, traveling bag, sack, valise, or other container or closed vehicle, and open the same, and, as soon thereafter as may be practicable, examine the contents, and if any article subject to duty or any article the importation of which is prohibited is found therein, the whole contents and the container or vehicle shall be subject to forfeiture.

(June 17, 1930, ch. 497, title IV, § 462, 46 Stat. 718.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 3101, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 462, 42 Stat. 956, and was repealed by section 642 thereof. Section 462 of the 1922 act was superseded by section 462 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1463. Sealed vessels and vehicles

To avoid unnecessary inspection of merchandise imported from a contiguous country at the first port of arrival, the master of the vessel or the person in charge of the vehicle in which such merchandise is imported may apply to the customs officer of the United States stationed in the place from which such merchandise is shipped, and such officer may seal such vessel or vehicle. Any vessel or vehicle so sealed may proceed with such merchandise to the port of destination under such regulations as the Secretary of the Treasury may prescribe.

(June 17, 1930, ch. 497, title IV, § 463, 46 Stat. 718.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 463, 42 Stat. 957. That section was superseded by section 463 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section, and further provisions requiring the vessel, car, or vehicle sealed to proceed without unnecessary delay to the port of destination and be there inspected, and providing that nothing contained therein should exempt the vessel, car, or vehicle from examinations to prevent frauds, were contained in R.S. § 3102, and provisions authorizing and requiring the Secretary of the Treasury to make regulations for sealing vessels, cars, etc., were contained in section 3103, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

§ 1464. Penalties in connection with sealed vessels and vehicles

If the master of such vessel or the person in charge of any such vehicle fails to proceed with reasonable promptness to the port of destination and to deliver such vessel or vehicle to the proper officers of the customs, or fails to proceed in accordance with such regulations of the Secretary of the Treasury, or unlades such merchandise or any part thereof at other than such port of destination, or disposes of any such merchandise by sale or otherwise, he shall be guilty of a felony and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than five years, or both; and any such vessel or vehicle, with its contents, shall be subject to forfeiture.

(June 17, 1930, ch. 497, title IV, § 464, 46 Stat. 718.)

PRIOR PROVISIONS

Provisions somewhat similar to those in this section, with a further provision for seizure of the vessel, car, or vehicle with its contents, and a provision that nothing therein should prevent sales of cargo prior to arrival, to be delivered per manifest and after due inspection, were contained in R.S. § 3104, which was superseded in part by act Sept. 21, 1922, ch. 356, title IV, § 464, 42 Stat. 957, and was repealed by section 642 thereof. Section 464 of the 1922 act was superseded by section 464 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

CROSS REFERENCES

Provisions restricting the seizure and forfeiture of vessels used as common carriers, see section 1594 of this title.

§ 1465. Repealed. Pub. L. 103–182, title VI, § 690(b)(7), Dec. 8, 1993, 107 Stat. 2223

Section, act June 17, 1930, ch. 497, title IV, § 465, 46 Stat. 718, required master of any vessel engaged in certain foreign and coasting trade and conductor of any railway car to file, upon arrival from foreign contiguous country, a list of all supplies or other merchandise purchased in such foreign country.

§ 1466. Equipment and repairs of vessels

(a) Vessels subject to duty; penalties

The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country. If the owner or master willfully or knowingly neglects or fails to report, make entry, and pay duties as herein required, or if he makes any false statement in respect of such purchases or repairs without reasonable cause to believe the truth of such statements, or aids or procures the making of any false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture. For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs.

(b) Notice

If the appropriate customs officer has reasonable cause to believe a violation has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a penalty claim. Such notice shall—

(1) describe the circumstances of the alleged violation;

(2) specify all laws and regulations allegedly violated;

(3) disclose all the material facts which establish the alleged violation;

(4) state the estimated loss of lawful duties, if any, and taking into account all of the cir-

cumstances, the amount of the proposed penalty; and

(5) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

(c) Violation

After considering representations, if any, made by the person concerned pursuant to the notice issued under subsection (b) of this section, the appropriate customs officer shall determine whether any violation of subsection (a) of this section, as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly notify, in writing, the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under paragraphs (1) through (4) of subsection (b) of this section.

(d) Remission for necessary repairs

If the owner or master of such vessel furnishes good and sufficient evidence that—

(1) such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination;

(2) such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel; or

(3) such equipments, or parts thereof, or materials, or labor, were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo;

then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments or parts thereof or materials and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this section, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited.

(e) Exclusions for arrivals two or more years after last departure

(1) In the case of any vessel referred to in subsection (a) of this section that arrives in a port of the United States two years or more after its last departure from a port in the United States, the duties imposed by this section shall apply only with respect to—

(A) fish nets and netting, and

(B) other equipments and parts thereof, repair parts and materials purchased, or repairs made, during the first six months after the last departure of such vessel from a port of the United States.

(2) If such vessel is designed and used primarily for transporting passengers or property, paragraph (1) shall not apply if the vessel departed from the United States for the sole purpose of obtaining such equipments, parts, materials, or repairs.

(f) Civil aircraft exception

The duty imposed under subsection (a) of this section shall not apply to the cost of equipments, or any part thereof, purchased, of repair parts or materials used, or of repairs made in a foreign country with respect to a United States civil aircraft, within the meaning of general note 3(c)(iv) of the Harmonized Tariff Schedule of the United States.

(g) Fish net and netting purchases and repairs

The duty imposed by subsection (a) of this section shall not apply to entries on and after October 1, 1979, and before January 1, 1982, of—

(1) tuna purse seine nets and netting which are equipments or parts thereof,

(2) repair parts for such nets and netting, or materials used in repairing such nets and netting, or

(3) the expenses of repairs of such nets and netting,

for any United States documented tuna purse seine vessel of greater than 500 tons carrying capacity or any United States tuna purse seine vessel required to carry a certificate of inclusion under the general permit issued to the American Tunaboat Association pursuant to section 1374 of title 16.

(h) Foreign repair of vessels

The duty imposed by subsection (a) of this section shall not apply to—

(1) the cost of any equipment, or any part of equipment, purchased for, or the repair parts or materials to be used, or the expense of repairs made in a foreign country with respect to, LASH (Lighter Aboard Ship) barges documented under the laws of the United States and utilized as cargo containers,

(2) the cost of spare repair parts or materials (other than nets or nettings) which the owner or master of the vessel certifies are intended for use aboard a cargo vessel, documented under the laws of the United States and engaged in the foreign or coasting trade, for installation or use on such vessel, as needed, in the United States, at sea, or in a foreign country, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country, or

(3) the cost of spare parts necessarily installed before the first entry into the United States, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States

upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country.

(June 17, 1930, ch. 497, title IV, § 466, 46 Stat. 719; Pub. L. 91–654, § 1, Jan. 5, 1971, 84 Stat. 1944; Pub. L. 95–410, title II, § 206, Oct. 3, 1978, 92 Stat. 900; Pub. L. 96–39, title VI, § 601(a)(3), July 26, 1979, 93 Stat. 268; Pub. L. 96–467, § 14(a)(3)(B), Oct. 17, 1980, 94 Stat. 2225; Pub. L. 96–609, title I, § 115(a), Dec. 28, 1980, 94 Stat. 3558; Pub. L. 98–573, title II, § 208, Oct. 30, 1984, 98 Stat. 2976; Pub. L. 100–418, title I, § 1214(h)(4), Aug. 23, 1988, 102 Stat. 1157; Pub. L. 101–382, title III, § 484E(a), Aug. 20, 1990, 104 Stat. 709; Pub. L. 103–465, title I, § 112(b), Dec. 8, 1994, 108 Stat. 4825.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (f) and (h)(2), (3), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (a) and (b) of this section were contained respectively in R.S. §§ 3114 and 3115, as amended, which were formerly classified to sections 257 and 258 of this title prior to repeal by section 3 of Pub. L. 91–654.

AMENDMENTS

1994—Subsec. (h)(3). Pub. L. 103–465 added par. (3).

1990—Subsec. (h). Pub. L. 101–382 added subsec. (h).

1988—Subsec. (f). Pub. L. 100–418 substituted ''general note 3(c)(iv) of the Harmonized Tariff Schedule of the United States'' for ''headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States''.

1984—Subsec. (e). Pub. L. 98–573 designated existing provisions as par. (1), in par. (1) as so designated substituted reference to any vessel referred to in subsec. (a) for reference to any vessel designed and used primarily for purposes other than transporting passengers or property in the foreign or coasting trade, redesignated former cls. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

1980—Subsec. (f). Pub. L. 96–467 substituted ''of equipments, or any part thereof, purchased, of repair parts or materials used, or of repairs made in a foreign country with respect to'' for ''of repair parts, materials, or expenses of repairs in a foreign country upon'' and ''schedule 6'' for ''Schedule 6''.

Subsec. (g). Pub. L. 96–609 added subsec. (g).

1979—Subsec. (f). Pub. L. 96–39 added subsec. (f).

1978—Subsec. (a). Pub. L. 95–410, § 206(1), incorporated seizure and forfeiture provision formerly a part of first sentence in an inserted second sentence; substituted therein ''willfully or knowingly'' for ''willfully and knowingly'' and ''such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture'' for ''such vessel, with her tackle, apparel, and furniture, shall be seized and forfeited''; and authorized the seizure and forfeiture for making false statements in respect of purchases or repairs or aiding or procuring the making of false statements.

Subsecs. (b) to (e). Pub. L. 95–410, § 206(2), added subsecs. (b) and (c) and redesignated former subsecs. (b) and (c) as (d) and (e), respectively.

1971—Subsec. (c). Pub. L. 91–654 added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 116(a) of Pub. L. 103–465, set out as an Effective Date note under section 3521 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 484E(b), (c) of Pub. L. 101–382, as amended by Pub. L. 103–465, title I, § 112(a), Dec. 8, 1994, 108 Stat. 4825; Pub. L. 104–295, § 27, Oct. 11, 1996, 110 Stat. 3533, provided that:

''(b) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to—

''(1) any entry made before the date of enactment of this Act [Aug. 20, 1990] that is not liquidated on the date of enactment of this Act,

''(2) any entry made—

''(A) on or after the date of enactment of this Act, and

''(B) on or before December 31, 1992,

''(3) any entry listed in subsection (c) that was made during the period beginning on January 1, 1993, and ending on December 31, 1994, to the extent such entry involves the purchase of equipment, the use of materials, or the expense of repairs in a foreign country for 66 LASH (Lighter Aboard Ship) barges documented under the laws of the United States if—

''(A) such entry was not liquidated on January 1, 1995; and

''(B) such entry, had it been made on or after January 1, 1995, would otherwise be eligible for the exemption provided in section 466(h)(1) of the Tariff Act of 1930 (19 U.S.C. 1466(h)(1)), and

''(4) any entry made pursuant to section 466(h)(1) or (2) of the Tariff Act of 1930 (19 U.S.C. 1466(h)(1) or (2)), on or after the date of the entry into force of the WTO Agreement with respect to the United States [Jan. 1, 1995].

''(c) ENTRIES.—The entries referred to in subsection (b)(3) are the following:

''(1) NUMBERED ENTRIES.—

Entry Number	Date of Entry
C14–0025455–8	August 18, 1993
C14–0025456–6	August 18, 1993
C14–0025457–4	August 18, 1993
C14–0025473–1	August 27, 1993
C14–0025478–0	September 13, 1993
C14–0025479–8	September 13, 1993
C14–0025480–6	September 13, 1993
C14–0025481–4	September 13, 1993
C14–0025511–8	April 16, 1993
C14–0025533–2	April 30, 1993
C14–0025545–6	May 21, 1993
C14–0025546–4	May 21, 1993
C14–0025547–2	May 21, 1993
C14–0025558–9	June 15, 1993
C14–0025560–5	June 15, 1993
C14–0025574–6	July 21, 1993
C14–0025575–3	July 21, 1993
C14–0025603–3	July 23, 1993
C14–0025604–1	July 23, 1993
C14–0025605–8	July 23, 1993
C14–0025623–1	October 25, 1993
C14–0025624–9	October 25, 1993
C14–0025625–6	October 25, 1993
C14–0025635–5	November 8, 1993
C14–0025636–3	November 8, 1993
C14–0025637–1	November 8, 1993
C14–0025653–8	November 30, 1993
C14–0025654–6	November 30, 1993
C14–0025655–3	November 30, 1993
C14–0025657–9	November 30, 1993
C14–0025679–3	January 3, 1994
C14–0025680–1	January 3, 1994
C14–0025688–4	February 14, 1994
C14–0025689–2	February 14, 1994
C14–0025690–0	February 14, 1994
C14–0025691–8	February 14, 1994
C14–0025692–6	February 14, 1994
C14–0026803–8	January 24, 1994
C14–0026804–6	January 24, 1994
C14–0026805–3	January 24, 1994
C14–0026807–9	January 24, 1994
C14–0026808–7	January 24, 1994
C14–0026809–5	January 24, 1994
C14–0026810–3	January 24, 1994
C14–0026811–1	January 24, 1994

Entry Number	Date of Entry
C14–0026826–9	March 10, 1994
C14–0026827–7	March 10, 1994
C14–0026828–5	March 10, 1994
C14–0026829–3	March 10, 1994
C14–0026830–1	March 10, 1994
C14–0026831–9	March 10, 1994
C14–0026832–7	March 10, 1994
C14–0026833–5	March 10, 1994
C14–0026841–8	March 31, 1994
C14–0026843–4	March 31, 1994
C14–0026852–5	May 5, 1994
C14–0026853–3	May 5, 1994
C14–0026854–1	May 5, 1994
C14–0026867–3	May 18, 1994
C14–0026869–9	May 18, 1994
C14–0026874–9	June 8, 1994
C14–0026875–6	June 8, 1994
C14–0026898–8	August 2, 1994
C14–0026899–6	August 2, 1994
C14–0040625–7	October 5, 1994.

''(2) ADDITIONAL ENTRY.—The entry of a 66th LASH barge (No. CG E69), for which no entry number is available, if, within 60 days after the date of the enactment of this subsection [Oct. 11, 1996], a proper entry is filed with the Customs Service.''

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 applicable with respect to entries made in connection with arrivals of vessels on or after the 15th day after Oct. 30, 1984, with certain exceptions for vessels transporting passengers or property, see section 214(a), (c)(3) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 14(b) of Pub. L. 96–467 provided in part that: ''The amendment made by paragraph (3) of subsection (a) [amending this section] shall apply with respect to entries made under section 466 of the Tariff Act of 1930 [this section] on or after January 1, 1980.''

EFFECTIVE DATE OF 1979 AMENDMENT

Section 601(a) of Pub. L. 96–39 provided that the amendment made by that section is effective upon a Presidential proclamation authorized to be made after Sept. 30, 1979, when the conditions under section 2503(b) of this title on acceptance of the Agreement on Trade in Civil Aircraft are fulfilled.

ENTRIES MADE IN CONNECTION WITH ARRIVAL OF VESSELS ON OR AFTER OCTOBER 1, 1979, AND BEFORE DECEMBER 28, 1980

Section 115(b) of Pub. L. 96–609 provided that: ''Upon request therefor filed with the customs officer concerned on or before the 90th day after the date of the enactment of this Act [Dec. 28, 1980], the entry of any article to which section 466(a) of the Tariff Act of 1930 [subsec. (a) of this section] applied and—

''(1) that was made on or after October 1, 1979, and before the date of the enactment of this Act; and

''(2) with respect to which there would have been no duty if the amendment made by subsection (a) [adding subsec. (g) of this section] applied to such entry or withdrawal;

shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 [section 1514 of this title] or any other provision of law, be liquidated or reliquidated as though such entry or withdrawal had been made on the date of the enactment of this Act.''

ENTRIES MADE IN CONNECTION WITH ARRIVALS OF VESSELS ON OR AFTER JANUARY 5, 1971; ENTRIES IN CONNECTION WITH THE ARRIVAL OF SHRIMP VESSELS AFTER JANUARY 1, 1969, AND BEFORE JANUARY 5, 1971

Section 2 of Pub. L. 91–654 provided that:

''(a) The amendment made by the first section of this Act [amending this section] shall apply with respect to entries made in connection with arrivals of vessels on or after the date of the enactment of this Act [Jan. 5, 1971].

''(b) Upon request therefor filed with the customs officer concerned on or before the ninetieth day after the date of the enactment of this Act, any entry in connection with the arrival of a vessel used primarily for the catching of shrimp—

''(1) which was made after January 1, 1969, and before the date of the enactment of this Act, and

''(2) with respect to which there would have been no duty if the amendment made by the first section of this Act applied to such entry,

shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 [section 1514 of this title] or any other provision of law, be liquidated or reliquidated as though such entry had been made on the day after the date of the enactment of this Act.''

CROSS REFERENCES

Definitions with respect to vessel documentation, see section 12101 of Title 46, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1498 of this title.

§ 1467. Special inspection, examination, and search

Whenever a vessel from a foreign port or place or from a port or place in any Territory or possession of the United States arrives at a port or place in the United States or the Virgin Islands, whether directly or via another port or place in the United States or the Virgin Islands, the appropriate customs officer for such port or place of arrival may, under such regulations as the Secretary of the Treasury may prescribe and for the purpose of assuring compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, cause inspection, examination, and search to be made of the persons, baggage, and merchandise discharged or unladen from such vessel, whether or not any or all such persons, baggage, or merchandise has previously been inspected, examined, or searched by officers of the customs.

(June 17, 1930, ch. 497, title IV, § 467, as added June 25, 1938, ch. 679, § 11, 52 Stat. 1083; amended Pub. L. 91–271, title III, § 301(g), June 2, 1970, 84 Stat. 288.)

AMENDMENTS

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector of customs.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE

This section effective on the thirtieth day following June 25, 1938, except as otherwise specifically provided,

see section 37 of act June 25, 1938, set out as an Effective Date of 1938 Amendment note under section 1401 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

§ 1481. Invoice; contents

(a) In general

All invoices of merchandise to be imported into the United States and any electronic equivalent thereof considered acceptable by the Secretary in regulations prescribed under this section shall set forth, in written, electronic, or such other form as the Secretary shall prescribe, the following:

(1) The port of entry to which the merchandise is destined;

(2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if to be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;

(3) A detailed description of the merchandise, including the commercial name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

(4) The quantities in the weights and measures of the country or place from which the merchandise is shipped, or in the weights and measures of the United States;

(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;

(7) The kind of currency, whether gold, silver, or paper;

(8) All charges upon the merchandise, itemized by name and amount when known to the seller or shipper; or all charges by name (including commissions, insurance, freight, cases, containers, coverings, and cost of packing) included in the invoice prices when the amounts for such charges are unknown to the seller or shipper;

(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise; and

(10) Any other fact that the Secretary may by regulation require as being necessary to a proper appraisement, examination and classification of the merchandise.

(b) Shipments not purchased and not shipped by manufacturer

If the merchandise is shipped to a person in the United States by a person other than the manufacturer, otherwise than by purchase, such person shall state on the invoice the time when, the place where, the person from whom such merchandise was purchased, and the price paid therefor in the currency of the purchase, stating whether gold, silver, or paper.

(c) Importer provision of information

Any information required to be set forth on an invoice may alternatively be provided by any of the parties qualifying as an ''importer of record'' under section 1484(a)(2)(B) of this title by such means, in such form or manner, and within such time as the Secretary shall by regulation prescribe.

(d) Exceptions by regulations

The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this section as he deems advisable and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section.

(June 17, 1930, ch. 497, title IV, §481, 46 Stat. 719; Pub. L. 103–182, title VI, §636, Dec. 8, 1993, 107 Stat. 2200.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §481, 42 Stat. 958. That section was superseded by section 481 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions as to the weights or measures, and currency, in which invoices should be made out and the contents of invoices, with additional provisions as to invoices of merchandise intended for immediate transportation without appraisement, and a provision as to the signing of the invoice, were contained in R.S. §2837 and act Oct. 3, 1913, ch. 16, §III, C, 38 Stat. 181 (superseding Customs Administrative Act of June 10, 1890, ch. 407, §2, 26 Stat. 131, as amended by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 91), which were superseded by act Sept. 21, 1922, ch. 356, title IV, §481, 42 Stat. 958, and repealed by sections 642 and 643 thereof.

R.S. §§2838, 2853 (as amended by Act June 10, 1880, ch. 190) and 2860, contained provisions concerning invoices and their contents, prior to repeal by Customs Administrative Act of June 10, 1890, ch. 407, §29, 26 Stat. 141.

Act May 27, 1921, ch. 14, §401, 42 Stat. 16, required invoices to contain, in addition to statements then required by law, such other statements as the Secretary of the Treasury should prescribe, and a statement as to the currency in which made out, and section 402 of that Act required the owner, importer, etc., to set forth on the invoice or statement in form of an invoice, and in the entry, in addition to statements then required by law such statements, under oath if required, as the Sec-

retary might prescribe. These provisions were omitted from the Code as superseded by this section, and section 1485(a) of this title.

Provisions on the subject matter of subdivision (c) of this section were contained in act Oct. 3, 1913, ch. 16, § III, W, 38 Stat. 190, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 481, 42 Stat. 958, and repealed by section 643 thereof.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182, § 636(1)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''All invoices of merchandise to be imported into the United States shall set forth—''.

Subsec. (a)(3). Pub. L. 103–182, § 636(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;''.

Subsec. (a)(10). Pub. L. 103–182, § 636(1)(C), amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''Any other facts deemed necessary to a proper appraisement, examination, and classification of the merchandise that the Secretary of the Treasury may require.''

Subsec. (c). Pub. L. 103–182, § 636(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''When the merchandise has been purchased in different consular districts for shipment to the United States and is assembled for shipment and embraced in a single invoice which is produced for certification under the provisions of paragraph (2) of subdivision (a) of section 1482 of this title, the invoice shall have attached thereto the original bills or invoices received by the shipper, or extracts therefrom, showing the actual prices paid or to be paid for such merchandise. The consular officer to whom the invoice is so produced for certification may require that any such original bill or invoice be certified by the consular officer for the district in which the merchandise was purchased.''

Subsec. (d). Pub. L. 103–182, § 636(3), inserted before period at end ''and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section''.

CROSS REFERENCES

Furs and fur products, additional information required in invoices, see section 69d of Title 15, Commerce and Trade.

Wool products, additional information required in invoices, see section 68f of Title 15.

§ 1482. Repealed. Pub. L. 103–182, title VI, § 690(b)(8), Dec. 8, 1993, 107 Stat. 2223

Section, acts June 17, 1930, ch. 497, title IV, § 482, 46 Stat. 720; Proc. No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Oct. 25, 1951, ch. 562, § 4(4), 65 Stat. 640; Aug. 8, 1953, ch. 397, § 16(a), 67 Stat. 517; June 2, 1970, Pub. L. 91–271, title III, § 301(h), 84 Stat. 288, set forth requirements for certified invoices including time of certification, declarations, number and destination of copies, and certification by other than an American consulate in remote areas.

§ 1483. Repealed. Pub. L. 97–446, title II, § 201(c), Jan. 12, 1983, 96 Stat. 2349

Section, acts June 17, 1930, ch. 497, title IV, § 483, 46 Stat. 721; Oct. 3, 1978, Pub. L. 95–410, title II, § 207, 92 Stat. 901, provided that for specified purposes the consignee of merchandise be deemed the owner.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97–446, set out as an Effective Date of 1983 Amendment note under section 1484 of this title.

§ 1484. Entry of merchandise

(a) Requirement and time

(1) Except as provided in sections 1490, 1498, 1552, and 1553 of this title, one of the parties qualifying as ''importer of record'' under paragraph (2)(B), either in person or by an agent authorized by the party in writing, shall, using reasonable care—

(A) make entry therefor by filing with the Customs Service—

(i) such documentation or, pursuant to an electronic data interchange system, such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody, and

(ii) notification whether an import activity summary statement will be filed; and

(B) complete the entry by filing with the Customs Service the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to—

(i) properly assess duties on the merchandise,

(ii) collect accurate statistics with respect to the merchandise, and

(iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(2)(A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, covering entries or warehouse withdrawals made during a calendar month, within such time period as is prescribed in regulations but not to exceed the 20th day following such calendar month.

(B) When an entry of merchandise is made under this section, the required documentation or information shall be filed or electronically transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 1641 of this title. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Service may, without liability, accept the declaration. For the purposes of this chapter, the importer of record must be one of the parties who is eligible to file the documentation or information required by this section.

(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data shall be transmitted immediately to the Director of the Bureau of the Census, who shall

make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the enforcement of laws governing the importation and exportation of merchandise, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.

(b) Reconciliation

(1) In general

A party may elect to file a reconciliation with regard to such entry elements as are identified by the party pursuant to regulations prescribed by the Secretary. If the party so elects, the party shall declare that a reconciliation will be filed. The declaration shall be made in such manner as the Secretary shall prescribe and at the time the documentation or information required by subsection (a)(1)(B) of this section or the import activity summary statement is filed with, or transmitted to, the Customs Service, or at such later time as the Customs Service may, in its discretion, permit. The reconciliation shall be filed by the importer of record at such time and in such manner as the Secretary prescribes but not later than 15 months after the date the importer declares his intent to file the reconciliation. In the case of reconciling issues relating to the assessment of antidumping and countervailing duties, the reconciliation shall be filed not later than 90 days after the date the Customs Service advises the importer that the period of review for antidumping or countervailing duty purposes has been completed. Before filing a reconciliation, an importer of record shall post bond or other security pursuant to such regulations as the Secretary may prescribe.

(2) Regulations regarding AD/CV duties

The Secretary shall prescribe, in consultation with the Secretary of Commerce, such regulations as are necessary to adapt the reconciliation process for use in the collection of antidumping and countervailing duties.

(c) Release of merchandise

The Customs Service may permit the entry and release of merchandise from customs custody in accordance with such regulations as the Secretary may prescribe. No officer of the Customs Service shall be liable to any person with respect to the delivery of merchandise released from customs custody in accordance with such regulations.

(d) Signing and contents

(1) Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system. If electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.

(2) The Secretary, in prescribing regulations governing the content of entry documentation, shall require that entry documentation contain such information as may be necessary to determine whether the imported merchandise bears an infringing trademark in violation of section 1124 of title 15 or any other applicable law, including a trademark appearing on the goods or packaging.

(e) Production of invoice

The Secretary may provide by regulation for the production of an invoice, parts thereof, or the electronic equivalents thereof, in such manner and form, and under such terms and conditions, as the Secretary considers necessary.

(f) Statistical enumeration

The Secretary, the Secretary of Commerce, and the United States International Trade Commission shall establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

(g) Statement of cost of production

Under such regulations as the Secretary may prescribe, the Customs Service may require a verified statement from the manufacturer or producer showing the cost of producing the imported merchandise, if the Customs Service considers such verification necessary for the appraisement of such merchandise.

(h) Admissibility of data electronically transmitted

Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.

(June 17, 1930, ch. 497, title IV, § 484, 46 Stat. 722; June 25, 1938, ch. 679, § 12, 52 Stat. 1083; Aug. 8, 1953, ch. 397, §§ 3(b), 16(b), (c), 67 Stat. 509, 517; Pub. L. 91–271, title III, § 301(i), June 2, 1970, 84 Stat. 288; Pub. L. 93–618, title VI, § 608(a), Jan. 3, 1975, 88 Stat. 2073; Pub. L. 95–106, § 4, Aug. 17, 1977, 91 Stat. 869; Pub. L. 95–410, title I, § 102(a), Oct. 3, 1978, 92 Stat. 888; Pub. L. 97–446, title II, § 201(d), Jan. 12, 1983, 96 Stat. 2349; Pub. L. 103–182, title VI, § 637(a), Dec. 8, 1993, 107 Stat. 2200; Pub. L. 104–153, § 12, July 2, 1996, 110 Stat. 1389; Pub. L. 104–295, §§ 18(b), 21(e)(6), Oct. 11, 1996, 110 Stat. 3524, 3531.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 484, 42 Stat. 960. That section was superseded by section 484 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions requiring entry of goods, and prescribing the manner of making it, the documents to be produced, etc., were contained in R.S. § 2785. Provision for entry when the particulars of the merchandise were unknown was made by R.S. § 2788. A special provision regarding entry of distilled spirits and wines was contained in R.S. § 2794. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

Provisions relating to the production of certified invoices were contained in act Oct. 3, 1913, ch. 16, § III, E, 38 Stat. 182, which reenacted the provisions of the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 92, which amended Customs Administrative Act of June 10, 1890, ch. 407, § 4, 26 Stat. 131. Said section III, E, was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989. Earlier provisions were contained in R.S. § 2860, and act June 22, 1874, ch. 391, §§ 9, 10, and 11, all repealed by act June 10, 1890, ch. 407, § 29, 26 Stat. 141.

R.S. § 2842 required bond for the production of an invoice duly certified by the oath of the owner or one of them, in the case of merchandise belonging to a resident of the United States absent from the place of entry. R.S. § 2852, provided that when merchandise was admitted to entry on invoice, the collector should certify the same, and no other evidence of value should be admitted on the part of the owner, except in corroboration of the entry. R.S. § 2859, made special provision for entry of merchandise from countries where there was no United States consul, etc. These sections were all repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. §§ 2847 and 2848 authorized the Secretary of the Treasury to admit to entry in certain cases merchandise subject to ad valorem duty, belonging to a person not residing in the United States, not accompanied with an invoice verified and authenticated as required by preceding section. They became inoperative by the repeal of R.S. §§ 2843, 2845, by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141, reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 104, and the enactment of provisions for entry of goods without invoice by section 4 of said Customs Administrative Act amended by the Payne-Aldrich Tariff Act, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, § III, E, and were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 2858, provided that the Secretary of the Treasury, whenever it had become impracticable for the person desiring to make entry of merchandise to produce any invoice thereof, might authorize the entry thereof, and remit forfeitures in such cases, as in other cases under the revenue laws. It was repealed by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141, reenacted by the Payne-Aldrich Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 104.

A provision relating to statistical enumeration of merchandise, except that the ''accurate statement'' was to be a part of the declaration therein provided for, and a further provision making it the duty of the consular officer to whom the invoice should be produced to require the information to be given, were contained in act Oct. 3, 1913, ch. 16, § III, F, 38 Stat. 182, amending the Customs Administrative Act of June 10, 1890, ch. 407, § 5, 26 Stat. 132, as previously amended by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 95. Said section III, F, was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

Prior provisions on the subject of subsequent entry of part of merchandise and separate entry of packages contained in packages for delivery to others were contained in act May 1, 1876, ch. 89, § 1, 19 Stat. 49, which was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989; and in act Oct. 3, 1913, ch. 16, § III, F, 38 Stat. 182, amending Customs Administrative Act of June 10, 1890, ch. 407, § 5, 26 Stat. 132, as previously amended by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 95. Said section III, F, was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–295, § 21(e)(6), substituted ''and 1553'' for ''1553, and 1336(j)''.

Subsec. (b)(1). Pub. L. 104–295, § 18(b), substituted ''A party may elect to file a reconciliation with regard to such entry elements as are identified by the party pursuant to regulations prescribed by the Secretary. If the party so elects, the party shall declare that a reconciliation will be filed. The declaration shall be made in such manner as the Secretary shall prescribe and at the time the documentation or information required by subsection (a)(1)(B) of this section or the import activity summary statement is filed with, or transmitted to, the Customs Service, or at such later time as the Customs Service may, in its discretion, permit. The reconciliation shall be filed by the importer of record at such time and in such manner as the Secretary prescribes but not later than 15 months after the date the importer declares his intent to file the reconciliation. In the case of reconciling issues relating to the assessment of antidumping and countervailing duties, the reconciliation shall be filed not later than 90 days after the date the Customs Service advises the importer that the period of review for antidumping or countervailing duty purposes has been completed.'' for ''A party that electronically transmits an entry summary or import activity summary statement may at the time of filing such summary or statement notify the Customs Service of his intention to file a reconciliation pursuant to such regulations as the Secretary may prescribe. Such reconciliation must be filed by the importer of record within such time period as is prescribed by regulation but no later than 15 months following the filing of the entry summary or import activity summary statement; except that the prescribed time period for reconciliation issues relating to the assessment of antidumping and countervailing duties shall require filing no later than 90 days after the Customs Service advises the importer that a period of review for antidumping or countervailing duty purposes has been completed.''

Subsec. (d). Pub. L. 104–153 designated existing provisions as par. (1) and added par. (2).

1993—Pub. L. 103–182 amended section generally, substituting present provisions for provisions relating to entry of merchandise and providing specifically for requirement and time, production of certified invoice, production of bill of lading, signing and contents of entry, statistical enumeration, packages included, statement of cost of production, certification of owner by carrier, acceptance of duplicate bill of lading, and release of merchandise from customs custody.

1983—Subsec. (a)(1). Pub. L. 97–446, § 201(d)(1)(A), substituted ''one of the parties qualifying as 'importer of record' under paragraph (2)(C) of this subsection'' for ''the consignee of imported merchandise'', and ''authorized by him'' for ''authorized by the consignee''.

Subsec. (a)(2)(C), (D). Pub. L. 97–446, § 201(d)(1)(B), (C), added subpar. (C), redesignated former subpar. (C) as (D), and in subpar. (D) as so redesignated substituted ''importers of record'' for ''consignees'' after ''treatment of all''.

Subsec. (c). Pub. L. 97–446, § 201(d)(2), substituted ''importer of record'' for ''consignee'' before ''shall produce''.

Subsec. (d). Pub. L. 97–446, § 201(d)(2), substituted ''importer of record'' for ''consignee'' after ''signed by the''.

Subsec. (h). Pub. L. 97–446, § 201(d)(3), substituted provision relating to authority of carrier of merchandise bringing it into the port to certify any person to receive the merchandise if the carrier has actual knowledge of the accuracy of the certification, for provision that any person certified by the carrier bringing the

merchandise to the port at which entry was to be made to be the owner or consignee of the merchandise, or an agent of such owner or consignee, might make entry thereof, either in person or by an authorized agent, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 1483 of this title.

Subsec. (i). Pub. L. 97–446, § 201(d)(3), substituted provision authorizing appropriate customs officer to accept a duplicate bill of lading, for provision that any person might, upon the production of a duplicate bill of lading signed or certified to be genuine by the carrier bringing the merchandise to the port at which entry was to be made, make entry for the merchandise in respect to which such bill of lading was issued, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 1483 of this title, except that such person was to make such entry in his own name.

1978—Subsec. (a). Pub. L. 95–410, § 102(a)(1), incorporated first sentence in introductory text of par. designated (1), added subpars. (A) and (B) and par. (2), and struck out second sentence which required the entry to be made at the customhouse within five days, exclusive of Sundays and holidays, after the entry of the importing vessel or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless the appropriate customs officer authorized in writing a longer time.

Subsec. (c)(3). Pub. L. 95–410, § 102(a)(2), substituted ''subsection'' for ''subdivision''.

Subsec. (j). Pub. L. 95–410, § 102(a)(3), struck out ''The custom officer shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made.''

1977—Subsec. (e). Pub. L. 95–106 substituted ''production and programs for achieving international harmonization of trade statistics,'' for ''production,''.

1975—Subsec. (e). Pub. L. 93–618 substituted ''United States International Trade Commission'' for ''United States Tariff Commission'' and inserted references to an enumeration of articles exported from the United States and, in conjunction with statistical programs for domestic production, to the establishment of the comparability thereof with the enumeration of articles.

1970—Subsec. (a). Pub. L. 91–271, § 301(i)(1), substituted reference to appropriate customs officer for reference to collector.

Subsec. (c). Pub. L. 91–271, § 301(i)(2), (3), substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

Subsec. (g). Pub. L. 91–271, § 301(i)(4), substituted reference to appropriate customs officer for reference to collector or appraiser.

Subsec. (j). Pub. L. 91–271, § 301(i)(5), (6), substituted references to customs officer or such customs officer for references to collector wherever appearing.

1953—Subsec. (a). Act Aug. 8, 1953, § 16(b), substituted ''five days'' for ''forty-eight hours''.

Subsec. (b). Act Aug. 8, 1953, § 16(c), granted the Secretary of the Treasury discretion to require certified invoices with respect to merchandise entered as he deems advisable and to establish terms under which merchandise may be imported without a certified invoice, in lieu of former provision that all such merchandise should be accompanied by an invoice certified by a United States consulate except in certain enumerated situations, and of the former provision that the Secretary might grant certain other exceptions.

Subsec. (f). Act Aug. 8, 1953, § 3(b), inserted provision relating to acceptance at port of entry designated by consignee or his agent in cases of articles not subject to a quantitative or tariff-rate quota.

1938—Subsec. (f). Act June 25, 1938, inserted provision relating to authorization by the Secretary for inclusion of portions of merchandise in separate entries under such rules and regulations as he may prescribe.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 201(g) of Pub. L. 97–446 provided that: ''The amendments made by this section [amending the General headnotes of the Tariff Schedules, this section, and sections 1485, 1487, 1494, 1505, and 1557 of this title, and repealing section 1483 of this title] shall apply with respect to merchandise entered on and after the 30th day after the date of the enactment of this Act [Jan. 12, 1983].''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 102(b) of Pub. L. 95–410 provided that: ''The amendments made by this section [amending this section] shall take effect 60 days after the date of enactment of this Act [Oct. 3, 1978].''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 608(e) of Pub. L. 93–618 provided that: ''The amendment made by subsection (a) [amending this section] insofar as it related to export declarations shall take effect on January 1, 1976.''

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

DRUG PARAPHERNALIA

Pub. L. 101–382, title I, § 137, Aug. 20, 1990, 104 Stat. 652, provided that:

''(a) STATISTICAL ANNOTATIONS.—The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission shall take actions under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)) to implement the recommendations of the Commission regarding additional statistical annotations that were made in the report of the Commission on Investigation 332–277.

''(b) REPORT.—By no later than the date that is 1 year after the date of enactment of this Act [Aug. 20, 1990], the Commissioner of Customs shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the operational response of the United States Customs Service to the recommendations contained in the report of the United States Trade Commission described in subsection (a). The report submitted by the Commissioner of Customs under this subsection shall address the effectiveness of the United States Customs Service in monitoring and seizing drug paraphernalia, including crack bags, vials, and pipes.''

STUDY OF COMMODITY CLASSIFICATION SYSTEMS

Section 608(b) of Pub. L. 93–618 mandated a joint study by the Secretary of Commerce and the United States International Trade Commission with a view toward development of an enumeration of articles resulting in comparability of import, production, and export data, with the submission of a report to both Houses of Congress and to the President no later than Aug. 1, 1975.

INVESTIGATION BY UNITED STATES INTERNATIONAL TRADE COMMISSION; FORMULATION OF INTERNATIONAL COMMODITY CODE

Section 608(c) of Pub. L. 93–618 authorized an investigation by the United States International Trade Com-

mission to provide the basis for the formulation of an international commodity code (with a report to be submitted to both Houses of Congress and to the President no later than June 1, 1975) and to provide the basis for full and immediate participation by the Trade Commission in the United States contribution to technical work of the Harmonized Systems Committee to assure recognition of the needs of the business community in the development of a harmonized code.

COOPERATION OF GOVERNMENTAL AGENCIES WITH SECRETARY OF COMMERCE AND UNITED STATES INTERNATIONAL TRADE COMMISSION IN STUDIES AND INVESTIGATIONS

Section 608(d) of Pub. L. 93–618 provided that: ''The President is requested to direct the appropriate agencies to cooperate fully with the Secretary of Commerce and the United States International Trade Commission in carrying out their responsibilities under subsections (a) [amending this section], (b), and (c) [see notes set out above].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58c, 81c, 1401, 1414, 1481, 1485, 1504, 1592a, 3007, 3010 of this title; title 15 section 70g.

§ 1484a. Articles returned from space not to be construed as importation

The return of articles from space shall not be considered an importation, and an entry of such articles shall not be required, if:

(1) such articles were previously launched into space from the customs territory of the United States aboard a spacecraft operated by, or under the control of, United States persons and owned—

(A) wholly by United States persons, or

(B) in substantial part by United States persons, or

(C) by the United States;

(2) such articles were maintained or utilized while in space solely on board such spacecraft or aboard another spacecraft which meets the requirements of paragraph (1)(A) through (C) of this section; and

(3) such articles were returned to the customs territory directly from space aboard such spacecraft or aboard another spacecraft which meets the requirements of paragraph (1)(A) through (C) of this section;

without regard to whether such articles have been advanced in value or improved in condition by any process of manufacture or other means while in space.

(June 17, 1930, ch. 497, title IV, § 484a, as added Pub. L. 98–573, title II, § 209(a), Oct. 30, 1984, 98 Stat. 2976.)

EFFECTIVE DATE

Section applicable with respect to articles launched into space from the customs territory of the United States on or after Jan. 1, 1985, see section 214(c)(4) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1202 of this title.

§ 1485. Declaration

(a) Requirement; form and contents

Every importer of record making an entry under the provisions of section 1484 of this title shall make and file or transmit electronically therewith, in a form and manner to be prescribed by the Secretary of the Treasury, a declaration under oath, stating—

(1) Whether the merchandise is imported in pursuance of a purchase or an agreement to purchase, or whether it is imported otherwise than in pursuance of a purchase or agreement to purchase;

(2) That the prices set forth in the invoice are true, in the case of merchandise purchased or agreed to be purchased; or in the case of merchandise secured otherwise than by purchase or agreement to purchase, that the statements in such invoice as to value or price are true to the best of his knowledge and belief;

(3) That all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and

(4) That he will produce at once to the appropriate customs officer any invoice, paper, letter, document, or information received showing that any such prices or statements are not true or correct.

(b) Books and periodicals

The Secretary of the Treasury is authorized to prescribe regulations for one declaration in the case of books, magazines, newspapers, and periodicals published and imported in successive parts, numbers, or volumes, and entitled to free entry.

(c) Agents

In the event that an entry is made by an agent under the provisions of section 1484 of this title and such agent is not in possession of such declaration of the importer of record, such agent shall give a bond to produce such declaration.

(d) Liability of importer of record for increased duties

An importer of record shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of an importer of record.

(e) Separate forms for purchase and nonpurchase importations

The Secretary of the Treasury shall prescribe separate forms for the declaration in the case of merchandise which is imported in pursuance of a purchase or agreement to purchase and merchandise which is imported otherwise than in pursuance of a purchase or agreement to purchase.

(f) Deceased or insolvent persons; partnerships and corporations

Whenever such merchandise is consigned to a deceased person, or to an insolvent person who has assigned the same for the benefit of his creditors, the executor or administrator, or the assignee of such person or trustee in a case

under title 11, shall be considered as the importer of record; when consigned to a partnership the declaration of one of the partners only shall be required, and when consigned to a corporation such declaration may be made by any officer of such corporation. Whether the importer of record is an individual, a partnership, or a corporation, the declaration may be made by any person who has knowledge of the facts and who is specifically authorized by such individual, a member of such partnership, or an officer of such corporation to make such declaration.

(g) Exported merchandise returned as undeliverable

With respect to any importation of merchandise to which General Headnote 4(e) of the Harmonized Tariff Schedule of the United States applies, any person who gained any benefit from, or met any obligation to, the United States as a result of the prior exportation of such merchandise shall, in accordance with regulations prescribed by the Secretary, within a reasonable time inform the Customs Service of the return of the merchandise.

(June 17, 1930, ch. 497, title IV, §485, 46 Stat. 724; June 25, 1938, ch. 679, §13, 52 Stat. 1083; Pub. L. 91–271, title III, §301(b), June 2, 1970, 84 Stat. 287; Pub. L. 95–598, title III, §315, Nov. 6, 1978, 92 Stat. 2678; Pub. L. 97–446, title II, §201(e), Jan. 12, 1983, 96 Stat. 2350; Pub. L. 103–182, title VI, §657, Dec. 8, 1993, 107 Stat. 2212.)

REFERENCES IN TEXT

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

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §485, 42 Stat. 961. That section was superseded by section 485 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions for a declaration to be filed when merchandise was entered by invoice, were contained in the Customs Administrative Act of June 10, 1890, ch. 407, §5, 26 Stat. 132, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 95, and by act Oct. 3, 1913, ch. 16, §III, F, 38 Stat. 182. The sections of the acts of 1890 and 1913, referred to, were repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

R.S. §2786, requiring entries to be verified by oath, was superseded by the Customs Administrative Act of June 10, 1890, ch. 407, §§4, 5, 22, 26 Stat. 131, 132, 140, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 92, 102, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, §III, E, F, and section IV, S, of that act, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

R.S. §2841 prescribed the forms of oaths of which one, according to the nature of the case, was required to be administered by the collector at the time of the entry of merchandise by invoice. It was modified by act May 1, 1876, ch. 89, §2, 19 Stat. 49, and repealed by the Customs Administrative Act of June 10, 1890, ch. 407, §29, 26 Stat. 141, amended and reenacted by the Payne-Aldrich Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 104, and declarations in lieu of oaths were required to accompany the invoice by section 5 of the Customs Administrative Act, amended by the Payne-Aldrich Act and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, §III, F. All oaths administered by officers of the customs, except as provided in the Customs Administrative Act, were abolished by section 22 thereof amended by section 28 of the Payne-Aldrich Act.

The provisions for the abolition of fees and oaths on entry of goods, made by the Customs Administrative Act of June 10, 1890, ch. 407, §22, 26 Stat. 140, as amended by the Payne-Aldrich Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 102, were superseded by a proviso annexed to section IV, S, of the Underwood Tariff Act of Oct. 3, 1913, which provided that "nothing in this act shall be construed to permit any oaths to be demanded or fees to be charged except as provided in this act," etc.

Act May 1, 1876, ch. 89, §2, 19 Stat. 49, modifying the form of oath prescribed by R.S. §2841, was repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

R.S. §2849, relative to oaths when merchandise belonged in part to a resident of the United States and in part to a non-resident was superseded in part by the Customs Administrative Act of June 10, 1890, ch. 407, §§5, 22, 29, 26 Stat. 132, 140, 141, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 92, 102, 104, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, §III, B–J, and was repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

Prior provisions requiring a bond to be taken when entry was made by an agent, factor, or person other than the owner or ultimate consignee, and prescribing the conditions, etc., of the bond, and the circumstances under which it might be canceled with a proviso authorizing the taking of a general penal bond, were contained in R.S. §2787, as amended by act Mar. 2, 1905, ch. 1306, 33 Stat. 826, which was repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

Provisions concerning the statement to be presented to the collector when merchandise entered for customs duty had been consigned for sale to a person, agent, partner, or consignee, were contained in act Oct. 3, 1913, ch. 16, §III, J, 38 Stat. 185, which reenacted the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 131, and the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 96, and which was repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

A prior provision relative to oaths to invoices when merchandise belonged to estates of deceased persons or of persons insolvent was contained in R.S. §2846, which was superseded, in part, by the abolition of all oaths administered by officers of the customs, except as provided therein, by the Customs Administrative Act of June 10, 1890, ch. 407, §22, 26 Stat. 140, and by the repeal, by section 29 of that act, 26 Stat. 141, of R.S. §§2841, 2843, 2845, which required oaths to accompany invoices on entry of merchandise, and the substitution of declarations for such oaths, by sections 3–5 of said act, 26 Stat. 131, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 102, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, §III, D, F, and §IV, S, 38 Stat. 181.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182, §657(1), in introductory provisions, inserted "or transmit electronically" after "file" and "and manner" after "form".

Subsec. (d). Pub. L. 103–182, §657(2), substituted "An importer" for "A importer" and "an importer" for "a importer".

Subsec. (g). Pub. L. 103–182, §657(3), added subsec. (g).

1983—Subsec. (a). Pub. L. 97–446 substituted "importer of record" for "consignee" before "making an entry".

Subsec. (c). Pub. L. 97–446 substituted "importer of record" for "consignee" after "declaration of the".

Subsecs. (d), (f). Pub. L. 97–446 substituted "importer of record" for "consignee" wherever appearing.

1978—Subsec. (f). Pub. L. 95–598 substituted "trustee in a case under title 11" for "receiver or trustee in bankruptcy".

1970—Subsec. (a). Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

1938—Subsec. (f). Act June 25, 1938, changed the comma to a period after "such declaration may be

made by any officer of such corporation'', struck out ''or by any other person specifically authorized by any officer of such corporation to make the same'' after said comma, and inserted in lieu thereof a new sentence providing that whether the consignee is an individual, a partnership, or a corporation, the declaration may be made by any person having knowledge of the facts and authorized to make such declaration.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97–446, set out as a note under section 1484 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1514 of this title; title 15 section 70g.

§ 1486. Administration of oaths

(a) Customs officers

The following officers and employees may administer any oaths required or authorized by law or regulations promulgated thereunder in respect of any matter coming before such officers or employees in the performance of their official duties: (1) Any customs officer appointed by the President; (2) the chief assistant of any such officer, or any officer or employee of the customs field service designated for the purpose by such officer or by the Secretary of the Treasury; and (3) any officer or employee of the United States Customs Service designated for the purpose by the Secretary of the Treasury.

(b) Postmasters

The postmaster or assistant postmaster of the United States at any post office where customs officers are not stationed, is authorized to administer any oaths required to be made to statements in customs documents by importers of merchandise, not exceeding $100 in value, through the mails.

(c) No compensation

No compensation or fee shall be demanded or accepted for administering any oath under the provisions of this section.

(d) Verification in lieu of oath

The Secretary of the Treasury may by regulation prescribe that any document required by any law administered by the Customs Service to be under oath may be verified by a written declaration in such form as he shall prescribe, such declaration to be in lieu of the oath otherwise required.

(June 17, 1930, ch. 497, title IV, § 486, 46 Stat. 725; Aug. 8, 1953, ch. 397, § 17, 67 Stat. 517.)

AMENDMENTS

1953—Subsec. (d). Act Aug. 8, 1953, added subsec. (d).

CHANGE OF NAME

''United States Customs Service'' substituted in text for ''Bureau of Customs'' pursuant to Treasury Department Order 165–23, Apr. 4, 1973, eff. Aug. 1, 1973, 38 F.R. 13037. See, also, section 308 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1487. Value in entry; amendment

The importer of record or his agent may, under such regulations as the Secretary of the Treasury may prescribe, at the time entry is made, make in the entry such additions to or deductions from the cost or value given in the invoice as, in his opinion, may raise or lower the same to the value of such merchandise.

(June 17, 1930, ch. 497, title IV, § 487, 46 Stat. 725; Aug. 8, 1953, ch. 397, § 18(a), 67 Stat. 517; Pub. L. 97–446, title II, § 201(e), Jan. 12, 1983, 96 Stat. 2350.)

PRIOR PROVISIONS

Provisions somewhat similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § III, I, 38 Stat. 184, which were substituted for provisions made by the Customs Administrative Act of June 10, 1890, ch. 407, § 7, 26 Stat. 134, as amended by act July 24, 1897, ch. 11, § 32, 30 Stat. 211, and as further amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 95. Section III of the act of 1913 was superseded by act Sept. 21, 1922, ch. 356, title IV, § 487, 42 Stat. 962, and was repealed by section 643 thereof. Section 487 of the 1922 act was superseded by section 487 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions for addition to the invoice values made by R.S. § 2900, were repealed by section 29 of the Customs Administrative Act.

AMENDMENTS

1983—Pub. L. 97–446 substituted ''importer of record'' for ''consignee'' before ''or his agent''.

1953—Act Aug. 8, 1953, struck out ''or at any time before the invoice or the merchandise has come under the observation of the appraiser for the purpose of appraisement,'' after ''at the time entry is made,''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97–446, set out as a note under section 1484 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

§ 1488. Repealed. Pub. L. 91–271, title II, § 204(b), June 2, 1970, 84 Stat. 283

Section, act June 17, 1930, ch. 497, title IV, § 488, 46 Stat. 725, authorized a collector to cause the appraisal of entered merchandise.

EFFECTIVE DATE OF REPEAL

For effective date of repeal, see section 203 of Pub. L. 91–271, set out as an Effective Date of 1970 Amendment note under section 1500 of this title.

§ 1489. Repealed. Pub. L. 87–456, title III, § 301(a), May 24, 1962, 76 Stat. 75

Section, acts June 17, 1930, ch. 497, title IV, § 489, 46 Stat. 725; Aug. 8, 1953, ch. 397, § 18(b), 67 Stat. 517, related to entry of antique furniture at designated ports.

EFFECTIVE DATE OF REPEAL

For effective date of repeal, see section 501(a) of Pub. L. 87–456, set out as an Effective Date of Tariff Classification Act of 1962 note preceding section 1202 of this title.

§ 1490. General orders

(a) Incomplete entry

(1) Whenever—

(A) the entry of any imported merchandise is not made within the time provided by law or by regulation prescribed by the Secretary;

(B) the entry of imported merchandise is incomplete because of failure to pay the estimated duties, fees, or interest;

(C) in the opinion of the Customs Service, the entry of imported merchandise cannot be made for want of proper documents or other cause; or

(D) the Customs Service believes that any merchandise is not correctly and legally invoiced;

the carrier (unless subject to subsection (c) of this section) shall notify the bonded warehouse of such unentered merchandise.

(2) After notification under paragraph (1), the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The merchandise shall remain in the bonded warehouse until—

(A) entry is made or completed and the proper documents are produced;

(B) the information and data necessary for entry are transmitted to the Customs Service pursuant to an authorized electronic data interchange system; or

(C) a bond is given for the production of documents or the transmittal of data.

(b) Request for possession by Customs

At the request of the consignee of any merchandise, or of the owner or master of the vessel or the person in charge of the vehicle in which the same is imported, any merchandise may be taken possession of by the Customs Service after the expiration of one day after the entry of the vessel or report of the vehicle and may be unladen and held at the risk and expense of the consignee until entry thereof is made.

(c) Government merchandise

Any imported merchandise that—

(1) is described in any of subparagraphs (A) through (D) of subsection (a)(1) of this section; and

(2) is consigned to, or owned by, the United States Government;

shall be stored and disposed of in accordance with such rules and procedures as the Secretary shall by regulation prescribe.

(June 17, 1930, ch. 497, title IV, § 490, 46 Stat. 726; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103–182, title VI, § 658, Dec. 8, 1993, 107 Stat. 2212; Pub. L. 104–295, § 21(e)(9), Oct. 11, 1996, 110 Stat. 3531.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 490, 42 Stat. 963. That section was superseded by section 490 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions authorizing the collector to take possession of, or store merchandise were contained in the following sections, all of which were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989:

R.S. § 2789, authorizing the collector, when an entry was imperfect, to take the merchandise into his custody until the quantity, quality, or value could be ascertained;

R.S. § 2840, providing that when the collector should suspect that merchandise was not invoiced at a sum equal to that for which it had usually been sold, he should take possession and retain the same until its value had been ascertained and the duties paid or secured;

R.S. § 2926, providing that merchandise of which incomplete entry had been made, or entry without specification of particulars, should be conveyed to some warehouse or designated by the collector to remain until the particulars, cost or value should have been ascertained, and the duties paid or secured, and a permit for delivery granted;

R.S. § 2963, providing that when merchandise had not been entered it should be deposited in a public warehouse, and there remain until an invoice was produced, but that it should not be construed to prohibit sales of merchandise to discharge duties and charges;

R.S. § 2964, authorizing the collector to take possession of merchandise, and deposit it in public stores, or other stores to be agreed on, in case of failure or neglect to pay duties, or when the owner, etc., should make entry for warehousing;

R.S. § 2965, providing for the storage in a public warehouse, or private bonded warehouse, of unclaimed merchandise required to be taken possession of by collectors, and making provision for payment of charges and expenses;

R.S. § 2966, as amended by act June 26, 1884, ch. 121, § 24, 23 Stat. 58, providing for the deposit in a bonded warehouse of merchandise imported in vessels, when it should appear by the bills of lading that it was to be delivered immediately after entry of the vessel, or on request, when it did not so appear.

A prior provision authorizing the collector to require a bond for the production of proof to enable the collector to ascertain the class or description of manufacture, or rate of duty to which merchandise was liable, was contained in R.S. § 2925, which was also repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1996—Subsec. (c)(1). Pub. L. 104–295 substituted ''subparagraphs (A) through (D) of subsection (a)(1)'' for ''paragraphs (1) through (4) of subsection (a)''.

1993—Subsec. (a). Pub. L. 103–182, § 658(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Whenever entry of any imported merchandise is not made within the time provided by law or the regulations prescribed by the Secretary of the Treasury, or whenever entry of such merchandise is incomplete because of failure to pay the estimated duties, or whenever, in the opinion of the appropriate customs officer, entry of such merchandise can not be made for want of proper documents or other cause, or whenever the appropriate customs officer believes that any merchandise is not correctly and legally invoiced, he shall take the merchandise into his custody and send it to a bonded warehouse or public store, to be held at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production.''

Subsec. (b). Pub. L. 103–182, § 658(2), substituted heading for one which read ''At request of consignee'' and in text substituted ''Customs Service'' for ''appropriate customs officer''.

Subsec. (c). Pub. L. 103–182, § 658(3), added subsec. (c).

1970—Pub. L. 91–271 substituted references to appropriate customs officer for references to collector wherever appearing.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1484, 1491 of this title.

§ 1491. Unclaimed merchandise; disposition of forfeited distilled spirits, wines and malt liquor

(a) Appraisal and sale of unclaimed merchandise

Any entered or unentered merchandise (except merchandise entered under section 1557 of this title, but including merchandise entered for transportation in bond or for exportation) which shall remain in a bonded warehouse pursuant to section 1490 of this title for 6 months from the date of importation thereof, without all estimated duties, taxes, fees, interest, storage, or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised and sold by the Customs Service at public auction under such regulations as the Secretary of the Treasury shall prescribe. All gunpowder and other explosive substances and merchandise liable to depreciation in value by damage, leakage, or other cause to such extent that the proceeds of sale thereof may be insufficient to pay the duties, taxes, fees, interest, storage, and other charges, if permitted to remain in[1] pursuant to section 1490 of this title in a bonded warehouse for 6 months, may be sold forthwith, under such regulations as the Secretary of the Treasury may prescribe. Merchandise subject to sale hereunder or under section 1559 of this title may be entered or withdrawn for consumption at any time prior to such sale upon payment of all duties, taxes, fees, interest, storage, and other charges, and expenses that may have accrued thereon, but such merchandise after becoming subject to sale may not be exported prior to sale without the payment of such duties, taxes, fees, interest, charges, and expenses nor may it be entered for warehouse. The computation of duties, taxes, interest, and fees for the purposes of this section and sections 1493 and 1559 of this title shall be at the rate or rates applicable at the time the merchandise becomes subject to sale.

(b) Notice of title vesting in United States

At the end of the 6-month period referred to in subsection (a) of this section, the Customs Service may, in lieu of sale of the merchandise, provide notice to all known interested parties that the title to such merchandise shall be considered to vest in the United States free and clear of any liens or encumbrances, on the 30th day after the date of the notice unless, before such 30th day—

(1) the subject merchandise is entered or withdrawn for consumption; and

(2) payment is made of all duties, taxes, fees, transfer and storage charges, and other expenses that may have accrued thereon.

(c) Retention, transfer, destruction, or other disposition

If title to any merchandise vests in the United States by operation of subsection (b) of this section, such merchandise may be retained by the Customs Service for official use, transferred to any other Federal agency or to any State or local agency, destroyed, or otherwise disposed of in accordance with such regulations as the Secretary shall prescribe. All transfer and storage charges or expenses accruing on retained or transferred merchandise shall be paid by the receiving agency.

(d) Petition

Whenever any party, having lost a substantial interest in merchandise by virtue of title vesting in the United States under subsection (b) of this section, can establish such title or interest to the satisfaction of the Secretary within 30 days after the day on which title vests in the United States under subsection (b) of this section, or can establish to the satisfaction of the Secretary that the party did not receive notice under subsection (b) of this section, the Secretary may, upon receipt of a timely and proper petition and upon finding that the facts and circumstances warrant, pay such party out of the Treasury of the United States the amount the Secretary believes the party would have received under section 1493 of this title had the merchandise been sold and a proper claim filed. The decision of the Secretary with respect to any such petition is final and conclusive on all parties.

(e) Appraisal and sale or other disposition of forfeited distilled spirits, wines, and malt liquor

All distilled spirits, wines, and malt liquor forfeited to the Government summarily or by order of court, under any provision of law administered by the United States Customs Service, shall be appraised and disposed of by—

(1) delivery to such Government agencies, as in the opinion of the Secretary have a need for such distilled spirits, wines, and malt liquor for medical, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency:

[1] So in original. The word ''in'' probably should not appear.

(2) gifts to such eleemosynary institutions as, in the opinion of the Secretary, have a need for such distilled spirits, wines, and malt liquor for medical purposes;

(3) sale by Customs Service at public auction under such regulations as the Secretary shall prescribe, except that before making any such sale the Secretary shall determine that no Government agency or eleemosynary institution has established a need for such spirits, wines, and malt liquor under paragraph (1) or (2); or

(4) destruction.

(June 17, 1930, ch. 497, title IV, § 491, 46 Stat. 726; June 25, 1938, ch. 679, § 14, 52 Stat. 1083; Pub. L. 91–271, title III, § 301(j), June 2, 1970, 84 Stat. 289; Pub. L. 95–410, title II, § 208, Oct. 3, 1978, 92 Stat. 901; Pub. L. 103–182, title VI, § 659, Dec. 8, 1993, 107 Stat. 2213; Pub. L. 104–295, § 21(e)(8), Oct. 11, 1996, 110 Stat. 3531.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. §§ 2973, 2975 and 2976, all of which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 491, 42 Stat. 963, and repealed by section 642 thereof. Section 491 of the 1922 act was superseded by section 491 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–295 substituted ''in a bonded warehouse pursuant to section 1490'' for ''in in a bonded warehouse pursuant to section 1490'' and ''Customs Service'' for ''appropriate customs officer''.

1993—Subsec. (a). Pub. L. 103–182, § 659(1), substituted ''in a bonded warehouse pursuant to section 1490 of this title for 6 months'' for ''customs custody for one year'', ''estimated duties, taxes, fees, interest, storage,'' for ''estimated duties and storage'', ''duties, taxes, fees, interest, storage, and other charges, if permitted'' for ''duties, storage, and other charges, if permitted'', ''pursuant to section 1490 of this title in a bonded warehouse for 6 months'' for ''public store or bonded warehouse for a period of one year'', ''duties, taxes, fees, interest, storage, and other charges'' for ''duties, storage, and other charges'', ''duties, taxes, fees, interest, charges, and expenses'' for ''duties, charges, and expenses'', and ''computation of duties, taxes, interest, and fees for the purposes'' for ''computation of duties for the purposes''.

Subsecs. (b) to (d). Pub. L. 103–182, § 659(2), added subsecs. (b) to (d). Former subsec. (b) redesignated (e).

Subsec. (e). Pub. L. 103–182, § 659(2), (3), redesignated subsec. (b) as (e) and substituted ''Customs Service'' for ''appropriate customs officer'' in par. (3).

1978—Pub. L. 95–410 amended section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector, and struck out reference to appraiser of merchandise.

1938—Act June 25, 1938, amended generally so much of this section as preceded ''shall be considered unclaimed and abandoned''.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

EXTENSION OF ONE-YEAR PERIOD

For extension of one year period prescribed in this section, see Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41, set out as a note under section 1318 of this title.

Proc. No. 2599, Nov. 6, 1943, 8 F.R. 15359, 57 Stat. 758, as amended by Proc. No. 2712, Dec. 4, 1946, 11 F.R. 14133, 61 Stat. 1947, was superseded by Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1493, 1753 of this title.

§ 1492. Destruction of abandoned or forfeited merchandise

Except as provided in R.S. § 3369 (relating to tobacco and snuff), and in section 901 of the Revenue Act of 1926 (relating to distilled spirits), any merchandise abandoned or forfeited to the Government under the preceding or any other provision of the customs laws, which is subject to internal revenue tax and which the Customs Service shall be satisfied will not sell for a sufficient amount to pay such taxes, shall be forthwith destroyed, retained for official use, or otherwise disposed of under regulations to be prescribed by the Secretary of the Treasury, instead of being sold at auction.

(June 17, 1930, ch. 497, title IV, § 492, 46 Stat. 727; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 103–182, title VI, § 660, Dec. 8, 1993, 107 Stat. 2214.)

REFERENCES IN TEXT

R.S. § 3369, referred to in text, is covered by sections 5723(a) and 5753 of Title 26, Internal Revenue Code.

Section 901 of Revenue Act of 1926, referred to in text, is covered by section 5243 of Title 26.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 492, 42 Stat. 963. That section was superseded by section 492 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior to its incorporation into the Code, this section read: ''Except as provided in section 3369 of the Revised Statutes, as amended,'' etc. R.S. § 3369, as amended by act Oct. 14, 1921, ch. 107, 42 Stat. 205, related in part to abandoned, condemned or forfeited tobacco, snuff, cigars, or cigarettes, which would not bring a price equal to the internal revenue tax thereon. So far as it related to tobacco and snuff, it was incorporated into the Code as sections 702(a)(1), 803(a)(1), (c), (d), and 890, of Title 26, Internal Revenue Code, and so far as it applied to cigars and cigarettes, it was incorporated into the Code as sections 812(d)(2) and 890, of Title 26.

AMENDMENTS

1993—Pub. L. 103–182 substituted ''Customs Service'' for ''appropriate customs officer'' and inserted '', retained for official use, or otherwise disposed of'' after ''destroyed''.

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1753 of this title.

§ 1493. Proceeds of sale

The surplus of the proceeds of sales under section 1491 of this title, after the payment of storage charges, expenses, duties, taxes, and fees, and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited in the Treasury of the United States, if claim therefor shall not be filed with the Customs Service within ten days from the date of sale, and the sale of such merchandise shall exonerate the master of any vessel in which the merchandise was imported from all claims of the owner thereof, who shall, nevertheless, on due proof of his interest, be entitled to receive from the Treasury the amount of any surplus of the proceeds of sale.

(June 17, 1930, ch. 497, title IV, § 493, 46 Stat. 727; Pub. L. 91–271, title III, § 301(e), June 2, 1970, 84 Stat. 288; Pub. L. 103–182, title VI, § 661, Dec. 8, 1993, 107 Stat. 2214.)

PRIOR PROVISIONS

Provisions substantially similar in most respects to those in this section, with further provisions concerning the documents to be forwarded by the collector to the Treasury Department, were contained in R.S. § 2974, which was superseded and more nearly assimilated to the present section by act Sept. 21, 1922, ch. 356, title IV, § 493, 42 Stat. 964, and repealed by section 642 thereof. Section 493 of the 1922 act was superseded by section 493 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1993—Pub. L. 103–182 inserted ''taxes, and fees,'' after ''duties,'', struck out ''by the appropriate customs officer'' after ''shall be deposited'', and substituted ''the Customs Service'' for ''such customs officer''.

1970—Pub. L. 91–271 substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

APPROPRIATIONS

Section 2 of act June 26, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title ''Refunding proceeds of unclaimed merchandise (Customs) (2x326)'' effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1491, 1559, 1753 of this title.

§ 1494. Expense of weighing and measuring

In all cases in which the invoice or entry does not state the weight, quantity, or measure of the merchandise, the expense of ascertaining the same shall be collected from the importer of record before its release from customs custody.

(June 17, 1930, ch. 497, title IV, § 494, 46 Stat. 727; Pub. L. 97–446, title II, § 201(e), Jan. 12, 1983, 96 Stat. 2350.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 494, 42 Stat. 964. That section was superseded by section 494 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision requiring merchandise to be weighed, gauged or measured at the expense of the owner, agent or consignee, in cases in which the invoice or entry did not contain the weight, quantity or measure was contained in R.S. § 2920, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1983—Pub. L. 97–446 substituted ''importer of record'' for ''consignee'' after ''collected from the''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97–446, set out as a note under section 1484 of this title.

§ 1495. Partnership bond

When any bond is required by law or regulations to be executed by any partnership for any purpose connected with the transaction of business at any customhouse, the execution of such bond by any member of such partnership shall bind the other partners in like manner and to the same extent as if such other partners had personally joined in the execution, and an action or suit may be instituted on such bond against all partners as if all had executed the same.

(June 17, 1930, ch. 497, title IV, § 495, 46 Stat. 727.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 495, 42 Stat. 964. That section was superseded by section 495 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions substantially similar to those in this section, except that they applied to bonds for the payment of duties or for any other purpose connected with the general transaction of business at any customs house, were contained in act June 20, 1876, ch. 136, 19 Stat. 60, as amended by act Aug. 27, 1894, ch. 349, § 70, 28 Stat. 569, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

§ 1496. Examination of baggage

The appropriate customs officer may cause an examination to be made of the baggage of any person arriving in the United States in order to ascertain what articles are contained therein and whether subject to duty, free of duty, or prohibited notwithstanding a declaration and entry therefor has been made.

(June 17, 1930, ch. 497, title IV, § 496, 46 Stat. 727; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 496, 42 Stat. 964. That section was superseded by section 496 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1496a. Clearance restrictions of individuals returning from abroad; special circumstances; "baggage and effects" defined

Except as otherwise provided by law, no individual returning to the United States from abroad shall be—

(1) entitled to the admission of his or her baggage and effects free of duty without entry; or

(2) entitled to expedited customs examination and clearance of his or her baggage and effects.

Paragraph (2) shall not apply to individuals in special circumstances (including being seriously ill or infirm, having been summoned by news of affliction or disaster, and accompanying the body of a deceased relative). For purposes of this section, the term ''baggage and effects'' means any article which was in the possession of the individual while abroad and is being imported in connection with his or her arrival and is intended for his or her bona fide personal or household use. Such term does not include any article imported as an accommodation to others or for sale or other commercial use.

(Pub. L. 95–410, title II, § 215, Oct. 3, 1978, 92 Stat. 904.)

CODIFICATION

Section was enacted as part of Customs Procedural Reform and Simplification Act of 1978, and not as part of Tariff Act of 1930 which comprises this chapter.

CLEARANCE PROCEDURES STUDY; REPORT TO CONGRESSIONAL COMMITTEES

Section 216 of Pub. L. 95–410 provided that the Comptroller General, in cooperation with the Customs Service of the Department of the Treasury and the Immigration and Naturalization Service of the Department of Justice, study clearance procedures for individuals entering or reentering the United States, and to report the results of his study and any recommendations for expediting the clearance process to specific committees of the United States Senate and the House of Representatives not later than Sept. 1, 1979.

§ 1497. Penalties for failure to declare

(a) In general

(1) Any article which—

(A) is not included in the declaration and entry as made or transmitted; and

(B) is not mentioned before examination of the baggage begins—

(i) in writing by such person, if written declaration and entry was required, or

(ii) orally, if written declaration and entry was not required;

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

(A) if the article is a controlled substance, either $500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and

(B) if the article is not a controlled substance, the value of the article.

(b) Value of controlled substances

(1) Notwithstanding any other provision of this chapter, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.

(June 17, 1930, ch. 497, title IV, § 497, 46 Stat. 728; Pub. L. 99–570, title III, § 3116, Oct. 27, 1986, 100 Stat. 3207–83; Pub. L. 100–690, title VII, § 7367(a), Nov. 18, 1988, 102 Stat. 4479; Pub. L. 103–182, title VI, § 612, Dec. 8, 1993, 107 Stat. 2170.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 497, 42 Stat. 964. That section was superseded by section 497 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision for forfeiture of any article subject to duty found in baggage, and not mentioned to the collector before whom entry was made, and for a penalty of treble the value of the article, was contained in R.S. § 2802, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Subsec. (a)(1)(A). Pub. L. 103–182, § 612(1), inserted ''or transmitted'' after ''made''.

Subsec. (a)(2)(A). Pub. L. 103–182, § 612(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''if the article is a controlled substance, 1,000 percent of the value of the article; and''.

1988—Subsec. (a)(2)(A). Pub. L. 100–690 substituted ''1,000 percent'' for ''200 percent''.

1986—Pub. L. 99–570 amended section generally. Prior to amendment, section read as follows: ''Any article not included in the declaration and entry as made, and, before examination of the baggage was begun, not mentioned in writing by such person, if written declaration and entry was required, or orally if written declaration and entry was not required, shall be subject to forfeiture and such person shall be liable to a penalty equal to the value of such article.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1590 of this title.

§ 1498. Entry under regulations

(a) Authorized for certain merchandise

The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of—

(1) Merchandise, when—

(A) the aggregate value of the shipment does not exceed an amount specified by the Secretary by regulation, but not more than $2,500; or

(B) different commercial facilitation and risk considerations that may vary for dif-

ferent classes or kinds of merchandise or different classes of transactions may dictate;

(2) Products of the United States, when the aggregate value of the shipment does not exceed such amounts as the Secretary may prescribe and the products are imported.

(A) for the purposes of repair or alteration prior to reexportation, or

(B) after having been either rejected or returned by the foreign purchaser to the United States for credit;

(3) Merchandise damaged on the voyage of importation, by fire or through marine casualty or any other cause, without fault on the part of the shipper;

(4) Merchandise recovered from a wrecked or stranded vessel;

(5) Household effects used abroad and personal effect, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

(6) Articles sent by persons in foreign countries as gifts to persons in the United States;

(7) Articles carried on the person or contained in the baggage of a person arriving in the United States;

(8) Tools of trade of a person arriving in the United States;

(9) Personal effects of citizens of the United States who have died in a foreign country;

(10) Merchandise within the provisions of sections 1465[1] and 1466 of this title (relating to supplies, repairs, and equipment on vessels and railway cars) at the first port of arrival;

(11) Merchandise when in the opinion of the Secretary of the Treasury the value thereof cannot be declared; and

(12) Merchandise within the provisions of paragraph 1631 of section 1201 of this title.

(b) Application of general provisions

The Secretary of the Treasury is authorized to include in such rules and regulations any of the provisions of section 1484 or 1485 of this title (relating, respectively, to entry and to declaration of merchandise generally).

(June 17, 1930, ch. 497, title IV, § 498, 46 Stat. 728; Aug. 8, 1953, ch. 397, § 16(d), (e), 67 Stat. 517; Pub. L. 96–609, title II, § 202, Dec. 28, 1980, 94 Stat. 3561; Pub. L. 98–573, title II, § 206, Oct. 30, 1984, 98 Stat. 2975; Pub. L. 100–418, title I, § 1214(h)(5), Aug. 23, 1988, 102 Stat. 1157; Pub. L. 103–182, title VI, § 662, Dec. 8, 1993, 107 Stat. 2214.)

REFERENCES IN TEXT

Section 1465 of this title, referred to in subsec. (a)(10), was repealed by Pub. L. 103–182, title VI, § 690(b)(7), Dec. 8, 1993, 107 Stat. 2223.

Section 1201 of this title, referred to in subsec. (a)(12), which comprised the free list for articles imported into the United States, was repealed by Pub. L. 87–456, title I, § 101(a), May 24, 1962, 76 Stat. 72, which act also revised the Tariff Schedules of the United States. See notes under section 1202 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 498, 42 Stat. 964. That section was superseded by section 498 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provision for an entry, separate from that of other merchandise, of wearing apparel, personal baggage, and tools and implements of a mechanical trade, was made by R.S. § 2799, which also prescribed the contents of such entry, and of the accompanying oath. R.S. § 2800 provided for a bond when the person making entry was not the owner. R.S. § 2801 provided for a landing permit, and for an examination of baggage when deemed proper by the collector and naval officer, and for entry of articles not exempt from duty. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–182, § 662(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Merchandise, imported in the mails or otherwise, when the aggregate value of the shipment does not exceed such amount, not greater than $1,250 as the Secretary of the Treasury shall specify in the regulations, and the specified amount may vary for different classes or kinds of merchandise or different classes of transactions, except that this paragraph does not apply to articles valued in excess of $250 classified in—

''(A) chapters 50 through 63;

''(B) chapters 39 through 43, 61 through 65, 67 and 95; and

''(C) subchapters III and IV of chapter 99;

of the Harmonized Tariff Schedule of the United States, or to any other article for which formal entry is required without regard to value.;''.

Subsec. (a)(2). Pub. L. 103–182, § 662(2), substituted ''such amounts as the Secretary may prescribe'' for ''$10,000'' in introductory provisions.

1988—Subsec. (a)(1). Pub. L. 100–418, substituted ''the Harmonized Tariff Schedule of the United States'' for ''the Tariff Schedules of the United States'' in closing provisions, added subpars. (A) to (C), and struck out former subpars. (A) to (C) which read as follows:

''(A) schedule 3,

''(B) parts 1, 4A, 7B, 12A, 12D, and 13B of schedule 7, and

''(C) parts 2 and 3 of the Appendix,''.

1984—Subsec. (a)(1). Pub. L. 98–573 substituted ''$1,250'' for ''$250'' and inserted provision that this paragraph does not apply to articles valued in excess of $250 classified in schedule 3, parts 1, 4A, 7B, 12A, 12D, and 13B of schedule 7, and parts 2 and 3 of the Appendix, of the Tariff Schedules, or to any other article for which formal entry is required without regard to value.

1980—Subsec. (a). Pub. L. 96–609 added par. (2) and redesignated former pars. (2) to (11) as (3) to (12), respectively.

1953—Subsec. (a)(1). Act Aug. 8, 1953, § 16(d), increased valuation figure with respect to informal entries from $100 to $250, and inserted provisions with respect to possible variation for different classes or kinds of merchandise and different classes of transactions.

Subsec. (a)(11). Act Aug. 8, 1953, § 16(e), substituted ''paragraph 1631 of section 1201 of this title'' for ''sections 472 to 574 of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

[1] See References in Text note below.

CROSS REFERENCES

Baggage in transit to foreign country, see section 1553 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1484 of this title.

§ 1499. Examination of merchandise

(a) Entry examination

(1) In general

Imported merchandise that is required by law or regulation to be inspected, examined, or appraised shall not be delivered from customs custody (except under such bond or other security as may be prescribed by the Secretary to assure compliance with all applicable laws, regulations, and instructions which the Secretary or the Customs Service is authorized to enforce) until the merchandise has been inspected, appraised, or examined and is reported by the Customs Service to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States.

(2) Examination

The Customs Service—

(A) shall designate the packages or quantities of merchandise covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise;

(B) shall order such packages or quantities to be sent to such place as is designated by the Secretary by regulation for such purpose;

(C) may require such additional packages or quantities as the Secretary considers necessary for such purpose; and

(D) shall inspect a sufficient number of shipments, and shall examine a sufficient number of entries, to ensure compliance with the laws enforced by the Customs Service.

(3) Unspecified articles

If any package contains any article not specified in the invoice or entry and, in the opinion of the Customs Service, the article was omitted from the invoice or entry—

(A) with fraudulent intent on the part of the seller, shipper, owner, agent, importer of record, or entry filer, the contents of the entire package in which such article is found shall be subject to seizure; or

(B) without fraudulent intent, the value of the article shall be added to the entry and the duties, fees, and taxes thereon paid accordingly.

(4) Deficiency

If a deficiency is found in quantity, weight, or measure in the examination of any package, the person finding the deficiency shall make a report thereof to the Customs Service. The Customs Service shall make allowance for the deficiency in the liquidation of duties.

(5) Information required for release

If an examination is conducted, any information required for release shall be provided, either electronically or in paper form, to the Customs Service at the port of examination. The absence of such information does not limit the authority of the Customs Service to conduct an examination.

(b) Testing laboratories

(1) Accreditation of private testing laboratories

The Customs Service shall establish and implement a procedure, under regulations promulgated by the Secretary, for accrediting private laboratories within the United States which may be used to perform tests (that would otherwise be performed by Customs Service laboratories) to establish the characteristics, quantities, or composition of imported merchandise. Such regulations—

(A) shall establish the conditions required for the laboratories to receive and maintain accreditation for purposes of this subsection;

(B) shall establish the conditions regarding the suspension and revocation of accreditation, which may include the imposition of a monetary penalty not to exceed $100,000 and such penalty is in addition to the recovery, from a gauger or laboratory accredited under paragraph (1), of any loss of revenue that may have occurred, but the Customs Service—

(i) may seek to recover lost revenue only in cases where the gauger or laboratory intentionally falsified the analysis or gauging report in collusion with the importer; and

(ii) shall neither assess penalties nor seek to recover lost revenue because of a good faith difference of professional opinion; and

(C) may provide for the imposition of a reasonable charge for accreditation and periodic reaccreditation.

The collection of any charge for accreditation and reaccreditation under this section is not prohibited by section 58c(e)(6) of this title.

(2) Appeal of adverse accreditation decisions

A laboratory applying for accreditation, or that is accredited, under this section may contest any decision or order of the Customs Service denying, suspending, or revoking accreditation, or imposing a monetary penalty, by commencing an action in accordance with chapter 169 of title 28 in the Court of International Trade within 60 days after issuance of the decision or order.

(3) Testing by accredited laboratories

When requested by an importer of record of merchandise, the Customs Service shall authorize the release to the importer of a representative sample of the merchandise for testing, at the expense of the importer, by a laboratory accredited under paragraph (1). The testing results from a laboratory accredited under paragraph (1) that are submitted by an importer of record with respect to merchandise in an entry shall, in the absence of testing results obtained from a Customs Service laboratory, be accepted by the Customs Service if the importer of record certifies that the sample tested was taken from the merchandise in

the entry. Nothing in this subsection shall be construed to limit in any way or preclude the authority of the Customs Service to test or analyze any sample or merchandise independently.

(4) Availability of testing procedure, methodologies, and information

Testing procedures and methodologies used by the Customs Service, and information resulting from any testing conducted by the Customs Service, shall be made available as follows:

(A) Testing procedures and methodologies shall be made available upon request to any person unless the procedures or methodologies are—

(i) proprietary to the holder of a copyright or patent related to such procedures or methodologies, or

(ii) developed by the Customs Service for enforcement purposes.

(B) Information resulting from testing shall be made available upon request to the importer of record and any agent thereof unless the information reveals information which is—

(i) proprietary to the holder of a copyright or patent; or

(ii) developed by the Customs Service for enforcement purposes.

(5) Miscellaneous provisions

For purposes of this subsection—

(A) any reference to a private laboratory includes a reference to a private gauger; and

(B) accreditation of private laboratories extends only to the performance of functions by such laboratories that are within the scope of those responsibilities for determinations of the elements relating to admissibility, quantity, composition, or characteristics of imported merchandise that are vested in, or delegated to, the Customs Service.

(c) Detentions

Except in the case of merchandise with respect to which the determination of admissibility is vested in an agency other than the Customs Service, the following apply:

(1) In general

Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for customs examination, the Customs Service shall decide whether to release or detain the merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise.

(2) Notice of detention

The Customs Service shall issue a notice to the importer or other party having an interest in detained merchandise no later than 5 days, excluding weekends and holidays, after the decision to detain the merchandise is made. The notice shall advise the importer or other interested party of—

(A) the initiation of the detention;

(B) the specific reason for the detention;

(C) the anticipated length of the detention;

(D) the nature of the tests or inquiries to be conducted; and

(E) the nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.

(3) Testing results

Upon request by the importer or other party having an interest in detained merchandise, the Customs Service shall provide the party with copies of the results of any testing conducted by the Customs Service on the merchandise and a description of the testing procedures and methodologies (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by the Customs Service for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.

(4) Seizure and forfeiture

If otherwise provided by law, detained merchandise may be seized and forfeited.

(5) Effect of failure to make determination

(A) The failure by the Customs Service to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for customs examination, or such longer period if specifically authorized by law, shall be treated as a decision of the Customs Service to exclude the merchandise for purposes of section 1514(a)(4) of this title.

(B) For purposes of section 1581 of title 28, a protest against the decision to exclude the merchandise which has not been allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day.

(C) Notwithstanding section 2639 of title 28, once an action respecting a detention is commenced, unless the Customs Service establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.

(June 17, 1930, ch. 497, title IV, § 499, 46 Stat. 728; June 25, 1938, ch. 679, §§ 15, 16(a), 52 Stat. 1084; Pub. L. 91–271, title III, § 301(k), June 2, 1970, 84 Stat. 289; Pub. L. 103–182, title VI, § 613(a), Dec. 8, 1993, 107 Stat. 2171.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 499, 42 Stat. 965. That section was superseded by section 499 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision prohibiting delivery of merchandise liable to be inspected or appraised, until it had been inspected or appraised, or until the packages sent to be inspected or appraised, should be found correctly invoiced, and be so reported, with a further provision as to the taking of bonds conditioned for delivery of the merchandise, and the forfeiture of such bonds, was contained in R.S. § 2899.

Provisions substantially similar to those in this section concerning the number of packages to be examined

(not including the provision for designation of a less number by the Secretary of the Treasury) and concerning packages found to contain articles not specified in the invoice, with a further provision for remission of the forfeiture, were contained in R.S. § 2901.

A prior provision, concerning deficiencies somewhat similar to that in this section, was contained in R.S. § 2921.

A special provision concerning the number of packages to be examined and appraised at the port of New York was contained in R.S. § 2939.

A provision concerning returns by weighers, gaugers, and measurers, was contained in R.S. § 2890.

All of the foregoing sections of the Revised Statutes were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Pub. L. 103–182 amended section generally, substituting present provisions for provisions which required imported merchandise to be inspected, examined, appraised, and reported by appropriate customs officer to have been truly and correctly invoiced and found to comply with requirements of laws of the United States prior to release of such merchandise from customs custody.

1970—Pub. L. 91–271 substituted references to appropriate customs officer or such officer for references to collector or appraiser wherever appearing, and struck out references to duties of appraiser.

1938—Act June 25, 1938, amended section generally and among other changes inserted provision relating to invalidity of appraisements made after effective date of Customs Administrative Act of 1938.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

EXISTING LABORATORIES

Section § 613(b) of Pub. L. 103–182 provided that: ''Accreditation under section 499(b) of the Tariff Act of 1930 [19 U.S.C. 1499(b)] (as added by subsection (a)) is not required for any private laboratory (including any gauger) that was accredited or approved by the Customs Service as of the day before the date of the enactment of this Act [Dec. 8, 1993]; but any such laboratory is subject to reaccreditation under the provisions of such section and the regulations promulgated thereunder.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1595a of this title; title 15 section 1198; title 28 sections 1581, 2631, 2636, 2640, 2642.

§ 1500. Appraisement, classification, and liquidation procedure

The Customs Service shall, under rules and regulations prescribed by the Secretary—

(a) fix the final appraisement of merchandise by ascertaining or estimating the value thereof, under section 1401a of this title, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding;

(b) fix the final classification and rate of duty applicable to such merchandise;

(c) fix the final amount of duty to be paid on such merchandise and determine any increased or additional duties, taxes, and fees due or any excess of duties, taxes, and fees deposited;

(d) liquidate the entry and reconciliation, if any, of such merchandise; and

(e) give or transmit, pursuant to an electronic data interchange system, notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall by regulation prescribe.

(June 17, 1930, ch. 497, title IV, § 500, 46 Stat. 729; Aug. 2, 1956, ch. 887, § 4(b), 70 Stat. 948; Pub. L. 91–271, title II, § 204(a), June 2, 1970, 84 Stat. 283; Pub. L. 96–39, title II, § 202(a)(4), July 26, 1979, 93 Stat. 202; Pub. L. 103–182, title VI, § 638, Dec. 8, 1993, 107 Stat. 2203.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 500, 42 Stat. 965. That section was superseded by section 500 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions dealing with the subject matter of subdivision (a) of this section were contained in act Oct. 3, 1913, ch. 16, § III, K, 38 Stat. 185, reenacting without change the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, § 10, 26 Stat. 136, as reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 97. A provision somewhat similar to subdivision (a)(5) of this section was contained in section III, M, of the 1913 act, the provisions of which were substituted for provisions of the same nature contained in section 13 of the Customs Administrative Act of June 10, 1890, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 99. Said section III of the 1913 act was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

R.S. §§ 2609, 2610, relative to merchant appraisers, were superseded by the provisions relating to appraisers and appraisements in the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 131, and later acts, and were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 2902 prescribed the mode of appraisal of merchandise, prior to repeal by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141.

R.S. § 2911 required appraisers to adopt the value of the best article in a package containing articles wholly or in part of wool or cotton of similar kind but different quality, charged at an average price, and R.S. § 2912 related to appraisal of wool of different qualities when imported in the same bale, bag, or package, and of bales of different qualities when embraced in the same invoice, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 2945 imposed a penalty on any merchant chosen by the collector to make any appraisement required under any act respecting imports and tonnage, who should, after due notice, decline or neglect to assess at such appraisement. This section was repealed by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141, and was again repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 2946 related to the ascertainment of value at ports where there were no appraisers, prior to repeal by section 642 of the act of Sept. 21, 1922, ch. 356.

A prior provision similar to subdivision (b) was contained in act Oct. 3, 1913, ch. 16, § III, M, 38 Stat. 186, the provisions of which were substitutes for those of the Customs Administrative Act of June 10, 1890, ch. 407, § 13, 26 Stat. 136, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 99. Section III, M, was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

An earlier provision on the subject was contained in R.S. § 2929, prior to repeal by Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141.

Somewhat similar to subdivision (d), R.S. § 2943 provided that one of the assistant appraisers at the port of New York should be detailed for the supervision of examination of merchandise damaged on the voyage of importation, and to make examinations and appraisals and to report, etc. It was repealed, with R.S. § 2927, which provided for appraisal of such goods, and other sections, by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141, reenacted and designated as section 28 by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 104.

AMENDMENTS

1993—Pub. L. 103–182, § 638(1), substituted ''The Customs Service'' for ''The appropriate customs officer'' in introductory provisions.

Subd. (a). Pub. L. 103–182, § 638(2), substituted ''fix the final appraisement of'' for ''appraise''.

Subd. (b). Pub. L. 103–182, § 638(3), substituted ''fix the final'' for ''ascertain the''.

Subd. (c). Pub. L. 103–182, § 638(4), inserted ''final'' after ''fix the'' and '', taxes, and fees'' after ''duties'' in two places.

Subds. (d) and (e). Pub. L. 103–182, § 638(5), amended subds. (d) and (e) generally. Prior to amendment, subds. (d) and (e) read as follows:

''(d) liquidate the entry of such merchandise; and

''(e) give notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall prescribe in such regulations.''

1979—Subd. (a). Pub. L. 96–39 substituted ''by ascertaining or estimating the value thereof, under section 1401a of this title, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, or other document'' for ''in the unit of quantity in which the merchandise is usually bought and sold by ascertaining or estimating the value thereof by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, or other document''.

1970—Pub. L. 91–271 struck out ''(a)'' preceding first sentence and, in such provisions, as so redesignated, substituted provisions which set forth the customs functions to be performed by the appropriate customs officer for provisions which set forth the customs functions to be performed by the appraiser, and struck out subds. (b) to (f), which allocated specific customs functions to appraisers, assistant and deputy appraisers, and examiners, and authorized the designation of acting appraisers where necessary.

1956—Subd. (f). Act Aug. 2, 1956, struck out ''take the oath,'' before ''perform all the duties'' in second sentence, and struck out comma after ''perform all duties''.

EFFECTIVE DATE OF 1979 AMENDMENT

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

EFFECTIVE DATE OF 1970 AMENDMENT

Section 203 of Pub. L. 91–271 provided that: ''Titles II and III of this Act [see Short Title of 1970 Amendment note set out under section 1654 of this title] shall take effect with respect to articles entered, or withdrawn, from warehouse for consumption, on or after October 1, 1970, and such other articles entered or withdrawn from warehouse for consumption prior to such date, the appraisement of which has not become final before October 1, 1970, and for which an appeal for reappraisement has not been timely filed with the Bureau of Customs [now the United States Customs Service] before October 1, 1970, or with respect to which a protest has not been disallowed in whole or in part before October 1, 1970.''

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Conversion of foreign currency into currency of the United States for the purpose of the assessment and collection of duties, see section 5151 of Title 31, Money and Finance.

Estimating duties upon the value at the date of shipment, see section 240 of this title.

''Merchandise'' defined, see section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1501, 1503, 1504 of this title.

§ 1501. Voluntary reliquidations by Customs Service

A liquidation made in accordance with section 1500 of this title or any reliquidation thereof made in accordance with this section may be reliquidated in any respect by the Customs Service, notwithstanding the filing of a protest, within ninety days from the date on which notice of the original liquidation is given or transmitted to the importer, his consignee or agent. Notice of such reliquidation shall be given or transmitted in the manner prescribed with respect to original liquidations under section 1500(e) of this title.

(June 17, 1930, ch. 497, title IV, § 501, 46 Stat. 730; June 25, 1938, ch. 679, § 16(b), 52 Stat. 1084; June 25, 1948, ch. 646, §§ 25, 39, 62 Stat. 990, 992; Aug. 8, 1953, ch. 397, § 18(c), 67 Stat. 517; Pub. L. 91–271, title II, § 205, June 2, 1970, 84 Stat. 283; Pub. L. 103–182, title VI, § 639, Dec. 8, 1993, 107 Stat. 2203.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 501, 42 Stat. 966. That section was superseded by section 501 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions for appeals to reappraisement and for a further appeal to be assigned to a board of general appraisers, with further provisions as to the fee to be paid, the proceedings on appeal, and the conclusiveness of decisions, were contained in act Oct. 3, 1913, ch. 16, § III, M, 38 Stat. 186, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

The provisions of section III, M, of the 1913 act, were substituted for provisions of the same nature made by the Customs Administrative Act of June 10, 1890, ch. 407, § 13, 26 Stat. 136, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 99.

Provisions similar to some extent to those in section 13 of the Customs Administrative Act of 1890 were con-

tained in R.S. §§2929, 2930, prior to repeal by section 29 of that Act.

R.S. §2950 provided that the certificate of the appraiser should be deemed to be the appraisement. It was superseded by the provisions relating to appraisers made by the Customs Administrative Act of June 10, 1890, ch. 407, §13, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, and the Underwood Tariff Act of Oct. 3, 1913, ch. 16, §III, M, 38 Stat. 186, and was repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1993—Pub. L. 103–182 amended section catchline generally, substituting ''Customs Service'' for ''appropriate customs officer; notice'', and in text substituted ''the Customs Service'' for ''the appropriate customs officer on his own initiative'' and inserted ''or transmitted'' after ''given'' in two places.

1970—Pub. L. 91–271 struck out ''(a)'' preceding first sentence and, in such provisions, as so redesignated, substituted provisions authorizing a reliquidation in any respect by the appropriate customs officer on his own initiative for a liquidation made in accordance with section 1500 of this title or any reliquidation thereof made in accordance with this section for provisions setting forth the procedure for an appeal for a reappraisement by the collector or the consignee.

1953—Subsec. (a). Act. Aug. 8, 1953, inserted cl. (3) and ''including all determinations entering into the same,'' in second sentence, and struck out third sentence which provided that ''No such appeal filed by the consignee or his agent shall be deemed valid, unless he has complied with all the provisions of this chapter relating to the entry and appraisement of such merchandise''.

1948—Subsec. (a). Act June 25, 1948, struck out fourth sentence and substituted new fourth sentence, and repealed the fifth, sixth, seventh, and eighth sentences dealing with review by Customs Court of Reappraisements of this material. See section 1582 of Title 28, Judiciary and Judicial Procedure.

Subsecs. (b) and (c), relating to practice and procedure in Customs Court, were repealed by Act June 25, 1948. See sections 2631 to 2637 of Title 28, Judiciary and Judicial Procedure.

1938—Act June 25, 1938, designated paragraphs as subsecs. (a) and (b) and added subsec. (c).

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specially provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1514 of this title.

§ 1502. Regulations for appraisement and classification

(a) Powers of Secretary of the Treasury

The Secretary of the Treasury shall establish and promulgate such rules and regulations not inconsistent with the law (including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned), and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry. The Secretary may direct any customs officer to go from one port of entry to another for the purpose of appraising or classifying or assisting in appraising or classifying merchandise imported at any port, and may direct any customs officer at any port to review entries of merchandise filed at any other port.

(b) Duties of customs officers

It shall be the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any difficulty arises as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary shall be binding upon all officers of the customs.

(June 17, 1930, ch. 497, title IV, §502, 46 Stat. 731; Pub. L. 91–271, title III, §301(*l*), June 2, 1970, 84 Stat. 289; Pub. L. 96–417, title VI, §601(3), Oct. 10, 1980, 94 Stat. 1744; Pub. L. 100–449, title IV, §403(a), Sept. 28, 1988, 102 Stat. 1884; Pub. L. 103–182, title IV, §412(a), title VI, §640, Dec. 8, 1993, 107 Stat. 2146, 2203.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §502, 42 Stat. 967. That section was superseded by section 502 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision, authorizing the Secretary of the Treasury to direct appraisers for any collection district, to attend in any other collection district, was contained in R.S. §2947. Prior provisions requiring the Secretary to establish rules and regulations to secure a just, faithful, and impartial appraisal, just and proper entries, and to report such rules and regulations to the next session of Congress, were contained in R.S. §2949. Both of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

Provisions similar to those in subsec. (b) of this section, except that reversal or modification was permitted in concurrence with a judicial decision of a circuit or district court, instead of a final decision of the Board of General Appraisers, were contained in act Mar. 3, 1875, ch. 136, §2, 18 Stat. 469, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

Provisions almost identical with those in subsec. (c) of this section were contained in R.S. §2652, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182, § 640(1), inserted ''(including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned)'' after ''law'', substituted ''ports of entry. The Secretary'' for ''ports of entry, and'', inserted ''or classifying'' after ''appraising'' in two places, and substituted ''any port, and may direct any customs officer at any port to review entries of merchandise filed at any other port'' for ''such port''.

Subsec. (b). Pub. L. 103–182, § 640(2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''No ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, shall be reversed or modified adversely to the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of the United States-Canada Free-Trade Agreement.''

Pub. L. 103–182, § 412(a), which directed the insertion of ''the North American Free Trade Agreement or'' before ''the United States-Canada Free-Trade Agreement'', could not be executed because the words ''the United States-Canada Free-Trade Agreement'' did not appear in subsec. (b) subsequent to amendment by Pub. L. 103–182, § 640(2), effective Dec. 8, 1993. See above.

Subsec. (c). Pub. L. 103–182, § 640(2), redesignated subsec. (c) as (b).

1988—Subsec. (b). Pub. L. 100–449 substituted ''a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of the United States-Canada Free-Trade Agreement'' for ''or a final decision of the United States Court of International Trade''.

1980—Subsec. (b). Pub. L. 96–417 redesignated the United States Customs Court as the United States Court of International Trade.

1970—Subsec. (a). Pub. L. 91–271 substituted ''customs officer'' for ''appraiser, deputy appraiser, assistant appraiser, or examiner of merchandise''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 412(a) 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.

Amendment by section 640 of Pub. L. 103–182 effective Dec. 8, 1993, see section 692 of Pub. L. 103–182, set out as a note under section 58c of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

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.

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury under subsec. (a) of this section, insofar as subsec. (a) of this section provides authority to issue regulations and disseminate information and insofar as Secretary of the Treasury had responsibility under sections 1303 and 1671 et seq. of this title for functions transferred to Secretary of Commerce by section 5(a)(1)(C) of Reorg. Plan No. 3 of 1979, transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(F), 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, to be exercised in consultation with Secretary of the Treasury.

Functions of Secretary of the Treasury under subsec. (b) of this section, with respect to functions transferred to Secretary of Commerce in section 1303 and 1671 et seq. of this title by section 5(a)(1)(C) of Reorg. Plan No. 3 of 1979, transferred to Secretary of Commerce pursuant to section 5(a)(1)(F) of Reorg. Plan No. 3 of 1979.

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees.

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.

CROSS REFERENCES

Removal of—

Custom house, in case of insurrection, to a secure place in the district, see section 219 of Title 50, War and National Defense.

Revenue officers from port during epidemic, see section 112 of Title 42, The Public Health and Welfare.

State quarantine regulations and the discharge of cargoes of vessels in quarantine, see sections 88 to 91 and 97 of Title 42.

Superintendence of collection of import duties, see section 3 of this title.

§ 1503. Dutiable value

Except as provided in section 1520(c) of this title (relating to reliquidations on the basis of authorized corrections of errors) or section 1562 of this title (relating to withdrawal from manipulating warehouses), the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty or rates based upon or regulated in any manner by the value of the merchandise, shall be the appraised value determined upon liquidation, in accordance with section 1500 of this title or any adjustment thereof made pursuant to section 1501 of this title. *Provided, however*, That if reliquidation is required pursuant to a final judgment or order of the United States Court of International Trade which includes a reappraisement of imported merchandise, the basis for such assessment shall be the final appraised value determined by such court.

(June 17, 1930, ch. 497, title IV, § 503, 46 Stat. 731; Aug. 8, 1953, ch. 397, § 18(d), 67 Stat. 518; Pub. L.

91–271, title II, § 206, June 2, 1970, 84 Stat. 284; Pub. L. 96–417, title VI, § 601(4), Oct. 10, 1980, 94 Stat. 1744.)

PRIOR PROVISIONS

Provisions somewhat similar to those in subsecs. (a) and (b) were contained in act Sept. 21, 1922, ch. 356, title IV, § 503, 42 Stat. 967. Provisions similar to former subsec. (b) relating to entries pending reappraisement were contained in act Sept. 21, 1922, ch. 356, title IV, § 489, 42 Stat. 962. Both of the acts of 1922 were in part superseded by act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A provision for assessment of duty on merchandise of different values when invoiced at an average price, was contained in R.S. § 2910, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1980—Pub. L. 96–417 redesignated the United States Customs Court as the United States Court of International Trade.

1970—Pub. L. 91–271 substituted provisions that, except as provided in section 1520(c) or 1562 of this title, the basis for the assessment of duties on imported merchandise be the appraised value determined upon liquidation, in accordance with section 1500 of this title or any adjustment thereof pursuant to section 1501 of this title, and be the final appraised value where reliquidation is required pursuant to a final judgment or order of the United States Customs Court, for provisions that, except as provided in section 1562 of this title, the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty be the final appraised value, and provisions that for the purpose of determining the rate of duty assessed upon any merchandise when the rate is based upon or regulated in any manner by the value of the merchandise, the final appraised value, except as provided in section 1562 of this title, be taken as the value of merchandise.

1953—Subsec. (a). Act Aug. 8, 1953, struck out ''and in subdivision (b) of this section'' after reference to section 1562 of this title, ''the entered value or'' after ''shall be'', and ''whichever is higher'' at the end.

Subsecs. (b), (c). Act Aug. 8, 1953, redesignated subsec. (c) as (b). Former subsec. (b), which related to entries pending reappraisement, was repealed by act Aug. 8, 1953.

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after the thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

§ 1503a. Repealed. Aug. 8, 1953, ch. 397, § 18(e), 67 Stat. 518

Section, act July 12, 1932, ch. 473, 47 Stat. 657, related to the construction of former subsection (b) of section 1503 of this title, which was omitted by section 18(d) of act Aug. 8, 1953.

EFFECTIVE DATE OF REPEAL; SAVINGS PROVISION

Repeal effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

§ 1504. Limitation on liquidation

(a) Liquidation

Unless an entry is extended under subsection (b) of this section or suspended as required by statute or court order, except as provided in section 1675(a)(3) of this title, an entry of merchandise not liquidated within one year from:

(1) the date of entry of such merchandise;

(2) the date of the final withdrawal of all such merchandise covered by a warehouse entry;

(3) the date of withdrawal from warehouse of such merchandise for consumption where, pursuant to regulations issued under section 1505(a) of this title, duties may be deposited after the filing of an entry or withdrawal from warehouse; or

(4) if a reconciliation is filed, or should have been filed, the date of the filing under section 1484 of this title or the date the reconciliation should have been filed;

shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer of record. Notwithstanding section 1500(e) of this title, notice of liquidation need not be given of an entry deemed liquidated.

(b) Extension

The Secretary may extend the period in which to liquidate an entry if—

(1) the information needed for the proper appraisement or classification of the merchandise, or for insuring compliance with applicable law, is not available to the Customs Service; or

(2) the importer of record requests such extension and shows good cause therefor.

The Secretary shall give notice of an extension under this subsection to the importer of record and the surety of such importer of record. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record at the expiration of 4 years from the applicable date specified in subsection (a) of this section.

(c) Notice of suspension

If the liquidation of any entry is suspended, the Secretary shall by regulation require that notice of the suspension be provided, in such manner as the Secretary considers appropriate, to the importer of record and to any authorized agent and surety of such importer of record.

(d) Removal of suspension

Except as provided in section 1675(a)(3) of this title, when a suspension required by statute or court order is removed, the Customs Service shall liquidate the entry, unless liquidation is extended under subsection (b) of this section, within 6 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry (other than an entry with re-

spect to which liquidation has been extended under subsection (b) of this section) not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record.

(June 17, 1930, ch. 497, title IV, § 504, as added Pub. L. 95–410, title II, § 209(a), Oct. 3, 1978, 92 Stat. 902; amended Pub. L. 98–573, title I, § 191(d), Oct. 30, 1984, 98 Stat. 2971; Pub. L. 103–182, title VI, § 641, Dec. 8, 1993, 107 Stat. 2204; Pub. L. 103–465, title II, § 220(c), Dec. 8, 1994, 108 Stat. 4865; Pub. L. 104–295, § 3(a)(7), Oct. 11, 1996, 110 Stat. 3516.)

PRIOR PROVISIONS

A prior section 1504, act June 17, 1930, ch. 497, title IV, § 504, 46 Stat. 732, related to duties on coverings and containers, prior to repeal by Pub. L. 87–456, title III, § 301(a), May 24, 1962, 76 Stat. 75, effective, pursuant to section 501(a) of Pub. L. 87–456, with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–295 inserted ‘‘, unless liquidation is extended under subsection (b) of this section,’’ after ‘‘shall liquidate the entry’’ in first sentence, and ‘‘(other than an entry with respect to which liquidation has been extended under subsection (b) of this section)’’ after ‘‘Any entry’’ in second sentence.

1994—Subsec. (a). Pub. L. 103–465, § 220(c)(1), inserted ‘‘except as provided in section 1675(a)(3) of this title,’’ before ‘‘an entry of merchandise not liquidated’’ in introductory provisions.

Subsec. (d). Pub. L. 103–465, § 220(c)(2), substituted ‘‘Except as provided in section 1675(a)(3) of this title, when a suspension’’ for ‘‘When a suspension’’.

1993—Subsec. (a). Pub. L. 103–182, § 641(1)(A), substituted ‘‘Unless an entry is extended under subsection (b) or suspended as required by statute or court order’’ for ‘‘Except as provided in subsection (b) of this section’’ in introductory provisions.

Subsec. (a)(4). Pub. L. 103–182, § 641(1)(B)–(D), added par. (4).

Subsec. (b). Pub. L. 103–182, § 641(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ‘‘The Secretary may extend the period in which to liquidate an entry by giving notice of such extension to the importer of record in such form and manner as the Secretary shall prescribe in regulations, if—

‘‘(1) information needed for the proper appraisement or classification of the merchandise is not available to the appropriate customs officer;

‘‘(2) liquidation is suspended as required by statute or court order; or

‘‘(3) the importer of record requests such extension and shows good cause therefor.’’

Subsec. (c). Pub. L. 103–182, § 641(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ‘‘If the liquidation of any entry is suspended, the Secretary shall, by regulation, require that notice of such suspension be provided to the importer of record concerned and to any authorized agent and surety of such importer of record.’’

Subsec. (d). Pub. L. 103–182, § 641(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) ‘‘Limitation’’ read as follows: ‘‘Any entry of merchandise not liquidated at the expiration of four years from the applicable date specified in subsection (a) of this section, shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record, unless liquidation continues to be suspended as required by statute or court order. When such a suspension of liquidation is removed, the entry shall be liquidated within 90 days therefrom.’’

1984—Subsec. (a). Pub. L. 98–573, § 191(d)(1), substituted ‘‘importer of record’’ for ‘‘importer, his consignee, or agent’’ in provisions following par. (3).

Subsec. (b). Pub. L. 98–573, § 191(d)(2), substituted ‘‘importer of record’’ for ‘‘importer, his consignee, or agent’’ in provisions preceding par. (1), and substituted ‘‘importer of record’’ for ‘‘importer, consignee, or his agent’’ in par. (3).

Subsec. (c). Pub. L. 98–573, § 191(d)(3), substituted ‘‘importer of record’’ for ‘‘importer or consignee’’ in two places.

Subsec. (d). Pub. L. 98–573, § 191(d)(4), substituted ‘‘importer of record’’ for ‘‘importer, his consignee, or agent’’.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

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 1984 AMENDMENT

Amendment by Pub. L. 98–573 applicable with respect to articles entered on or after 15th day after Oct. 30, 1984, see section 195(a) of Pub. L. 98–573, set out as a note under section 1322 of this title.

EFFECTIVE DATE

Section 209(b) of Pub. L. 95–410 provided that: ‘‘The amendment made by this section [enacting this section] applies to the entry or withdrawal of merchandise for consumption on or after 180 days after the enactment of this Act [Oct. 3, 1978].’’

§ 1505. Payment of duties and fees

(a) Deposit of estimated duties, fees, and interest

Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of making entry, or at such later time as the Secretary may prescribe by regulation, the amount of duties and fees estimated to be payable thereon. Such regulations may provide that estimated duties and fees shall be deposited before or at the time an import activity summary statement is filed. If an import activity summary statement is filed, the estimated duties and fees shall be deposited together with interest, at a rate determined by the Secretary, accruing from the first date of the month the statement is required to be filed until the date such statement is actually filed.

(b) Collection or refund of duties, fees, and interest due upon liquidation or reliquidation

The Customs Service shall collect any increased or additional duties and fees due, together with interest thereon, or refund any excess moneys deposited, together with interest thereon, as determined on a liquidation or reliquidation. Duties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment. Refunds of excess moneys depos-

ited, together with interest thereon, shall be paid within 30 days of liquidation or reliquidation.

(c) Interest

Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest or, in a case in which a claim is made under section 1520(d) of this title, from the date on which such claim is made, to the date of liquidation or reliquidation of the applicable entry or reconciliation.

(d) Delinquency

If duties, fees, and interest determined to be due or refunded are not paid in full within the 30-day period specified in subsection (b) of this section, any unpaid balance shall be considered delinquent and bear interest by 30-day periods, at a rate determined by the Secretary, from the date of liquidation or reliquidation until the full balance is paid. No interest shall accrue during the 30-day period in which payment is actually made.

(June 17, 1930, ch. 497, title IV, § 505, 46 Stat. 732; Pub. L. 91–271, title II, § 204(c), June 2, 1970, 84 Stat. 283; Pub. L. 95–410, title I, § 103, Oct. 3, 1978, 92 Stat. 889; Pub. L. 97–446, title II, § 201(e), Jan. 12, 1983, 96 Stat. 2350; Pub. L. 98–573, title II, § 210(a), Oct. 30, 1984, 98 Stat. 2977; Pub. L. 103–182, title VI, § 642(a), Dec. 8, 1993, 107 Stat. 2205; Pub. L. 104–295, § 2(a), Oct. 11, 1996, 110 Stat. 3515.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 504, 42 Stat. 967. That section was superseded by section 505 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision that the collector or person acting as such should ascertain, fix, and liquidate the rate and amount of duties, and the dutiable costs and charges, was contained in act Oct. 3, 1913, ch. 16, § III, M, 38 Stat. 186, the provisions of which were substituted for provisions of the same nature contained in the Customs Administrative Act of June 10, 1890, ch. 407, § 13, 26 Stat. 136, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 99.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–295 inserted ''or, in a case in which a claim is made under section 1520(d) of this title, from the date on which such claim is made,'' after ''deposits estimated duties, fees, and interest''.

1993—Pub. L. 103–182 amended section generally, substituting provisions relating to deposit, collection or refund of duties, fees, and interest for provisions relating to deposit, collection, or refund of duties and interest.

1984—Subsec. (c). Pub. L. 98–573 added subsec. (c).

1983—Subsec. (a). Pub. L. 97–446 substituted ''importer of record'' for ''consignee'' before ''shall deposit''.

1978—Subsec. (a). Pub. L. 95–410 authorized deposit of estimated duties to be made as prescribed by regulations after time of making entry but not later than thirty days after date of entry.

1970—Pub. L. 91–271 reorganized existing provisions into subsecs. (a) and (b), and struck out provisions authorizing receipt by a collector of various reports and the performance of certain functions in connection with the liquidation of an entry.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2(b) of Pub. L. 104–295 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to claims made pursuant to section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) on or after June 7, 1996.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on 30th day after Oct. 30, 1984, see section 214(c)(5)(A) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97–446, set out as a note under section 1484 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1315, 1504, 1557 of this title.

§ 1506. Allowance for abandonment and damage

Allowance shall be made in the estimation and liquidation of duties under regulations prescribed by the Secretary of the Treasury in the following cases:

(1) Abandonment within thirty days

Where the importer abandons to the United States, within thirty days after entry in the case of merchandise released without an examination, or within thirty days after the release in the case of merchandise sent to the Customs Service for examination, any imported merchandise representing 5 per centum or more of the total value of all the merchandise of the same class or kind entered in the invoice or entry in which the item appears, and delivers, within the applicable thirty-day period, the portion so abandoned to such place as the Customs Service directs unless the Customs Service is satisfied that the merchandise is so far destroyed as to be nondeliverable;

(2) Perishable merchandise, condemned

Where fruit or other perishable merchandise has been condemned at the port of entry, within ten days after landing, by the health officers or other legally constituted authorities, and the consignee, within five days after such condemnation, files, electronically or otherwise, with the Customs Service notice thereof, an invoiced description and the location thereof, and the name of the vessel or vehicle in which imported.

(June 17, 1930, ch. 497, title IV, § 506, 46 Stat. 732; Pub. L. 91–271, title III, § 301(m), June 2, 1970, 84 Stat. 289; Pub. L. 103–182, title VI, § 643, Dec. 8, 1993, 107 Stat. 2205.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § III, X, 38 Stat. 190, re-

enacting the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, § 23, 26 Stat. 140, as amended by Act May 17, 1898, ch. 341, 30 Stat. 417, and further amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 103. Section III of the 1913 act was superseded by act Sept. 21, 1922, ch. 356, title IV, § 505, 42 Stat. 967, and repealed by section 643 thereof. Section 505 of the 1922 act was superseded by section 506 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

R.S. § 2927 provided for the appraisal of articles damaged during the voyage, and for the allowances for such damages in estimating duties, prior to repeal by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141.

R.S. § 2928, providing for appraisement of merchandise taken from any wreck and of damages sustained during the course of the voyage, was superseded by the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, § 23, 26 Stat. 140, and repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Par. (1). Pub. L. 103–182, § 643(1), (2), substituted ''merchandise released without an examination'' for ''merchandise not sent to the appraiser's stores for examination'', struck out ''of the examination packages or quantities of merchandise'' after ''thirty days after the release'', substituted ''merchandise sent to the Customs Service'' for ''merchandise sent to the appraiser's stores'', inserted ''or entry'' after ''invoice'', and substituted ''such place as the Customs Service'' for ''such place as the appropriate customs officer'' and ''unless the Customs Service'' for ''unless such customs officer''.

Par. (2). Pub. L. 103–182, § 643(1), (3), inserted '', electronically or otherwise,'' after ''files'' and substituted ''the Customs Service notice'' for ''the appropriate customs officer written notice''.

1970—Par. (1). Pub. L. 91–271, § 301(m)(1), substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

Par. (2). Pub. L. 91–271, § 301(m)(2), substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1507. Tare and draft

(a) In general

The Secretary of the Treasury is authorized to prescribe and issue regulations for the ascertainment of tare upon imported merchandise, including the establishment of reasonable and just schedule tares therefor, but (except as otherwise provided in this section) there shall not be any allowance for draft or for impurities, other than excessive moisture and impurities not usually found in or upon such or similar merchandise.

(b) Crude oil and petroleum products

In ascertaining tare on imports of crude oil, and on imports of petroleum products, allowance shall be made for all detectable moisture and impurities present in, or upon, the imported crude oil or petroleum products.

(June 17, 1930, ch. 497, title IV, § 507, 46 Stat. 732; Pub. L. 100–418, title I, § 1902(a), Aug. 23, 1988, 102 Stat. 1312.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 506, 42 Stat. 968. That section was superseded by section 507 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision relative to the allowance of tare, prohibiting any allowance for draught, was contained in R.S. § 2898, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1988—Pub. L. 100–418 designated existing provision as subsec. (a), substituted ''(except as otherwise provided in this section) there shall not be'' for ''in no case shall there be'', and added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1902(b) of Pub. L. 100–418, as amended by Pub. L. 100–647, title IX, § 9001(a)(18), Nov. 10, 1988, 102 Stat. 3808, provided that: ''The amendment made by this section [amending this section] shall apply with respect to articles entered, or withdrawn from warehouse for consumption, after October 1, 1988.''

§ 1508. Recordkeeping

(a) Requirements

Any—

(1) owner, importer, consignee, importer of record, entry filer, or other party who—

(A) imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or

(B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(2) agent of any party described in paragraph (1); or

(3) person whose activities require the filing of a declaration or entry, or both;

shall make, keep, and render for examination and inspection records (which for purposes of this section include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which—

(A) pertain to any such activity, or to the information contained in the records required by this chapter in connection with any such activity; and

(B) are normally kept in the ordinary course of business.

(b) Exportations to free trade countries

(1) Definitions

As used in this subsection—

(A) The term ''associated records'' means, in regard to an exported good under paragraph (2), records associated with—

(i) the purchase of, cost of, value of, and payment for, the good;

(ii) the purchase of, cost of, value of, and payment for, all material, including indirect materials, used in the production of the good; and

(iii) the production of the good.

For purposes of this subparagraph, the terms ''indirect material'', ''material'', ''preferential tariff treatment'', ''used'', and ''value'' have the respective meanings given them in articles 415 and 514 of the North American Free Trade Agreement.

(B) The term ''NAFTA Certificate of Origin'' means the certification, established under article 501 of the North American Free Trade Agreement, that a good qualifies as an originating good under such Agreement.

(2) Exports to NAFTA countries

(A) In general

Any person who completes and signs a NAFTA Certificate of Origin for a good for which preferential treatment under the North American Free Trade Agreement is claimed shall make, keep, and render for examination and inspection all records relating to the origin of the good (including the Certificate or copies thereof) and the associated records.

(B) Claims for certain waivers, reductions, or refunds of duties or for credit against bonds

(i) In general

Any person that claims with respect to an article—

(I) a waiver or reduction of duty under the last paragraph of section 1311 of this title, section 1312(b)(1) or (4) of this title, section 1562(2) of this title, or the last proviso to section 81c(a) of this title;

(II) a credit against a bond under section 1312(d) of this title; or

(III) a refund, waiver, or reduction of duty under section 1313(n)(2) or (*o*)(1) of this title;

must disclose to the Customs Service the information described in clause (ii).

(ii) Information required

Within 30 days after making a claim described in clause (i) with respect to an article, the person making the claim must disclose to the Customs Service whether that person has prepared, or has knowledge that another person has prepared, a NAFTA Certificate of Origin for the article. If after such 30-day period the person making the claim either—

(I) prepares a NAFTA Certificate of Origin for the article; or

(II) learns of the existence of such a Certificate for the article;

that person, within 30 days after the occurrence described in subclause (I) or (II), must disclose the occurrence to the Customs Service.

(iii) Action on claim

If the Customs Service determines that a NAFTA Certificate of Origin has been prepared with respect to an article for which a claim described in clause (i) is made, the Customs Service may make such adjustments regarding the previous customs treatment of the article as may be warranted.

(3) Exports under the Canadian agreement

Any person who exports, or who knowingly causes to be exported, any merchandise to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to the exportations.

(c) Period of time

The records required by subsections (a) and (b) of this section shall be kept for such periods of time as the Secretary shall prescribe; except that—

(1) no period of time for the retention of the records required under subsection (a) or (b)(3) of this section may exceed 5 years from the date of entry, filing of a reconciliation, or exportation, as appropriate;

(2) the period of time for the retention of the records required under subsection (b)(2) of this section shall be at least 5 years from the date of signature of the NAFTA Certificate of Origin; and

(3) records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.

(d) Limitation

For the purposes of this section and section 1509 of this title, a person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported unless—

(1) the terms and conditions of the importation are controlled by the person placing the order; or

(2) technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with knowledge that they will be used in the manufacture or production of the imported merchandise.

(e) Subsection (b) penalties

(1) Relating to NAFTA exports

Any person who fails to retain records required by paragraph (2) of subsection (b) of this section or the regulations issued to implement that paragraph shall be liable for—

(A) a civil penalty not to exceed $10,000; or

(B) the general recordkeeping penalty that applies under the customs laws;

whichever penalty is higher.

(2) Relating to Canadian agreement exports

Any person who fails to retain the records required by paragraph (3) of subsection (b) of this section or the regulations issued to implement that paragraph shall be liable for a civil penalty not to exceed $10,000.

(June 17, 1930, ch. 497, title IV, §508, as added Pub. L. 95–410, title I, §104, Oct. 3, 1978, 92 Stat. 889; amended Pub. L. 100–449, title II, §205(b), Sept. 28, 1988, 102 Stat. 1864; Pub. L. 103–182, title II, §205(a), title VI, §614, Dec. 8, 1993, 107 Stat. 2093, 2174; Pub. L. 104–295, §3(a)(6)(B), Oct. 11, 1996, 110 Stat. 3515.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (e)(1)(B), are classified generally to this title.

PRIOR PROVISIONS

A prior section 1508, acts June 17, 1930, ch. 497, title IV, §508, 46 Stat. 732; Aug. 8, 1953, ch. 397, §19, 67 Stat.

518, related to commingling of goods, prior to repeal by Pub. L. 87–456, title III, § 301(a), May 24, 1962, 76 Stat. 75, effective, pursuant to section 501(a) of Pub. L. 87–456, with respect to articles entered, or withdrawn from warehouse, for consumption on or after Aug. 31, 1963.

AMENDMENTS

1996—Subsec. (c)(1). Pub. L. 104–295 inserted ", filing of a reconciliation," after "entry".

1993—Subsec. (a). Pub. L. 103–182, § 614(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Any owner, importer, consignee, or agent thereof who imports, or who knowingly causes to be imported, any merchandise into the customs territory of the United States shall make, keep, and render for examination and inspection such records (including statements, declarations, and other documents) which—

"(1) pertain to any such importation, or to the information contained in the documents required by this chapter in connection with the entry of merchandise; and

"(2) are normally kept in the ordinary course of business."

Subsec. (b). Pub. L. 103–182, § 205(a)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Any person who exports, or who knowingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to such exportations."

Subsec. (c). Pub. L. 103–182, § 205(a)(2), amended generally subsec. (c), as amended by Pub. L. 103–182, § 614(2) (see below). Prior to amendment, subsec. (c) read as follows: "The records required by subsections (a) and (b) of this section shall be kept for such period of time, not to exceed 5 years from the date of entry or exportation, as appropriate, as the Secretary shall prescribe; except that records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim." See Construction of 1993 Amendment note below.

Pub. L. 103–182, § 614(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The records required by subsection (a) and (b) of this section shall be kept for such periods of time, not to exceed 5 years from the date of entry, as the Secretary shall prescribe." See Construction of 1993 Amendment note below.

Subsec. (e). Pub. L. 103–182, § 205(a)(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "Any person who fails to retain records required by subsection (b) of this section or the regulations issued to implement that subsection shall be liable to a civil penalty not to exceed $10,000."

1988—Subsecs. (b) to (e). Pub. L. 100–449 added subsec. (b), redesignated former subsec. (b) as (c) and inserted "and (b)" after "subsection (a)", redesignated former subsec. (c) as (d), and added subsec. (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 205(a) 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], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

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.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 205(a) of Pub. L. 103–182 to be made after amendment by section 614 of Pub. L. 103–182 is executed, see section 212 of Pub. L. 103–182, set out as a note under section 58c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 81c, 1311, 1312, 1313, 1509, 1520, 1553a, 1562, 1592 of this title.

§ 1509. Examination of books and witnesses

(a) Authority

In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty, fees and taxes due or duties, fees and taxes which may be due the United States, for determining liability for fines and penalties, or for insuring compliance with the laws of the United States administered by the United States Customs Service, the Secretary (but no delegate of the Secretary below the rank of district director or special agent in charge) may—

(1) examine, or cause to be examined, upon reasonable notice, any record (which for purposes of this section, includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry, except that—

(A) if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and

(B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g) of this section;

(2) summon, upon reasonable notice—

(A) the person who—

(i) imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,

(ii) exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country (as defined in section 3301(4) of this title) or to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada,

(iii) transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or

(iv) filed a declaration, entry, or drawback claim with the Customs Service;

(B) any officer, employee, or agent of any person described in subparagraph (A);

(C) any person having possession, custody or care of records relating to the importa-

tion or other activity described in subparagraph (A); or

(D) any other person he may deem proper;

to appear before the appropriate customs officer at the time and place within the customs territory of the United States specified in the summons (except that no witness may be required to appear at any place more than one hundred miles distant from the place where he was served with the summons), to produce records, as defined in subsection (d)(1)(A) of this section, and to give such testimony, under oath, as may be relevant to such investigation or inquiry; and

(3) take, or cause to be taken, such testimony of the person concerned, under oath, as may be relevant to such investigation or inquiry.

(b) Regulatory audit procedures

(1) In conducting a regulatory audit under this section (which does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone), the Customs Service auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the course of an audit it becomes apparent that additional time will be required, the Customs Service auditor shall immediately provide a further estimate of such additional time.

(2) Before commencing an audit, the Customs Service auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Service auditor shall schedule a closing conference to explain the preliminary results of the audit.

(3) Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Service auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the officer designated pursuant to regulations, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after the date of receipt.

(4) Except as provided in paragraph (5), the Customs Service auditor shall complete the formal written audit report within 90 days following the closing conference unless the officer designated pursuant to regulations provides written notice to the person being audited of the reason for any delay and the anticipated completion date. After application of any exemption contained in section 552 of title 5, a copy of the formal written audit report shall be sent to the person audited no later than 30 days following completion of the report.

(5) Paragraphs (3) and (4) shall not apply after the Customs Service commences a formal investigation with respect to the issue involved.

(c) Service of summons

A summons issued pursuant to this section may be served by any person designated in the summons to serve it. Service upon a natural person may be made by personal delivery of the summons to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the summons to an officer, or managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The certificate of service signed by the person serving the summons is prima facie evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of records, such records shall be described in the summons with reasonable specificity.

(d) Special procedures for third-party summonses

(1) For purposes of this subsection—

(A) The term ''records'' includes those—

(i) required to be kept under section 1508 of this title; or

(ii) regarding which there is probable cause to believe that they pertain to merchandise the importation of which into the United States is prohibited.

(B) The term ''summons'' means any summons issued under subsection (a) of this section which requires the production of records or the giving of testimony relating to records. Such term does not mean any summons issued to aid in the collection of the liability of any person against whom an assessment has been made or judgment rendered.

(C) The term ''third-party recordkeeper'' means—

(i) any customhouse broker, unless such customhouse broker is the importer of record on an entry;

(ii) any attorney; and

(iii) any accountant.

(2) If—

(A) any summons is served on any person who is a third-party recordkeeper; and

(B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the transactions described in section 1508 of this title of any person (other than the person summoned) who is identified in the description of the records contained in such summons;

then notice of such summons shall be given to any persons so identified within a reasonable time before the day fixed in the summons as the day upon which such records are to be examined or testimony given. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under paragraph (5)(B) of this subsection.

(3) Any notice required under paragraph (2) of this subsection shall be sufficient if such notice is served in the manner provided in subsection (b) of this section upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person.

(4) Paragraph (2) of this subsection shall not apply to any summons—

(A) served on the person with respect to whose liability for duties, fees, or taxes the

summons is issued, or any officer or employee of such person; or

(B) to determine whether or not records of the transactions described in section 1508 of this title of an identified person have been made or kept.

(5) Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under paragraph (2) of this subsection shall have the right—

(A) to intervene in any proceeding with respect to the enforcement of such summons under section 1510 of this title; and

(B) to stay compliance with the summons if, not later than the day before the day fixed in the summons as the day upon which the records are to be examined or testimony given—

(i) notice in writing is given to the person summoned not to comply with the summons; and

(ii) a copy of such notice not to comply with the summons is mailed by registered or certified mail to such person and to such office as the Secretary may direct in the notice referred to in paragraph (2) of this subsection.

(6) No examination of any records required to be produced under a summons as to which notice is required under paragraph (2) of this subsection may be made—

(A) before the expiration of the period allowed for the notice not to comply under paragraph (5)(B) of this subsection, or

(B) if the requirements of such paragraph (5)(B) have been met, except in accordance with an order issued by a court of competent jurisdiction authorizing examination of such records or with the consent of the person staying compliance.

(7) The provisions of paragraphs (2) and (5) of this subsection shall not apply with respect to any summons if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(e) List of records and information

The Customs Service shall identify and publish a list of the records or entry information that is required to be maintained and produced under subsection (a)(1)(A) of this section.

(f) Recordkeeping compliance program

(1) In general

After consultation with the importing community, the Customs Service shall by regulation establish a recordkeeping compliance program which the parties listed in section 1508(a) of this title may participate in after being certified by the Customs Service under paragraph (2). Participation in the recordkeeping compliance program by recordkeepers is voluntary.

(2) Certification

A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements established under the program or after negotiating an alternative program suited to the needs of the recordkeeper and the Customs Service. Certification requirements shall take into account the size and nature of the importing business and the volume of imports. In order to be certified, the recordkeeper must be able to demonstrate that it—

(A) understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records;

(C) has in place procedures regarding the preparation and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of the Customs Service;

(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternative records or recordkeeping formats other than the original records; and

(F) has procedures for notifying the Customs Service of occurrences of variances to, and violations of, the requirements of the recordkeeping compliance program or the negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems regarding such program.

(g) Penalties

(1) "Information" defined

For purposes of this subsection, the term ''information'' means any record, statement, declaration, document, or electronically stored or transmitted information or data referred to in subsection (a)(1)(A) of this section.

(2) Effects of failure to comply with demand

Except as provided in paragraph (4), if a person fails to comply with a lawful demand for information under subsection (a)(1)(A) of this section the following provisions apply:

(A) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less.

(B) If the failure to comply is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

(C) In addition to any penalty imposed under subparagraph (A) or (B) regarding demanded information, if such information related to the eligibility of merchandise for a column 1 special rate of duty under title I, the entry of such merchandise—

(i) if unliquidated, shall be liquidated at the applicable column 1 general rate of duty; or

(ii) if liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in section 1514 or 1520 of this title, at the applicable column 1 general rate of duty;

except that any liquidation or reliquidation under clause (i) or (ii) shall be at the applicable column 2 rate of duty if the Customs Service demonstrates that the merchandise should be dutiable at such rate.

(3) Avoidance of penalty

No penalty may be assessed under this subsection if the person can show—

(A) that the loss of the demanded information was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

(B) on the basis of other evidence satisfactory to the Customs Service, that the demand was substantially complied with; or

(C) the information demanded was presented to and retained by the Customs Service at the time of entry or submitted in response to an earlier demand.

(4) Penalties not exclusive

Any penalty imposed under this subsection shall be in addition to any other penalty provided by law except for—

(A) a penalty imposed under section 1592 of this title for a material omission of the demanded information, or

(B) disciplinary action taken under section 1641 of this title.

(5) Remission or mitigation

A penalty imposed under this section may be remitted or mitigated under section 1618 of this title.

(6) Customs summons

Nothing in this subsection shall limit or preclude the Customs Service from issuing, or seeking the enforcement of, a customs summons.

(7) Alternatives to penalties

(A) In general

When a recordkeeper who—

(i) has been certified as a participant in the recordkeeping compliance program under subsection (f) of this section; and

(ii) is generally in compliance with the appropriate procedures and requirements of the program;

does not produce a demanded record or information for a specific release or provide the information by acceptable alternative means, the Customs Service, in the absence of willfulness or repeated violations, shall issue a written notice of the violation to the recordkeeper in lieu of a monetary penalty. Repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(B) Contents of notice

A notice of violation issued under subparagraph (A) shall—

(i) state that the recordkeeper has violated the recordkeeping requirements;

(ii) indicate the record or information which was demanded; and

(iii) warn the recordkeeper that future failures to produce demanded records or information may result in the imposition of monetary penalties.

(C) Response to notice

Within a reasonable time after receiving written notice under subparagraph (A), the recordkeeper shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(D) Regulations

The Secretary shall promulgate regulations to implement this paragraph. Such regulations may specify the time periods for compliance with a demand for information and provide guidelines which define repeated violations for purposes of this paragraph. Any penalty issued for a recordkeeping violation shall take into account the degree of compliance compared to the total number of importations, the nature of the demanded records and the recordkeeper's cooperation.

(June 17, 1930, ch. 497, title IV, §509, 46 Stat. 733; June 25, 1948, ch. 646, §26, 62 Stat. 990; Pub. L. 91–271, title III, §301(n), June 2, 1970, 84 Stat. 289; Pub. L. 95–410, title I, §105, Oct. 3, 1978, 92 Stat. 889; Pub. L. 99–570, title III, §3117, Oct. 27, 1986, 100 Stat. 3207–84; Pub. L. 103–182, title II, §205(b), title VI, §615, Dec. 8, 1993, 107 Stat. 2094, 2175; Pub. L. 104–295, §3(a)(1), (10), Oct. 11, 1996, 110 Stat. 3515, 3516.)

REFERENCES IN TEXT

Title I, referred to in subsec. (g)(2)(C), means title I of act June 17, 1930, ch. 497, as amended, which contains the Harmonized Tariff Schedule of the United States and which is not set out in the Code. See notes preceding section 1202 of this title and Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions substantially the same, in most respects, as those in this section, were contained in act Oct. 3, 1913, ch. 16, §III, O, 38 Stat. 188, which substantially reenacted the provisions of Customs Administrative Act of June 10, 1890, ch. 407, §16, 26 Stat. 138, as renumbered and reenacted without other change by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, §28, 36 Stat. 100. Section III of the 1913 act was superseded and more closely assimilated to this section by act Sept. 21, 1922, ch. 356, title IV, §508, 42 Stat. 968, and repealed by section 643 thereof. Section 508 of the 1922 act was superseded by section 509 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions similar to those in this section and section 1510 of this title were made by R.S. §§2922–2924,

repealed by section 29 of the Customs Administrative Act of 1890, 26 Stat. 141.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–295, § 3(a)(1), substituted ''(d)(1)(A)'' for ''(c)(1)(A)'' in concluding provisions.

Subsec. (b)(3), (4). Pub. L. 104–295, § 3(a)(10), substituted ''officer designated pursuant to regulations'' for ''appropriate regional commissioner''.

1993—Subsec. (a). Pub. L. 103–182, § 615(1)(A), substituted '', fees and taxes'' for ''and taxes'' in two places in introductory provisions.

Subsec. (a)(1). Pub. L. 103–182, § 615(1)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''examine, or cause to be examined, upon reasonable notice, any record, statement, declaration or other document, described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry;''.

Subsec. (a)(2)(A). Pub. L. 103–182, § 615(1)(C), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the person who imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,''. See Construction of 1993 Amendment note below.

Subsec. (a)(2)(A)(ii). Pub. L. 103–182, § 205(b), amended generally cl. (ii), as amended by Pub. L. 103–182, § 615(1)(C). Prior to amendment, cl. (ii) read as follows: ''exported merchandise, or knowingly caused merchandise to be exported, to Canada,''. See Construction of 1993 Amendment note below.

Subsec. (a)(2)(B), (C). Pub. L. 103–182, § 615(1)(C), amended subpars. (B) and (C) generally. Prior to amendment, subpars. (B) and (C) read as follows:

''(B) any officer, employee, or agent of such person,

''(C) any person having possession, custody, or care of records relating to such importation, or''.

Subsec. (a)(2)(D). Pub. L. 103–182, § 615(1)(D), substituted a semicolon for comma at end.

Subsecs. (b), (c). Pub. L. 103–182, § 615(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 103–182, § 615(2), redesignated subsec. (c) as (d).

Subsec. (d)(1)(A). Pub. L. 103–182, § 615(4)(A), substituted ''those'' for ''statements, declarations, or documents'' in introductory provisions.

Subsec. (d)(1)(C)(i). Pub. L. 103–182, § 615(4)(B), inserted '', unless such customhouse broker is the importer of record on an entry'' after ''broker''.

Subsec. (d)(2)(B). Pub. L. 103–182, § 615(4)(C), (D), substituted ''the transactions described in section 1508 of this title'' for ''the import transactions''.

Subsec. (d)(4)(A). Pub. L. 103–182, § 615(4)(E), inserted '', fees,'' after ''duties''.

Subsec. (d)(4)(B). Pub. L. 103–182, § 615(4)(C), (D), substituted ''the transactions described in section 1508 of this title'' for ''the import transactions''.

Subsecs. (e) to (g). Pub. L. 103–182, § 615(5), added subsecs. (e) to (g).

1986—Subsec. (a)(2). Pub. L. 99–570, § 3117(1), substituted ''as defined in subsection (c)(1)(A) of this section'' for ''required to be kept under section 1508 of this title'' in concluding provisions.

Subsec. (c)(1)(A). Pub. L. 99–570, § 3117(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The term 'records' includes statements, declarations, or documents required to be kept under section 1508 of this title.''

1978—Pub. L. 95–410 substituted subsec. (a) to (c) provisions for examination of books and witnesses for prior provisions for examination of importer and others, which authorized appropriate customs officers to issue citations for examination under oath of any owner, importer, consignee, agent, or other person upon any material matter or thing respecting any imported merchandise then under consideration or previously imported within one year, in ascertaining the classification or the value thereof or the rate or amount of duty and to require production of any letters, accounts, contracts, invoices, or other documents relating to the merchandise, and the reduction of the testimony to writing, required the testimony to be filed and preserved under Customs Court rules, and authorized consideration of the evidence in subsequent proceedings relating to the merchandise.

1970—Pub. L. 91–271 substituted ''Appropriate customs officer'' for ''Collectors and appraisers''.

1948—Act June 25, 1948, struck out ''and judges and divisions of the United States Customs Court'' after ''Collectors and appraisers'' in first sentence.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 205(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], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 205(b) of Pub. L. 103–182 to be made after amendment by section 615 of Pub. L. 103–182 is executed, see section 212 of Pub. L. 103–182, set out as a note under section 58c of this title.

CROSS REFERENCES

Court of International Trade procedure, witnesses and inspection of documents, see section 2641 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1508, 1510, 1553a of this title; title 26 section 6103.

§ 1510. Judicial enforcement

(a) Order of court

If any person summoned under section 1509 of this title does not comply with the summons, the district court of the United States for any district in which such person is found or resides or is doing business, upon application and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to comply with the summons. Failure to obey such order of the court may be punished by such court as a contempt thereof and such court may assess a monetary penalty.

(b) Sanctions

(1) For so long as any person, after being adjudged guilty of contempt for neglecting or refusing to obey a lawful summons issued under section 1509 of this title and for refusing to obey the order of the court, remains in contempt, the Secretary may—

(A) prohibit that person from importing merchandise into the customs territory of the United States directly or indirectly or for his account, and

(B) instruct the appropriate customs officers to withhold delivery of merchandise imported directly or indirectly by that person or for his account.

(2) If any person remains in contempt for more than one year after the date on which the Secretary issues instructions under paragraph (1)(B) with respect to that person, the appropriate customs officers shall cause all merchandise held in customs custody pursuant to such instructions to be sold at public auction or otherwise disposed of under the customs laws.

(3) The sanctions which may be imposed under paragraphs (1) and (2) are in addition to any punishment which may be imposed by the court for contempt.

(June 17, 1930, ch. 497, title IV, § 510, 46 Stat. 733; Pub. L. 91–271, title III, § 301(*o*), June 2, 1970, 84 Stat. 290; Pub. L. 95–410, title I, § 106, Oct. 3, 1978, 92 Stat. 891; Pub. L. 103–182, title VI, § 616, Dec. 8, 1993, 107 Stat. 2179.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (b)(2), are classified generally to this title.

PRIOR PROVISIONS

Provisions substantially the same as those in this section were contained in act Oct. 3, 1913, ch. 16, § III, P, 38 Stat. 188, which substantially reenacted the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, § 17, 26 Stat. 139, as renumbered and reenacted without other change by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 23, 36 Stat. 100. Section III, P, of the 1913 act was superseded by act Sept. 21, 1922, ch. 356, title IV, § 509, 42 Stat. 968, and repealed by section 643 thereof. Section 509 of the 1922 act was superseded by section 510 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions similar to those in this section were contained in R.S. §§ 2923, 2924, prior to repeal by section 29 of the Customs Administrative Act of June 10, 1890, 26 Stat. 141.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182 inserted before period at end ''and such court may assess a monetary penalty''.

1978—Pub. L. 95–410 substituted judicial enforcement provisions covering court order for compliance with administrative summonses and imposition of specified sanctions for prior provisions covering imposition of penalties for refusal to give testimony, including provision for a penalty of not less than $20 nor more than $500 for refusing to appear or to produce documents or to subscribe his name to a deposition or refusing to answer interrogatories; deeming the last made appraisement of the merchandise as final where an owner, importer, or consignee failed to comply with the examination provisions; deeming the person falsely swearing on an examination guilty of perjury; and forfeiture of the merchandise where the person was an owner, importer, or consignee, or the recovery of its value from him.

1970—Pub. L. 91–271 substituted references to appropriate customs officer for references to collector or appraiser wherever appearing, and struck out references to divisions of United States Customs Court.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1509 of this title.

§ 1511. Repealed. Pub. L. 95–410, title I, § 107, Oct. 3, 1978, 92 Stat. 892

Section, acts June 17, 1930, ch. 497, title IV, § 511, 46 Stat. 733; June 2, 1970, Pub. L. 91–271, title III, § 301(p), 84 Stat. 290, provided for inspection of importer's books. See sections 1508–1510 of this title.

Provisions similar to those in this section were contained in act May 27, 1921, ch. 14, § 405, 42 Stat. 18, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 511, 42 Stat. 969. Section 511 of the 1922 act was superseded by section 511 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Earlier provisions for assessment of additional duty for failure or refusal of persons importing merchandise or dealing in imported merchandise to submit their books, records, etc., to inspection, were contained in act Oct. 3, 1913, ch. 16, § III, V, 38 Stat. 190, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

§ 1512. Deposit of duty receipts

All moneys paid to any customs officer for unascertained duties or for duties paid under protest against the rate or amount of duties charged shall be deposited to the credit of the Treasurer of the United States and shall not be held by the customs officers to await any ascertainment of duties or the result of any litigation in relation to the rate or amount of duties legally chargeable and collectible in any case where money is so paid.

(June 17, 1930, ch. 497, title IV, § 512, 46 Stat. 734; Pub. L. 91–271, title III, § 301(q), June 2, 1970, 84 Stat. 290.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 3010, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 512, 42 Stat. 969, and was repealed by section 642 thereof. Section 512 of the 1922 act was superseded by section 512 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1970—Pub. L. 91–271 substituted references to customs officers for references to collectors wherever appearing.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1513. Customs officer's immunity

No customs officer shall be liable in any way to any person for or on account of—

(1) any ruling or decision regarding the appraisement or the classification of any imported merchandise or regarding the duties, fees, and taxes charged thereon,

(2) the collection of any dues, charges, duties, fees, and taxes on or on account of any imported merchandise, or

(3) any other matter or thing as to which any person might under this chapter be entitled to protest or appeal from the decision of such officer.

(June 17, 1930, ch. 497, title IV, § 513, 46 Stat. 734; Pub. L. 91–271, title III, § 301(r), June 2, 1970, 84 Stat. 290; Pub. L. 103–182, title VI, § 644, Dec. 8, 1993, 107 Stat. 2206.)

PRIOR PROVISIONS

Provisions substantially the same as those in this section, except that they did not specifically refer to

rulings or decisions as to appraisement, were contained in act Oct. 3, 1913, ch. 16, § III, Z, 38 Stat. 191, which reenacted without change the provisions of the Customs Administrative Act of June 10, 1890, ch. 407, § 25, 26 Stat. 141, as reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 103. Section III, Z, of the 1913 act was superseded and more closely assimilated to this section by act Sept. 21, 1922, ch. 356, title IV, § 513, 42 Stat. 969, and repealed by section 643 thereof. Section 513 of the 1922 act was superseded by section 513 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1993—Pub. L. 103–182 amended section generally. Prior to amendment, section read as follows: ''No customs officer shall be in any way liable to any owner, importer, consignee, or agent or any other person for or on account of any rulings or decisions as to the appraisement or the classification of any imported merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any other matter or thing as to which said owner, importer, consignee, or agent might under this chapter be entitled to protest or appeal from the decision of such officer.''

1970—Pub. L. 91–271 substituted ''customs officer'' for ''collector or other customs officer'' and ''such officer'' for ''such collector or other officer''.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1514. Protest against decisions of Customs Service

(a) Finality of decisions; return of papers

Except as provided in subsection (b) of this section, section 1501 of this title (relating to voluntary reliquidations), section 1516 of this title (relating to petitions by domestic interested parties), and section 1520 of this title (relating to refunds and errors), decisions of the Customs Service, including the legality of all orders and findings entering into the same, as to—

(1) the appraised value of merchandise;

(2) the classification and rate and amount of duties chargeable;

(3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 1337 of this title;

(5) the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof;

(6) the refusal to pay a claim for drawback; or

(7) the refusal to reliquidate an entry under section 1520(c) of this title;

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 within the time prescribed by section 2636 of that title. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the Customs Service, which shall take action accordingly.

(b) Finality of determinations

With respect to determinations made under section 1303[1] of this title or subtitle IV of this chapter which are reviewable under section 1516a of this title, determinations of the Customs Service are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 1516a of this title is commenced in the United States Court of International Trade, or review by a binational panel of a determination to which section 1516a(g)(2) of this title applies is commenced pursuant to section 1516a(g) of this title and article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement.

(c) Form, number, and amendment of protest; filing of protest

(1) A protest of a decision made under subsection (a) of this section shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically—

(A) each decision described in subsection (a) of this section as to which protest is made;

(B) each category of merchandise affected by each decision set forth under paragraph (1);

(C) the nature of each objection and the reasons therefor; and

(D) any other matter required by the Secretary by regulation.

Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. In addition, separate protests filed by different authorized persons with respect to any one category of merchandise, or with respect to a determination of origin under section 3332 of this title, that is the subject of a protest are deemed to be part of a single protest. A protest may be amended, under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) of this section which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 1515 of this title at any time prior to the disposition of the protest in accordance with that section.

(2) Except as provided in sections 1485(d) and 1557(b) of this title, protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section by—

[1] See References in Text note below.

(A) the importers or consignees shown on the entry papers, or their sureties;

(B) any person paying any charge or exaction;

(C) any person seeking entry or delivery;

(D) any person filing a claim for drawback;

(E) with respect to a determination of origin under section 3332 of this title, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a NAFTA Certificate of Origin covering the merchandise; or

(F) any authorized agent of any of the persons described in clauses (A) through (E).

(3) A protest of a decision, order, or finding described in subsection (a) of this section shall be filed with the Customs Service within ninety days after but not before—

(A) notice of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

A protest by a surety which has an unsatisfied legal claim under its bond may be filed within 90 days from the date of mailing of notice of demand for payment against its bond. If another party has not filed a timely protest, the surety's protest shall certify that it is not being filed collusively to extend another authorized person's time to protest as specified in this subsection.

(d) Limitation on protest of reliquidation

The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the Customs Service upon any question not involved in such reliquidation.

(e) Advance notice of certain determinations

Except as provided in subsection (f) of this section, an exporter or producer referred to in subsection (c)(2)(E) of this section shall be provided notice in advance of an adverse determination of origin under section 3332 of this title. The Secretary may, by regulations, prescribe the time period in which such advance notice shall be issued and authorize the Customs Service to provide in the notice the entry number and any other entry information considered necessary to allow the exporter or producer to exercise the rights provided by this section.

(f) Denial of preferential treatment

If the Customs Service finds indications of a pattern of conduct by an exporter or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 3332 of this title—

(1) the Customs Service, in accordance with regulations issued by the Secretary, may deny preferential tariff treatment to entries of identical goods exported or produced by that person; and

(2) the advance notice requirement in subsection (e) of this section shall not apply to that person;

until the person establishes to the satisfaction of the Customs Service that its representations are in conformity with section 3332 of this title.

(June 17, 1930, ch. 497, title IV, § 514, 46 Stat. 734; Pub. L. 91–271, title II, § 207, June 2, 1970, 84 Stat. 284; Pub. L. 96–39, title X, § 1001(b)(3), July 26, 1979, 93 Stat. 305; Pub. L. 96–417, title VI, §§ 601(5), 605, Oct. 10, 1980, 94 Stat. 1744; Pub. L. 98–573, title VI, § 612(b)(1), Oct. 30, 1984, 98 Stat. 3034; Pub. L. 99–514, title XVIII, § 1888(4), Oct. 22, 1986, 100 Stat. 2924; Pub. L. 100–449, title IV, § 403(b), Sept. 28, 1988, 102 Stat. 1884; Pub. L. 103–182, title II, § 208, title IV, § 412(a), title VI, § 645, Dec. 8, 1993, 107 Stat. 2097, 2146, 2206; Pub. L. 104–295, § 21(e)(7), Oct. 11, 1996, 110 Stat. 3531.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (a)(4), are classified generally to this title.

Section 1303 of this title, referred to in subsec. (b), is defined in section 1677(26) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

CODIFICATION

Section was formerly classified to former section 579 of this title subsequent to its classification to section 784 of title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 464, § 1, 62 Stat. 869.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 514, 42 Stat. 969. That section was superseded by section 514 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions that the decision of the collector as to duties, including dutiable costs and charges, and as to all fees and exactions, should be final and conclusive unless a protest was filed within 30 days after ascertainment and liquidation of duties, or within 15 days after payment of fees, charges and exactions, with further provisions as to fees, transmission of the papers to the Board of General Appraisers, etc., were contained in act Oct. 3, 1913, ch. 16, § III, N, 38 Stat. 187, the provisions of which were substituted for provisions of a similar nature in the Customs Administrative Act of June 10, 1890, ch. 407, § 14, 26 Stat. 137, as amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 100. Section III, N, of the 1913 act was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

Provisions relating to decisions of the collector, and appeals therefrom to the Secretary of the Treasury were contained in R.S. §§ 2931, 2932, prior to repeal by section 29 of the Customs Administrative Act, 26 Stat. 141.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–295 substituted "and section 1520 of this title (relating to refunds and errors)" for "section 1520 of this title (relating to refunds and errors), and section 1521 of this title (relating to reliquidations on account of fraud)".

1993—Pub. L. 103–182, § 645(7), amended section catchline generally.

Subsec. (a). Pub. L. 103–182, § 645(1), in introductory provisions, substituted "Customs Service" for "appropriate customs officer", in par. (5), inserted "or reconciliation as to the issues contained therein," after "entry,", in par. (6), substituted "or" for "and" at end, in par. (7), substituted a semicolon for the comma at end, and in concluding provisions, substituted "Customs Service, which" for "appropriate customs officer, who".

Subsec. (b). Pub. L. 103–182, § 645(2), substituted "Customs Service" for "appropriate customs officer".

Pub. L. 103–182, § 412(a), inserted "the North American Free Trade Agreement or" before "the United States-Canada Free-Trade Agreement".

Subsec. (c)(1). Pub. L. 103–182, § 208(1), inserted in fourth sentence ", or with respect to a determination of origin under section 3332 of this title," after "with respect to any one category of merchandise". See Construction of 1993 Amendment note below.

Pub. L. 103–182, § 645(3), substituted first two sentences, including subpars. (A) to (D), for former first sentence which read as follows: ''A protest of a decision under subsection (a) of this section shall be filed in writing with the appropriate customs officer designated in regulations prescribed by the Secretary, setting forth distinctly and specifically each decision described in subsection (a) of this section as to which protest is made; each category of merchandise affected by each such decision as to which protest is made; and the nature of each objection and reasons therefor.'' See Construction of 1993 Amendment note below.

Subsec. (c)(2). Pub. L. 103–182, § 208(2), added subpar. (E) and redesignated former subpar. (E) as (F) and substituted ''clauses (A) through (E)'' for ''clauses (A) through (D)''. See Construction of 1993 Amendment note below.

Pub. L. 103–182, § 645(5), designated last sentence of par. (1) as par. (2). Former par. (2) redesignated (3). See Construction of 1993 Amendment note below.

Subsec. (c)(3). Pub. L. 103–182, § 645(4), redesignated par. (2) as (3) and substituted ''the Customs Service'' for ''such customs officer'' in introductory provisions.

Subsec. (d). Pub. L. 103–182, § 645(6), substituted ''Customs Service'' for ''customs officer''.

Subsecs. (e), (f). Pub. L. 103–182, § 208(3), added subsecs. (e) and (f).

1988—Subsec. (b). Pub. L. 100–449 inserted '', or review by a binational panel of a determination to which section 1516a(g)(2) of this title applies is commenced pursuant to section 1516a(g) of this title and article 1904 of the United States-Canada Free-Trade Agreement'' before period at end.

1986—Subsec. (a). Pub. L. 99–514 struck out ''as defined in section 1677(9)(C), (D), (E), and (F) of this title'' after ''domestic interested parties''.

1984—Subsec. (a). Pub. L. 98–573 substituted ''section 1677(9)(C), (D), (E), and (F) of this title'' for ''section 1677(9)(C), (D), and (E) of this title'' in provisions preceding par. (1).

1980—Subsec. (a). Pub. L. 96–417, §§ 601(5), 605, redesignated the United States Customs Court as the United States Court of International Trade, inserted in item (4) provision for decisions as to a demand for redelivery to customs custody and the phrase '', except a determination appealable under section 1337 of this title'' and substituted provision for contesting denial of a protest in accordance with chapter 169 of title 28 within the time prescribed by section 2636 of that title for provision for such contest in accordance with section 2632 of title 28 within the time prescribed by section 2631 of that title.

Subsec. (b). Pub. L. 96–417, § 601(5), redesignated the United States Customs Court as the United States Court of International Trade.

1979—Subsec. (a). Pub. L. 96–39, § 1001(b)(3)(A), (B), inserted reference to subsection (b) of this section and substituted ''section 1516 of this title (relating to petitions by domestic interested parties as defined in section 1677(9)(C), (D), and (E) of this title)'' for ''section 1516 of this title (relating to petitions by American manufacturers, producers, and wholesalers)'' in provisions preceding par. (1).

Subsec. (b). Pub. L. 96–39, § 1001(b)(3)(D), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c)(1). Pub. L. 96–39, § 1001(b)(3)(C), (E), redesignated former subsec. (b)(1) as (c)(1) and substituted provisions that, except as provided in sections 1485(d) and 1557(b) of this title, protests may be filed by importers or consignees or their sureties, persons paying a charge or exaction, persons seeking entry or delivery, persons filing a claim for drawback, and authorized agents of such persons for provisions that, except as otherwise provided in section 1557(b) of this title, protests could be filed only by importers, consignees, or the authorized agents of persons paying any charges, or exactions, persons filing claims for drawback, or persons seeking entry or delivery.

Subsec. (c)(2). Pub. L. 96–39, § 1001(b)(3)(C), (F), redesignated former subsec. (b)(2) as (c)(2) and inserted provision that a protest by a surety which has an unsatisfied legal claim under its bond may be filed within 90 days from the date of mailing of notice of demand for payment against its bond and that, if another party has not filed a timely protest, the surety's protest shall certify that it is not being filed collusively to extend another authorized person's time to protest as specified in this subsection.

Subsec. (d). Pub. L. 96–39, § 1001(b)(3)(C), redesignated former subsec. (c) as (d).

1970—Pub. L. 91–271 designated existing provisions as subsec. (a), expanded references to sections excepted from application of this section, substituted decisions of the appropriate customs officer for all decisions of the collector as deemed to be final and conclusive, reorganized the categories of decisions and findings subject to such finality and conclusiveness, and revised the procedures for filing of protests, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 208 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], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

Amendment by section 412(a) 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 AND TERMINATION DATES OF 1988 AMENDMENT

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.

EFFECTIVE DATE 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 subtitle IV of this chapter, and to 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 a note under section 1671 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see sections 1002 and 107 of Pub. L. 96–39, set out as Effective Date notes under sections 1516a and 1671 of this title, respectively.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 208 of Pub. L. 103–182 to be made after amendment by section 645 of Pub. L. 103–182 is executed, see section 212 of Pub. L. 103–182, set out as a note under section 58c of this title.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury under this section insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979, set out as a note under section 1516a of this title, transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(D), 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.

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.

INCONSISTENT DECISIONS OF CUSTOMS OFFICERS

Pub. L. 100–690, title VII, § 7361(c), Nov. 18, 1988, 102 Stat. 4474, provided that:

''(1) The Secretary of the Treasury shall prescribe regulations that—

''(A) effect uniformity in—

''(i) decisions described in section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) that are made by customs officers with respect to the same, or substantially similar, merchandise, and

''(ii) decisions to conduct intensified inspections or examinations of merchandise at ports of entry, and

''(B) establish procedures that allow individuals described in section 514(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1514(c)(1)), any port authority, and any other interested party (within the meaning of section 516(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1516(a)(2))) to petition the Secretary to obtain such uniformity in an expedited and timely fashion.

''(2) The Secretary of the Treasury shall publish in the Federal Register and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the proposed and final form of the regulations prescribed under paragraph (1) and shall receive and consider comments from the public regarding the proposed form of such regulations during the 60-day period beginning on the date the proposed form of such regulations are published in the Federal Register.

''(3) The regulations prescribed under paragraph (1) shall take effect by no later than April 1, 1989.

''(4) By no later than September 1, 1989, the Secretary of the Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the effectiveness of the regulations prescribed under paragraph (1) and recommendations for permanent legislation addressing uniformity.''

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1499, 1509, 1515, 1557, 1592, 1593a, 2013, 3011, 3522 of this title; title 28 sections 2631, 2638.

§ 1515. Review of protests

(a) Administrative review and modification of decisions

Unless a request for an accelerated disposition of a protest is filed in accordance with subsection (b) of this section the appropriate customs officer, within two years from the date a protest was filed in accordance with section 1514 of this title, shall review the protest and shall allow or deny such protest in whole or in part. Thereafter, any duties, charge, or exaction found to have been assessed or collected in excess shall be remitted or refunded and any drawback found due shall be paid. Upon the request of the protesting party, filed within the time allowed for the filing of a protest under section 1514 of this title, a protest may be subject to further review by another appropriate customs officer, under the circumstances and in the form and manner that may be prescribed by the Secretary in regulations, but subject to the two-year limitation prescribed in the first sentence of this subsection. Notice of the denial of any protest shall be mailed in the form and manner prescribed by the Secretary. Such notice shall include a statement of the reasons for the denial, as well as a statement informing the protesting party of his right to file a civil action contesting the denial of a protest under section 1514 of this title.

(b) Request for accelerated disposition of protest

A request for accelerated disposition of a protest filed in accordance with section 1514 of this title may be mailed by certified or registered mail to the appropriate customs officer any time after ninety days following the filing of such protest. For purposes of section 1581 of title 28, a protest which has not been allowed or denied in whole or in part within thirty days following the date of mailing by certified or registered mail of a request for accelerated disposition shall be deemed denied on the thirtieth day following mailing of such request.

(c) Request for set aside of denial of further review

If a protesting party believes that an application for further review was erroneously or improperly denied or was denied without authority for such action, it may file with the Commissioner of Customs a written request that the denial of the application for further review be set aside. Such request must be filed within 60 days after the date of the notice of the denial. The Commissioner of Customs may review such request and, based solely on the information before the Customs Service at the time the application for further review was denied, may set aside the denial of the application for further review and void the denial of protest, if appropriate. If the Commissioner of Customs fails to act within 60 days after the date of the request, the request shall be considered denied. All denials of protests are effective from the date of original denial for purposes of section 2636 of title 28. If an action is commenced in the Court of International Trade that arises out of a protest or an application for further review, all administrative action pertaining to such protest or application shall terminate and any adminis-

trative action taken subsequent to the commencement of the action is null and void.

(d) Voiding denial of protest

If a protest is timely and properly filed, but is denied contrary to proper instructions, the Customs Service may on its own initiative, or pursuant to a written request by the protesting party filed with the appropriate port director within 90 days after the date of the protest denial, void the denial of the protest.

(June 17, 1930, ch. 497, title IV, § 515, 46 Stat. 734; Pub. L. 91–271, title II, § 208, June 2, 1970, 84 Stat. 285; Pub. L. 96–39, title X, § 1001(b)(2), July 26, 1979, 93 Stat. 304; Pub. L. 96–417, title VI, § 606, Oct. 10, 1980, 94 Stat. 1745; Pub. L. 103–182, title VI, § 617, Dec. 8, 1993, 107 Stat. 2179; Pub. L. 104–295, § 3(a)(11), Oct. 11, 1996, 110 Stat. 3516.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 515, 42 Stat. 970. That section was superseded by section 515 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions for transmission of the invoice, papers, and exhibits to the board of general appraisers in case of protest, and provisions concerning the conclusiveness of its determination, were contained in act Oct. 3, 1913, ch. 16, § III, N, 38 Stat. 187, the provisions of which were substituted for provisions of a similar nature in Customs Administrative Act of June 10, 1890, ch. 407, § 14, 26 Stat. 137, as amended by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 100.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–295 substituted ''port director'' for ''district director''.

1993—Subsecs. (c) and (d). Pub. L. 103–182 added subsecs. (c) and (d).

1980—Subsec. (b). Pub. L. 96–417 substituted reference to section ''1581'' for ''1582'' of title 28.

1979—Subsec. (a). Pub. L. 96–39 required that notice of denial include a statement of reasons for denial, as well as a statement informing protesting party of his right to file a civil action contesting denial of a protest under section 1514 of this title.

1970—Pub. L. 91–271 designating existing provisions as subsec. (a), substituted provisions authorizing review by appropriate customs officer for provisions authorizing review by collector and revised such review procedures, and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see sections 1002 and 107 of Pub. L. 96–39, set out as Effective Date notes under sections 1516a and 1671 of this title, respectively.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury under this section insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979, set out as a note under section 1516a of this title, transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(D), 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.

REVIEW OF PROTESTS IN IMPORT SURCHARGE CASES

Pub. L. 93–618, title VI, § 611, Jan. 3, 1975, 88 Stat. 2075, provided that: ''Notwithstanding the provisions of section 515(a) of the Tariff Act of 1930 (19 U.S.C. 1515(a)), in the case of any protest under section 514 of such Act [section 1514 of this title] involving the imposition of an import surcharge in the form of a supplemental duty pursuant to Presidential Proclamation 4074, dated August 17, 1971 [set out as a note preceding section 1202 of this title], the time for review and allowing or denying the protest shall not expire until five years from the date the protest was filed in accordance with such section 514 [section 1514 of this title].''

CROSS REFERENCES

Court of International Trade procedure, see section 2631 et seq. of Title 28, Judiciary and Judicial Procedure; Rules of Court, Title 28 Appendix.

Jurisdiction—

Court of Appeals for the Federal Circuit, see section 1295 of Title 28.

Court of International Trade, see section 1581 et seq. of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1514 of this title; title 28 sections 1581, 2631, 2632, 2635, 2636, 2637, 2638, 2639, 2640, 2644.

§ 1516. Petitions by domestic interested parties

(a) Request for classification and rate of duty; petition

(1) The Secretary shall, upon written request by an interested party furnish the classification and the rate of duty imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by such interested party. If the interested party believes that the appraised value, the classification, or rate of duty is not correct, it may file a petition with the Secretary setting forth—

(A) a description of the merchandise,

(B) the appraised value, the classification, or the rate of duty that it believes proper, and

(C) the reasons for its belief.

(2) As used in this section, the term ''interested party'' means a person who is—

(A) a manufacturer, producer, or wholesaler in the United States;

(B) 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; or

(C) a trade or business association a majority of whose members are manufacturers, producers, or wholesalers in the United States,

of goods of the same class or kind as the designated imported merchandise. Such term includes an association, a majority of whose members is composed of persons described in subparagraph (A), (B), or (C).

(3) Any producer of a raw agricultural product who is considered under section 1677(4)(E) of this title to be part of the industry producing a proc-

essed agricultural product of the same class or kind as the designated imported merchandise shall, for purposes of this section, be treated as an interested party producing such processed agricultural product.

(b) Determination on petition

If, after receipt and consideration of a petition filed by such an interested party, the Secretary determines that the appraised value, the classification, or rate of duty is not correct, he shall determine the proper appraised value, classification, or rate of duty and shall notify the petitioner of his determination. All such merchandise entered for consumption or withdrawn from warehouse for consumption more than thirty days after the date such notice to the petitioner is published in the weekly Customs Bulletin shall be appraised, classified, or assessed as to the rate of duty in accordance with the Secretary's determination.

(c) Contest by petitioner of appraised value, classification, or rate of duty

If the Secretary determines that the appraised value, classification, or rate of duty with respect to which a petition was filed pursuant to subsection (a) of this section is correct, he shall notify the petitioner. If dissatisfied with the determination of the Secretary, the petitioner may file with the Secretary, not later than thirty days after the date of the notification, notice that it desires to contest the appraised value, classification, or rate of duty. Upon receipt of notice from the petitioner, the Secretary shall cause publication to be made of his determination as to the proper appraised value, classification, or rate of duty and of the petitioner's desire to contest, and shall thereafter furnish the petitioner with such information as to the entries and consignees of such merchandise, entered after the publication of the determination of the Secretary, at such ports of entry designated by the petitioner in his notice of desire to contest, as will enable the petitioner to contest the appraised value, classification, or rate of duty imposed upon such merchandise in the liquidation of one such entry at such port. The Secretary shall direct the appropriate customs officer at such ports to immediately notify the petitioner by mail when the first of such entries is liquidated.

(d) Appraisal, classification, and liquidation of entries of merchandise covered by published decisions of Secretary

Notwithstanding the filing of an action pursuant to chapter 169 of title 28, merchandise of the character covered by the published decision of the Secretary (when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit, not in harmony with the published decision of the Secretary) shall be appraised or classified, or both, and the entries liquidated, in accordance with the decision of the Secretary and, except as otherwise provided in this chapter, the final liquidations of these entries shall be conclusive upon all parties.

(e) Consignee or his agent as party in interest before the Court of International Trade

The consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States Court of International Trade.

(f) Appraisement, classification, and assessment of duty of merchandise covered by published decision of Secretary in accordance with final judicial decision of Court of International Trade or Court of Appeals for the Federal Circuit sustaining cause of action in whole or in part; suspension of liquidation of entries; publication

If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, shall be subject to appraisement, classification, and assessment of duty in accordance with the final judicial decision in the action, and the liquidation of entries covering the merchandise so entered or withdrawn shall be suspended until final disposition is made of the action, whereupon the entries shall be liquidated, or if necessary, reliquidated in accordance with the final decision. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(g) Regulations implementing required procedures

Regulations shall be prescribed by the Secretary to implement the procedures required under this section.

(June 17, 1930, ch. 497, title IV, §516, 46 Stat. 735; June 25, 1938, ch. 679, §17(a), 52 Stat. 1084; June 25, 1948, ch. 646, §39, 62 Stat. 992; Pub. L. 91–271, title II, §209, June 2, 1970, 84 Stat. 286; Pub. L. 93–618, title III, §§321(f)(1), 331(b), Jan. 3, 1975, 88 Stat. 2048, 2052; Pub. L. 96–39, title X, §1001(b)(1), July 26, 1979, 93 Stat. 303; Pub. L. 96–417, title VI, §§601(6), 607, Oct. 10, 1980, 94 Stat. 1744, 1745; Pub. L. 97–164, title I, §163(a)(1), Apr. 2, 1982, 96 Stat. 49; Pub. L. 99–514, title XVIII, §1888(5), Oct. 22, 1986, 100 Stat. 2925; Pub. L. 100–418, title I, §1326(d)(3), Aug. 23, 1988, 102 Stat. 1204.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §516, 42 Stat. 970. That section was superseded by section 516 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Application of subsection (b) of this section to complaints. Section 17(b) of act June 25, 1938, provided that: "(b) The provisions of subsection (b) of section 516 of the Tariff Act of 1930 [this section], as amended by this Act, shall apply only in the case of complaints filed after the effective date of this Act [see section 1653a of this title]. The provisions of subsection (b) of section 516 of the Tariff Act of 1930, as in force prior to the effective date of this Act, shall continue in force with respect to any proceedings commenced by the filing of a complaint thereunder, except that upon the expiration

of thirty days after the effective date of this Act, or upon the expiration of thirty days after the date of a decision of the Secretary adverse to the complainant, whichever is the later, any such proceedings in which a protest has not been duly filed shall be deemed to have been terminated unless the complainant shall have filed with the Secretary after the effective date of this Act a notice that he desires to protest the classification of, or rate of duty assessed upon, the merchandise.''

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100–418 added par. (3).

1986—Subsec. (a)(2). Pub. L. 99–514 inserted ''Such term includes an association, a majority of whose members is composed of persons described in subparagraph (A), (B), or (C).''

1982—Subsecs. (d), (f). Pub. L. 97–164 substituted ''Court of Appeals for the Federal Circuit'' for ''Court of Customs and Patent Appeals''.

1980—Subsec. (a). Pub. L. 96–417, § 607(a), designated existing provisions as par. (1), redesignated as subpars. (A), (B), and (C), former pars. (1), (2), and (3), struck out ''(as defined in section 1677(9)(C), (D), and (E) of this title)'' after ''interested party'', covered in par. (2), and added par. (2).

Subsec. (d). Pub. L. 96–417, §§ 601(6), 607(b), redesignated the United States Customs Court as the United States Court of International Trade and substituted reference to chapter 169 for section 2632 of title 28.

Subsecs. (e), (f). Pub. L. 96–417, § 601(6), redesignated the United States Customs Court as the United States Court of International Trade.

1979—Pub. L. 96–39 completely revised the section to provide an expedited process for judicial review of an appealable determination, expanded the size of the group of parties having standing to obtain review of an appealable determination, and, in the process, revised subsecs. (a), (b), and (c), redesignated former subsecs. (e), (f), (g), and (h) as (d), (e), (f), and (g), and struck out former subsec. (d) relating to the contest of the Secretary's determination that foreign merchandise was not being sold in the United States at less than fair value or that bounty or grant was not being paid.

1975—Subsec. (a). Pub. L. 93–618, § 331(b), inserted provisions relating to additional duty described in section 1303 of this title (to be known as ''countervailing duties'') and to special duty described in section 161 of this title (to be known as ''antidumping duties'').

Subsecs. (b), (c). Pub. L. 93–618, § 331(b), inserted provisions relating to countervailing duties and antidumping duties.

Subsecs. (d) to (h). Pub. L. 93–618, § 321(f)(1), added subsec. (d) and redesignated subsecs. (d) to (g) as (e) to (h), respectively.

1970—Subsec. (a). Pub. L. 91–271 substituted provisions requiring the Secretary to furnish to the American manufacturer, producer, or wholesaler the classification, and the rate of duty, if any, imposed upon designated imported merchandise, and provisions authorizing the American manufacturer, etc., to file a protest with the Secretary if the appraised value is too low, the classification is not correct, or the proper rate of duty is not being assessed, for provisions setting forth the procedure for the determination of a protest by an American manufacturer, producer, or wholesaler that the appraised value of any imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him is too low.

Subsec. (b). Pub. L. 91–271 substituted provisions authorizing the Secretary to determine the proper appraised value, classification, or rate of duty of the imported merchandise, and to notify the American manufacturer, producer, or wholesaler of his determination, for provision setting forth the procedure for the determination of a protest by an American manufacturer, producer, or wholesaler that the classification of, and the rate of duty, if any, is not proper.

Subsec. (c). Pub. L. 91–271 substituted provisions setting forth the procedure for the petitioner to contest the decisions of the Secretary with respect to a petition filed pursuant to subsec. (a) of this section, for provisions requiring the collector to mail to the consignee or his agent a copy of every appeal and every protest filed by an American manufacturer, producer, or wholesaler, and authorizing such consignee or his agent to appear and be heard as a party in interest before the Customs Court.

Subsecs. (d) to (g). Pub. L. 91–271 added subsecs. (d) to (g).

1948—Subsec. (b). Act June 25, 1948, repealed last sentence relating to procedure of proceeding over all other cases on Customs Court docket. See sections 2602 and 2638 of Title 28, Judiciary and Judicial Procedure.

Subsec. (c). Act June 25, 1948, repealed last sentence relating to finality of Customs Court's decision. See section 2637 of Title 28.

Subsec. (d). Act June 25, 1948, repealed subsec. (d) relating to inspection of documents. See section 2634 of Title 28.

1938—Subsec. (b). Act June 25, 1938, amended subsec. (b) generally.

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 1982 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–39 effective Jan. 1, 1980, see sections 1002 and 107 of Pub. L. 96–39, set out as Effective Date notes under sections 1516a and 1671 of this title, respectively.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 321(g)(3) of Pub. L. 93–618 provided that: ''The amendment made by subsection (f) [amending this section and sections 2631 and 2632 of Title 28, Judiciary and Judicial Procedure] shall apply with respect to determinations under section 201 of the Antidumping Act, 1921 [section 160 of this title], resulting from questions of dumping raised or presented on or after the date of the enactment of this Act [Jan. 3, 1975].''

Amendment by section 331(b) of Pub. L. 93–618 effective Jan. 3, 1975, see section 331(d)(1) of Pub. L. 93–618, set out as a note under section 1315 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury under this section insofar as they relate to any protest, petition,

or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979, set out as a note under section 1516a of this title, transferred to Secretary of Commerce pursuant to Reorg. Plan No. 3 of 1979, § 5(a)(1)(D), 44 F.R. 69275, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1–107(a) of Ex. Ord. No. 11288, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 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.

APPLICATION OF SUBSECTION (b) TO COMPLAINTS

Section 17(b), (c) of act of June 25, 1938, as amended by act June 16, 1951, ch. 141, § 9(b), 65 Stat. 75, provided that:

''(b) The provisions of subsection (b) of section 516 of the Tariff Act of 1930 [this section], as amended by this act, shall apply only in the case of complaints filed after the effective date of this act [see Effective Date of 1938 Amendment note set out under section 1401 of this title]. The provisions of subsection (b) of section 516 of the Tariff Act of 1930, as in force prior to the effective date of this act, shall continue in force with respect to any proceedings commenced by the filing of a complaint thereunder, except that upon the expiration of thirty days after the effective date of this act, or upon the expiration of thirty days after the date of a decision of the Secretary adverse to the complainant, whichever is the later, any such proceedings in which a protest has not been duly filed shall be deemed to have been terminated unless the complainant shall have filed with the Secretary after the effective date of this act a notice that he desires to protest the classification of, or rate of duty assessed upon, the merchandise.

''(c) [Repealed. June 16, 1951, ch. 141, § 9(b), 65 Stat. 75.]''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1304, 1514, 3011 of this title; title 28 sections 1581, 2631, 2632, 2635, 2636, 2637, 2639, 2640.

§ 1516a. Judicial review in countervailing duty and antidumping duty proceedings

(a) Review of determination

(1) Review of certain determinations

Within 30 days after the date of publication in the Federal Register of—

(A) a determination by the administering authority, under 1671a(c)[1] or 1673a(c) of this title, not to initiate an investigation,

(B) a determination by the Commission, under section 1675(b) of this title, not to review a determination based upon changed circumstances,

(C) a negative determination by the Commission, under section 1671b(a) or 1673b(a) of this title, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation, or

(D) a final determination by the administering authority or the Commission under section 1675(c)(3) of this title,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) Review of determinations on record

(A) In general

Within thirty days after—

(i) the date of publication in the Federal Register of—

(I) notice of any determination described in clause (ii), (iii), (iv), (v), or (viii) of subparagraph (B),

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), or

(III) notice of the implementation of any determination described in clause (vii) of subparagraph (B), or

(ii) the date of mailing of a determination described in clause (vi) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) Reviewable determinations

The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the administering authority and by the Commission under section 1671d or 1673d of this title, including any negative part of such a determination (other than a part referred to in clause (ii)).

(ii) A final negative determination by the administering authority or the Commission under section 1671d or 1673d of this title, including, at the option of the appellant, any part of a final affirmative determination which specifically excludes any company or product.

(iii) A final determination, other than a determination reviewable under paragraph (1), by the administering authority or the Commission under section 1675 of this title.

(iv) A determination by the administering authority, under section 1671c or 1673c of this title, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net countervailable subsidy cal-

[1] So in original. Probably should be preceded by ''section''.

culated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

(v) An injurious effect determination by the Commission under section 1671c(h) or 1673c(h) of this title.

(vi) A determination by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

(vii) A determination by the administering authority or the Commission under section 3538 of this title concerning a determination under subtitle IV of this chapter.

(viii) A determination by the Commission under section 1675b(a)(1) of this title.

(3) Exception

Notwithstanding the limitation imposed by paragraph (2)(A)(i)(II) of this subsection, a final affirmative determination by the administering authority under section 1671d or 1673d of this title may be contested by commencing an action, in accordance with the provisions of paragraph (2)(A), within thirty days after the date of publication in the Federal Register of a final negative determination by the Commission under section 1671d or 1673d of this title.

(4) Procedures and fees

The procedures and fees set forth in chapter 169 of title 28 apply to an action under this section.

(5) Time limits in cases involving merchandise from free trade area countries

Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) of this section apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the day specified in whichever of the following subparagraphs applies:

(A) For a determination described in paragraph (1)(B) or clause (i), (ii) or (iii) of paragraph (2)(B), the 31st day after the date on which notice of the determination is published in the Federal Register.

(B) For a determination described in clause (vi) of paragraph (2)(B), the 31st day after the date on which the government of the relevant FTA country receives notice of the determination.

(C) For a determination with respect to which binational panel review has commenced in accordance with subsection (g)(8) of this section, the day after the date as of which—

(i) the binational panel has dismissed binational panel review of the determination for lack of jurisdiction, and

(ii) any interested party seeking review of the determination under paragraph (1), (2), or (3) of this subsection has provided timely notice under subsection (g)(3)(B) of this section.

If such an interested party files a summons and complaint under this subsection after dismissal by the binational panel, and if a request for an extraordinary challenge committee is made with respect to the decision by the binational panel to dismiss—

(I) judicial review under this subsection shall be stayed during consideration by the committee of the request, and

(II) the United States Court of International Trade shall dismiss the action if the committee vacates or remands the binational panel decision to dismiss.

(D) For a determination for which review by the United States Court of International Trade is provided for—

(i) under subsection (g)(12)(B) of this section, the day after the date of publication in the Federal Register of notice that article 1904 of the NAFTA has been suspended, or

(ii) under subsection (g)(12)(D) of this section, the day after the date that notice of settlement is published in the Federal Register.

(E) For a determination described in clause (vii) of paragraph (2)(B), the 31st day after the date on which notice of the implementation of the determination is published in the Federal Register.

(b) Standards of review

(1) Remedy

The court shall hold unlawful any determination, finding, or conclusion found—

(A) in an action brought under subparagraph (A), (B), or (C) of subsection (a)(1) of this section, to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

(B)(i) in an action brought under paragraph (2) of subsection (a) of this section, to be unsupported by substantial evidence on the record, or otherwise not in accordance with law, or

(ii) in an action brought under paragraph (1)(D) of subsection (a) of this section, to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) Record for review

(A) In general

For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

(i) a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 1677f(a)(3) of this title; and

(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(B) Confidential or privileged material

The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action

under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

(3) Effect of decisions by NAFTA or United States-Canada binational panels

In making a decision in any action brought under subsection (a) of this section, a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 of the NAFTA or of the Agreement.

(c) Liquidation of entries

(1) Liquidation in accordance with determination

Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) of this section shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) Injunctive relief

In the case of a determination described in paragraph (2) of subsection (a) of this section by the Secretary, the administering authority, or the Commission, the United States Court of International Trade may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

(3) Remand for final disposition

If the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(d) Standing

Any interested party who was a party to the proceeding under section 1303[2] of this title or subtitle IV of this chapter shall have the right to appear and be heard as a party in interest before the United States Court of International Trade. The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court.

(e) Liquidation in accordance with final decision

If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit—

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined under subsection (c)(2) of this section,

shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(f) Definitions

For purposes of this section—

(1) Administering authority

The term ''administering authority'' means the administering authority described in section 1677(1) of this title.

(2) Commission

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

(3) Interested party

The term ''interested party'' means any person described in section 1677(9) of this title.

(4) Secretary

The term ''Secretary'' means the Secretary of the Treasury.

(5) Agreement

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

(6) United States Secretary

The term ''United States Secretary'' means—

(A) the secretary for the United States Section referred to in article 1908 of the NAFTA, and

(B) the secretary of the United States Section provided for in article 1909 of the Agreement.

(7) Relevant FTA Secretary

The term ''relevant FTA Secretary'' means the Secretary—

(A) referred to in article 1908 of the NAFTA, or

(B) provided for in paragraph 5 of article 1909 of the Agreement,

of the relevant FTA country.

(8) NAFTA

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

[2] See References in Text note below.

(9) Relevant FTA country

The term ''relevant FTA country'' means the free trade area country to which an antidumping or countervailing duty proceeding pertains.

(10) Free trade area country

The term ''free trade area country'' means the following:

(A) Canada for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Canada.

(B) Mexico for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Mexico.

(C) Canada for such time as—

(i) it is not a free trade area country under subparagraph (A); and

(ii) the Agreement is in force with respect to, and the United States applies the Agreement to, Canada.

(g) Review of countervailing duty and antidumping duty determinations involving free trade area country merchandise

(1) "Determination" defined

For purposes of this subsection, the term ''determination'' means a determination described in—

(A) paragraph (1)(B) of subsection (a) of this section, or

(B) clause (i), (ii), (iii), or (vi) of paragraph (2)(B) of subsection (a) of this section,

if made in connection with a proceeding regarding a class or kind of free trade area country merchandise, as determined by the administering authority.

(2) Exclusive review of determination by binational panels

If binational panel review of a determination is requested pursuant to article 1904 of the NAFTA or of the Agreement, then, except as provided in paragraphs (3) and (4)—

(A) the determination is not reviewable under subsection (a) of this section, and

(B) no court of the United States has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise.

(3) Exception to exclusive binational panel review

(A) In general

A determination is reviewable under subsection (a) of this section if the determination sought to be reviewed is—

(i) a determination as to which neither the United States nor the relevant FTA country requested review by a binational panel pursuant to article 1904 of the NAFTA or of the Agreement,

(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a) of this section, if neither the United States nor the relevant FTA country requested review of the original determination,

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) of this section prior to the entry into force of the NAFTA or of the Agreement,

(iv) a determination which a binational panel has determined is not reviewable by the binational panel,

(v) a determination as to which binational panel review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA, or

(vi) a determination as to which extraordinary challenge committee review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA.

(B) Special rule

A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) of this section only if the party seeking to commence review has provided timely notice of its intent to commence such review to—

(i) the United States Secretary and the relevant FTA Secretary;

(ii) all interested parties who were parties to the proceeding in connection with which the matter arises; and

(iii) the administering authority or the Commission, as appropriate.

Such notice is timely provided if the notice is delivered no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) of this section that is applicable to such determination, except that, if the time for requesting binational panel review is suspended under paragraph (8)(A)(ii) of this subsection, any unexpired time for providing notice of intent to commence judicial review shall, during the pendency of any such suspension, also be suspended. Such notice shall contain such information, and be in such form, manner, and style, as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(4) Exception to exclusive binational panel review for constitutional issues

(A) Constitutionality of binational panel review system

An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or the United States-Canada Free-Trade Agreement Implementation Act of 1988 implementing the binational panel dispute settlement system under chapter 19 of the Agreement, violates the Constitution may be brought only in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of such action.

(B) Other constitutional review

Review is available under subsection (a) of this section with respect to a determination solely concerning a constitutional issue

(other than an issue to which subparagraph (A) applies) arising under any law of the United States as enacted or applied. An action for review under this subparagraph shall be assigned to a 3-judge panel of the United States Court of International Trade.

(C) Commencement of review

Notwithstanding the time limits in subsection (a) of this section, within 30 days after the date of publication in the Federal Register of notice that binational panel review has been completed, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action under subparagraph (A) or (B) by filing an action in accordance with the rules of the court.

(D) Transfer of actions to appropriate court

Whenever an action is filed in a court under subparagraph (A) or (B) and that court finds that the action should have been filed in the other court, the court in which the action was filed shall transfer the action to the other court and the action shall proceed as if it had been filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it is transferred.

(E) Frivolous claims

Frivolous claims brought under subparagraph (A) or (B) are subject to dismissal and sanctions as provided under section 1927 of title 28 and the Federal Rules of Civil Procedure.

(F) Security

(i) Subparagraph (A) actions

The security requirements of rule 65(c) of the Federal Rules of Civil Procedure apply with respect to actions commenced under subparagraph (A).

(ii) Subparagraph (B) actions

No claim shall be heard, and no temporary restraining order or temporary or permanent injunction shall be issued, under an action commenced under subparagraph (B), unless the party seeking review first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense parties affected for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction. If a court upholds the constitutionality of the determination in question in such action, the court shall award to a prevailing party fees and expenses, in addition to any costs incurred by that party, unless the court finds that the position of the other party was substantially justified or that special circumstances make an award unjust.

(G) Panel record

The record of proceedings before the binational panel shall not be considered part of the record for review pursuant to subparagraph (A) or (B).

(H) Appeal to Supreme Court of court orders issued in subparagraph (A) actions

Notwithstanding any other provision of law, any final judgment of the United States Court of Appeals for the District of Columbia Circuit which is issued pursuant to an action brought under subparagraph (A) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under subparagraph (A) may be issued by a single Justice of the Supreme Court.

(5) Liquidation of entries

(A) Application

In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c) of this section.

(B) General rule

In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

(C) Suspension of liquidation

(i) In general

Notwithstanding the provisions of subparagraph (B), in the case of a determination described in clause (iii) or (vi) of subsection (a)(2)(B) of this section for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the administering authority, upon request of an interested party who was a party to the proceeding in connection with which the matter arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.

(ii) Notice

At the same time as the interested party makes its request to the administering authority under clause (i), that party shall serve a copy of its request on the United States Secretary, the relevant FTA Sec-

retary, and all interested parties who were parties to the proceeding in connection with which the matter arises.

(iii) Application of suspension

If the interested party requesting continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in subparagraph (C), (D), (E), or (F) of section 1677(9) of this title, the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 of the NAFTA or of the Agreement.

(iv) Judicial review

Any action taken by the administering authority or the United States Customs Service under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(6) Injunctive relief

Except for cases under paragraph (4)(B), in the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the provisions of subsection (c)(2) of this section shall not apply.

(7) Implementation of international obligations under article 1904 of the NAFTA or the Agreement

(A) Action upon remand

If a determination is referred to a binational panel or extraordinary challenge committee under the NAFTA or the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this paragraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(B) Application if subparagraph (A) held unconstitutional

In the event that the provisions of subparagraph (A) are held unconstitutional under the provisions of subparagraphs (A) and (H) of paragraph (4), the provisions of this subparagraph shall take effect. In such event, the President is authorized on behalf of the United States to accept, as a whole, the decision of a binational panel or extraordinary challenge committee remanding the determination to the administering authority or the Commission within the period specified by the panel or committee. Upon acceptance by the President of such a decision, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with such decision. Any action taken by the President, the administering authority, or the Commission under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(8) Requests for binational panel review

(A) Interested party requests for binational panel review

(i) General rule

An interested party who was a party to the proceeding in which a determination is made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A), (B), or (E) of subsection (a)(5) of this section that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the NAFTA or of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(ii) Suspension of time to request binational panel review under the NAFTA

Notwithstanding clause (i), the time for requesting binational panel review shall be suspended during the pendency of any stay of binational panel review that is issued pursuant to paragraph 11(a) of article 1905 of the NAFTA.

(B) Service of request for binational panel review

(i) Service by interested party

If a request for binational panel review of a determination is filed under subparagraph (A), the party making the request shall serve a copy, by mail or personal service, on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(ii) Service by United States Secretary

If an interested party to the proceeding requests binational panel review of a de-

termination by filing a request with the relevant FTA Secretary, the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(C) Limitation on request for binational panel review

Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review of a determination under article 1904 of the NAFTA or the Agreement.

(9) Representation in panel proceedings

In the case of binational panel proceedings convened under chapter 19 of the NAFTA or of the Agreement, the administering authority and the Commission shall be represented by attorneys who are employees of the administering authority or the Commission, respectively. Interested parties who were parties to the proceeding in connection with which the matter arises shall have the right to appear and be represented by counsel before the binational panel.

(10) Notification of class or kind rulings

In the case of a determination which is described in paragraph (2)(B)(vi) of subsection (a) of this section and which is subject to the provisions of paragraph (2), the administering authority, upon request, shall inform any interested person of the date on which the Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement.

(11) Suspension and termination of suspension of article 1904 of the NAFTA

(A) Suspension of article 1904

If a special committee established under article 1905 of the NAFTA issues an affirmative finding, the Trade Representative may, in accordance with paragraph 8(a) or 9, as appropriate, of article 1905 of the NAFTA, suspend the operation of article 1904 of the NAFTA.

(B) Termination of suspension of article 1904

If a special committee is reconvened and makes an affirmative determination described in paragraph 10(b) of article 1905 of the NAFTA, any suspension of the operation of article 1904 of the NAFTA shall terminate.

(12) Judicial review upon termination of binational panel or committee review under the NAFTA

(A) Notice of suspension or termination of suspension of article 1904

(i) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) of this section that the operation of article 1904 of the NAFTA has been suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of suspension of article 1904 of the NAFTA.

(ii) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) of this section that the suspension of the operation of article 1904 of the NAFTA is terminated in accordance with paragraph 10 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of termination of suspension of article 1904 of the NAFTA.

(B) Transfer of final determinations for judicial review upon suspension of article 1904

If the operation of article 1904 of the NAFTA is suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA—

(i) upon the request of an authorized person described in subparagraph (C), any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a) of this section; or

(ii) in a case in which—

(I) a binational panel review was completed fewer than 30 days before the suspension, and

(II) extraordinary challenge committee review has not been requested,

upon the request of an authorized person described in subparagraph (C) which is made within 60 days after the completion of the binational panel review, the final determination that was the subject of the binational panel review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a) of this section.

(C) Persons authorized to request transfer of final determinations for judicial review

A request that a final determination be transferred to the Court of International Trade under subparagraph (B) may be made by—

(i) if the United States made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 8(a) of article 1905 of the NAFTA—

(I) the government of the relevant country described in subsection (f)(10)(A) or (B) of this section,

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired, or

(ii) if a country described in subsection (f)(10)(A) or (B) of this section made an al-

legation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 9 of article 1905 of the NAFTA—

(I) the government of that country,

(II) an interested party that is a person of that country and that was a party to the panel or committee review, or

(III) an interested party that is a person of that country and that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired.

(D) Transfer for judicial review upon settlement

(i) If the Trade Representative achieves a settlement with the government of a country described in subsection (f)(10)(A) or (B) of this section pursuant to paragraph 7 of article 1905 of the NAFTA, and referral for judicial review is among the terms of such settlement, any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall, upon a request described in clause (ii), be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a) of this section.

(ii) A request referred to in clause (i) is a request made by—

(I) the country referred to in clause (i),

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time for filing notices of appearance in the panel review has not expired.

(June 17, 1930, ch. 497, title IV, § 516A, as added Pub. L. 96–39, title X, § 1001(a), July 26, 1979, 93 Stat. 300; amended Pub. L. 96–417, title VI, §§ 601(7), 608, Oct. 10, 1980, 94 Stat. 1744, 1745; Pub. L. 96–542, § 2, Dec. 17, 1980, 94 Stat. 3210; Pub. L. 97–164, title I, § 163(a)(2), Apr. 2, 1982, 96 Stat. 49; Pub. L. 98–573, title VI, § 623(a), Oct. 30, 1984, 98 Stat. 3040; Pub. L. 99–514, title XVIII, § 1888(6), Oct. 22, 1986, 100 Stat. 2925; Pub. L. 100–449, title IV, § 401, Sept. 28, 1988, 102 Stat. 1878; Pub. L. 101–382, title I, § 134(a)(3), Aug. 20, 1990, 104 Stat. 649; Pub. L. 103–182, title IV, § 411, Dec. 8, 1993, 107 Stat. 2140; Pub. L. 103–465, title I, § 129(e), title II, §§ 220(b), 270(a)(1)(N), 271(b), Dec. 8, 1994, 108 Stat. 4838, 4864, 4917, 4921; Pub. L. 104–295, §§ 20(a)(1), 21(c)(3), 22, Oct. 11, 1996, 110 Stat. 3526, 3530, 3531.)

REFERENCES IN TEXT

Section 1303 of this title, referred to in subsec. (d), is defined in section 1677(26) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

The North American Free Trade Agreement Implementation Act, referred to in subsec. (g)(4)(A), is Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

The United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in subsec. (g)(4)(A), is Pub. L. 100–449, Sept. 28, 1988, 102 Stat. 1851, which is set out as a note under section 2112 of this title. For complete classification of this Act to the Code, see Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (g)(4)(E), (F), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

In the original, section 1001(a) of Pub. L. 96–39 directed that this section, designated as section 516A, be added to title V of the Tariff Act of 1930, however, since a title V of the Tariff Act of 1930 has not been enacted, this section was added to title IV of the Tariff Act of 1930 to reflect the probable intent of Congress.

AMENDMENTS

1996—Subsec. (a)(2)(A)(i)(I). Pub. L. 104–295, § 20(a)(1), inserted comma after ''subparagraph (B)''.

Subsec. (g)(4)(A). Pub. L. 104–295, § 22, substituted ''Agreement Implementation Act of 1988'' for ''Implementation Agreement Act of 1988''.

Subsec. (g)(12)(D). Pub. L. 104–295, § 21(c)(3), transferred designation ''(i)'' from heading to before sentence beginning ''If the Trade Representative''.

1994—Subsec. (a)(1)(D). Pub. L. 103–465, § 220(b)(1), added subpar. (D).

Subsec. (a)(2)(A)(i)(I). Pub. L. 103–465, § 271(b)(1), substituted ''(v), or (viii)'' for ''or (v)''.

Pub. L. 103–465, § 129(e)(1)(A)(i), struck out '', or'' after ''(B)''.

Subsec. (a)(2)(A)(i)(III). Pub. L. 103–465, § 129(e)(1)(A)(ii), added subcl. (III).

Subsec. (a)(2)(B)(iv). Pub. L. 103–465, § 270(a)(1)(N), inserted ''countervailable'' before ''subsidy''.

Subsec. (a)(2)(B)(vii). Pub. L. 103–465, § 129(e)(1)(B), added cl. (vii).

Subsec. (a)(2)(B)(viii). Pub. L. 103–465, § 271(b)(2), added cl. (viii).

Subsec. (a)(5)(E). Pub. L. 103–465, § 129(e)(2), added subpar. (E).

Subsec. (b)(1)(A). Pub. L. 103–465, § 220(b)(2)(A), substituted ''under subparagraph (A), (B), or (C) of subsection (a)(1) of this section'' for ''under paragraph (1) of subsection (a) of this section''.

Subsec. (b)(1)(B). Pub. L. 103–465, § 220(b)(2)(B), designated existing provisions as cl. (i), substituted '', or'' for period at end, and added cl. (ii).

Subsec. (g)(8)(A)(i). Pub. L. 103–465, § 129(e)(3), substituted ''(A), (B), or (E)'' for ''(A) or (B)''.

1993—Subsec. (a)(5). Pub. L. 103–182, § 411(1), amended par. (5) generally, substituting present provisions for provisions relating to time limits for commencing review in cases involving Canadian merchandise.

Subsec. (b)(3). Pub. L. 103–182, § 411(2), inserted ''NAFTA or'' after ''decisions by'' in heading and ''of the NAFTA or'' after ''article 1904'' in text.

Subsec. (f)(6), (7). Pub. L. 103–182, § 411(3)(A), amended pars. (6) and (7) generally, substituting present provisions for provisions which, in par. (6) defined ''United States Secretary'' as the secretary provided for in paragraph 4 of article 1909 of the United States-Canada Free-Trade Agreement, and in par. (7), defined ''Canadian Secretary'' as the secretary provided for in paragraph 5 of article 1909 of the Agreement.

Subsec. (f)(8) to (10). Pub. L. 103–182, § 411(3)(B), added pars. (8) to (10).

Subsec. (g). Pub. L. 103–182, § 411(4)(A), substituted ''free trade area country merchandise'' for ''Canadian merchandise'' in heading.

Subsec. (g)(1). Pub. L. 103–182, § 411(4)(B), substituted ''free trade area country merchandise'' for ''Canadian merchandise'' in concluding provisions.

Subsec. (g)(2). Pub. L. 103–182, § 411(4)(C), inserted ''of the NAFTA or'' after ''article 1904'' in introductory provisions.

Subsec. (g)(3)(A). Pub. L. 103–182, § 411(4)(D), in cl. (i), substituted ''nor the relevant FTA country'' for ''nor Canada'' and inserted ''of the NAFTA or'' before ''of the

Agreement'', in cl. (ii), substituted ''nor the relevant FTA country'' for ''nor Canada'', in cl. (iii), inserted ''of the NAFTA or'' before ''of the Agreement'' and struck out ''or'' at end, in cl. (iv), struck out ''under paragraph (2)(A)'' before ''is not reviewable'' and substituted a comma for period at end, and added cls. (v) and (vi).

Subsec. (g)(3)(B). Pub. L. 103–182, §411(4)(E), substituted first two sentences for former sentences which read as follows: ''A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) of this section only if the party seeking to commence review has provided timely notice of its intent to commence such review to the United States Secretary, the Canadian Secretary, all interested parties who were parties to the proceeding in connection with which the matter arises, and the administering authority or the Commission, as appropriate. Such notice is provided timely if the notice is delivered by no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) of this section that is applicable to such determination.''

Subsec. (g)(4)(A). Pub. L. 103–182, §411(4)(F), inserted ''the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or'' after ''or amendment made by,'', a comma before ''violates'', ''only'' after ''may be brought'', and '', which shall have jurisdiction of such action'' after ''Circuit'' and struck out at end ''Any action brought under this subparagraph shall be heard and determined by a 3-judge court in accordance with section 2284 of title 28.''

Subsec. (g)(5). Pub. L. 103–182, §411(4)(G), inserted ''of the NAFTA or'' after ''article 1904'' in subpars. (A), (B), and (C)(i), substituted '', the relevant FTA Secretary,'' for '', the Canadian Secretary,'' in subpar. (C)(ii), and inserted ''of the NAFTA or'' after ''chapter 19'' in subpar. (C)(iii).

Subsec. (g)(6). Pub. L. 103–182, §411(4)(H), inserted ''of the NAFTA or'' after ''article 1904''.

Subsec. (g)(7). Pub. L. 103–182, §411(4)(I)(i), inserted ''of the NAFTA or the Agreement'' in heading.

Subsec. (g)(7)(A). Pub. L. 103–182, §411(4)(I)(ii), (iii), substituted heading for one which read ''In general'' and inserted ''the NAFTA or'' before ''the Agreement''.

Subsec. (g)(8)(A). Pub. L. 103–182, §411(4)(J), designated existing provisions as cl. (i), inserted cl. heading, realigned margin, inserted ''of the NAFTA or'' after ''article 1904(4)'', and added cl. (ii).

Subsec. (g)(8)(B)(ii). Pub. L. 103–182, §411(4)(K), substituted ''relevant FTA Secretary'' for ''Canadian Secretary''.

Subsec. (g)(8)(C). Pub. L. 103–182, §411(4)(L), substituted ''of a determination under article 1904 of the NAFTA or the Agreement'' for ''under article 1904 of the Agreement of a determination''.

Subsec. (g)(9). Pub. L. 103–182, §411(4)(M), inserted ''of the NAFTA or'' after ''chapter 19''.

Subsec. (g)(10). Pub. L. 103–182, §411(4)(N), substituted ''Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement'' for ''Government of Canada received notice of the determination under article 1904(4) of the Agreement''.

Subsec. (g)(11), (12). Pub. L. 103–182, §411(4)(O), added pars. (11) and (12).

1990—Subsec. (a)(5)(A). Pub. L. 101–382, §134(a)(3)(A)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the date of publication in the Federal Register of—

''(i) notice of any determination described in paragraph (1)(B) or a determination described in clause (ii) or (iii) of paragraph (2)(B), or

''(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of paragraph (2)(B), or''.

Subsec. (a)(5)(C). Pub. L. 101–382, §134(a)(3)(A)(ii), added subpar. (C).

Subsec. (g)(3)(A)(iv). Pub. L. 101–382, §134(a)(3)(B)(i), added cl. (iv).

Subsec. (g)(3)(B). Pub. L. 101–382, §134(a)(3)(B)(ii), inserted ''or (iv)'' after ''subparagraph (A)(i)''.

1988—Subsec. (a)(5). Pub. L. 100–449, §401(a), added par. (5).

Subsec. (b)(3). Pub. L. 100–449, §401(d), added par. (3).

Subsec. (f)(5) to (7). Pub. L. 100–449, §401(b), added pars. (5) to (7).

Subsec. (g). Pub. L. 100–449, §401(c), added subsec. (g).

1986—Subsec. (a)(3). Pub. L. 99–514 substituted ''(2)(A)(i)(II)'' for ''(2)(A)(ii)''.

1984—Subsec. (a)(1). Pub. L. 98–573, §623(a)(1), amended par. (1) generally, and thereby struck out the designation ''(A)'' before ''Within 30 days'', redesignated former cls. (i) to (iii) as subpars. (A) to (C), respectively, in subpar. (A) as so redesignated struck out references to the Secretary and to section 1303(a)(3) of this title, in subpar. (B) as so redesignated struck out reference to the administering authority and to review of agreements based on changed circumstances, and struck out former subpar. (B), relating to a right of judicial review of certain determinations of the administering authority within 10 days after publication of notice of the determination in the Federal Register.

Subsec. (a)(2)(A). Pub. L. 98–573, §623(a)(2), inserted the designation ''(i)'' before ''the date of publication in the Federal Register of'', redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (a)(2)(B)(i). Pub. L. 98–573, §623(a)(3), amended cl. (i) generally and thereby struck out provisions referring to final affirmative determinations by the Secretary and by the Commission under section 1303 of this title, and inserted reference to any negative part of decisions under section 1671d or 1673d of this title.

Subsec. (a)(2)(B)(ii). Pub. L. 98–573, §623(a)(3), amended cl. (ii) generally and thereby struck out references to the Secretary and to section 1303 of this title and inserted provision relating to any part of a final affirmative determination which specifically excludes any company or product.

Subsec. (a)(2)(B)(iii). Pub. L. 98–573, §623(a)(3), amended cl. (iii) generally and thereby substituted provisions relating to final determinations by the administering authority or the Commission for provisions relating to determinations by the Secretary, the administering authority, or the Commission.

Subsec. (a)(2)(B)(iv). Pub. L. 98–573, §623(a)(3), amended cl. (iv) generally and thereby inserted provision relating to any final determination resulting from a continued investigation which changes the size of the dumping margin or net subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

Subsec. (a)(2)(B)(vi). Pub. L. 98–573, §623(a)(3), added cl. (vi).

Subsec. (a)(3), (4). Pub. L. 98–573, §623(a)(4), added par. (3) and redesignated former par. (3) as (4).

1982—Subsecs. (c)(1), (e). Pub. L. 97–164 substituted ''Court of Appeals for the Federal Circuit'' for ''Court of Customs and Patent Appeals''.

1980—Subsec. (a)(1). Pub. L. 96–417, §608(a), inserted subpar. ''(A) Thirty-day review'' heading; redesignated as cls. (i), (ii), and (iii) of subpar. (A) provisions formerly designated as subpars. (A), (C), and (D) of par. (1); inserted subpar. ''(B) Ten-day review'' heading and its introductory text; redesignated as cls. (i) and (ii) of subpar. (B) provisions formerly designated as subpars. (B) and (E) of par. (1), thus substituting ten-day for thirty-day review for such clauses; enacted provision respecting commencement of action by an interested party following subpars. (A) and (B), formerly enacted following only par. (1); and redesignated the United States Customs Court as the United States Court of International Trade in the latter provisions.

Subsec. (a)(2)(A). Pub. L. 96–417, §601(7), redesignated the United States Customs Court as the United States Court of International Trade.

Subsec. (a)(3). Pub. L. 96–542 substituted ''chapter 169 of title 28'' for ''subsections (b), (c), and (e) of chapter 169 of title 28''.

Pub. L. 96–417, §608(b), substituted ''chapter 169 of title 28'' for ''section 2632 of title 28''.

Subsec. (c)(1), (2). Pub. L. 96–417, §§601(7), 608(c), redesignated in pars. (1) and (2) the United States Customs Court as the United States Court of International Trade and deleted from par. (2) the criteria to be considered in ruling on an injunction, namely, the party likely to prevail, irreparable harm, public interest, and greater harm.

Subsec. (d). Pub. L. 96–417, §§601(7), 608(d), redesignated the United States Customs Court as the United States Court of International Trade and substituted requirement for notification of ''all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court'' for prior notice requirement to ''all interested parties of the filing of an action pursuant to this section''.

Subsec. (e). Pub. L. 96–417, §601(7), redesignated the United States Customs Court as the United States Court of International Trade.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 129(e) of Pub. L. 103–465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 130 of Pub. L. 103–465, set out as an Effective Date note under section 3531 of this title.

Amendment by sections 220(b), 270(a)(1)(N), and 271(b) of Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

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 AMENDMENT

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.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 applicable with respect to civil actions pending on, or filed on or after, Oct. 30, 1984, see section 626(b)(2) of Pub. L. 98–573, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 3 of Pub. L. 96–542 provided that: ''The amendments made by this Act [amending this section and provisions set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure] shall be effective as of November 1, 1980.''

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of title 28.

EFFECTIVE DATE; TRANSITIONAL RULES

Section 1002 of title X of Pub. L. 96–39 provided that:

''(a) EFFECTIVE DATE.—The amendments made by this title [enacting this section and amending sections 1514, 1515, and 1516 of this title and sections 1541, 1582, 2632, 2633, and 2637 of Title 28, Judiciary and Judicial Procedure] shall take effect on that date (hereinafter in this section referred to as the 'effective date') on which title VII of the Tariff Act of 1930 [subtitle IV of this chapter] (as added by title I of this Act) takes effect [Jan. 1, 1980]; and section 515(a) of such Act of 1930 [section 1515(a) of this title] (as amended by section 1001(b)(2)) shall apply with respect to any denial, in whole or in part, of a protest filed under section 514 of such Act of 1930 [section 1514 of this title] on or after the effective date.

''(b) TRANSITIONAL RULES.—

''(1) CERTAIN PROTESTS, PETITIONS, ACTIONS, ETC.—The amendments made by this title [enacting this section and amending sections 1514, 1515, and 1516 of this title and sections 1541, 1582, 2632, 2633, and 2637 of Title 28, Judiciary and Judicial Procedure] shall not apply with respect to—

''(A) any protest, petition, or notice of desire to contest filed before the effective date [Jan. 1, 1980] under section 514, 516(a), or 516(d), respectively, of the Tariff Act of 1930 [section 1514, 1516(a), or 1516(d) of this title];

''(B) any civil action commenced before the effective date [Jan. 1, 1980] under section 2632 of title 28 of the United States Code; or

''(C) any civil action commenced after the effective date [Jan. 1, 1980] under such section 2632 if the protest, petition, or notice of desire to contest (under section 514, 516(a), or 516(d), respectively, of the Tariff Act of 1930) on which such action is based was filed before such effective date.

''(2) LAW TO BE APPLIED FOR PURPOSES OF SUCH ACTIONS.—Notwithstanding the repeal of the Antidumping Act, 1921 [sections 160 to 171 of this title], by section 106(a) of this Act, and the amendment of section 303 of the Tariff Act of 1930 [section 1303 of this title] by section 103 of this Act, the law in effect on the date of any finding or determination contested in a civil action described in subparagraph (A), (B), or (C) of paragraph (1) shall be applied for purposes of that action.

''(3) CERTAIN COUNTERVAILING AND ANTIDUMPING DUTY ASSESSMENTS.—The amendments made by this title [enacting this section and amending sections 1514, 1515, and 1516 of this title and sections 1541, 1582, 2632, 2633, and 2637 of Title 28, Judiciary and Judicial Procedure] shall apply with respect to the review of the assessment of, or failure to assess, any countervailing duty or antidumping duty on entries subject to a countervailing duty order or antidumping finding if the assessment is made after the effective date. If no assessment of such duty had been made before the effective date that could serve the party seeking review as the basis of a review of the underlying determination, made by the Secretary of the Treasury or the International Trade Commission before the effective date, on which such order, finding, or lack thereof is based, then the underlying determination shall be subject to review in accordance with the law in effect on the day before the effective date.

''(4) CERTAIN COUNTERVAILING AND ANTIDUMPING DUTY DETERMINATIONS.—With respect to any preliminary determination or final determination of the Secretary of the Treasury under section 303 of the Tariff Act of 1930 [section 1303 of this title] or the Antidumping Act, 1921 [sections 160 to 171 of this title],

which is treated under section 102 of this Act [set out as a note under section 1671 of this title] as if made under section 703(b), 705(a), 733(b), or 735(a) of the Tariff Act of 1930 [section 1671b(b), 1671d(a), 1673b(b), or 1673d(a) of this title] (as added by title I of this Act) such determinations shall be subject to judicial review in the same manner and to the same extent as if made on the day before the effective date.''

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.

ACCEPTANCE BY PRESIDENT OF PANEL AND COMMITTEE DECISIONS

For acceptance by President of decisions of binational panels and extraordinary challenge committees in event that subsec. (b)(7)(B) of this section takes effect, see section 2 of Ex. Ord. No. 12889, Dec. 27, 1993, 58 F.R. 69681, set out as a note under section 3311 of this title.

For provision that in the event that subsec. (g)(7)(B) of this section takes effect, the President accepts, as a whole, all decisions of binational panels and extraordinary challenge committees, see section 3 of Ex. Ord. No. 12662, Dec. 31, 1988, 54 F.R. 785, set out as a note under section 2112 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1514, 1675, 1675b, 1676a, 1677f, 1677n, 3451 of this title; title 28 sections 1581, 2201, 2631, 2632, 2635, 2636, 2639, 2640, 2643.

§§ 1517 to 1519. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section 1517, act June 17, 1930, ch. 497, title IV, § 517, 46 Stat. 737, related to frivolous protest or appeal. See section 2641 of Title 28, Judiciary and Judicial Procedure.

Section 1518, acts June 10, 1890, ch. 407, § 12, 26 Stat. 136; May 27, 1908, ch. 205, § 3, 35 Stat. 406; Aug. 5, 1909, ch. 6, § 28, 36 Stat. 98; May 28, 1926, ch. 411, § 1, 44 Stat. 669; June 17, 1930, ch. 497, title IV, § 518, 46 Stat. 737, related to the judges of the United States Customs Court: their appointment, salary, retirement, vacancies, and powers; the control of the fiscal affairs and of the clerical force of the court; and the division of the court. See sections 251 to 254, 456, 1581, 2071, 2639, and 2640 of Title 28, Judiciary and Judicial Procedure. Last sentence of section, relating to the transfer of unexpended appropriations for salaries to be available for expenditures for the same purposes, was omitted as executed.

Section 1519, act June 17, 1930, ch. 497, title IV, § 519, 46 Stat. 739, related to publication of Customs Court's decisions. See section 255 of Title 28, Judiciary and Judicial Procedure.

§ 1520. Refunds and errors

(a) Cases in which refunds authorized

The Secretary of the Treasury is authorized to refund duties or other receipts in the following cases:

(1) *Excess deposits.*—Whenever it is ascertained on liquidation or reliquidation of an entry or reconciliation that more money has been deposited or paid as duties than was required by law to be so deposited or paid;

(2) *Fees, charges, and exactions.*—Whenever it is determined in the manner required by law that any fees, charges, or exactions, other than duties and taxes, have been erroneously or excessively collected; and

(3) *Fines, penalties, and forfeitures.*—Whenever money has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted.

(4) *Prior to liquidation.*—Prior to the liquidation of an entry or reconciliation, whenever it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid by reason of clerical error.

(b) Authorization of appropriations

The necessary moneys to make such refunds are authorized to be appropriated annually from the general fund of the Treasury.

(c) Reliquidation of entry or reconciliation

Notwithstanding a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry or reconciliation to correct—

(1) a clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in electronic transmission, not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the Customs Service within one year after the date of liquidation or exaction; or

(2) any assessment of duty on household or personal effects in respect of which an application for refund has been filed, with such employee as the Secretary of the Treasury shall designate, within one year after the date of entry.

(d) Goods qualifying under NAFTA rules of origin

Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties paid on a good qualifying under the rules of origin set out in section 3332 of this title for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

(1) a written declaration that the good qualified under those rules at the time of importation;

(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 1508(b)(1) of this title); and

(3) such other documentation relating to the importation of the goods as the Customs Service may require.

(June 17, 1930, ch. 497, title IV, § 520, 46 Stat. 739; June 26, 1934, ch. 756, § 2, 48 Stat. 1225; June 25, 1938, ch. 679, § 18, 52 Stat. 1086; Aug. 8, 1953, ch. 397, § 20, 67 Stat. 519; Pub. L. 91–271, title II, § 210, June 2, 1970, 84 Stat. 287; Pub. L. 95–410, title II, § 210, Oct. 3, 1978, 92 Stat. 903; Pub. L. 98–573, title II, §§ 210(b), 212(c)(B), formerly § 212(b)(7)(B), Oct. 30, 1984, 98 Stat. 2977, 2984, renumbered Pub. L. 99–514, title XVIII, § 1889(3), Oct. 22, 1986, 100 Stat. 2925; Pub. L. 103–182, title II, § 206, title VI, §§ 642(b), 646, Dec. 8, 1993, 107 Stat. 2095, 2205, 2207.)

CODIFICATION

Act June 26, 1934, effective July 1, 1935, provided for repeal of certain permanent appropriations authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury.

PRIOR PROVISIONS

This section, as originally enacted, contained a paragraph (b) making a permanent appropriation of the moneys necessary to make refunds. Effective July 1, 1935, paragraph (b) was repealed by act June 26, 1934, ch. 756, § 2, 48 Stat. 1225, such act authorizing, in lieu thereof, an annual appropriation from the general fund of the Treasury.

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 520, 42 Stat. 973. That section was superseded by section 520 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions somewhat similar to those in subdivisions (1) and (3) of paragraph (a) for refund of moneys paid on account of unascertained or estimated duties or payments on appeal, and for correction of clerical errors within one year, with further provisions making an appropriation and requiring reports to Congress of moneys refunded, were contained in act Oct. 3, 1913, ch. 16, § III, Y, 38 Stat. 191, which reenacted the provisions of Customs Administrative Act June 10, 1890, ch. 407, § 24, 26 Stat. 140, as renumbered and reenacted by Payne-Aldrich Tariff Act of August 5, 1909, ch. 6, § 28, 36 Stat. 103. Said section III, Y, of the 1913 act was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

Provisions concerning the refund of moneys collected as duties in accordance with any decision, etc., of the Secretary of the Treasury, with provisos concerning reliquidations, correction of errors, household effects and other articles exempt from duty, were contained in act March 3, 1875, ch. 136, 18 Stat. 469, which was also repealed by section 643 of the act of Sept. 21, 1922.

R.S. § 3011 (as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, and act Feb. 1, 1888, ch. 4, 25 Stat. 6) and section 3012, relative to actions to recover duties paid under protest, and sections 3012½ and 3013, relative to refunds, were repealed by the Customs Administrative Act of June 10, 1890, ch. 407, § 29. 26 Stat. 141.

Act June 7, 1924, ch. 357, 43 Stat. 660, authorizing the remission of unpaid customs duties on material belonging to the United States and theretofore imported by the War Department, was omitted from the Code as temporary.

AMENDMENTS

1993—Subsec. (a)(1), (4). Pub. L. 103–182, § 646(1), inserted ''or reconciliation'' after ''entry''.

Subsec. (c). Pub. L. 103–182, § 646(2)(A), (B), substituted ''Customs Service'' for ''appropriate customs officer'' and inserted ''or reconciliation'' after ''entry'' in introductory provisions.

Subsec. (c)(1). Pub. L. 103–182, § 646(2)(A), (C), inserted '', whether or not resulting from or contained in electronic transmission,'' before ''not amounting to'', and substituted ''Customs Service'' for ''appropriate customs officer''.

Subsec. (d). Pub. L. 103–182, § 206, added subsec. (d). See Construction of 1993 Amendment note below.

Pub. L. 103–182, § 642(b), struck out subsec. (d) which read as follows: ''If a determination is made to reliquidate an entry as a result of a protest filed under section 1514 of this title or an application for relief made under subsection (c)(1) of this section, or if reliquidation is ordered by an appropriate court, interest shall be allowed on any amount paid as increased or additional duties under section 1505(c) of this title at the annual rate established pursuant to that section and determined as of the 15th day after the date of liquidation or reliquidation. The interest shall be calculated from the date of payment to the date of (1) the refund, or (2) the filing of a summons under section 2632 of title 28, whichever occurs first.'' See Construction of 1993 Amendment note below.

1984—Subsec. (a)(4). Pub. L. 98–573, § 212(b)(7)(B), added par. (4).

Subsec. (d). Pub. L. 98–573, § 210(b), added subsec. (d).

1978—Subsec. (c)(1). Pub. L. 95–410 substituted ''appropriate customs officer within one year after the date of liquidation or exaction'' for ''customs service within one year after the date of entry, or transaction, or within ninety days after liquidation or exaction when the liquidation or exaction is made more than nine months after the date of the entry, or transaction''.

1970—Subsec. (c). Pub. L. 91–271 in introductory material substituted ''the appropriate customs officer may, in accordance with regulations prescribed by the Secretary,'' for ''the Secretary of the Treasury may authorize a collector to'', and in par. (1) struck out ''appraisement'' wherever appearing and substituted ''ninety'' and ''nine'' for ''sixty'' and ''ten'', respectively.

1953—Subsec. (c)(1). Act Aug. 8, 1953, extended the relief provision to situations involving clerical errors, mistakes of fact, or any other inadvertence not amounting to an error in the construction of a law, in any entry, liquidation, appraisement or other customs transaction, when such error, mistake or other inadvertence is adverse to the record or established by written evidence.

Subsec. (c)(2). Act Aug. 8, 1953, permitted correction of assessments of duty on household or personal effects which are subject to duty.

1938—Subsecs. (b), (c). Act June 25, 1938, added subsecs. (b) and (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 206 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], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 210(b) of Pub. L. 98–573 applicable with respect to determinations made or ordered on or after Oct. 30, 1984, see section 214(c)(5)(B) of Pub. L. 98–573, set out as a note under section 1304 of this title.

Amendment by section 212 of Pub. L. 98–573 effective on close of 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise spe-

cifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

CONSTRUCTION OF 1993 AMENDMENT

Amendment by section 206 of Pub. L. 103–182 to be made after amendment by section 642(b) of Pub. L. 103–182 is executed, see section 212 of Pub. L. 103–182, set out as a note under section 58c 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.

AVAILABILITY OF TRANSPORTATION AND STORAGE FACILITIES FOR MILITARY PURPOSES

Act Sept. 29, 1942, ch. 567, 56 Stat. 761, authorized removal of merchandise in bond or customs custody from transportation and storage facilities needed for military purposes, prior to repeal by act July 25, 1947, ch. 327, § 1, 61 Stat. 449.

CROSS REFERENCES

Appropriation account covering ''Refunding moneys erroneously received and covered (Customs)'' abolished and unobligated balances transferred to surplus fund of Treasury, see section 1322 of Title 31, Money and Finance.

Provisions for abatement and refund of duties in case of injury to goods while in any public or private warehouse under bond, see section 1563 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1505, 1509, 1514 of this title.

§ 1521. Repealed. Pub. L. 103–182, title VI, § 618, Dec. 8, 1993, 107 Stat. 2180

Section, acts June 17, 1930, ch. 497, title IV, § 521, 46 Stat. 739; June 2, 1970, Pub. L. 91–271, title III, § 301(b), 84 Stat. 287, provided for reliquidation of entry on account of fraud.

§ 1522. Omitted

CODIFICATION

Section, act June 17, 1930, ch. 497, title IV, § 522, 46 Stat. 739, amended section 372 of former Title 31. See section 5151 of Title 31, Money and Finance.

§ 1523. Examination of accounts

The Secretary of the Treasury or such officer or employee as he shall designate, shall, under regulations and instructions prescribed by the Secretary—

(1) examine the customs officers' accounts of receipts and disbursements of money and receipts and disposition of merchandise; and

(2) verify, to such extent as the Secretary of the Treasury shall direct, assessments of duties and taxes and allowances of drawback.

(June 17, 1930, ch. 497, title IV, § 523, 46 Stat. 740; Aug. 8, 1953, ch. 397, § 2(d), 67 Stat. 508; Pub. L. 91–271, title III, § 301(s), June 2, 1970, 84 Stat. 290.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 523, 42 Stat. 974. That section was superseded by section 523 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1970—Pub. L. 91–271 substituted reference to customs officers for reference to collectors.

1953—Act Aug. 8, 1953, amended section generally by eliminating the provision continuing ''naval officers of customs'' as ''Comptrollers of Customs''; by substituting the reference to ''The Secretary of the Treasury or such officer or employee as he shall designate'' for references to the comptrollers of customs; and, among other changes, substituting the provision that the verification of assessments of duties and allowances of drawbacks should be to such extent as the Secretary of the Treasury directs, for the former provision requiring such verification in all cases.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

§ 1524. Deposit of reimbursable charges

Receipts for any reimbursable charges or expenses which have been paid for out of any appropriation for collecting the revenue from customs shall be deposited as a refund to such appropriation instead of being covered into the Treasury as miscellaneous receipts, as provided by section 527 of this title.

(June 17, 1930, ch. 497, title IV, § 524, 46 Stat. 741; June 25, 1938, ch. 679, § 19(b), 52 Stat. 1087.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 524, 42 Stat. 975. That section was superseded by section 524 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1938—Act June 25, 1938, amended section generally.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58c, 1613b, 1755 of this title.

§ 1525. Repealed. Pub. L. 89–762, § 2, Nov. 5, 1966, 80 Stat. 1312

Section, act June 17, 1930, ch. 497, title IV, § 525, 46 Stat. 741, authorized the Secretary of the Treasury to employ not more than ten persons in the District of Columbia who have been detailed from the field force of the Customs Service.

§ 1526. Merchandise bearing American trademark

(a) Importation prohibited

Except as provided in subsection (d) of this section, it shall be unlawful to import into the

United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trademark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent and Trademark Office by a person domiciled in the United States, under the provisions of sections 81 to 109 of title 15, and if a copy of the certificate of registration of such trademark is filed with the Secretary of the Treasury, in the manner provided in section 106 of said title 15, unless written consent of the owner of such trademark is produced at the time of making entry.

(b) Seizure and forfeiture

Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

(c) Injunction and damages

Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trademark and shall be liable for the same damages and profits provided for wrongful use of a trade-mark, under the provisions of sections 81 to 109 of title 15.

(d) Exemptions; publication in Federal Register; forfeitures; rules and regulations

(1) The trademark provisions of this section and section 1124 of title 15, do not apply to the importation of articles accompanying any person arriving in the United States when such articles are for his personal use and not for sale if (A) such articles are within the limits of types and quantities determined by the Secretary pursuant to paragraph (2) of this subsection, and (B) such person has not been granted an exemption under this subsection within thirty days immediately preceding his arrival.

(2) The Secretary shall determine and publish in the Federal Register lists of the types of articles and the quantities of each which shall be entitled to the exemption provided by this subsection. In determining such quantities of particular types of trade-marked articles, the Secretary shall give such consideration as he deems necessary to the numbers of such articles usually purchased at retail for personal use.

(3) If any article which has been exempted from the restrictions on importation of the trade-mark laws under this subsection is sold within one year after the date of importation, such article, or its value (to be recovered from the importer), is subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not subject to the provisions of this paragraph.

(4) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this subsection.

(e) Merchandise bearing counterfeit mark; seizure and forfeiture; disposition of seized goods

Any such merchandise bearing a counterfeit mark (within the meaning of section 1127 of title 15) imported into the United States in violation of the provisions of section 1124 of title 15, shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may obliterate the trademark where feasible and dispose of the goods seized—

(1) by delivery to such Federal, State, and local government agencies as in the opinion of the Secretary have a need for such merchandise,

(2) by gift to such eleemosynary institutions as in the opinion of the Secretary have a need for such merchandise, or

(3) more than 90 days after the date of forfeiture, by sale by the Customs Service at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2).

(f) Civil penalties

(1) Any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under subsection (e) of this section shall be subject to a civil fine.

(2) For the first such seizure, the fine shall be not more than the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, determined under regulations promulgated by the Secretary.

(3) For the second seizure and thereafter, the fine shall be not more than twice the value that the merchandise would have had if it were genuine, as determined under regulations promulgated by the Secretary.

(4) The imposition of a fine under this subsection shall be within the discretion of the Customs Service, and shall be in addition to any other civil or criminal penalty or other remedy authorized by law.

(June 17, 1930, ch. 497, title IV, § 526, 46 Stat. 741; Pub. L. 93–596, § 3, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 95–410, title II, § 211(a), (c), Oct. 3, 1978, 92 Stat. 903; Pub. L. 103–182, title VI, § 663, Dec. 8, 1993, 107 Stat. 2214; Pub. L. 104–153, §§ 9, 10, July 2, 1996, 110 Stat. 1388.)

REFERENCES IN TEXT

Sections 81 to 109 of title 15, referred to in subsecs. (a) and (c), were repealed by act July 5, 1946, ch. 540, § 46(a), 61 Stat. 444. See sections 1051 to 1127, respectively, of Title 15, Commerce and Trade.

Section 106 of title 15, referred to in subsec. (a), was repealed by act July 15, 1946, ch. 540, § 46(a), 60 Stat. 444. See section 1124 of Title 15.

The customs laws, referred to in subsec. (b), are classified generally to this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 526, 42

Stat. 975. That section was superseded by section 526 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–153, § 9, inserted ''destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may'' after ''shall, after forfeiture,'' in second sentence, inserted ''or'' at end of par. (2), substituted period for '', or'' at end of par. (3), and struck out par. (4) which read as follows: ''if the merchandise is unsafe or a hazard to health, by destruction.''

Subsec. (f). Pub. L. 104–153, § 10, added subsec. (f).

1993—Subsec. (e)(3). Pub. L. 103–182 substituted ''90 days'' for ''1 year'' and ''the Customs Service'' for ''appropriate customs officers''.

1978—Subsec. (a). Pub. L. 95–410, § 211(a)(1), substituted ''Except as provided in subsection (d) of this section, it'' for ''It''.

Subsec. (d). Pub. L. 95–410, § 211(a)(2), added subsec. (d).

Subsec. (e). Pub. L. 95–410, § 211(c), added subsec. (e).

CHANGE OF NAME

''Patent and Trademark Office'' substituted for ''Patent Office'' in subsec. (a) pursuant to Pub. L. 93–596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

CROSS REFERENCES

False designations of origin and false descriptions forbidden, see section 1125 of Title 15, Commerce and Trade.

Importation of goods bearing infringing marks or names forbidden, see section 1124 of Title 15.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 1124; title 48 section 1643.

§ 1527. Importation of wild mammals and birds in violation of foreign law

(a) Importation prohibited

If the laws or regulations of any country, dependency, province, or other subdivision of government restrict the taking, killing, possession, or exportation to the United States, of any wild mammal or bird, alive or dead, or restrict the exportation to the United States of any part or product of any wild mammal or bird, whether raw or manufactured, no such mammal or bird, or part or product thereof, shall, after the expiration of ninety days after June 17, 1930, be imported into the United States from such country, dependency, province, or other subdivision of government, directly or indirectly, unless accompanied by a certification of the United States consul, for the consular district in which is located the port or place from which such mammal or bird, or part or product thereof, was exported from such country, dependency, province, or other subdivision of government, that such mammal or bird, or part or product thereof, has not been acquired or exported in violation of the laws or regulations of such country, dependency, province, or other subdivision of government.

(b) Forfeiture

Any mammal or bird, alive or dead, or any part or product thereof, whether raw or manufactured, imported into the United States in violation of the provisions of the preceding subdivision shall be subject to seizure and forfeiture under the customs laws. Any such article so forfeited may, in the discretion of the Secretary of the Treasury and under such regulations as he may prescribe, be placed with the departments or bureaus of the Federal or State Governments, or with societies or museums, for exhibition or scientific or educational purposes, or destroyed, or (except in the case of heads or horns of wild mammals) sold in the manner provided by law.

(c) Section not to apply in certain cases

The provisions of this section shall not apply in the case of—

(1) Prohibited importations

Articles the importation of which is prohibited under the provisions of this chapter, or of section 42(a) of title 18, or of any other law;

(2) Scientific or educational purposes

Wild mammals or birds, alive or dead, or parts or products thereof, whether raw or manufactured, imported for scientific or educational purposes;

(3) Certain migratory game birds

Migratory game birds (for which an open season is provided by the laws of the United States and any foreign country which is a party to a treaty with the United States, in effect on the date of importation, relating to the protection of such migratory game birds) brought into the United States by bona fide sportsmen returning from hunting trips in such country, if at the time of importation the possession of such birds is not prohibited by the laws of such country or of the United States.

(June 17, 1930, ch. 497, title IV, § 527, 46 Stat. 741.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (b), are classified generally to this title.

CODIFICATION

In subsec. (c)(1), ''section 42(a) of title 18'' substituted for ''section 241 of the Criminal Code [18 U.S.C. 391]'' on authority of act June 25, 1948, ch. 645, 62 Stat. 683, the first section of which enacted Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 1540.

§ 1528. Taxes not to be construed as duties

No tax or other charge imposed by or pursuant to any law of the United States shall be construed to be a customs duty for the purpose of any statute relating to the customs revenue, unless the law imposing such tax or charge designates it as a customs duty or contains a provision to the effect that it shall be treated as a duty imposed under the customs laws. Nothing in this section shall be construed to limit or restrict the jurisdiction of the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit.

(June 17, 1930, ch. 497, title IV, § 528, as added June 25, 1938, ch. 679, § 20, 52 Stat. 1087; amended Pub. L. 96–417, title VI, § 601(8), Oct. 10, 1980, 94

Stat. 1744; Pub. L. 97–164, title I, § 163(a)(3), Apr. 2, 1982, 96 Stat. 49.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to this title.

AMENDMENTS

1982—Pub. L. 97–164 substituted ''Court of Appeals for the Federal Circuit'' for ''Court of Customs and Patent Appeals''.

1980—Pub. L. 96–417 redesignated the United States Customs Court as the United States Court of International Trade.

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE

Section effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as an Effective Date of 1938 Amendment note under section 1401 of this title.

§ 1529. Collection of fees on behalf of other agencies

The Customs Service shall be reimbursed from the fees collected for the cost and expense, administrative and otherwise, incurred in collecting any fees on behalf of any government[1] agency for any reason.

(June 17, 1930, ch. 497, title IV, § 529, as added Pub. L. 103–182, title VI, § 669, Dec. 8, 1993, 107 Stat. 2216.)

PART IV—TRANSPORTATION IN BOND AND WAREHOUSING OF MERCHANDISE

§ 1551. Designation as carrier of bonded merchandise

Under such regulations and subject to such terms and conditions as the Secretary of the Treasury shall prescribe—

(1) any common carrier of merchandise owning or operating a railroad, steamship, or other transportation line or route for the transportation of merchandise in the United States,

(2) any contract carrier authorized to operate as such by any agency of the United States, and

(3) any freight forwarder authorized to operate as such by any agency of the United States,

upon application, may, in the discretion of the Secretary, be designated as a carrier of bonded merchandise for the final release of which from customs custody a permit has not been issued. A private carrier, upon application, may, in the discretion of the Secretary, be designated under the preceding sentence as a carrier of bonded merchandise, subject to such regulations and, in the case of each applicant, to such special terms and conditions as the Secretary may prescribe to safeguard the revenues of the United States with respect to the transportation of bonded merchandise by such applicant.

(June 17, 1930, ch. 497, title IV, § 551, 46 Stat. 742; Dec. 28, 1945, ch. 605, 59 Stat. 667; Pub. L. 87–598, Aug. 24, 1962, 76 Stat. 400; Pub. L. 87–854, Oct. 23, 1962, 76 Stat. 1130; Pub. L. 90–240, § 3, Jan. 2, 1968, 81 Stat. 776.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 551, 42 Stat. 975. That section was superseded by section 551 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions concerning transportation of merchandise in bond without appraisement to another port of entry were contained in the Immediate Transportation Act of June 10, 1880, ch. 190, 21 Stat. 173, as amended, section 3 of which required the merchandise to be transported by carriers designated by the Secretary of the Treasury, and required them to give bonds as the Secretary should require. That act was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

AMENDMENTS

1968—Pub. L. 90–240 provided that a private carrier, upon application, could, in the discretion of the Secretary, be designated as a carrier of bonded merchandise, subject to regulations, terms, and conditions prescribed by the Secretary, safeguard the revenues of the United States with respect to the transportation of bonded merchandise by such applicant.

1962—Pub. L. 87–854 included any contract carrier authorized to operate as such by any agency of the United States.

Pub. L. 87–598 substituted ''authorized to operate as such by any agency of the United States,'' for '', as defined in section 1002(5) of title 49.''

1945—Act Dec. 28, 1945, substituted ''Under such regulations and subject to such terms and conditions as the Secretary of the Treasury shall prescribe, any common carrier of merchandise owning or operating a railroad, steamship, or other transportation line or route for the transportation of merchandise in the United States, or any freight forwarder, as defined in section 1002(5) of title 49, upon application, may, in the discretion of the Secretary'' for ''Any common carrier of merchandise owning or operating railroad, steamship, or other transportation lines or routes for the transportation of merchandise in the United States, upon application and the filing of a bond in a form and penalty and with such sureties as may be approved by the Secretary of the Treasury, may''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1565 of this title.

§ 1551a. Bonded cartmen or lightermen

The Secretary of the Treasury be, and he is, authorized, when it appears to him to be in the interest of commerce, and notwithstanding any provision of law or regulation requiring that the transportation of imported merchandise be by a bonded common carrier, to permit such merchandise which has been entered and examined for customs purposes to be transported by bonded cartmen or bonded lightermen between the ports of New York, Newark, and Perth Amboy, which are all included in Customs Collection District Numbered 10 (New York): *Provided*, That

[1] So in original. Probably should be capitalized.

this resolution shall not be construed to deprive any of the ports affected of its rights and privileges as a port of entry.

(June 19, 1936, ch. 611, 49 Stat. 1538.)

CODIFICATION

Section was not enacted as part of Tariff Act of 1930 which comprises this chapter.

§ 1552. Entry for immediate transportation

Any merchandise, other than explosives and merchandise the importation of which is prohibited, arriving at a port of entry in the United States may be entered, under such rules and regulations as the Secretary of the Treasury may prescribe, for transportation in bond without appraisement to any other port of entry designated by the consignee, or his agent, and by such bonded carrier as he designates, there to be entered in accordance with the provisions of this chapter.

(June 17, 1930, ch. 497, title IV, § 552, 46 Stat. 742.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 552, 42 Stat. 975. That section was superseded by section 552 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions for transportation in bond without appraisement of merchandise with certain exceptions, when imported at certain named ports and destined for certain ports, were contained in act June 10, 1880, ch. 190, §§ 1 (as amended by act June 14, 1880, ch. 214, and act June 20, 1884, ch. 103) 2, 7, and 9, 21 Stat. 173, 174, 175. Sections 5 (as amended by act July 2, 1884, ch. 142, and act Feb. 23, 1887, ch. 215, and act Feb. 2, 1899, ch. 84) and 6 (as amended by act July 2, 1884, ch. 142), regulated the transportation and transfer of the merchandise. The act of June 10, 1880 was amended by act Feb. 23, 1887, ch. 218, 24 Stat. 414, and its provisions were extended by various acts to ports other than those originally named. The act of June 10, 1880, ch. 190, as amended, and the acts of Feb. 23, 1887, ch. 218, and Feb. 2, 1899, ch. 84, were all repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989, and the various acts extending the provisions of the act of June 10, 1880, thereupon became inoperative.

R.S. §§ 2990–2997, as amended by act Feb. 18, 1875, ch. 80, 18 Stat. 319, and as extended by act Mar. 14, 1876, ch. 23, 19 Stat. 7, and act Aug. 14, 1876, ch. 270, 19 Stat. 139, contained provisions somewhat similar to those of the act of June 10, 1880, ch. 190, and were repealed by section 8 of the 1880 act.

R.S. § 2581, relative to the transshipment of merchandise transported in bond to the port of Brownsville, by Brazos Harbor; R.S. §§ 2816–2831, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 246, 247, and act June 16, 1880, ch. 239, 21 Stat. 283, relative to transportation of merchandise intended to be imported into certain ports of delivery; and R.S. § 2998, prescribing a penalty for breaking or entering any car, etc., containing merchandise transported under sections 2990–2997, or defacing any lock or seal, etc.—were all repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1315, 1484 of this title.

§ 1553. Entry for transportation and exportation; lottery material from Canada

(a) Any merchandise, other than explosives and merchandise the importation of which is prohibited, shown by the manifest, bill of lading, shipping receipt, or other document to be destined to a foreign country, may be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duties and exported under such regulations as the Secretary of the Treasury shall prescribe; and any baggage or personal effects not containing merchandise the importation of which is prohibited arriving in the United States destined to a foreign country may, upon the request of the owner or carrier having the same in possession for transportation, be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duty, under such regulations as the Secretary of the Treasury may prescribe. In places where no bonded common-carrier facilities are reasonably available, such merchandise may be so transported otherwise than by a bonded common carrier under such regulations as the Secretary of the Treasury shall prescribe.

(b) Notwithstanding subsection (a) of this section, the entry for transportation in bond through the United States of any lottery ticket, printed paper that may be used as a lottery ticket, or any advertisement of any lottery, that is printed in Canada, shall be permitted without appraisement or the payment of duties under such regulations as the Secretary of the Treasury may prescribe, except that such regulations shall not permit the transportation of lottery materials in the personal baggage of a traveler.

(June 17, 1930, ch. 497, title IV, § 553, 46 Stat. 742; June 25, 1938, ch. 679, § 21, 52 Stat. 1087; Pub. L. 101–382, title III, § 484H(a), Aug. 20, 1990, 104 Stat. 711.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 553, 42 Stat. 976. That section was superseded by section 553 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision that merchandise destined for a foreign country might be entered and conveyed through the territory of the United States without payment of duties under regulations to be prescribed by the Secretary of the Treasury was contained in R.S. § 3005, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, and act May 21, 1900, ch. 487, § 1, 31 Stat. 181. Res. March 1, 1895, No. 23, 28 Stat. 973, partially suspending the operation of that section, was repealed by act May 21, 1900, ch. 487, § 2, 31 Stat. 181, and the section was itself repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

A provision that baggage or personal effects in transit to a foreign country might be delivered to the collector for retention without payment of duty, or forwarding to the collector of the port of departure, was contained in act Oct. 3, 1913, ch. 16, § III, CC, 38 Stat. 192, which reenacted Customs Administrative Act June 10, 1890, ch. 407, § 28, 26 Stat. 141, as reenacted by Payne-Aldrich Tariff Act Aug. 5, 1909, ch. 6, § 28, 36 Stat. 104. Said section III, CC, of the 1913 act was repealed by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

R.S. § 2803, on the same subject, was superseded by section 28 of the Customs Administrative Act of June 10, 1890, and repealed by section 642 of the act of Sept. 21, 1922.

R.S. § 2866, provided for the entry and conveyance in transit, without payment of duties, of merchandise arriving at certain ports in the United States destined for

the British possessions in North America, and for conveyance in transit from such possessions for export from said ports, in pursuance of provisions of the treaty with Great Britain of May 8, 1871. It was repealed on the termination of articles 18–25, 30, of that treaty, pursuant to the Joint Resolution of Mar. 3, 1883, No. 22, 22 Stat. 641.

AMENDMENTS

1990—Pub. L. 101–382 designated existing provisions as subsec. (a) and added subsec. (b).

1938—Act June 25, 1938, inserted sentence providing for transportation otherwise than by bonded carrier where no bonded common-carrier facilities are reasonably available.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 484H(b) of Pub. L. 101–382, as amended by Pub. L. 104–295, § 5, Oct. 11, 1996, 110 Stat. 3517, provided that: ''The amendments made by this section [amending this section] shall apply with respect to articles entered for transportation in bond on or after the date that is 15 days after the date of enactment of this Act [Aug. 20, 1990].''

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1484 of this title.

§ 1553a. Recordkeeping for merchandise transported by pipeline

Merchandise in Customs[1] custody that is transported by pipeline may be accounted for on a quantitative basis, based on the bill of lading, or equivalent document of receipt, issued by the pipeline carrier. Unless the Customs Service has reasonable cause to suspect fraud, the Customs Service may accept the bill of lading, or equivalent document of receipt, issued by the pipeline carrier to the shipper and accepted by the consignee to maintain identity. The shipper, pipeline operator, and consignee shall be subject to the recordkeeping requirements of sections 1508 and 1509 of this title.

(June 17, 1930, ch. 497, title IV, § 553A, as added Pub. L. 103–182, title VI, § 664, Dec. 8, 1993, 107 Stat. 2215.)

§ 1554. Transportation through contiguous countries

With the consent of the proper authorities, imported merchandise, in bond or duty-paid, and products and manufactures of the United States may be transported from one port to another in the United States through contiguous countries, under such regulations as the Secretary of the Treasury shall prescribe, unless such transportation is in violation of section 4347 of the Revised Statutes, as amended, section 883 of title 46, Appendix, or section 1588 of this title.

(June 17, 1930, ch. 497, title IV, § 554, 46 Stat. 743.)

REFERENCES IN TEXT

Section 4347 of the Revised Statutes, as amended, referred to in text, was not classified to this Code. It was superseded by act Feb. 17, 1898, ch. 26, § 1, 30 Stat. 248, which was classified to section 290 of former Title 46, Shipping. See section 883 of Title 46, Appendix.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 554, 42 Stat. 976. That section was superseded by section 554 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions the same in effect as those in this section, except that they did not contain the provision commencing with the words ''unless such transportation,'' were contained in R.S. § 3006, which also provided that the merchandise transported should be treated as if transported entirely within the United States. R.S. § 3007 exempted cars and vehicles from the payment of fees for receiving or certifying manifests. Both sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

§ 1555. Bonded warehouses

(a) Designation; preconditions; bonding requirements; supervision

Subject to subsection (b) of this section, buildings or parts of buildings and other enclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the appropriate customs officer, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. Before any imported merchandise not finally released from customs custody shall be stored in any such premises, the owner or lessee thereof shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. The compensation of such officer of the customs and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimbursed to the Government by the proprietor of such warehouse.

(b) Duty-free sales enterprises

(1) Duty-free sales enterprises may sell and deliver for export from the customs territory duty-free merchandise in accordance with this subsection and such regulations as the Secretary may prescribe to carry out this subsection.

[1] So in original. Probably should not be capitalized.

(2) A duty-free sales enterprise may be located anywhere within—

(A) the same port of entry, as established under section 1 of the Act of August 24, 1912 (37 Stat. 434), from which a purchaser of duty-free merchandise departs the customs territory; or

(B) 25 statute miles from the exit point through which the purchaser of duty-free merchandise will depart the customs territory.

(3) Each duty-free sales enterprise—

(A) shall establish procedures to provide reasonable assurance that duty-free merchandise sold by the enterprise will be exported from the customs territory;

(B) if the duty-free sales enterprise is an airport store, shall establish and enforce, in accordance with such regulations as the Secretary may prescribe, restrictions on the sale of duty-free merchandise to any one individual to personal use quantities;

(C) shall display in prominent places within its place of business notices which state clearly that any duty-free merchandise purchased from the enterprise—

(i) has not been subject to any Federal duty or tax,

(ii) if brought back into the customs territory, must be declared and is subject to Federal duty and tax, and

(iii) is subject to the customs laws and regulation of any foreign country to which it is taken;

(D) shall not be required to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate that the items were sold by a duty-free sales enterprise, unless the Secretary finds a pattern in which such items are being brought back into the customs territory without declaration;

(E) may unpack merchandise into saleable units after it has been entered for warehouse and placed in a duty-free sales enterprise, without requirement of further permits; and

(F) shall deliver duty-free merchandise—

(i) in the case of a duty-free sales enterprise that is an airport store—

(I) to the purchaser (or a family member or companion traveling with the purchaser) in an area that is within the airport and to which access to passengers is restricted to those departing from the customs territory;

(II) to the purchaser (or a family member or companion traveling with the purchaser) at the exit point of a specific departing flight;

(III) by placing the merchandise within the aircraft on which the purchaser will depart for carriage as passenger baggage; or

(IV) if the duty-free sales enterprise has made a good faith effort to effect delivery for exportation through one of the methods described in subclause (I), (II), or (III) but is unable to do so, by any other reasonable method to effect delivery; or

(ii) in the case of a duty-free sales enterprise that is a border store—

(I) at a merchandise storage location at or beyond the exit point; or

(II) at any location approved by the Secretary before the date of enactment of the Omnibus Trade Act of 1987.

(4) If a State or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free sales enterprise under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn from a bonded warehouse and transferred to or through such facility unless the operator of the duty-free sales enterprise demonstrates to the Secretary that the concession or approval required for the enterprise has been obtained.

(5) This subsection does not prohibit a duty-free sales enterprise from offering for sale and delivering to, or on behalf of, individuals departing from the customs territory merchandise other than duty-free merchandise, except that such other merchandise may not be stored in a bonded warehouse facility other than a bonded facility used for retail sales.

(6)(A) Except as provided in subparagraph (B), merchandise that is purchased in a duty-free sales enterprise is not eligible for exemption from duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States if such merchandise is brought back to the customs territory.

(B) Except in the case of travel involving transit to, from, or through an insular possession of the United States, merchandise described in subparagraph (A) that is purchased by a United States resident shall be eligible for exemption from duty under subheadings 9804.00.65, 9804.00.70, and 9804.00.72 of the Harmonized Tariff Schedule of the United States upon the United States resident's return to the customs territory of the United States, if the resident meets the eligibility requirements for the exemption claimed. Notwithstanding any other provision of law, such merchandise shall be considered to be an article acquired abroad as an incident of the journey from which the resident is returning, for purposes of determining eligibility for any such exemption.

(7) The Secretary shall by regulation establish a separate class of bonded warehouses for duty-free sales enterprises. Regulations issued to carry out this paragraph shall take into account the unique characteristics of the different types of duty-free sales enterprises.

(8) For purposes of this subsection—

(A) The term ''airport store'' means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory from an international airport located within the customs territory.

(B) The term ''border store'' means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory through a land or water border by a means of conveyance other than an aircraft.

(C) The term ''customs territory'' means the customs territory of the United States and foreign trade zones.

(D) The term ''duty-free sales enterprise'' means a person that sells, for use outside the customs territory, duty-free merchandise that is delivered from a bonded warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the customs territory.

(E) The term ''duty-free merchandise'' means merchandise sold by a duty-free sales enterprise on which neither Federal duty nor Federal tax has been assessed pending exportation from the customs territory.

(F) The term ''exit point'' means the area in close proximity to an actual exit for departing from the customs territory, including the gate holding area in the case of an airport, but only if there is reasonable assurance that duty-free merchandise delivered in the gate holding area will be exported from the customs territory.

(G) The term ''personal use quantities'' means quantities that are only suitable for uses other than resale, and includes reasonable quantities for household or family consumption as well as for gifts to others.

(June 17, 1930, ch. 497, title IV, § 555, 46 Stat. 743; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 98–573, title II, § 211, Oct. 30, 1984, 98 Stat. 2977; Pub. L. 100–418, title I, § 1908(b), Aug. 23, 1988, 102 Stat. 1315; Pub. L. 101–382, title I, § 139(a)(1), Aug. 20, 1990, 104 Stat. 653; Pub. L. 104–295, § 29, Oct. 11, 1996, 110 Stat. 3535.)

REFERENCES IN TEXT

For provisions relating to ports of entry established under section 1 of the Act of August 24, 1912 (37 Stat. 434), referred to in subsec. (b)(2)(A), see Prior Provisions note under section 1 of this title.

The date of enactment of the Omnibus Trade Act of 1987, referred to in subsec. (b)(3)(F)(ii)(II), probably means the date of enactment of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, which was approved Aug. 23, 1988.

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b)(6), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 555, 42 Stat. 976. That section was superseded by section 555 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions dealing with the subject matter of this section were contained in R.S. § 2958, authorizing cellars and vaults of stores for storage of wines and distilled spirits, and yards for storage of coal, etc., to be constituted bonded warehouses; section 2959, authorizing parts of buildings to be bonded for the storage of grain; section 2960, requiring private warehouses to be used solely for the storage of warehoused merchandise, and be approved by the Secretary of the Treasury, and be in charge of a proper officer of the customs, etc.; section 2961 requiring bonds to hold the United States harmless, and providing that imports deposited in warehouses should be at the risk and expense of the owner or importer; section 2968, authorizing the extension of warehouse privileges to the port of Albany; and section 2988, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, requiring collectors to make reports of merchandise in warehouses. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1996—Subsec. (b)(6). Pub. L. 104–295 designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), merchandise'' for ''Merchandise'', and added subpar. (B).

1990—Subsec. (b)(6). Pub. L. 101–382, which directed substitution of ''subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States'' for ''subpart A of part 2 of schedule 8 of the Tariff schedules of the United States'', was executed by making the substitution for ''subpart A of part 2 of schedule 8 of the Tariff Schedules of the United States'' to reflect the probable intent of Congress.

1988—Subsec. (b). Pub. L. 100–418 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''If a State or local governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free sales enterprise under which merchandise is delivered to such facility for exportation, merchandise incident to such operation may not be withdrawn from a bonded warehouse and transferred to such facility unless the operator of the duty-free sales enterprise demonstrates to the Secretary of the Treasury that the concession or approval required for the enterprise has been obtained. For purposes of this subsection, the term 'duty-free sales enterprise' means an entity that sells, in less than wholesale quantities, duty-free or tax-free merchandise that is delivered from a bonded warehouse to an airport, seaport, or point of exit from the United States for exportation by, or on behalf of, individuals departing from the United States.''

1984—Pub. L. 98–573 designated existing provisions as subsec. (a), substituted ''Subject to subsection (b) of this section, buildings'' for ''Buildings'', and added subsec. (b).

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1908(c) of Pub. L. 100–418 provided that: ''The amendment made by this section [amending this section] shall take effect on the date that is 15 days after the date of enactment of this Act [Aug. 23, 1988].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

DUTY-FREE SALES ENTERPRISES; FINDINGS

Section 1908(a) of Pub. L. 100–418 provided that: ''The Congress finds that—

''(1) duty-free sales enterprises play a significant role in attracting international passengers to the United States and thereby their operations favorably affect our balance of payments;

''(2) concession fees derived from the operations of authorized duty-free sales enterprises constitute an important source of revenue for the State, local and other governmental authorities that collect such fees;

''(3) there is inadequate statutory and regulatory recognition of, and guidelines for the operation of, duty-free sales enterprises; and

''(4) there is a need to encourage uniformity and consistency of regulation of duty-free sales enterprises.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 58c of this title; title 18 section 2341; title 49 section 47107.

§ 1556. Bonded warehouses; regulations for establishing

The Secretary of the Treasury shall from time to time establish such rules and regulations as may be necessary for the establishment of bonded warehouses and to protect the interests of the Government in the conduct, management, and operation of such warehouses and in the withdrawal of and accounting for merchandise deposited therein.

(June 17, 1930, ch. 497, title IV, § 556, 46 Stat. 743.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 556, 42 Stat. 976. That section was superseded by section 556 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions on the subject matter of this section were contained in R.S. § 2989, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, authorizing the Secretary of the Treasury to establish rules and regulations for the execution of the provisions of that chapter (chapter 7 of Title 34 of the Revised Statutes, The Bond and Warehouse System); and in act June 22, 1874, ch. 391, § 24, 18 Stat. 191, authorizing the Secretary to make regulations for the conduct and management of bonded warehouses, general order stores and other depositories, and to revise, alter or revoke regulations or orders, issued by collectors, prohibiting the bonding of warehouses or the establishment of general order stores without his authority and approval, and making it his duty to require warehouses to be located contiguous, or as near as might be, to landing places of vessels. These sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §§ 642, 643, 42 Stat. 989.

§ 1557. Entry for warehouse

(a) Withdrawal of merchandise; time; payment of charges

(1) Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner[1] purchaser, importer, or consignee. Such merchandise may be withdrawn, at any time within 5 years from the date of importation, for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; or may be withdrawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port; except that—

(A) the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation; and

(B) turbine fuel may be withdrawn for use under section 1309 of this title without the payment of duty if an amount equal to the quantity of fuel withdrawn is shown to be used within 30 days after the day of withdrawal, but duties (together with interest payable from the date of the withdrawal at the rate of interest established under section 6621 of title 26) shall be deposited by the 40th day after the day of withdrawal on fuel that was withdrawn in excess of the quantity shown to have been so used during such 30-day period.

(2) Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within 5 years after the date of importation for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, the duties thereon shall be refunded.

(b) Transferal of right of withdrawal

The right to withdraw any merchandise entered in accordance with subsection (a) of this section for the purposes specified in such subsection may be transferred upon compliance with regulations prescribed by the Secretary of the Treasury and upon the filing by the transferee of a bond in such amount and containing such conditions as the Secretary of the Treasury shall prescribe. The bond shall include an obligation to pay, with respect to the merchandise the subject of the transfer, all unpaid regular, increased, and additional duties, all unpaid taxes imposed upon or by reason of importation, and all unpaid charges and exactions. Such transfers shall be irrevocable, shall relieve the transferor from all customs liability with respect to obligations assumed by the transferee under the bond herein provided for, and shall confer upon the transferee all rights to the privileges provided for in this section and in sections 1562 and 1563 of this title which were vested in the transferor prior to the transfer. The transferee shall also have the right to receive all lawful refunds of money paid by him to the United States with respect to the merchandise the subject of the transfer, and shall have the right to file a protest under section 1514 of this title to the same extent that such right would have been available to the transferor. Notice of liquidation shall be given to the transferee in the form and manner prescribed by the Secretary of the Treasury. A transferee may further transfer the right to withdraw merchandise, subject to the provisions of this subsection relating to original transfers.

(c) Destruction of merchandise at request of consignee

Merchandise entered under bond, under any provision of law, may, upon payment of all charges other than duty on the merchandise, be destroyed, at the request and at the expense of the consignee, within the bonded period under customs supervision, in lieu of exportation, and upon such destruction the entry of such mer-

[1] So in original. Probably should be followed by a comma.

chandise shall be liquidated without payment of duty and any duties collected shall be refunded.

(d) Withdrawal before payment

Merchandise may be withdrawn for consumption without the payment of the duty thereon if the importer of record or transferee is permitted to pay duty at a later time pursuant to regulations prescribed by the Secretary under section 1505 of this title.

(June 17, 1930, ch. 497, title IV, § 557, 46 Stat. 744; June 25, 1938, ch. 679, §§ 2, 22(a), 23(a), 52 Stat. 1077, 1087, 1088; Aug. 8, 1953, ch. 397, § 21(a), 67 Stat. 519; June 30, 1955, ch. 258, § 2(a) (4), 69 Stat. 242; Pub. L. 91–271, title III, § 301(t), June 2, 1970, 84 Stat. 290; Pub. L. 91–685, § 1, Jan. 12, 1971, 84 Stat. 2069; Pub. L. 95–410, title I, § 108(a), (b)(1), Oct. 3, 1978, 92 Stat. 892; Pub. L. 97–446, title II, § 201(f), Jan. 12, 1983, 96 Stat. 2350; Pub. L. 103–182, title VI, § 665, Dec. 8, 1993, 107 Stat. 2215.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 557, 42 Stat. 977. That section was superseded by section 557 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions dealing with the subject matter of this section were contained in the following statutes, all of which were repealed by act Sept. 21, 1922, ch. 356, title IV, §§ 642, 643, 42 Stat. 989:

Act Oct. 3, 1913, ch. 16, § III, S, 38 Stat. 189, reenacting the provisions of Customs Administrative Act of June 10, 1890, ch. 407, § 20, 26 Stat. 140, as amended by act Oct. 1, 1890, ch. 1244, § 54, 26 Stat. 624, and act Dec. 15, 1902, ch. 1, 32 Stat. 753, and as reenacted by Payne-Aldrich Tariff Act, Aug. 5, 1909, ch. 6, § 28, 36 Stat. 101, and authorizing the withdrawal for consumption of merchandise deposited in any public or private bonded warehouse within three years from date of importation, on payment of duties and charges to which it might be subject at the time of such withdrawal;

Res. Sept. 5, 1916, ch. 441, 39 Stat. 725, extending the time for which merchandise for exportation to Mexico might remain in bonded warehouse;

R.S. § 2962, authorizing the deposit of merchandise, with specified exceptions, when duly entered and bonded for warehousing, in any public warehouse owned or leased by the United States, the private warehouse of the importer used exclusively for the storage of the importer's warehoused merchandise, or a warehouse used as a general warehouse for the storage of warehoused merchandise; section 2964, providing that when the owner, etc., should make entry for warehousing, the collector should take possession and deposit the merchandise in the public stores, or in stores to be agreed on, there to be kept at the risk of the owner, importer, etc., and subject to their order, on payment of duties and expenses to be ascertained on entry, and secured by bond with surety; section 2970 (superseded by Customs Administrative Act of June 10, 1890, ch. 407, § 20, 26 Stat. 140), relative to the withdrawal of merchandise; section 2971, authorizing withdrawal for exportation, or transshipment to the Pacific Coast, and providing for exclusion of periods when exportation or transshipment should be prevented in computing the three years; section 2977 relative to return of duties on merchandise upon which duties had been paid; section 3000 authorizing withdrawal and transportation to a bonded warehouse in another district and rewarehousing thereat; section 3001, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, authorizing the Secretary of the Treasury to prescribe the form of bond to be given for transportation under the preceding section, and the time for delivery, and imposing a penalty and providing for forfeiture for failure to transport and deliver within the time limited; sections 3002 and 3003, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, and section 3004, as amended by act Sept. 25, 1890, ch. 917, § 2, 26 Stat. 470, authorizing withdrawal for exportation to Mexico by certain routes, and through certain ports;

R.S. § 2967, which provided that merchandise imported into the port of Louisville, and destined for Jeffersonville, might be landed and warehoused at Jeffersonville, was superseded by the Plan of Reorganization of the Customs Service set out in a note to section 1 of this title, and repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182 designated first two sentences as par. (1), substituted "; except that—" along with subpars. (A) and (B) for ": *Provided*, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation.", and designated remaining portion of subsec. (a) as par. (2).

1983—Subsec. (a). Pub. L. 97–446, § 201(f)(1), inserted "purchaser" after "risk of the owner".

Subsec. (d). Pub. L. 97–446, § 201(f)(2), substituted "importer of record" for "consignee" before "or transferee".

1978—Subsec. (a). Pub. L. 95–410, § 108(b)(1), substituted "5 years" for "three years" wherever appearing.

Subsec. (d). Pub. L. 95–410, § 108(a), added subsec. (d).

1971—Subsec. (b). Pub. L. 91–685 substituted provisions which granted the transferee the right to file a protest under section 1514 of this title to the same extent that such right would have been available to the transferor and required notice of liquidation to be given the transferee in the form and manner prescribed by the Secretary of the Treasury for former provisions which denied the transferee the right to file any protest under section 1514 of this title except as to decisions with respect to his rights under subsec. (c) of this section or under section 1562 or 1563 of this title or against a decision as to the rate or amount of duty, tax, charge, or exaction when such rate or amount has been changed by statute or proclamation on or after the date of the transfer, or the right to file an appeal for reappraisement under section 1501 of this title, except when subsequent to the transfer and before a withdrawal for consumption has been deposited for the merchandise, it has been charge changed in condition pursuant to section 1311 or 1562 of this title in a manner which necessitates that it be appraised in its changed condition in order that the correct amount of duties may be assessed, and prohibited any new or separate liquidation, reliquidation, or determination to be made in name of, or on behalf of, a transferee, except with regard to any matter which may arise under subsec. (c) of this section or section 1562 or 1563 of this title when the transferee has invoked either of these sections, and in the case of a statutory or proclaimed change in the rate of duty, tax, charge, or exaction applicable to the merchandise the subject of the transfer and effective on or after the date of the transfer.

1970—Subsec. (b). Pub. L. 91–271 substituted "a protest contesting an appraisement decision in accordance with section 1514 of this title" for "an appeal for reappraisement under section 1501 of this title".

1955—Subsec. (a). Act June 30, 1955, inserted "Johnston Island" in two places.

1953—Subsec. (b). Act Aug. 8, 1953, provided that all transfers shall be irrevocable; that in the case of each transfer the transferee shall file a bond undertaking to pay all unpaid duties, taxes, charges, and exactions on the merchandise the subject of the transfer; and that a transferee shall have no right to file a protest under section 1514 of this title, or to a separate liquidation in his behalf, unless the rate of duty, tax, charge, or exaction has been changed pursuant to statute or proclamation after the right to withdraw the merchandise was transferred to him.

1938—Act June 25, 1938, amended section generally, and among other changes, inserted "Wake Island, Mid-

way Islands, Kingman Reef'' before ''or the island of Guam,'' and struck out ''(or ten months in the case of grain)'' wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–446 applicable with respect to merchandise entered on and after 30th day after Jan. 12, 1983, see section 201(g) of Pub. L. 97–446, set out as a note under section 1484 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 108(b)(2) of Pub. L. 95–410 provided that: ''For purposes of applying the amendments made by paragraph (1) [amending this section and section 1559 of this title] to merchandise remaining in a bonded warehouse on the date of enactment of this Act [Oct. 3, 1978], any period of time the merchandise was in the bonded warehouse before that date shall be disregarded.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 91–685 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply with respect to articles entered for warehousing on or after the date of the enactment of this Act [Jan. 12, 1971].''

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act June 30, 1955, effective July 1, 1955, see note set out under section 1401 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT

Section 21(b) of act Aug. 8, 1953, provided that: ''Notwithstanding any other provision of this Act [amending this section and sections 258, 1001, 1201, 1304, 1308, 1309, 1313, 1315, 1317, 1321, 1431, 1439, 1440, 1482, 1484, 1486, 1487, 1489, 1498, 1501, 1503, 1508, 1520, 1523, and 1562 of this title, enacting sections 1322 and 1646a of this title, and repealing sections 33 to 35, 39, 42 to 45, 273, 274, 472 to 475, 1320, and 1503a of this title], the foregoing subsection (a) shall be effective with respect to merchandise entered after the date of the enactment of this Act [Aug. 8, 1953] and to merchandise which has been entered before that date and is the subject of a transfer within the purview of section 557(b) of the Tariff Act [subsec. (b) of this section], as amended by this Act, and made after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1938 AMENDMENT

Section 22(b) of act June 25, 1938, provided that: ''On and after the effective date of this Act [see note set out under section 1401 of this title], this section [amending this section] shall be effective with respect to merchandise entered for warehouse prior to, as well as after, such date.''

Section 23(b) of act June 25, 1938, provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply in the case of grain imported prior to the effective date of this act [see note set out under section 1401 of this title] which, on such date, has not become abandoned to the Government under section 491 or 559 of the Tariff Act of 1930 [section 1491 or 1559 of this title], and which has remained in the custody of customs officers.''

SAVINGS PROVISION

Savings provision of act Aug. 8, 1953, which amended subsec. (b) of this section, see note set out under section 1304 of this title.

EXTENSION OF THREE-YEAR PERIOD

For extension of three year period prescribed in this section, see Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41, set out as a note under section 1318 of this title.

Proc. No. 2599, Nov. 6, 1943, 8 F.R. 15359, 57 Stat. 758, as amended by Proc. No. 2712, Dec. 4, 1946, 11 F.R. 14133, 61 Stat. 1047, superseded by Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41.

APPROPRIATIONS

Section 2 of act June 26, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title ''Debentures or drawbacks, bounties, or allowances (Customs) (2x321)'' effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1491, 1514, 1558 of this title.

§ 1558. No remission or refund after release of merchandise

(a) Exceptions

No remission, abatement, refund, or drawback of estimated or liquidated duty shall be allowed because of the exportation or destruction of any merchandise after its release from the custody of the Government, except in the following cases:

(1) When articles are exported with respect to which a drawback of duties is expressly provided for by law;

(2) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to a law of the United States and under such regulations as the Secretary of the Treasury may prescribe; and

(3) When articles entered under bond, under any provision of law, are destroyed within the bonded period as provided for in section 1557 of this title, or are destroyed within the bonded period by death, accidental fire, or other casualty, and proof of such destruction is furnished which shall be satisfactory to the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied.

(b) Payment of duties required notwithstanding export or destruction of articles; exception

When articles are exported or destroyed under customs supervision after once having been released from customs custody, as provided for in subsection (c)[1] of section 1304 of this title, such exportation or destruction shall not exempt such articles from the payment of duties other than the marking duty provided for in such subsection (c).

(June 17, 1930, ch. 497, title IV, § 558, 46 Stat. 744; June 25, 1938, ch. 679, § 24, 52 Stat. 1088.)

REFERENCES IN TEXT

Subsection (c) of section 1304 of this title, referred to in subsec. (b), was redesignated subsection (f) and a new

[1] See References in Text note below.

subsection (c) of section 1304 was added by Pub. L. 98–573, title II, § 207(1), (2), Oct. 30, 1984, 98 Stat. 2976. Subsection (f) was subsequently redesignated (h) and a new subsection (f) was added by Pub. L. 104–295, § 14(a), Oct. 11, 1996, 110 Stat. 3521.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 2978, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, and in R.S. § 3025, both of which were superseded by act Sept. 21, 1922, ch. 356, title IV, § 558, 42 Stat. 977, and were repealed by section 642 thereof. Section 558 of the 1922 act was superseded by section 558 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1938—Act June 25, 1938, designated existing provisions as subsecs. (a) and (b).

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

§ 1559. Warehouse goods deemed abandoned after 5 years

Merchandise upon which any duties or charges are unpaid, remaining in bonded warehouse beyond 5 years from the date of importation, shall be regarded as abandoned to the Government and shall be sold under such regulations as the Secretary of the Treasury shall prescribe, and the proceeds of sale paid into the Treasury, as in the case of unclaimed merchandise covered by section 1493 of this title, subject to the payment to the owner or consignee of such amount, if any, as shall remain after deduction of duties, charges, and expenses. Merchandise upon which all duties and charges have been paid, remaining in bonded warehouse beyond 5 years from the date of importation, shall be held to be no longer in the custody or control of the officers of the customs.

(June 17, 1930, ch. 497, title IV, § 559, 46 Stat. 744; June 25, 1938, ch. 679, § 23(a), 52 Stat. 1088; Pub. L. 95–410, title I, § 108(b)(1), Oct. 3, 1978, 92 Stat. 892.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 559, 42 Stat. 977. That section was superseded by section 559 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions that goods, remaining in public store or bonded warehouse beyond three years, should be regarded as abandoned and sold, and the proceeds paid into the Treasury, and that the Secretary might pay the proceeds to the owner, etc., after deducting duties, charges and expenses, were contained in R.S. §§ 2971 and 2972, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1978—Pub. L. 95–410 substituted "5 years" for "three years" wherever appearing.

1938—Act June 25, 1938, struck out "(or ten months in the case of grain)" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Period of time prior to Oct. 3, 1978, disregarded in application of amendment to merchandise in bonded warehouse, see section 108(b)(1) of Pub. L. 95–410, set out as a note under section 1557 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Section 23(b) of act June 25, 1938, provided as follows: "The amendments made by subsection (a) of this section [amending this section] shall apply in the case of grain imported prior to the effective date of this act [see note set out under section 1401 of this title] which, on such date, has not become abandoned to the Government under section 491 or 559 of the Tariff Act of 1930 [section 1491 or 1559 of this title], and which has remained in the custody of customs officers."

EXTENSION OF THREE-YEAR PERIOD

For extension of three year period prescribed in this section, see Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41, set out as a note under section 1318 of this title.

Proc. No. 2599, Nov. 6, 1943, 8 F.R. 15359, 57 Stat. 758, as amended by Proc. No. 2712, Dec. 4, 1946, 11 F.R. 14133, 61 Stat. 1047, was superseded by Proc. No. 2948, Oct. 12, 1951, 16 F.R. 10589, 65 Stat. c41.

APPROPRIATIONS

Section 2 of act June 26, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title "Refunding proceeds of unclaimed merchandise (Customs) (2x326)" effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1491 of this title.

§ 1560. Leasing of warehouses

The Secretary of the Treasury may cause to be set aside any available space in a building used as a customhouse for the storage of bonded merchandise or may lease premises for the storage of unclaimed merchandise or other imported merchandise required to be stored by the Government, and set aside a portion of such leased premises for the storage of bonded merchandise: *Provided*, That no part of any premises owned or leased by the Government may be used for the storage of bonded merchandise at any port at which a public bonded warehouse has been established and is in operation. All the premises so leased shall be leased on public account and the storage and other charges shall be deposited and accounted for as customs receipts, and the rates therefor shall not be less than the charges for storage and similar services made at such port of entry by commercial concerns for the storage and handling of merchandise. No officer of the customs shall own, in whole or in part, any bonded warehouse or enter into any contract or agreement for the lease or use of any building to be thereafter erected as a public store or warehouse. No lease of any building to be so used shall be taken for a longer period than three years, nor shall rent for any such premises be paid, in whole or in part, in advance.

(June 17, 1930, ch. 497, title IV, § 560, 46 Stat. 745; Pub. L. 91–271, title III, § 301(u), June 2, 1970, 84 Stat. 290.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 560, 42

Stat. 977. That section was superseded by section 560 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions on the subject matter of this section were contained in R.S. § 2953, providing that nothing therein contained should be construed to prevent the leasing or hiring of buildings for use of appraisers, or for short periods, of stores required for customhouse purposes at the smaller ports; section 2954, authorizing the leasing of warehouses for storage of unclaimed goods or goods required to be stored; section 2955, prohibiting the leasing of warehouses at ports at which there was any private bonded warehouse, but excepting buildings for use of appraisers, etc.; section 2956, providing that warehouses hired should be on public account, and be appropriated exclusively to receipt of foreign merchandise, subject, as to rates of storage, to regulation by the Secretary of the Treasury; and section 2957, prohibiting leases for more than three years, or the payment of rent in advance. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

A prior provision that no officer of the customs should have any personal ownership of, or interest in, any bonded warehouse or general order store, was contained in act June 22, 1874, ch. 391, § 24, 18 Stat. 191; and a provision prohibiting agreements for the use of any building to be erected was contained in R.S. § 2957. Both of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §§ 642, 643, 42 Stat. 989.

AMENDMENTS

1970—Pub. L. 91–271 substituted ''officer of the customs'' for ''collector or other officer of the customs''.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1561. Public stores

Any premises owned or leased by the Government and used for the storage of merchandise for the final release of which from customs custody a permit has not been issued shall be known as a ''public store.''

(June 17, 1930, ch. 497, title IV, § 561, 46 Stat. 745.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 561, 42 Stat. 978. That section was superseded by section 561 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1562. Manipulation in warehouse

Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the importer, it appears to be the appropriate customs officer that it is necessary to the safety or preservation of the merchandise to repack or transfer the same; except that upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom—

(1) without payment of duties for exportation to a NAFTA country, as defined in section 3301(4) of this title, if the merchandise is of a kind described in any of paragraphs (1) through (8) of section 3333(a) of this title;

(2) for exportation to a NAFTA country if the merchandise consists of goods subject to NAFTA drawback, as defined in section 3333(a) of this title, except that—

(A) the merchandise may not be withdrawn from warehouse without assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of withdrawal from the warehouse with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition, and

(B) duty shall be paid on the merchandise before the 61st day after the date of exportation, but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the merchandise, the customs duty may be waived or reduced (subject to section 1508(b)(2)(B) of this title) in an amount that does not exceed the lesser of—

(i) the total amount of customs duties paid or owed on the merchandise on importation into the United States, or

(ii) the total amount of customs duties paid on the merchandise to the NAFTA country;

(3) without payment of duties for exportation to any foreign country other than to a NAFTA country or to Canada when exports to that country are subject to paragraph (4);

(4) without payment of duties for exportation to Canada (if that country ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates), but the exemption from the payment of duties under this paragraph applies only in the case of an exportation during the period such Agreement is in operation of merchandise that—

(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

(B) is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988; and

(5) without payment of duties for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam.

Merchandise may be withdrawn from bonded warehouse for consumption, or for exportation to Canada if the duty exemption under paragraph (4) of the preceding sentence does not apply, upon the payment of duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition. The basis for the assessment of duties on such merchandise so

withdrawn for consumption shall be the adjusted final appraised value, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise, such rate shall be based upon or regulated by such adjusted final appraised value. The scouring or carbonizing of wool shall not be considered a process of manufacture within the provisions of this section. Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous customs custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in bonded warehouse.

(June 17, 1930, ch. 497, title IV, § 562, 46 Stat. 745; June 25, 1938, ch. 679, §§ 2, 25, 52 Stat. 1077, 1088; Aug. 8, 1953, ch. 397, § 18(f), 67 Stat. 518; June 30, 1955, ch. 258, § 2(a)(5), 69 Stat. 242; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 100–449, title II, § 204(c)(4), Sept. 28, 1988, 102 Stat. 1863; Pub. L. 103–182, title II, § 203(b)(4), Dec. 8, 1993, 107 Stat. 2090.)

REFERENCES IN TEXT

Section 204 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, referred to in par. (4)(B), is section 204 of Pub. L. 100–449, which is set out in a note under section 2112 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 562, 42 Stat. 978. That section was superseded by section 562 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions substantially the same, in effect, as those in this section with respect to the quantity of merchandise which might be withdrawn, were contained in R.S. § 2980, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Pub. L. 103–182 substituted ''be withdrawn therefrom—'' for ''be withdrawn therefrom without payment of duties—'' in second sentence, substituted ''paragraph (4) of the preceding sentence'' for ''paragraph (1) of the preceding sentence'' in third sentence, added pars. (1) to (5), and struck out former pars. (1) to (3) which read as follows:

''(1) for exportation to Canada, but on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, such exemption from the payment of duties applies only in the case of the exportation to Canada of merchandise that—

''(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

''(B) is a drawback eligible good under section 204(a) of such Act of 1988;

''(2) for exportation to any foreign country except Canada; and

''(3) for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam.''

1988—Pub. L. 100–449 substituted the except clause and following sentence for proviso at end of second section which read as follows: '': *Provided*, That upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom for exportation to a foreign country or for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without payment of the duties, or for consumption, upon payment of the duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition.''

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

1955—Act June 30, 1955, inserted ''Johnston Island''.

1953—Act Aug. 8, 1953, in third sentence struck out ''the entered value or'' after ''consumption shall be'', ''whichever is higher,'' after ''the adjusted final appraised value,'', and ''; but for the purpose of the ascertainment and assessment of additional duties under section 1489 of this chapter adjustments of the final appraised value shall be disregarded'' after ''such adjusted final appraised value''.

1938—Act June 25, 1938, inserted sentence providing for manipulation of imported merchandise entering and remaining in continuous customs custody in cases where neither the protection of the revenue nor proper conduct of business requires such manipulation be done in a bonded warehouse, and inserted ''Wake Island, Midway Islands, Kingman Reef'' before ''or the island of Guam''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 applicable (1) with respect to exports from the United States to Canada on Jan. 1, 1996, if Canada is a NAFTA country on that date and after such date for so long as Canada continues to be a NAFTA country and (2) with respect to exports from the United States to Mexico on Jan. 1, 2001, if Mexico is a NAFTA country on that date and after such date for so long as Mexico continues to be a NAFTA country, see section 213(c) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

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.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act June 30, 1955, effective July 1, 1955, see note set out under section 1401 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT; SAVINGS PROVISION

Amendment by act Aug. 8, 1953, effective on and after thirtieth day following Aug. 8, 1953, and savings provision, see notes set out under section 1304 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1508 of this title.

§ 1563. Allowance for loss, abandonment of warehouse goods

(a) Abatement or allowance for deterioration, loss or damage to merchandise in customs custody; exception

In no case shall there be any abatement or allowance made in the duties for any injury, deterioration, loss, or damage sustained by any merchandise while remaining in customs custody, except that the Secretary of the Treasury is authorized, upon production of proof satisfactory to him of the loss or theft of any merchandise while in the appraiser's stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the appraiser's stores, or while in transportation under bond, or while in the custody of the officers of the customs, although not in bond, or while within the limits of any port of entry and before having been landed under the supervision of the officers of the customs, to abate or refund, as the case may be, the duties upon such merchandise, in whole or in part, and to pay any such refund out of any moneys in the Treasury not otherwise appropriated, and to cancel any warehouse bond or bonds, or enter satisfaction thereon in whole or in part, as the case may be, but no abatement or refund shall be made in respect of injury or destruction of any merchandise in bonded warehouse occurring after the expiration of three years from the date of importation. The decision of the Secretary of the Treasury as to the abatement or refund of the duties on any such merchandise shall be final and conclusive upon all persons.

The Secretary of the Treasury is authorized to prescribe such regulations as he may deem necessary to carry out the provisions of this subdivision and he may by such regulations limit the time within which proof of loss, theft, injury, or destruction shall be submitted, and may provide for the abatement or refund of duties, as authorized herein, by appropriate customs officers in cases in which the amount of the abatement or refund claimed is less than $25 and in which the importer has agreed to abide by the decision of the customs officer. The decision of the customs officer in any such case shall be final and conclusive upon all persons.

(b) Abandonment of merchandise to Government; remittal or refund of duties paid

Under such regulations as the Secretary of the Treasury may prescribe and subject to any conditions imposed thereby the consignee may at any time within three years from the date of original importation, abandon to the Government any merchandise in bonded warehouse, whereupon any duties on such merchandise may be remitted or refunded as the case may be, but any merchandise so abandoned shall not be less than an entire package and shall be abandoned in the original package without having been repacked while in a bonded warehouse (other than a bonded manipulating warehouse).

(June 17, 1930, ch. 497, title IV, § 563, 46 Stat. 746; June 25, 1938, ch. 679, § 23(a), 52 Stat. 1088; Pub. L. 91–271, title III, § 301(v), June 2, 1970, 84 Stat. 290.)

CODIFICATION

Provisions of this section authorizing transfer of cases before the United States Customs Court on June 18, 1930, to the Secretary of the Treasury, or to the collector, for consideration and determination, were omitted.

PRIOR PROVISIONS

Prior provisions somewhat similar to those in this section, were contained in R.S. § 2983, and section 2984 as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247, which contained a further provision for cancellation or satisfaction of warehouse bonds. Both of these sections were superseded by act Sept. 21, 1922, ch. 356, title IV, § 563, 42 Stat. 978, and repealed by section 642 thereof. Section 563 of the 1922 act was superseded and enlarged by section 563 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–271 substituted ''appropriate customs officers'' for ''collectors of customs'', and ''customs officer'' for ''collector'' wherever appearing.

1938—Act June 25, 1938, struck out ''(or ten months in the case of grain)'' wherever appearing.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Section 23(b) of act June 25, 1938, provided as follows: ''The amendments made by subsection (a) of this section [amending this section] shall apply in the case of grain imported prior to the effective date of this act [see note set out under section 1401 of this title] which, on such date, has not become abandoned to the Government under section 491 or 559 of the Tariff Act of 1930 [section 1491 or 1559 of this title], and which has remained in the custody of customs officers.''

APPROPRIATIONS

Section 2 of act June 26, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title ''Refunding duties on goods destroyed (Customs) (2x330)'' effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

§ 1564. Liens

Whenever a customs officer shall be notified in writing of the existence of a lien for freight, charges, or contribution in general average upon any imported merchandise sent to the appraiser's store for examination, entered for warehousing or taken possession of by him, he shall refuse to permit delivery thereof from public store or bonded warehouse until proof shall be produced that the said lien has been satisfied or discharged. The rights of the United States shall not be prejudiced or affected by the filing of such lien, nor shall the United States or its officers be liable for losses or damages consequent upon such refusal to permit delivery. If merchandise, regarding which such notice of lien has been filed, shall be forfeited or abandoned and sold, the freight, charges, or contribution in

general average due thereon shall be paid from the proceeds of such sale in the same manner as other lawful charges and expenses are paid therefrom. The provisions of this section shall apply to licensed customs brokers who otherwise possess a lien for the purposes stated above upon the merchandise under the statutes or common law, or by order of any court of competent jurisdiction, of any State.

(June 17, 1930, ch. 497, title IV, § 564, 46 Stat. 747; Pub. L. 91–271, title III, § 301(w), June 2, 1970, 84 Stat. 290; Pub. L. 98–573, title II, § 212(c)(A), formerly § 212(b)(7)(A), Oct. 30, 1984, 98 Stat. 2984, renumbered Pub. L. 99–514, title XVIII, § 1889(3), Oct. 22, 1986, 100 Stat. 2925.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 564, 42 Stat. 978. That section was superseded by section 564 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section were contained in R.S. § 2981, as amended by act June 10, 1880, ch. 190, § 10, 21 Stat. 175, and act May 21, 1896, ch. 217, 29 Stat. 129, which also required notice to be given the party claiming the lien before delivery of the goods, and provided that possession by officers of the customs should not affect the discharge of the lien. That section was repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1984—Pub. L. 98–573 inserted provision making this section applicable to licensed customs brokers who otherwise possess a lien for the purposes stated above upon the merchandise under the statutes or common law, or by order of any court of competent jurisdiction, of any State.

1970—Pub. L. 91–271 substituted reference to customs officer for reference to collector of customs.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on close of 180th day following Oct. 30, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 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.

§ 1565. Cartage

The cartage of merchandise entered for warehouse shall be done by—

(1) cartmen appointed and licensed by the Customs Service; or

(2) carriers designated under section 1551 of this title to carry bonded merchandise;

who shall give bond, in a penal sum to be fixed by the Customs Service, for the protection of the Government against any loss of, or damage to, the merchandise while being so carted. The cartage of merchandise designated for examination at the appraiser's stores and of merchandise taken into custody by the customs officer as unclaimed shall be performed by such persons as may be designated, under contract or otherwise, by the Secretary of the Treasury, and under such regulations for the protection of the owners thereof and of the revenue as the Secretary of the Treasury shall prescribe.

(June 17, 1930, ch. 497, title IV, § 565, 46 Stat. 747; Pub. L. 91–271, title III, § 301(x), June 2, 1970, 84 Stat. 290; Pub. L. 103–182, title VI, § 666, Dec. 8, 1993, 107 Stat. 2215.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 565, 42 Stat. 979. That section was superseded by section 565 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Act June 22, 1874, ch. 391, § 25, 18 Stat. 191, required cartage of merchandise in the custody of the government to be let to the lowest responsible bidder, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

AMENDMENTS

1993—Pub. L. 103–182 amended first sentence generally. Prior to amendment, first sentence read as follows: "The cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the appropriate customs officer and who shall give a bond in a penal sum to be fixed by such customs officer, for the protection of the Government against any loss of, or damage to, such merchandise while being so carted."

1970—Pub. L. 91–271 substituted references to appropriate customs officer of customs officer for references to collector of customs or collector wherever appearing.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

PART V—ENFORCEMENT PROVISIONS

§ 1581. Boarding vessels

(a) Customs officers

Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters or, as he may be authorized, within a customs-enforcement area established under the Anti-Smuggling Act [19 U.S.C. 1701 et seq.], or at any other authorized place, without as well as within his district, and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance.

(b) Officers of Department of the Treasury

Officers of the Department of the Treasury and other persons authorized by such department may go on board of any vessel at any place in the United States or within the customs waters and hail, stop, and board such vessel in the

enforcement of the navigation laws and arrest or, in case of escape or attempted escape, pursue and arrest any person engaged in the breach or violation of the navigation laws.

(c) Penalty for presenting forged, altered, or false documents

Any master of a vessel being examined as herein provided, who presents any forged, altered, or false document or paper to the examining officer, knowing the same to be forged, altered, or false and without revealing the fact shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than $5,000 nor less than $500.

(d) Penalty for failure to stop at command

Any vessel or vehicle which, at any authorized place, is directed to come to a stop by any officer of the customs, or is directed to come to a stop by signal made by any vessel employed in the service of the customs and displaying proper insignia, shall come to a stop, and upon failure to comply a vessel or vehicle so directed to come to a stop shall become subject to pursuit and the master, owner, operator, or person in charge thereof shall be liable to a penalty of not more than $5,000 nor less than $1,000.

(e) Seizure of vessel or merchandise

If upon the examination of any vessel or vehicle it shall appear that a breach of the laws of the United States is being or has been committed so as to render such vessel or vehicle, or the merchandise, or any part thereof, on board of, or brought into the United States by, such vessel or vehicle, liable to forfeiture or to secure any fine or penalty, the same shall be seized and any person who has engaged in such breach shall be arrested.

(f) Duty of customs officers to seize vessel

It shall be the duty of the several officers of the customs to seize and secure any vessel, vehicle, or merchandise which shall become liable to seizure, and to arrest any person who shall become liable to arrest, by virtue of any law respecting the revenue, as well without as within their respective districts, and to use all necessary force to seize or arrest the same.

(g) Vessels deemed employed within United States

Any vessel, within or without the customs waters, from which any merchandise is being, or has been, unlawfully introduced into the United States by means of any boat belonging to, or owned, controlled, or managed in common with, said vessel, shall be deemed to be employed within the United States and, as such, subject to the provisions of this section.

(h) Application of section to treaties of United States

The provisions of this section shall not be construed to authorize or require any officer of the United States to enforce any law of the United States upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon said vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government.

(June 17, 1930, ch. 497, title IV, § 581, 46 Stat. 747; Aug. 5, 1935, ch. 438, title II, § 203, 49 Stat. 521; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Sept. 1, 1954, ch. 1213, title V, § 504, 68 Stat. 1141.)

REFERENCES IN TEXT

The Anti-Smuggling Act, referred to in subsec. (a), is act Aug. 5, 1935, ch. 438, 49 Stat. 517, as amended, which is classified principally to chapter 5 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1711 of this title and Tables.

The navigation laws, referred to in subsec. (b), are classified generally to Title 33, Navigation and Navigable Waters.

For definition of officer of the customs used in text, see section 1401 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 581, 42 Stat. 979. That section was superseded by section 581 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions dealing with the subject matter of this section were contained in R.S. § 3059, conferring powers similar in most respects to those conferred by this section, so far as it relates to vessels, on any officer of the customs, including inspectors and occasional inspectors, or of a revenue cutter, or authorized agent of the Treasury Department, or other persons specially appointed in writing; section 3060, requiring appointments under the preceding section to be filed in the custom house; section 3067, authorizing collectors, etc., and officers of revenue cutters to go on board vessels in port or within four leagues of the coast, for the purpose of demanding manifests, and examining and searching vessels; and section 3069, relative to noting and sealing, if necessary, packages found separate from the residue of the cargo. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1954—Subsec. (d). Act Sept. 1, 1954, provided a penalty against the owner, operator or person in charge, as well as the master, of a vessel failing to come to a required stop and struck out provisions relating to the duty of the customs officers to pursue such vessels.

1935—Act Aug. 5, 1935, amended section generally among which changes it subdivided the section into subsecs. (a) to (h), inclusive.

TRANSFER OF FUNCTIONS

Word ''Treasury'' was substituted for ''Commerce'' in subsection (b) upon authority of Reorg. Plan No. 3 of 1946. See note set out under section 1613 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1587, 1703 of this title.

§ 1582. Search of persons and baggage; regulations

The Secretary of the Treasury may prescribe regulations for the search of persons and baggage and he is authorized to employ female inspectors for the examination and search of persons of their own sex; and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government under such regulations.

(June 17, 1930, ch. 497, title IV, § 582, 46 Stat. 748.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 3064, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 582, 42 Stat. 979, and was repealed by section 642 thereof. Section 582 of the 1922 act was superseded by section 582 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1583. Repealed. Pub. L. 103–182, title VI, § 690(b)(9), Dec. 8, 1993, 107 Stat. 2223

Section, acts June 17, 1930, ch. 497, title IV, § 583, 46 Stat. 748; Aug. 2, 1956, ch. 887, § 4(c), 70 Stat. 948, related to delivery and certification of manifest.

§ 1584. Falsity or lack of manifest; penalties

(a) General rule

(1) Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer (whether of the Customs Service or the Coast Guard) demanding the same shall be liable to a penalty of $1,000, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be liable to a penalty equal to the lesser of $10,000 or the domestic value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be subject to a penalty of $1,000: *Provided*, That if the Customs Service shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. For purposes of this subsection, the term ''clerical error'' means a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission (electronically or otherwise) of the manifest.

(2) If any of such merchandise so found consists of heroin, morphine, cocaine, isonipecaine, or opiate, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for heroin, morphine, cocaine, isonipecaine, or opiate being in such merchandise shall be liable to a penalty of $1,000 for each ounce thereof so found. If any of such merchandise so found consists of smoking opium, opium prepared for smoking, or marihuana, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for smoking opium, opium prepared for smoking, or marihuana being in such merchandise shall be liable to a penalty of $500 for each ounce thereof so found. If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for crude opium being in such merchandise shall be liable to a penalty of $200 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 1594 of this title (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or until a bond, satisfactory to the Customs Service, is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law. As used in this paragraph, the terms ''opiate'' and ''marihuana'' shall have the same meaning given those terms by sections 802(17) and 802(15),[1] respectively, of title 21.

(3) If any of such merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 1707[1] of this title and the required certificate be not shown, be so found upon any vessel not exceeding five hundred net tons, the vessel shall, in addition to any other penalties herein or by law provided, be seized and forfeited, and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalty herein provided in the case of merchandise not duly manifested: *Provided*, That if the Customs Service shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred.

(b) Procedures

(1) If the Customs Service has reasonable cause to believe that there has been a violation

[1] See References in Text note below.

of subsection (a)(1) of this section and determines that further proceedings are warranted, the Customs Service shall issue or electronically transmit to the person concerned a notice of intent to issue or electronically transmit a claim for a monetary penalty. Such notice shall—

(A) describe the merchandise;

(B) set forth the details of the error in the manifest;

(C) specify all laws and regulations allegedly violated;

(D) disclose all the material facts which establish the alleged violation;

(E) state the estimated loss of lawful duties, if any, and, taking into account all of the circumstances, the amount of the proposed monetary penalty; and

(F) inform such person that he will have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

No notice is required under this subsection for any violation of subsection (a)(1) of this section for which the proposed penalty is $1,000 or less.

(2) After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a)(1) of this section, as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall promptly issue or electronically transmit a statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, the Customs Service shall issue or electronically transmit a penalty claim to such person. The penalty claim shall specify all changes in the information provided under subparagraphs (A) through (E) of paragraph (1).

(June 17, 1930, ch. 497, title IV, §584, 46 Stat. 748; Aug. 5, 1935, ch. 438, title II, §204, 49 Stat. 523; July 1, 1944, ch. 377, §10, 58 Stat. 722; Mar. 8, 1946, ch. 81, §9, 60 Stat. 39; Pub. L. 91–271, title III, §301(b), June 2, 1970, 84 Stat. 287; Pub. L. 91–513, title III, §1102(m), Oct. 27, 1970, 84 Stat. 1293; Pub. L. 95–410, title I, §109, Oct. 3, 1978, 92 Stat. 892; Pub. L. 99–570, title III, §3118, Oct. 27, 1986, 100 Stat. 3207–84; Pub. L. 103–182, title VI, §619, Dec. 8, 1993, 107 Stat. 2180.)

REFERENCES IN TEXT

Sections 802(17) and 802(15) of title 21, referred to in subsec. (a)(2), were redesignated sections 802(18) and 802(16) of title 21, respectively, by Pub. L. 98–473, title II, §507(a), Oct. 12, 1984, 98 Stat. 2071.

Section 1707 of this title, referred to in subsec. (a)(3), was repealed by Pub. L. 104–295, §3(a)(2), Oct. 11, 1996, 110 Stat. 3515.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §584, 42 Stat. 980. Section 584 of the 1922 act was superseded by section 584 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions dealing with the subject matter of this section were contained in R.S. §2809, imposing a penalty and providing for forfeiture for bringing in merchandise not included in the manifest, or without a manifest; section 2810, as amended by act Feb. 27, 1877, ch. 69, §1, 19 Stat. 246, making an exception in case of mistake or accident, etc.; section 2814, imposing penalties for failing to produce, or deliver copies of the manifests, etc.; section 2815, requiring officers to report violations; section 2887, imposing a penalty if any package reported was not found, or if the merchandise did not agree with the report or manifest, etc. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–182, §619(1), substituted ''officer (whether of the Customs Service or the Coast Guard) demanding the same'' for ''officer demanding the same'' and ''Customs Service shall be satisfied'' for ''appropriate customs officer shall be satisfied'' and inserted ''(electronically or otherwise)'' after ''submission'' in last sentence.

Subsec. (a)(2), (3). Pub. L. 103–182, §619(1)(A), substituted ''Customs Service'' for ''appropriate customs officer'' wherever appearing.

Subsec. (b)(1). Pub. L. 103–182, §619(2), substituted ''If the Customs Service'' for ''If the appropriate customs officer'' and ''the Customs Service shall issue or electronically transmit to the person concerned a notice of intent to issue or electronically transmit a claim'' for ''he shall issue to the person concerned a written notice of his intention to issue a claim''.

Subsec. (b)(2). Pub. L. 103–182, §619(2)(A)–(C), substituted ''the Customs Service shall determine'' for ''the appropriate customs officer shall determine'', ''the Customs Service determines that there was no violation, the Customs Service shall promptly issue or electronically transmit a statement'' for ''such officer determines that there was no violation, he shall promptly issue a written statement'', ''the Customs Service determines that there was a violation, the Customs Service shall issue or electronically transmit a penalty claim'' for ''such officer determines that there was a violation, he shall issue a written penalty claim'' and ''The penalty claim shall specify'' for ''The written penalty claim shall specify''.

1986—Subsec. (a)(1). Pub. L. 99–570, §3118(1), substituted ''$1,000'' for ''$500'' in two places.

Subsec. (a)(2). Pub. L. 99–570, §3118(2)–(4), substituted ''$1,000'' for ''$50'', ''$500'' for ''$25'', and ''$200'' for ''$10''.

Subsec. (b)(1). Pub. L. 99–570, §3118(1), substituted ''$1,000'' for ''$500''.

1978—Subsec. (a)(1). Pub. L. 95–410, §109(1)(A), (2)–(4), inserted introductory heading ''(a) GENERAL RULE.—'', designated unnumbered first par. as par. (1), substituted for merchandise found or unladen but not included or described in the manifest a penalty the lesser of $10,000 or the domestic value of the merchandise for prior penalty equal to the value of the merchandise so found or unladen, made the above penalty and penalty of $500 for describing merchandise in the manifest without being found aboard the vessel or vehicle applicable to any person directly or indirectly responsible for any discrepancy between the merchandise and the manifest, and defined the term ''clerical error''.

Subsec. (a)(2). Pub. L. 95–410, §109(1)(B), (5)–(7), designated unnumbered second par. as par. (2) and made the penalties of $50, $25, and $10 applicable to any person directly or indirectly responsible, respectively, for: heroin, morphine, cocaine, isonipecaine, or opiate being in the merchandise; smoking opium, opium prepared for smoking, or marihuana being in the merchandise; and crude opium being in the merchandise.

Subsec. (a)(3). Pub. L. 95–410, §109(1)(C), designated unnumbered third par. as par. (3).

Subsec. (b). Pub. L. 95–410, §109(8), added subsec. (b).

1970—Pub. L. 91–271 substituted references to appropriate customs officer for references to collector wherever appearing.

Par. (2). Pub. L. 91–513 struck out ''isonipecaine'' from list of defined substances and substituted sections 802(17) and 802(15) of title 21 for sections 3228(e), 3228(f), and 3238(b) of title 26 as the sections where definitions referred to are to be found.

1946—Par. (2). Act Mar. 8, 1946, struck out ''or'' before ''isonipecaine'' and inserted ''or opiate'', after ''isonipecaine'' in first sentence, inserted ''opiate'' after ''isonipecaine'' and inserted ''3228(f)'' in last sentence.

1944—Par. (2). Act July 1, 1944, struck out ''or'' before ''cocaine,'' and inserted ''or isonipecaine'' after ''cocaine'' in first sentence, struck ''or'' before ''or opium prepared'' and inserted a comma in lieu thereof, inserted ''or Marihuana'' after ''prepared for smoking'' in second sentence, and inserted last sentence.

1935—Act Aug. 5, 1935, amended second par. and inserted last par.

EFFECTIVE DATE OF 1970 AMENDMENTS

Amendment by Pub. L. 91–513 effective on first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

STANDARDS OF CARE IN DISCOVERING CONTRABAND

Pub. L. 100–690, title VII, § 7369, Nov. 18, 1988, 102 Stat. 4481, directed Secretary of the Treasury, no later than 120 days after Nov. 18, 1988, and after an opportunity for public comment, to prescribe regulations which set forth criteria for use by the owner, master, pilot, operator, or officer of, or other employee in charge of, any common carrier in meeting the standards under sections 1584(a)(2) and 1594(c) of this title for the exercise of the highest degree of care and diligence to know whether controlled substances imported into the United States are on board the common carrier and, within 6 months after Nov. 18, 1988, to issue controlled substances regulations for a 2-year demonstration program to establish procedures for air carrier development and Customs Service approval of foreign and domestic security and inspection practices by permitting air carriers to request the Secretary of the Treasury to permit air carriers, the Customs Service, or an approved agent of the Customs Service to inspect at United States airports of entry, and aircraft arriving from foreign locations.

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Contraband articles, seizure and forfeiture of vessels carrying, see section 80301 et seq. of Title 49, Transportation.

Entry of goods by means of false statements, punishment, see section 542 of Title 18, Crimes and Criminal Procedure.

Narcotic drugs—

Seizure and forfeiture in connection with violation of revenue laws, see section 7301 of Title 26, Internal Revenue Code.

Smuggling goods into the United States, punishment, see section 545 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1436, 1644a of this title.

§ 1585. Repealed. Pub. L. 103–182, title VI, § 690(b)(10), Dec. 8, 1993, 107 Stat. 2223

Section, acts June 17, 1930, ch. 497, title IV, § 585, 46 Stat. 749; Aug. 5, 1935, ch. 438, title III, § 303, 49 Stat. 527; Oct. 27, 1986, Pub. L. 99–570, title III, § 3113(b), 100 Stat. 3207–82, set forth penalties assessed when vessel or vehicle from foreign port or place departed or unloaded merchandise before making report or entry.

§ 1586. Unlawful unlading or transshipment

(a) Penalty for unlading prior to grant of permission

The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited.

(b) Penalty for transshipment to any vessel for purpose of unlawful entry

The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen from his vessel at any place upon the high seas adjacent to the customs waters of the United States to be transshipped to or placed in or received on any vessel of any description, with knowledge, or under circumstances indicating the purpose to render it possible, that such merchandise, or any part thereof, may be introduced, or attempted to be introduced, into the United States in violation of law, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

(c) Penalty for unlawful transshipment to any vessel of United States

The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores) destined to the United States, the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen, without permit to unlade, at any place upon the high seas adjacent to the customs waters of the United States, to be transshipped to or placed in or received on any vessel of the United States or any other vessel which is owned by any person a citizen of, or domiciled

in, the United States, or any corporation incorporated in the United States, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

(d) Liability of master of receiving vessel in unlawful transshipment

If any merchandise (including sea stores) unladen in violation of the provisions of this section is transshipped to or placed in or received on any other vessel, the master of the vessel on which such merchandise is placed, and any person aiding or assisting therein, shall be liable to a penalty equal to twice the value of the merchandise, but not less than $10,000, and such vessel, and its cargo and such merchandise, shall be seized and forfeited.

(e) Imprisonment of persons aiding in unlawful unlading or transshipment

Whoever, at any place, if a citizen of the United States, or at any place in the United States or within customs waters, if a foreign national, shall engage or aid or assist in any unlading or transshipment of any merchandise in consequence of which any vessel becomes subject to forfeiture under the provisions of this section shall, in addition to any other penalties provided by law, be liable to imprisonment for not more than 15 years.

(f) Unlading or transshipment because of accident, stress of weather, etc.

Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transshipped shall, as soon as possible thereafter, notify the Customs Service at the district within which such unlading or transshipment has occurred, or the Customs Service at the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unlading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if the Customs Service is satisfied that the unlading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred.

(June 17, 1930, ch. 497, title IV, § 586, 46 Stat. 749; Aug. 5, 1935, ch. 438, title II, § 205, 49 Stat. 524; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 99–570, title III, § 3119, Oct. 27, 1986, 100 Stat. 3207–84; Pub. L. 103–182, title VI, § 620, Dec. 8, 1993, 107 Stat. 2180.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §§ 586, 587, 42 Stat. 980, 981. These sections were superseded by section 586 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section, but applicable only to vessels ''bound to the United States'' were contained in R.S. § 2867, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

Provisions substantially the same in effect as those contained in the act of 1922, § 587, except that the penalty was treble the value of the merchandise, and the provision for forfeiture applied only to the vessel was contained in R.S. § 2868, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Subsecs. (a) to (c). Pub. L. 103–182, § 620(1), inserted '', or of a hovering vessel which has received or delivered merchandise while outside the territorial sea,'' after ''from a foreign port or place''.

Subsec. (f). Pub. L. 103–182, § 620(2), substituted ''the Customs Service at the district'' for ''the appropriate customs officer of the district'' and ''the appropriate customs officer within the district'' and ''the Customs Service is satisfied'' for ''the appropriate customs officer is satisfied''.

1986—Subsecs. (a) to (d). Pub. L. 99–570, § 3119(1), substituted ''$10,000'' for ''$1,000'' wherever appearing.

Subsec. (e). Pub. L. 99–570, § 3119(2)(A), substituted ''customs waters'' for ''one league of the coast of the United States''.

Pub. L. 99–570, § 3119(2)(B), which directed that ''15 years'' be substituted for ''2 years'' was executed by making the substitution for ''two years'' as the probable intent of Congress.

1970—Subsec. (f). Pub. L. 91–271 substituted references to appropriate customs officer for references to collector wherever appearing.

1935—Act Aug. 5, 1935, redesignated existing provisions as subsecs. (a) and (f) and added subsecs. (b) to (e).

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1587. Examination of hovering vessels

(a) Boarding and examination

Any hovering vessel, or any vessel which fails (except for unavoidable cause), at any place within the customs waters or within a customs-enforcement area established under the Anti-Smuggling Act [19 U.S.C. 1701 et seq.], to display lights as required by law, or which has become subject to pursuit as provided in section 1581 of this title, or which, being a foreign vessel to which subsection (h) of section 1581 of this title applies, is permitted by special arrangement with a foreign government to be so examined without the customs waters of the United States, may at any time be boarded and examined by any officer of the customs, and the provisions of said section 1581 shall apply thereto, as well without as within his district, and in examining the same, any such officer may also examine the master upon oath respecting the cargo and voyage of the vessel, and may also bring the vessel into the most convenient port of the United States to examine the cargo, and if the master of said vessel refuses to comply with the lawful directions of such officer or does not truly answer such questions as are put to him respecting the vessel, its cargo, or voyage, he shall be liable to a penalty of not more than $5,000 nor less than $500. If, upon the examination of any such vessel or its cargo by any officer of the customs, any dutiable merchandise destined to the United States is found, or discovered to have been, on board thereof, the vessel and its cargo shall be seized and forfeited. It shall be presumed that any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liq-

uors, so found, or discovered to have been, on board thereof, is destined to the United States.

(b) Unexplained lightness of vessel or discharge of cargo

If any vessel laden with cargo be found at any place in the United States or within the customs waters or within a customs-enforcement area established under the Anti-Smuggling Act [19 U.S.C. 1701 et seq.] and such vessel afterwards is found light or in ballast or having discharged its cargo or any part thereof, and the master is unable to give a due account of the port or place at which the cargo, or any part thereof, consisting of any merchandise the importation of which into the United States is prohibited or any spirits, wines, or other alcoholic liquors, was lawfully discharged, the vessel shall be seized and forfeited.

(c) Vessel bona fide bound from one foreign port to another foreign port

Nothing contained in this section shall be construed to render any vessel liable to forfeiture which is bona fide bound from one foreign port to another foreign port, and which is pursuing her course, wind and weather permitting.

(June 17, 1930, ch. 497, title IV, § 587, 46 Stat. 749; Aug. 5, 1935, ch. 438, title II, § 206, 49 Stat. 525.)

REFERENCES IN TEXT

The Anti-Smuggling Act, referred to in subsecs. (a) and (b), is act Aug. 5, 1935, ch. 438, 49 Stat. 517, as amended, which is classified principally to chapter 5 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1711 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 588, 42 Stat. 981. That section was superseded by section 588 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions substantially the same as those in this section, except that they applied only to ports on the northern, northeastern and northwestern frontiers, were contained in R.S. § 3110, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1937—Act Aug. 5, 1935, amended section generally.

§ 1588. Transportation between American ports via foreign ports

If any merchandise is laden at any port or place in the United States upon any vessel belonging wholly or in part to a subject of a foreign country, and is taken thence to a foreign port or place to be reladen and reshipped to any other port in the United States, either by the same or by another vessel, foreign or American, with intent to evade the provisions relating to the transportation of merchandise from one port or place of the United States to another port or place of the United States in a vessel belonging wholly or in part to a subject of any foreign power, the merchandise shall, on its arrival at such last-named port or place, be seized and forfeited to the United States, and the vessel shall pay a tonnage duty of 50 cents per net ton.

(June 17, 1930, ch. 497, title IV, § 588, 46 Stat. 749.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1554 of this title.

§ 1589. Repealed. Pub. L. 100–690, title VII, § 7367(c)(5), Nov. 18, 1988, 102 Stat. 4480

Section, act June 17, 1930, ch. 497, title IV, § 589, as added Oct. 12, 1984, Pub. L. 98–473, title II, § 320, 98 Stat. 2056, set forth arrest authority of customs officers.

CODIFICATION

Another section 589 of act June 17, 1930, was added by Pub. L. 98–573, title II, § 213(a)(17), Oct. 30, 1984, 98 Stat. 2988, and is classified to section 1589a of this title.

A prior section 589 of act June 17, 1930, ch. 497, title IV, 46 Stat. 750, related to unlawful relanding and was classified to this section, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 544 of Title 18, Crimes and Criminal Procedure.

§ 1589a. Enforcement authority of customs officers

Subject to the direction of the Secretary of the Treasury, an officer of the customs may—

(1) carry a firearm;

(2) execute and serve any order, warrant, subpena, summons, or other process issued under the authority of the United States;

(3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and

(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.

(June 17, 1930, ch. 497, title IV, § 589, as added Pub. L. 98–573, title II, § 213(a)(17), Oct. 30, 1984, 98 Stat. 2988.)

CODIFICATION

Another section 589 of act June 17, 1930, as added by Pub. L. 98–473, title II, § 320, Oct. 12, 1984, 98 Stat. 2056, was classified to section 1589 of this title, prior to repeal by Pub. L. 100–690.

PRIOR PROVISIONS

A prior section 589 of act June 17, 1930, ch. 497, title IV, 46 Stat. 750, related to unlawful relanding and was classified to this section, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 544 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Section effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

§ 1590. Aviation smuggling

(a) In general

It is unlawful for the pilot of any aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing, or intending, that the merchandise will be introduced into the United States contrary to law.

(b) Sea transfers

It is unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United

States if such person has not been authorized by the Secretary to make such transfer and—

(1) either—

(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or

(B) the vessel is a vessel of the United States (within the meaning of section 1703(b) of this title), or

(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully.

(c) Civil penalties

Any person who violates any provision of this section is liable for a civil penalty equal to twice the value of the merchandise involved in the violation, but not less than $10,000. The value of any controlled substance included in the merchandise shall be determined in accordance with section 1497(b) of this title.

(d) Criminal penalties

In addition to being liable for a civil penalty under subsection (c) of this section, any person who intentionally commits a violation of any provision of this section is, upon conviction—

(1) liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved was a controlled substance; or

(2) liable for a fine of not more than $250,000 or imprisonment for not more than 20 years, or both, if any of the merchandise involved was a controlled substance.

(e) Seizure and forfeiture

(1) Except as provided in paragraph (2), a vessel or aircraft used in connection with, or in aiding or facilitating, any violation of this section, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with the customs laws.

(2) Paragraph (1) does not apply to a vessel or aircraft operated as a common carrier.

(f) "Merchandise" defined

As used in this section, the term ''merchandise'' means only merchandise the importation of which into the United States is prohibited or restricted.

(g) Intent of transfer of merchandise

For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be prima facie evidence that the transportation or possession of merchandise was unlawful and shall be presumed to constitute circumstances indicating that the purpose of the transfer is to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully, and for purposes of subsection (e) of this section or section 1595a of this title, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:

(1) The operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law.

(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.

(3) The failure to identify correctly—

(A) the vessel by name or country of registration, or

(B) the aircraft by registration number and country of registration,

when requested to do so by a customs officer or other government authority.

(4) The external display of false registration numbers, false country of registration, or, in the case of a vessel, false vessel name.

(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

(8) The failure of a vessel to stop when hailed by a customs officer or other government authority.

(June 17, 1930, ch. 497, title IV, § 590, as added Pub. L. 99–570, title III, § 3120, Oct. 27, 1986, 100 Stat. 3207–84.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (e)(1), are classified generally to this title.

PRIOR PROVISIONS

A prior section 1590, act June 17, 1930, ch. 497, title IV, § 590, 46 Stat. 750, related to false drawback claims, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 550 of Title 18, Crimes and Criminal Procedure.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1956.

§ 1591. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, acts June 17, 1930, ch. 497, title IV, § 591, 46 Stat. 750; Aug. 5, 1935, ch. 438, title III, § 304(a), 49 Stat. 527, related to fraud and personal penalties. See section 542 of Title 18, Crimes and Criminal Procedure.

§ 1592. Penalties for fraud, gross negligence, and negligence

(a) Prohibition

(1) General rule

Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty, tax, or fee thereby, no person, by fraud, gross negligence, or negligence—

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—

(i) any document or electronically transmitted data or information, written or

oral statement, or act which is material and false, or

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).

(2) Exception

Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

(b) Procedures

(1) Pre-penalty notice

(A) In general

If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) of this section and determines that further proceedings are warranted, it shall issue to the person concerned a written notice of its intention to issue a claim for a monetary penalty. Such notice shall—

(i) describe the merchandise;

(ii) set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

(iii) specify all laws and regulations allegedly violated;

(iv) disclose all the material facts which establish the alleged violation;

(v) state whether the alleged violation occurred as a result of fraud, gross negligence, or negligence;

(vi) state the estimated loss of lawful duties, taxes, and fees, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) Exceptions

The preceding subparagraph shall not apply if—

(i) the importation with respect to which the violation of subsection (a) of this section occurs is noncommercial in nature, or

(ii) the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less.

(2) Penalty claim

After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a) of this section, as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, it shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, it shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 1618 of this title to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 1618, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) Maximum penalties

(1) Fraud

A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.

(2) Gross negligence

A grossly negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) four times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.

(3) Negligence

A negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) two times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

(4) Prior disclosure

If the person concerned discloses the circumstances of a violation of subsection (a) of this section before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) of this section shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties, taxes, and fees of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of title 26) on the amount of lawful duties, taxes, and fees of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount.

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) of this section existed.

(5) Prior disclosure regarding NAFTA claims

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim for preferential tariff treatment under section 3332 of this title if the importer—

(A) has reason to believe that the NAFTA Certificate of Origin (as defined in section 1508(b)(1) of this title) on which the claim was based contains incorrect information; and

(B) in accordance with regulations issued by the Secretary, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(6) Seizure

If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) of this section and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c) of this section.

(d) Deprivation of lawful duties, taxes, or fees

Notwithstanding section 1514 of this title, if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of subsection (a) of this section, the Customs Service shall require that such lawful duties, taxes, and fees be restored, whether or not a monetary penalty is assessed.

(e) Court of International Trade proceedings

Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence.

(f) False certifications regarding exports to NAFTA countries

(1) In general

Subject to paragraph (3), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin (as defined in section 1508(b)(1) of this title) that a good to be exported to a NAFTA country (as defined in section 3301(4) of this title) qualifies under the rules of origin set out in section 3332 of this title.

(2) Applicable provisions

The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of paragraph (1), except that—

(A) subsection (d) of this section does not apply, and

(B) subsection (c)(5) of this section applies only if the person voluntarily and promptly provides, to all persons to whom the person provided the NAFTA Certificate of Origin, written notice of the falsity of the Certificate.

(3) Exception

A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a NAFTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

(B) the person voluntarily and promptly provides written notice of the change to all persons to whom the person provided the Certificate of Origin.

(June 17, 1930, ch. 497, title IV, § 592, 46 Stat. 750; Aug. 5, 1935, ch. 438, title III, § 304(b), 49 Stat. 527; Pub. L. 95–410, title I, § 110(a), Oct. 3, 1978, 92 Stat. 893; Pub. L. 96–417, title VI, § 609, Oct. 10, 1980, 94 Stat. 1746; Pub. L. 99–514, § 2, Oct. 22, 1986,

100 Stat. 2095; Pub. L. 103–182, title II, § 205(c), title VI, § 621, Dec. 8, 1993, 107 Stat. 2095, 2180; Pub. L. 104–295, §§ 3(a)(4), (5), 21(e)(12), (13), Oct. 11, 1996, 110 Stat. 3515, 3531.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § III, H, 38 Stat. 183, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 592, 42 Stat. 982, and was repealed by section 643 thereof. Section 592 of the 1922 act was superseded by section 592 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

The provisions of section III, H, of the 1913 act were substituted for provisions of the same nature made by the Customs Administrative Act of June 10, 1890, ch. 407, §§ 6, 9, 26 Stat. 134, 135, amended and reenacted by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 95, 97.

Those provisions superseded similar provisions made by R.S. § 2864, as amended by act Feb. 18, 1875, ch. 80, 18 Stat. 319, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 2839 provided for forfeiture of merchandise entered, but not invoiced according to the actual cost at the place of exportation, with the design to evade payment of duty. It was repealed by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141, and provisions of a similar nature were made by section 9 of that act, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 97, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, § III, H, 38 Stat. 183.

Act June 22, 1874, ch. 391, § 16, 18 Stat. 189, required special findings as to fraud in actions, etc., to enforce forfeitures, etc., prior to repeal by Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–295, § 3(a)(4)(A), substituted ''lawful duty, tax, or fee'' for ''lawful duty''.

Subsecs. (b)(1)(A)(vi), (c)(2)(A)(ii), (3)(A)(ii). Pub. L. 104–295, § 3(a)(4)(B), substituted ''lawful duties, taxes, and fees'' for ''lawful duties''.

Subsec. (c)(4)(A)(i), (B). Pub. L. 104–295, § 21(e)(12), amended Pub. L. 103–182, § 621(4)(A). See 1993 Amendment notes below.

Pub. L. 104–295, § 3(a)(4)(B), substituted ''lawful duties, taxes, and fees'' for ''lawful duties'' in two places.

Subsec. (d). Pub. L. 104–295, § 21(e)(13), inserted comma after ''taxes'' in heading.

Pub. L. 104–295, § 3(a)(5), substituted ''and fees be restored'' for ''or fees be restored''.

1993—Subsec. (a)(1)(A)(i). Pub. L. 103–182, § 621(1), inserted ''or electronically transmitted data or information'' after ''document''.

Subsec. (a)(2). Pub. L. 103–182, § 621(2), inserted at end ''The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.''

Subsec. (b)(1)(A). Pub. L. 103–182, § 621(3)(A), substituted ''the Customs Service'' for ''the appropriate customs officer'', ''it shall issue'' for ''he shall issue'' and ''its intention'' for ''his intention'' in introductory provisions.

Subsec. (b)(2). Pub. L. 103–182, § 621(3)(B), substituted ''the Customs Service shall determine'' for ''the appropriate customs officer shall determine'', ''the Customs Service determines'' for ''such officer determines'' in two places, ''it shall'' for ''he shall'' in two places, and ''the Customs Service shall provide'' for ''the appropriate customs officer shall provide''.

Subsec. (c)(4). Pub. L. 103–182, § 621(4)(B), inserted at end ''For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) of this section existed.''

Subsec. (c)(4)(A)(i). Pub. L. 103–182, § 621(4)(A), as amended by Pub. L. 104–295, § 21(e)(12), substituted ''time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its'' for ''time of disclosure or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his''.

Subsec. (c)(4)(B). Pub. L. 103–182, § 621(4)(A), as amended by Pub. L. 104–295, § 21(e)(12), which directed the substitution of ''time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its'' for ''time of disclosure within 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his'', was executed by making the substitution for text which began ''time of disclosure or within 30 days'', to reflect the probable intent of Congress.

Subsec. (c)(5), (6). Pub. L. 103–182, § 205(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsec. (d). Pub. L. 103–182, § 621(5), inserted '', taxes or fees'' after ''duties'' in heading and in text substituted ''duties, taxes, or fees'' for ''duties'' in two places and ''the Customs Service'' for ''the appropriate customs officer''.

Subsec. (f). Pub. L. 103–182, § 205(c)(2), added subsec. (f).

1986—Subsec. (c)(4)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1980—Subsec. (e). Pub. L. 96–417 substituted in heading ''Court of International Trade'' for ''District court'' and in text ''proceeding commenced by the United States in the Court of International Trade'' for ''proceeding in a United States district court commenced by the United States pursuant to section 1604 of this title''.

1978—Pub. L. 95–410 substituted subsecs. (a) to (e) relating to penalties for fraud, gross negligence, and negligence for prior provisions which: provided for forfeiture of merchandise, or recovery of value thereof, where entry or attempted entry of the merchandise was made using fraudulent or false invoice, declaration, affidavit, letter, paper, or false statement, written or verbal, false or fraudulent practice or appliance, or false statement in a declaration on entry without reasonable cause to believe the truth of the statement or aided or procured the making any such false statement as to any material matter without reasonable cause to believe the truth of the statement, regardless of deprivation of lawful duties, or guilty of any willful act or omission when there was a deprivation of such duties; made the forfeiture applicable to the whole of the merchandise or the value thereof where package contained the particular articles to which the fraud or false paper or statement related; and defined attempt to enter the merchandise without an actual entry having been made or offered.

1935—Act Aug. 5, 1935, inserted ''whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement;''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 3(a)(4), (5) of Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 205(c) of Pub. L. 103–182 effective on the date the North American Free Trade Agree-

ment enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 applicable with respect to civil actions commenced on or after 90th day after Nov. 1, 1980, see section 701(c)(2) of Pub. L. 96–417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 110(f) of Pub. L. 95–410 provided that:

''(1)(A) Except as provided in subparagraphs (B) and (C), subsections (a), (b), and (c) (other than new subsection (e) of section 592 of the Tariff Act of 1930 as added by subsection (a)) [subsec. (a), (b), and (c), not including (e) of this section] shall be effective with respect to proceedings commenced after the 89th day after the date of enactment of this Act [Oct. 3, 1978].

''(B) Except as provided in subparagraph (C), section 592 of the Tariff Act of 1930 [this section] (as such section existed on the day before the date of enactment of this Act) [Oct. 3, 1978] shall apply to any alleged intentional violation thereof involving television receivers that are the product of Japan and that were or are the subject of antidumping proceedings if the alleged intentional violation—

''(i) occurred before the date of enactment of this Act, and

''(ii) was the subject of an investigation by the Customs Service which was begun before the date of enactment of this Act.

''(C) Except as provided in the next sentence, subsection (e) of section 592 of the Tariff Act of 1930 (as added by subsection (a)) [subsec. (e) of this section] shall be effective on the date of enactment of this Act [Oct. 3, 1978]. Notwithstanding any provision of law, in any proceeding in a United States district court commenced by the United States pursuant to section 604 of the Tariff Act of 1930 [section 1604 of this title] for the recovery of any monetary penalty claimed under section 592 of such Act [this section] for an alleged intentional violation described in subparagraph (B)—

''(i) all issues, including the amount of the penalty, shall be tried de novo; and

''(ii) the United States shall have the burden of proof to establish such violation by a preponderance of the evidence.

''(2)(A) The amendment made by subsection (e) [to section 1621 of this title] shall apply with respect to alleged violations of section 592 of the Tariff Act of 1930 [this section] resulting from gross negligence or negligence which are committed on or after the date of the enactment of this Act [Oct. 3, 1978].

''(B) In the case of any alleged violation of such section 592 [this section] resulting from gross negligence or negligence which was committed before the date of the enactment of this Act [Oct. 3, 1978] and for which no suit or action for recovery was commenced before such date of enactment, no suit or action for recovery with respect to such alleged violation shall be instituted after—

''(i) the closing date of the 5-year period beginning on the date on which the alleged violation was committed, or

''(ii) the closing date of the 2-year period beginning on such date of enactment,

whichever date later occurs, except that no such suit or action may be instituted after the date on which such suit or action would have been barred under section 621 of the Tariff Act of 1930 [section 1621 of this title] (as in effect on the day before such date of enactment).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1509, 1592a, 1595, 1595a, 1613, 1615, 1621, 1671c, 1673c of this title; title 7 section 511r; title 28 section 1582.

§ 1592a. Special provisions regarding certain violations

(a) Publication of names of certain violators

(1) Publication

The Secretary of the Treasury is authorized to publish in the Federal Register a list of the name of any producer, manufacturer, supplier, seller, exporter, or other person located outside the customs territory of the United States—

(A) against whom the Customs Service has issued a penalty claim under section 1592 of this title, and

(B) if a petition with respect to that claim has been filed under section 1618 of this title, against whom a final decision has been issued under such section after exhaustion of administrative remedies,

citing any of the violations of the customs laws referred to in paragraph (2). Such list shall be published not later than March 31 and September 30 of each year.

(2) Violations

The violations of the customs laws referred to in paragraph (1) are the following:

(A) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products.

(B) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the customs territory of the United States of textile or apparel products.

(C) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labelled as to country of origin or source.

(D) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

(3) Removal from list

Any person whose name has been included in a list published under paragraph (1) may petition the Secretary to be removed from such list. If the Secretary finds that such person has not committed any violations described in paragraph (2) for a period of not less than 3 years after the date on which the person's name was so published, the Secretary shall remove such person from the list as of the next publication of the list under paragraph (1).

(4) Reasonable care required for subsequent imports

(A) Responsibility of importers and others

After the name of a person has been published under paragraph (1), the Secretary of

the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labelling that are accurate as to its origin. Such reasonable care shall not include reliance solely on a source of information which is the named person.

(B) Failure to exercise reasonable care

If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 1484(a) of this title.

(b) List of high risk countries

(1) List

The President or his designee, upon the advice of the Secretaries of Commerce and Treasury, and the heads of other appropriate departments and agencies, is authorized to publish a list of countries in which illegal activities have occurred involving transshipped textile or apparel products or activities designed to evade quotas of the United States on textile or apparel products, if those countries fail to demonstrate a good faith effort to cooperate with United States authorities in ceasing such activities. Such list shall be published in the Federal Register not later than March 31 of each year. Any country that is on the list and that subsequently demonstrates a good faith effort to cooperate with United States authorities in ceasing illegal activities described in the first sentence shall be removed from the list, and such removal shall be published in the Federal Register as soon as practicable.

(2) Reasonable care required for subsequent imports

(A) Responsibility of importers of record

The Secretary of the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products indicated, on the documentation, packaging, or labelling accompanying such products, to be from any country on the list published under paragraph (1) to show, to the satisfaction of the Secretary, that such importer, consignee, or purchaser has exercised reasonable care to ascertain the true country of origin of the textile or apparel products.

(B) Failure to exercise reasonable care

If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 1484(a) of this title.

(3) "Country" defined

For purposes of this subsection, the term ''country'' means a foreign country or territory, including any overseas dependent territory or possession of a foreign country.

(June 17, 1930, ch. 497, title IV, § 592A, as added Pub. L. 103–465, title III, § 333, Dec. 8, 1994, 108 Stat. 4947; amended Pub. L. 104–295, § 20(c)(3), Oct. 11, 1996, 110 Stat. 3528.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (a)(1), (2), are classified generally to this title.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–295 substituted ''list under paragraph (1)'' for ''list under paragraph (2)''.

EFFECTIVE DATE

Section effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 335 of Pub. L. 103–465, set out as a note under section 3591 of this title.

§ 1593. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, act June 17, 1930, ch. 497, title IV, § 593, 46 Stat. 751, related to smuggling and clandestine importations. See section 545 of Title 18, Crimes and Criminal Procedure.

§ 1593a. Penalties for false drawback claims

(a) Prohibition

(1) General rule

No person, by fraud, or negligence—

(A) may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of—

(i) any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or

(ii) any omission which is material; or

(B) may aid or abet any other person to violate subparagraph (A).

(2) Exception

Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

(b) Procedures

(1) Prepenalty notice

(A) In general

If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) of this section and determines that further proceedings are warranted, the Customs Service shall issue to

the person concerned a written notice of intent to issue a claim for a monetary penalty. Such notice shall—

(i) identify the drawback claim;

(ii) set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;

(iii) specify all laws and regulations allegedly violated;

(iv) disclose all the material facts which establish the alleged violation;

(v) state whether the alleged violation occurred as a result of fraud or negligence;

(vi) state the estimated actual or potential loss of revenue due to the drawback claim, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) Exceptions

The Customs Service may not issue a prepenalty notice if the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less. In such cases, the Customs Service may proceed directly with a penalty claim.

(C) Prior approval

No prepenalty notice in which the alleged violation occurred as a result of fraud shall be issued without the prior approval of Customs Headquarters.

(2) Penalty claim

After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a) of this section, as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, Customs shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vii) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 1618 of this title to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 1618 of this title, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination, and the findings of fact and conclusions of law on which such determination is based.

(c) Maximum penalties

(1) Fraud

A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) Negligence

(A) In general

A negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 20 percent of the actual or potential loss of revenue for the 1st violation.

(B) Repetitive violations

If the Customs Service determines that a repeat negligent violation occurs relating to the same issue, the penalty amount for the 2d violation shall be in an amount not to exceed 50 percent of the total actual or potential loss of revenue. The penalty amount for each succeeding repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue. If the same party commits a nonrepetitive violation, that violation shall be subject to a penalty not to exceed 20 percent of the actual or potential loss of revenue.

(3) Prior disclosure

(A) In general

Subject to subparagraph (B), if the person concerned discloses the circumstances of a violation of subsection (a) of this section before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this subsection may not exceed—

(i) if the violation resulted from fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) if the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under section 6621 of title 26 on the amount of actual revenue of which the United States is or may be deprived during the period that—

(I) begins on the date of the overpayment of the claim; and

(II) ends on the date on which the person concerned tenders the amount of the overpayment.

(B) Condition affecting penalty limitations

The limitations in subparagraph (A) on the amount of the monetary penalty to be assessed under this subsection apply only if the person concerned tenders the amount of the overpayment made on the claim at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide), after notice by the Customs Service of its calculation of the amount of the overpayment.

(C) Burden of proof

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(4) Commencement of investigation

For purposes of this section, a formal investigation of a violation is considered to be com-

menced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) of this section existed.

(5) Exclusivity

Penalty claims under this section shall be the exclusive civil remedy for any drawback related violation of subsection (a) of this section.

(d) Deprivation of lawful revenue

Notwithstanding section 1514 of this title, if the United States has been deprived of lawful duties and taxes resulting from a violation of subsection (a) of this section, the Customs Service shall require that such duties and taxes be restored whether or not a monetary penalty is assessed.

(e) Drawback compliance program

(1) In general

After consultation with the drawback trade community, the Customs Service shall establish a drawback compliance program in which claimants and other parties in interest may participate after being certified by the Customs Service under paragraph (2). Participation in the drawback compliance program is voluntary.

(2) Certification

A party may be certified as a participant in the drawback compliance program after meeting the general requirements established under the program or after negotiating an alternative program suited to the needs of the party and the Customs Service. Certification requirements shall take into account the size and nature of the party's drawback program and the volume of claims. In order to be certified, the participant must be able to demonstrate that it—

(A) understands the legal requirements for filing claims, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the Customs Service requirements to those employees that are involved in the preparation of claims, and the maintenance and production of required records;

(C) has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for compliance under the program and whose duties include maintaining familiarity with the drawback requirements of the Customs Service;

(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternate records or recordkeeping formats other than the original records; and

(F) has procedures for notifying the Customs Service of variances to, and violations of, the requirements of the drawback compliance program or any negotiated alternative programs, and for taking corrective action when notified by the Customs Service for violations or problems regarding such program.

(f) Alternatives to penalties

(1) In general

When a party that—

(A) has been certified as a participant in the drawback compliance program under subsection (e) of this section; and

(B) is generally in compliance with the appropriate procedures and requirements of the program;

commits a violation of subsection (a) of this section, the Customs Service, shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty, issue a written notice of the violation to the party. Repeated violations by a party may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(2) Contents of notice

A notice of violation issued under paragraph (1) shall—

(A) state that the party has violated subsection (a) of this section;

(B) explain the nature of the violation; and

(C) warn the party that future violations of subsection (a) of this section may result in the imposition of monetary penalties.

(3) Response to notice

Within a reasonable time after receiving written notice under paragraph (1), the party shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(g) Repetitive violations

(1) A party who has been issued a written notice under subsection (f)(1) of this section and subsequently commits a repeat negligent violation involving the same issue is subject to the following monetary penalties:

(A) 2d violation

An amount not to exceed 20 percent of the loss of revenue.

(B) 3rd violation

An amount not to exceed 50 percent of the loss of revenue.

(C) 4th and subsequent violations

An amount not to exceed 100 percent of the loss of revenue.

(2) If a party that has been certified as a participant in the drawback compliance program under subsection (e) of this section commits an alleged violation which was not repetitive, the party shall be issued a ''warning letter'', and, for any subsequent violation, shall be subject to the same maximum penalty amounts stated in paragraph (1).

(h) Regulation

The Secretary shall promulgate regulations and guidelines to implement this section. Such

regulations shall specify that for purposes of subsection (g) of this section, a repeat negligent violation involving the same issue shall be treated as a repetitive violation for a maximum period of 3 years.

(i) Court of International Trade proceedings

Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence; and

(3) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of providing evidence that the act or omission did not occur as a result of negligence.

(June 17, 1930, ch. 497, title IV, § 593A, as added Pub. L. 103–182, title VI, § 622(a), Dec. 8, 1993, 107 Stat. 2181.)

EFFECTIVE DATE

Section 622(b) of Pub. L. 103–182 provided that: ''The amendment made by subsection (a) [enacting this section] applies to drawback claims filed on and after the nationwide operational implementation of an automated drawback selectivity program by the Customs Service. The Customs Service shall publish notice of this date in the Customs Bulletin.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1621 of this title; title 28 section 1582.

§ 1594. Seizure of conveyances

(a) In general

Whenever—

(1) any vessel, vehicle, or aircraft; or

(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft;

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

(b) Exceptions

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure and forfeiture under the customs laws for violations relating to merchandise contained—

(A) on the person;

(B) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

(C) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

(2) Except as provided in paragraph (1) or subsection (c) of this section, no vessel, vehicle, or aircraft is subject to forfeiture to the extent of an interest of an owner for a drug-related offense established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

(c) Prohibited merchandise on conveyance

If any merchandise the importation of which is prohibited is found to be, or to have been—

(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

(A) that are not manifested (or not shown on bills of lading or airway bills); or

(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it is established that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such merchandise was on board.

(d) Definitions

For purposes of this section—

(1) The term ''owner or operator'' includes—

(A) a lessee or person operating a conveyance under a rental agreement or charter party; and

(B) the officers and directors of a corporation;

(C) station managers and similar supervisory ground personnel employed by airlines;

(D) one or more partners of a partnership;

(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

(F) and other persons with similar responsibilities.

(2) The term ''master'' and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.

(e) Costs and expenses of seizure

When a common carrier has been seized in accordance with the provisions of subsection (c) of this section and it is subsequently determined that a violation of such subsection occurred but that the vessel will be released, the conveyance is liable for the costs and expenses of the seizure and detention.

(June 17, 1930, ch. 497, title IV, § 594, 46 Stat. 751; Pub. L. 99–570, title III, § 3121, Oct. 27, 1986, 100 Stat. 3207–86; Pub. L. 100–690, title VI, § 6076(b), Nov. 18, 1988, 102 Stat. 4324.)

REFERENCES IN TEXT

The customs laws, referred to in subsecs. (a) and (b), are classified generally to this title.

PRIOR PROVISIONS

Provisions substantially similar to subsec. (a) of this section, so far as it relates to vessels, except that they referred to the ''revenue laws,'' instead of the ''customs laws,'' were contained in R.S. § 3088. Provisions substantially similar to subsec. (b), so far as it relates to vessels, were contained in act Feb. 8, 1881, ch. 34, 21 Stat. 322. Provisions similar to subsec. (b), except that they applied to railway cars, engines, other vehicles, and teams, and referred to the owner, superintendent, or agent of the owner in charge, instead of the ''conductor, driver,'' etc., were contained in R.S. § 3063. All of these sections were superseded and more closely assimilated to this section by act Sept. 21, 1922, ch. 356, title IV, § 594, 42 Stat. 982, and repealed by sections 642 and 643 thereof. Section 594 of the 1922 act was superseded by section 594 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–690 designated existing provisions as par. (1), redesignated former pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, and added par. (2).

1986—Pub. L. 99–570 amended section generally. Prior to amendment, section catchline read ''Libel of vessels and vehicles'' and text read as follows: ''Whenever a vessel or vehicle, or the owner or master, conductor, driver, or other person in charge thereof, has become subject to a penalty for violation of the customs-revenue laws of the United States, such vessel or vehicle shall be held for the payment of such penalty and may be seized and proceeded against summarily by libel to recover the same: *Provided*, That no vessel or vehicle used by any person as a common carrier in the transaction of business as such common carrier shall be so held or subject to seizure or forfeiture under the customs laws, unless it shall appear that the owner or master of such vessel or the conductor, driver, or other person in charge of such vehicle was at the time of the alleged illegal act a consenting party or privy thereto.''

CROSS REFERENCES

Forfeitures and seizures—
Jurisdiction, see sections 1333, 1355, and 1356 of Title 28, Judiciary and Judicial Procedure.
Proceedings, see section 2461 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1595a of this title.

§ 1595. Searches and seizures

(a) Warrant

(1) If any officer or person authorized to make searches and seizures has probable cause to believe that—

(A) any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States unlawfully;

(B) any property which is subject to forfeiture under any provision of law enforced or administered by the United States Customs Service; or

(C) any document, container, wrapping, or other article which is evidence of a violation of section 1592 of this title involving fraud or of any other law enforced or administered by the United States Customs Service,

is in any dwelling house, store, or other building or place, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any Federal magistrate judge, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise or other article described in the warrant.

(2) If any house, store, or other building or place, in which any merchandise or other article subject to forfeiture is found, is upon or within 10 feet of the boundary line between the United States and a foreign country, such portion thereof that is within the United States may be taken down or removed.

(b) Entry upon property of others

Any person authorized by this chapter to make searches and seizures, or any person assisting him or acting under his directions, may, if deemed necessary by him or them, enter into or upon or pass through the lands, inclosures, and buildings, other than the dwelling house, of any person whomsoever, in the discharge of his official duties.

(June 17, 1930, ch. 497, title IV, § 595, 46 Stat. 752; Pub. L. 91–271, title III, § 301(y), June 2, 1970, 84 Stat. 290; Pub. L. 99–570, title III, § 3122, Oct. 27, 1986, 100 Stat. 3207–87; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 595, 42 Stat. 983. That section was superseded by section 595 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in subsec. (a), but authorizing searches in the daytime only, with a further provision as to forfeitures, were contained in R.S. § 3066, as amended by act Apr. 25, 1882, ch. 89, 22 Stat. 49. Provisions for searches of buildings on or near the boundary line, and for seizure and forfeiture of merchandise, and removal of the building, were contained in R.S. § 3107. Provisions empowering persons, authorized to make searches and seizures, to enter into or upon lands, inclosures, and buildings, were contained in R.S. § 3065. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 3091, authorized the issuance of a warrant, upon complaint and affidavit of fraud on the revenue, directing the marshal of the district to enter any place and seize books or papers relating to merchandise in respect to which the alleged fraud was committed, and produce them before the judge.

R.S. § 3092, provided that no warrant for such seizure should be issued unless the complaint should set forth the character of the fraud alleged, its nature, the importations in respect to which it was committed, and the papers to be seized, and required the return of such warrant as other warrants are returned.

R.S. § 3093, provided that books and papers so seized should be subject to the order of the judge, who should allow the examination of the same by the collector or any officer authorized by him, and authorized the retention by the judge of such books and papers as he might deem necessary.

The provisions of act July 18, 1866, § 39, and of act Mar. 2, 1867, § 2, which were incorporated into these three sections, were repealed by the Anti-Moiety Act of

June 22, 1874, ch. 391, §1, 18 Stat. 186. These sections were repealed, therefore, by that act, it having effect as subsequent to the Revised Statutes, and as repealing any portion of the revision inconsistent therewith, by virtue of R.S. §5601.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–570 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''If any officer or person authorized to make searches and seizures shall have cause to suspect the presence in any dwelling house, store, or other building or place of any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States contrary to law, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any United States magistrate, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise: *Provided*, That if any such house, store, or other building, or place in which such merchandise shall be found, is upon or within ten feet of the boundary line between the United States and a foreign country, such portion thereof as is within the United States may forthwith be taken down or removed.''

1970—Subsec. (a). Pub. L. 91–271 struck out ''collector of customs or other'' before ''officer or person''.

CHANGE OF NAME

''Magistrate judge'' substituted for ''magistrate'' in subsec. (a)(1) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

CROSS REFERENCES

Depositing goods in buildings on boundary, penalty for, see section 547 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1603 of this title.

§ 1595a. Forfeitures and other penalties

(a) Importation, removal, etc. contrary to laws of United States

Except as specified in subsection (b) or (c) of section 1594 of this title, every vessel, vehicle, animal, aircraft, or other thing used in, to aid in, or to facilitate, by obtaining information or in any other way, the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the United States contrary to law, whether upon such vessel, vehicle, animal, aircraft, or other thing or otherwise, may be seized and forfeited together with its tackle, apparel, furniture, harness, or equipment.

(b) Penalty for aiding unlawful importation

Every person who directs, assists financially or otherwise, or is in any way concerned in any unlawful activity mentioned in the preceding subsection shall be liable to a penalty equal to the value of the article or articles introduced or attempted to be introduced.

(c) Merchandise introduced contrary to law

Merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows:

(1) The merchandise shall be seized and forfeited if it—

(A) is stolen, smuggled, or clandestinely imported or introduced;

(B) is a controlled substance, as defined in the Controlled Substances Act (21 U.S.C. 801 et seq.), and is not imported in accordance with applicable law;

(C) is a contraband article, as defined in section 80302 of title 49; or

(D) is a plastic explosive, as defined in section 841(q) of title 18, which does not contain a detection agent, as defined in section 841(p) of such title.

(2) The merchandise may be seized and forfeited if—

(A) its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute;

(B) its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license, permit, or authorization;

(C) it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved (including, but not limited to, violations of section 1124, 1125, or 1127 of title 15, section 506 or 509 of title 17, or section 2318 or 2320 of title 18);

(D) it is trade dress merchandise involved in the violation of a court order citing section 1125 of title 15;

(E) it is merchandise which is marked intentionally in violation of section 1304 of this title; or

(F) it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of section 1304 of this title.

(3) If the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, the merchandise shall be subject to detention in accordance with section 1499 of this title unless the appropriate visa, license, permit, or similar document or stamp is presented to the Customs Service; but if the visa, permit, license, or similar document or stamp which is presented in connection with the importation or entry of the merchandise is counterfeit, the merchandise may be seized and forfeited.

(4) If the merchandise is imported or introduced contrary to a provision of law which governs the classification or value of merchandise and there are no issues as to the admissibility of the merchandise into the United

States, it shall not be seized except in accordance with section 1592 of this title.

(5) In any case where the seizure and forfeiture of merchandise are required or authorized by this section, the Secretary may—

(A) remit the forfeiture under section 1618 of this title, or

(B) permit the exportation of the merchandise, unless its release would adversely affect health, safety, or conservation or be in contravention of a bilateral or multilateral agreement or treaty.

(June 17, 1930, ch. 497, title IV, § 596, as added Sept. 1, 1954, ch. 1213, title V, § 502, 68 Stat. 1140; amended Pub. L. 99–570, title III, § 3123, Oct. 27, 1986, 100 Stat. 3207–87; Pub. L. 103–182, title VI, § 624, Dec. 8, 1993, 107 Stat. 2187; Pub. L. 104–132, title VI, § 606, Apr. 24, 1996, 110 Stat. 1290.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (c)(1)(B), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

CODIFICATION

In subsec. (c)(1)(C), ''section 80302 of title 49'' substituted for ''section 1 of the Act of August 9, 1939 (49 U.S.C. App. 781)'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1996—Subsec. (c)(1)(D). Pub. L. 104–132 added subpar. (D).

1993—Subsec. (c). Pub. L. 103–182 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 1592 of this title) may be seized and forfeited.''

1986—Subsec. (a). Pub. L. 99–570, § 3123(1), (2), substituted ''subsection (b) or (c) of section 1594'' for ''the proviso to section 1594'' and ''may be seized'' for ''shall be seized''.

Subsec. (c). Pub. L. 99–570, § 3123(3), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 effective 1 year after Apr. 24, 1996, see section 607 of Pub. L. 104–132, set out as a note under section 841 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1590 of this title.

§§ 1596 to 1598. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section 1596, act June 17, 1930, ch. 497, title IV, § 596, 46 Stat. 752, related to buildings on boundary. See section 547 of Title 18, Crimes and Criminal Procedure.

Section 1597, act June 17, 1930, ch. 497, title IV, § 597, 46 Stat. 752, related to fraudulent treatment of goods in warehouses. See section 548 of Title 18.

Section 1598, acts June 17, 1930, ch. 497, title IV, § 598, 46 Stat. 752; June 25, 1938, ch. 679, § 26, 52 Stat. 1089, related to offenses concerning seals and unlawful removal of goods from custom custody. See section 549 of Title 18.

§ 1599. Officers not to be interested in vessels or cargo

No person employed under the authority of the United States, in the collection of duties on imports or tonnage, shall own, either in whole or in part, any vessel (other than a yacht or other pleasure boat), or act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the same; nor shall any such person import, or be concerned directly or indirectly in the importation of, any merchandise for sale into the United States. Every person who violates this section shall be liable to a penalty of $500.

(June 17, 1930, ch. 497, title IV, § 599, 46 Stat. 753; Pub. L. 95–410, title II, § 212, Oct. 3, 1978, 92 Stat. 904.)

PRIOR PROVISIONS

Identical provisions were contained in R.S. § 2638, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 599, 42 Stat. 984, and repealed by section 642 thereof. Section 599 of the 1922 act was superseded by section 599 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1978—Pub. L. 95–410 excepted from the interest prohibition ownership of a yacht or other pleasure boat.

§ 1600. Application of the customs laws to other seizures by customs officers

The procedures set forth in sections 1602 through 1619 of this title shall apply to seizures of any property effected by customs officers under any law enforced or administered by the Customs Service unless such law specifies different procedures.

(June 17, 1930, ch. 497, title IV, § 600, as added Pub. L. 98–473, title II, § 323, Oct. 12, 1984, 98 Stat. 2057.)

PRIOR PROVISIONS

A prior section 600 of act June 17, 1930, ch. 497, title IV, 46 Stat. 753, related to gratuities, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 213 of Title 18, Crimes and Criminal Procedure.

§§ 1601, 1601a. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section 1601, act June 17, 1930, ch. 497, title IV, § 601, 46 Stat. 753, related to bribery. See section 212 of Title 18, Crimes and Criminal Procedure.

Section 1601a, act Aug. 5, 1935, ch. 438, title III, § 309, 49 Stat. 528, related to wearing of uniform or badge of Coast Guard or Customs Service while violating revenue laws. See sections 702, 703, and 912 of Title 18.

§ 1602. Seizure; report to customs officer

It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the appropriate customs officer for the district in which such violation occurred, and to turn over and deliver to such customs officer any vessel, vehicle, aircraft, merchandise, or baggage seized by him, and to report immediately to such customs officer every violation of the customs laws.

(June 17, 1930, ch. 497, title IV, § 602, 46 Stat. 754; Pub. L. 91–271, title III, § 301(z), June 2, 1970, 84 Stat. 290; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(1), Oct. 30, 1984, 98 Stat. 2984.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 602, 42 Stat. 984. That section was superseded by section 602 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions requiring officers or persons employed in the customs revenue service, upon detection of any violation of the customs laws, to make complaint to the collector, were contained in act June 22, 1874, ch. 391, § 15, 18 Stat. 189, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft.

1970—Pub. L. 91–271 substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title; title 18 section 981.

§ 1603. Seizure; warrants and reports

(a) Any property which is subject to forfeiture to the United States for violation of the customs laws and which is not subject to search and seizure in accordance with the provisions of section 1595 of this title, may be seized by the appropriate officer or person upon process issued in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure. This authority is in addition to any seizure authority otherwise provided by law.

(b) Whenever a seizure of merchandise for violation of the customs laws is made, or a violation of the customs laws is discovered, and legal proceedings by the United States attorney in connection with such seizure or discovery are required, it shall be the duty of the appropriate customs officer to report promptly such seizure or violation to the United States attorney for the district in which such violation has occurred, or in which such seizure was made, and to include in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses and a citation to the statute or statutes believed to have been violated, and on which reliance may be had for forfeiture or conviction.

(June 17, 1930, ch. 497, title IV, § 603, 46 Stat. 754; June 25, 1938, ch. 679, § 27, 52 Stat. 1089; Pub. L. 91–271, title III, § 301(aa), June 2, 1970, 84 Stat. 291; Pub. L. 95–410, title I, § 110(b), Oct. 3, 1978, 92 Stat. 896; Pub. L. 100–690, title VII, § 7365, Nov. 18, 1988, 102 Stat. 4478.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to this title.

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 603, 42 Stat. 984. That section was superseded by section 603 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision requiring the collector or other person causing a seizure to be made to give information thereof to the Solicitor of the Treasury, was contained in R.S. § 3083, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 247. R.S. § 3084 required collectors to report to the district attorney of the district in which any fine, penalty, or forfeiture might be incurred, a statement of all the facts and circumstances. Officers of customs detecting violations of the customs laws were required to report to the collectors, and the latter were required to report to the district attorneys, by act June 22, 1874, ch. 391, § 15, 18 Stat. 189. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §§ 642, 643, 42 Stat. 989.

AMENDMENTS

1988—Pub. L. 100–690, § 7365, substituted ''Seizure; warrants and reports'' for ''Seizure; customs officer's reports'' in section catchline, added subsec. (a), and designated existing provisions as subsec. (b).

1978—Pub. L. 95–410 inserted ''promptly'' after ''to report''.

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector or principal local officer of Customs Agency Service.

1938—Act June 25, 1938, amended section generally.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs Service is under Department of the Treasury.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1604. Seizure; prosecution

It shall be the duty of the Attorney General of the United States immediately to inquire into the facts of cases reported to him by customs officers and the laws applicable thereto, and if it

appears probable that any fine, penalty, or forfeiture has been incurred by reason of such violation, for the recovery of which the institution of proceedings in the United States district court or the Court of International Trade is necessary, forthwith to cause the proper proceedings to be commenced and prosecuted, without delay, for the recovery of such fine, penalty, or forfeiture in such case provided, unless, upon inquiry and examination, the Attorney General decides that such proceedings can not probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case he shall report the facts to the Secretary of the Treasury for his direction in the premises.

(June 17, 1930, ch. 497, title IV, § 604, 46 Stat. 754; Pub. L. 91–271, title III, § 301(bb), June 2, 1970, 84 Stat. 291; Pub. L. 96–417, title VI, § 610, Oct. 10, 1980, 94 Stat. 1746.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 604, 42 Stat. 984. That section was superseded by section 604 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions substantially similar in effect, with a further provision for an allowance for expenses and services, were contained in R.S. § 3085. Provisions requiring district attorneys to cause investigations to be made before a United States commissioner and to initiate and prosecute proper proceedings to recover fines and penalties were contained in act June 22, 1874, ch. 391, § 15, 18 Stat. 189. Both of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §§ 642, 643, 42 Stat. 989.

The 1922 act also superseded a provision contained in R.S. § 3087, requiring collectors to cause suits to be commenced without delay and prosecuted to effect.

AMENDMENTS

1980—Pub. L. 96–417 substituted ''the Attorney General of the United States'' and ''the Attorney General'' for ''every United States district attorney'' and ''such district attorney'', respectively, and authorized institution of proceedings in the Court of International Trade.

1970—Pub. L. 91–271 substituted reference to customs officers for reference to collectors.

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

CROSS REFERENCES

Limitations of suits for recovery of penalties and forfeitures, see section 1621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1605. Seizure; custody; storage

All vessels, vehicles, aircraft, merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the appropriate customs officer for the district in which the seizure was made to await disposition according to law.

Pending such disposition, the property shall be stored in such place as, in the customs officer's opinion, is most convenient and appropriate with due regard to the expense involved, whether or not the place of storage is within the judicial district or the customs collection district in which the property was seized; and storage of the property outside the judicial district or customs collection district in which it was seized shall in no way affect the jurisdiction of the court which would otherwise have jurisdiction over such property.

(June 17, 1930, ch. 497, title IV, § 605, 46 Stat. 754; Sept. 1, 1954, ch. 1213, title V, § 505, 68 Stat. 1141; Pub. L. 91–271, title III, § 301(cc), June 2, 1970, 84 Stat. 291; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(2), Oct. 30, 1984, 98 Stat. 2984.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 605, 42 Stat. 985. That section was superseded by section 605 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions substantially similar to those in this section so far as it relates to merchandise or property seized under the customs laws, were contained in R.S. § 3086, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft in first par.

1970—Pub. L. 91–271 substituted references to appropriate customs officer or customs officer for references to collector wherever appearing.

1954—Act Sept. 1, 1954, permitted collector of seized property to store it in such places as he considers convenient or appropriate, whether within or without the judicial district in which it was seized, without affecting the jurisdiction of the court over such property.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 1613 of this title.

§ 1606. Seizure; appraisement

The appropriate customs officer shall determine the domestic value, at the time and place of appraisement, of any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws.

(June 17, 1930, ch. 497, title IV, § 606, 46 Stat. 754; Pub. L. 91–271, title III, § 301(dd), June 2, 1970, 84

Stat. 291; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(3), Oct. 30, 1984, 98 Stat. 2984.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 606, 42 Stat. 985. That section was superseded by section 606 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions for appraisement of property seized under the customs laws, or laws relating to the registering, enrolling or licensing of vessels, were contained in R.S. § 3074, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft.

1970—Pub. L. 91–271 substituted ''appropriate customs officer shall'' for ''collector shall require the appraiser to''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 1614, 2254 of this title.

§ 1607. Seizure; value $500,000 or less, prohibited articles, transporting conveyances

(a) Notice of seizure

If—

(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed $500,000;

(2) such seized merchandise is merchandise the importation of which is prohibited;

(3) such seized vessel, vehicle, or aircraft was used to import, export, transport, or store any controlled substance or listed chemical; or

(4) such seized merchandise is any monetary instrument within the meaning of section 5312(a)(3) of title 31;

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

(b) "Controlled substance" and "listed chemical" defined

As used in this section, the terms ''controlled substance'' and ''listed chemical'' have the meaning given such terms in section 802 of title 21.

(c) Report to Congress

The Commissioner of Customs shall submit to the Congress, by no later than February 1 of each fiscal year, a report on the total dollar value of uncontested seizures of monetary instruments having a value of over $100,000 which, or the proceeds of which, have not been deposited into the Customs Forfeiture Fund under section 1613b of this title within 120 days of seizure, as of the end of the previous fiscal year.

(June 17, 1930, ch. 497, title IV, § 607, 46 Stat. 754; June 25, 1938, ch. 679, § 28(a), 52 Stat. 1089; Sept. 1, 1954, ch. 1213, title V, § 506, 68 Stat. 1141; Pub. L. 91–271, title III, § 301(ee), June 2, 1970, 84 Stat. 291; Pub. L. 95–410, title I, § 111(a), Oct. 3, 1978, 92 Stat. 897; Pub. L. 98–473, title II, § 311, Oct. 12, 1984, 98 Stat. 2053; Pub. L. 98–573, title II, § 213(a)(4), Oct. 30, 1984, 98 Stat. 2984; Pub. L. 101–382, title I, § 122, Aug. 20, 1990, 104 Stat. 642; Pub. L. 104–237, title II, § 201(c), Oct. 3, 1996, 110 Stat. 3101.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 607, 42 Stat. 985. That section was superseded by section 607 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Prior provisions for publication or posting of notice of seizure, requiring claimants to appear and file their claim, when the appraised value did not exceed $500, were contained in R.S. § 3075, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–237, § 201(c)(1), inserted ''or listed chemical'' after ''controlled substance''.

Subsec. (b). Pub. L. 104–237, § 201(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''As used in this section, the term 'controlled substance' has the meaning given that term in section 802 of title 21.''

1990—Pub. L. 101–382, § 122(6), substituted ''$500,000'' for ''$100,000'' in section catchline.

Subsec. (a)(1). Pub. L. 101–382, § 122(1), substituted ''$500,000'' for ''$100,000''.

Subsec. (a)(4). Pub. L. 101–382, § 122(2)–(4), added par. (4).

Subsec. (c). Pub. L. 101–382, § 122(5), added subsec. (c).

1984—Pub. L. 98–573 amended section generally. See explanation below for amendment by Pub. L. 98–473.

Pub. L. 98–473 amended section generally in manner substantially identical to amendment by Pub. L. 98–573. Prior to amendment, section read as follows: ''If such value of such vessel, vehicle, merchandise, or baggage does not exceed $10,000, the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. For the purposes of this section and sections 1610 and 1612 of this title merchandise the importation of which is prohibited shall be held not to exceed $10,000 in value.''

1978—Pub. L. 95–410 substituted ''$10,000'' for ''$2,500'' wherever appearing.

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector, and struck out reference to appraiser's return of value.

1954—Act Sept. 1, 1954, substituted ''$2,500'' for ''$1,000'' wherever appearing.

1938—Act June 25, 1938, substituted ''forfeit and sell or otherwise dispose of the same according to law'' for ''forfeit and sell the same''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 1610, 1612 of this title.

§ 1608. Seizure; claims; judicial condemnation

Any person claiming such vessel, vehicle, aircraft, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the appropriate customs officer a claim stating his interest therein. Upon the filing of such claim, and the giving of a bond to the United States in the penal sum of $5,000 or 10 percent of the value of the claimed property, whichever is lower, but not less than $250, with sureties to be approved by such customs officer, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, such customs officer shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.

(June 17, 1930, ch. 497, title IV, § 608, 46 Stat. 755; Pub. L. 91–271, title III, § 301(e), June 2, 1970, 84 Stat. 288; Pub. L. 98–473, title II, §§ 312, 321, Oct. 12, 1984, 98 Stat. 2054, 2056; Pub. L. 98–573, title II, § 213(a)(5), Oct. 30, 1984, 98 Stat. 2985; Pub. L. 99–570, title I, § 1862, Oct. 27, 1986, 100 Stat. 3207–54; Pub. L. 100–690, title VII, § 7367(c)(2), Nov. 18, 1988, 102 Stat. 4479.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in R.S. § 3076, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 608, 42 Stat. 985, and was repealed by section 642 thereof. Section 608 of the 1922 act was superseded by section 608 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1988—Pub. L. 100–690 reenacted section without change. See 1984 and 1986 Amendment notes below.

1986—Pub. L. 99–570, § 1862(a), substituted ''$5,000'' for ''$2,500''. See 1984 Amendment notes below.

Pub. L. 99–570, § 1862(b), which provided that ''Section 608 of such Act [this section], as enacted by Public Law 98–473, is repealed'', was not executed to text because such section was amended (rather than enacted) by Pub. L. 98–473, and to reflect the probable intent of Congress to repeal the amendment made by Pub. L. 98–473 in view of later amendment by Pub. L. 98–573. See 1984 Amendment notes below.

1984—Pub. L. 98–573, § 213(a)(5)(B), which directed the insertion of ''$2,500 or 10 percent of the value of the claimed property, whichever is lower, but not less than'' after ''penal sum of'', was executed to text as superseding the amendment made by Pub. L. 98–473 to reflect the probable intent of Congress. See 1986 Amendment note above.

Pub. L. 98–473, § 312, inserted ''$5,000 or 10 per centum of the value of the claimed property, whichever is lower, but not less than,'' after ''penal sum of''. See 1984 and 1986 Amendment notes above.

Pub. L. 98–573, § 213(a)(5)(A), and Pub. L. 98–473, § 321, inserted reference to aircraft.

1970—Pub. L. 91–271 substituted references to appropriate customs officer or such customs officer for references to collector wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title; title 21 section 888.

§ 1609. Seizure; summary forfeiture and sale

(a) In general

If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the vessel, vehicle, aircraft, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold or otherwise dispose of the same according to law, and shall deposit the proceeds of sale, after deducting the expenses described in section 1613 of this title, into the Customs Forfeiture Fund.

(b) Effect

A declaration of forfeiture under this section shall have the same force and effect as a final decree and order of forfeiture in a judicial forfeiture proceeding in a district court of the United States. Title shall be deemed to vest in the United States free and clear of any liens or encumbrances (except for first preferred ship mortgages pursuant to section 961 of title 46, Appendix, or any corresponding revision, consolidation, and enactment of such subsection in title 46) from the date of the act for which the forfeiture was incurred. Officials of the various States, insular possessions, territories, and commonwealths of the United States shall, upon application of the appropriate customs officer accompanied by a certified copy of the declaration of forfeiture, remove any recorded liens or encumbrances which apply to such property and issue or reissue the necessary certificates of title, registration certificates, or similar documents to the United States or to any transferee of the United States.

(June 17, 1930, ch. 497, title IV, § 609, 46 Stat. 755; June 25, 1938, ch. 679, § 28(b), 52 Stat. 1089; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 98–473, title II, §§ 313, 321, Oct. 12, 1984, 98 Stat. 2054, 2056; Pub. L. 98–573, title II, § 213(a)(6),

Oct. 30, 1984, 98 Stat. 2985; Pub. L. 100–690, title VII, § 7367(b), Nov. 18, 1988, 102 Stat. 4479.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 609, 42 Stat. 985. That section was superseded by section 609 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions for sale of the property by the collector if no claim should be filed or bond given, were contained in R.S. § 3077, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1988—Pub. L. 100–690 amended section generally. Prior to amendment, section read as follows:

''(a) If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the vessel, vehicle, aircraft, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold or otherwise dispose of the same according to law, and (except as provided in subsection (b) of this section) shall deposit the proceeds of sale, after deducting expenses enumerated in section 1613 of this title into the Customs Forfeiture Fund.

''(b) During the period beginning on October 30, 1984, and ending on September 30, 1987, the appropriate customs officer shall deposit the proceeds of sale (after deducting such expenses) in the Customs Forfeiture Fund.''

1984—Pub. L. 98–573 designated existing provisions as subsec. (a), inserted reference to aircraft, inserted ''(except as provided in subsection (b) of this section)'' after ''according to law, and'', and added subsec. (b).

Pub. L. 98–473, § 321, inserted reference to aircraft.

Pub. L. 98–473, § 313, substituted ''after deducting expenses enumerated in section 1613 of this title into the Customs Forfeiture Fund'' for ''after deducting the actual expenses of seizure, publication, and sale in the Treasury of the United States''.

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

1938—Act June 25, 1938, inserted ''or otherwise dispose of the same according to law'' after ''in the same manner as merchandise abandoned to the United States is sold''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

CROSS REFERENCES

Destruction of forfeited vessels, see section 1705 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1610. Seizure; judicial forfeiture proceedings

If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title, the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

(June 17, 1930, ch. 497, title IV, § 610, 46 Stat. 755; Sept. 1, 1954, ch. 1213, title V, § 506, 68 Stat. 1141; Pub. L. 91–271, title III, § 301(ee), June 2, 1970, 84 Stat. 291; Pub. L. 95–410, title I, § 111(b), Oct. 3, 1978, 92 Stat. 898; Pub. L. 98–473, title II, § 314, Oct. 12, 1984, 98 Stat. 2054; Pub. L. 98–573, title II, § 213(a)(7), Oct. 30, 1984, 98 Stat. 2985; Pub. L. 100–690, title VII, § 7367(c)(3), Nov. 18, 1988, 102 Stat. 4480.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 610, 42 Stat. 985. That section was superseded by section 610 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1988—Pub. L. 100–690 reenacted section without change.

1984—Pub. L. 98–573 substituted ''If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title'' for ''If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than $10,000''.

Pub. L. 98–473 amended section in manner substantially identical to amendment by Pub. L. 98–573.

1978—Pub. L. 95–410 substituted ''$10,000'' for ''$2,500'' wherever appearing.

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector, and struck out reference to appraiser's return of value.

1954—Act Sept. 1, 1954, substituted ''$2,500'' for ''$1,000''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1611. Seizure; sale unlawful

If the sale of any vessel, vehicle, aircraft, merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, aircraft, merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage under the customs laws, provide in its decree of forfeiture that the vessel, vehicle, aircraft, merchandise, or baggage, so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If

the Secretary of the Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the costs thereof, he may order a destruction by the customs officers: *Provided*, That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only.

(June 17, 1930, ch. 497, title IV, § 611, 46 Stat. 755; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(8), Oct. 30, 1984, 98 Stat. 2985.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 611, 42 Stat. 985. That section was superseded by section 611 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft in four places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1612. Seizure; summary sale

(a) Whenever it appears to the Customs Service that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and such vessel, vehicle, aircraft, merchandise, or baggage is subject to section 1607 of this title, and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, the Customs Service shall proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title, the Customs Service shall forthwith transmit its report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the Customs Service or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to such claim.

(b) If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.

(June 17, 1930, ch. 497, title IV, § 612, 46 Stat. 755; June 25, 1948, ch. 646, § 1, 62 Stat. 869; Sept. 1, 1954, ch. 1213, title V, § 506, 68 Stat. 1141; Pub. L. 91–271, title III, § 301(ff), June 2, 1970, 84 Stat. 291; Pub. L. 95–410, title I, § 111(c), Oct. 3, 1978, 92 Stat. 898; Pub. L. 98–473, title II, § 315, Oct. 12, 1984, 98 Stat. 2054; Pub. L. 98–573, title II, § 213(a)(9), Oct. 30, 1984, 98 Stat. 2985; Pub. L. 100–690, title VII, § 7367(c)(4), Nov. 18, 1988, 102 Stat. 4480; Pub. L. 103–182, title VI, § 667, Dec. 8, 1993, 107 Stat. 2215.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (a), are classified generally to this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 612, 42 Stat. 986. That section was superseded by section 612 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions concerning the sale of property liable to perish or waste, etc., were contained in R.S. § 3080, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182, § 667(1), substituted ''the Customs Service'' for ''the appropriate customs officer'' after ''Whenever it appears to'', for ''such officer'' after ''delivered under bond,'', for ''such officer'' before ''shall forthwith transmit'' and for ''the customs officer'' after ''Whether such sale be made by'' and substituted ''its report of the seizure'' for ''the appraiser's return and his report of the seizure''.

Subsec. (b). Pub. L. 103–182, § 667(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''If the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, and such value is less than $1,000, such officer may proceed forthwith to order destruction or other appropriate disposition of such property, under regulations prescribed by the Secretary of the Treasury.''

1988—Pub. L. 100–690 reenacted section substantially without change.

1984—Subsec. (a). Pub. L. 98–573 designated existing provisions as subsec. (a), inserted reference to aircraft in six places and substituted ''the value thereof, and such vessel'' for ''the value thereof, and the value of such vessel'', ''is subject to section 1607 of this title'' for ''as determined under section 1606 of this title, does not exceed $10,000'', ''If such vessel'' for ''If such value of such vessel'', and ''baggage is not subject to section 1607 of this title,'' for ''baggage exceeds $10,000'', and added subsec. (b).

Pub. L. 98–473 amended section in manner substantially identical to amendment by Pub. L. 98–573, but did not add a subsec. (b) or provisions similar thereto.

1978—Pub. L. 95–410 substituted ''$10,000'' for ''$2,500'' wherever appearing.

1970—Pub. L. 91–271 substituted references to appropriate customs officer or such officer for references to collector wherever appearing therein, and struck out references to appraiser and appraiser's return of value.

1954—Act Sept. 1, 1954, substituted ''$2,500'' for ''$1,000'' wherever appearing.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorney'' for ''United States district attorney''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Note thereunder.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

CROSS REFERENCES

Destruction of forfeited vessels, see section 1705 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 1613b of this title; title 16 section 1861; title 31 section 9703.

§ 1613. Disposition of proceeds of forfeited property

(a) Application for remission of forfeiture and restoration of proceeds of sale; disposition of proceeds when no application has been made

Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, aircraft, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this chapter, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, the proceeds of sale shall be disposed of as follows:

(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;

(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

(3) The residue shall be deposited in the general fund of the Treasury of the United States.[1]

(b) Disposition of proceeds in excess of penalty assessed under section 1592

If merchandise is forfeited under section 1592 of this title, any proceeds from the sale thereof in excess of the monetary penalty finally assessed thereunder and the expenses and costs described in subsection (a)(1) and (2) of this section or subsection (a)(1), (a)(3), or (a)(4) of section 1613b of this title incurred in such sale shall be returned to the person against whom the penalty was assessed.

(c) Treatment of deposits

If property is seized by the Secretary under law enforced or administered by the Customs Service, or otherwise acquired under section 1605 of this title, and relief from the forfeiture is granted by the Secretary, or his designee, upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

(d) Expenses

In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.

(June 17, 1930, ch. 497, title IV, § 613, 46 Stat. 756; June 25, 1938, ch. 679, § 29, 52 Stat. 1089; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 95–410, title I, § 110(c), Oct. 3, 1978, 92 Stat. 896; Pub. L. 98–473, title II, §§ 316, 321, Oct. 12, 1984, 98 Stat. 2054, 2056; Pub. L. 98–573, title II, § 213(a)(10), Oct. 30, 1984, 98 Stat. 2986; Pub. L. 99–570, title III, § 3124, Oct. 27, 1986, 100 Stat. 3207–88.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to this title.

The navigation laws, referred to in text, are classified generally to Title 33, Navigation and Navigable Waters.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 613, 42 Stat. 986. That section was superseded by section 613 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

[1] See 1984 Amendment note below.

Provisions authorizing applications to the Secretary of the Treasury for remission of forfeitures and restoration of the proceeds of sales, and provisions substantially the same as those in this section concerning the granting of such applications, were contained in R.S. § 3078. R.S. § 3079 provided that if no application was made within three months the proceeds should be distributed in the same manner as if the property had been condemned and sold under a decree of court. R.S. § 3090, as amended by act Feb. 27, 1877, ch. 69, § 1, 19 Stat. 248, also specified how the proceeds of fines, penalties, and forfeitures incurred under customs laws, should be applied and distributed. All these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1986—Subsecs. (c), (d). Pub. L. 99–570 added subsecs. (c) and (d).

1984—Subsec. (a). Pub. L. 98–573, § 213(a)(10)(A), and Pub. L. 98–473, § 321, inserted reference to aircraft in provisions preceding par. (1).

Subsec. (a)(3). Pub. L. 98–573, § 213(a)(10)(B), substituted ''in the general fund of the Treasury of the United States'' for ''with the Treasurer of the United States as a customs or navigation fine''.

Pub. L. 98–473, § 316, which directed the substitution of ''The residue shall be deposited in the Customs Forfeiture Fund'' for ''The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine'' was not executed to text in view of the later amendment by section 213(a)(10)(B) of Pub. L. 98–573.

Subsec. (b). Pub. L. 98–573, § 213(a)(10)(C), inserted ''or subsection (a)(1), (a)(3), or (a)(4) of section 1613b of this title''.

1978—Subsec. (a). Pub. L. 95–410, § 110(c)(1), designated existing provisions as subsec. (a) and substituted ''Except as provided in subsection (b) of this section, any'' for ''Any''.

Subsec. (b). Pub. L. 95–410, § 110(c)(2), added subsec. (b).

1970—Pub. L. 91–271 substituted reference to appropriate customs officer for reference to collector.

1938—Act June 25, 1938, inserted ''and'' at end of subd. (2), struck out subd. (3), and redesignated subd. (4) as (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS

By Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5, Government Organization and Employees, functions of Secretary of Commerce relating to remission and mitigation of fines, penalties and forfeitures incurred for violation of navigation laws were transferred to Commandant of Coast Guard and Commissioner of Customs, subject to direction and control of Secretary of the Treasury, except as otherwise required by law with respect to United States Coast Guard whenever it operates as a part of Navy. Accordingly, references to Commandant of Coast Guard and Commissioner of Customs substituted in text for ''the Secretary of Commerce''.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Customs, referred to in text, is an officer in Department of the Treasury. Functions of Coast Guard and Commandant of Coast Guard excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14, Coast Guard.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14. See section 108 of Title 49, Transportation.

APPROPRIATIONS

Section 2 of act June 26, 1934, ch. 756, 48 Stat. 1225, which was classified to section 725a of former Title 31, Money and Finance, repealed the permanent appropriation under the title ''Proceeds of goods seized and sold (Customs) (2x322)'' effective July 1, 1935, and provided that such portions of any Acts as make permanent appropriations to be expended under such account are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 1609, 1613b, 1614, 2254 of this title.

§ 1613a. Repealed. Pub. L. 99–514, title XVIII, § 1888(7), Oct. 22, 1986, 100 Stat. 2925

Section, act June 17, 1930, ch. 497, title IV, § 613a, as added and amended Oct. 12, 1984, Pub. L. 98–473, title II, §§ 317, 2304, 98 Stat. 2054, 2193; Oct. 27, 1986, Pub. L. 99–570, title I, § 1152(b)(1), 100 Stat. 3207–12; July 11, 1987, Pub. L. 100–71, title I, § 101, 101 Stat. 438, related to establishment, purpose, etc. of the Customs Forfeiture Fund. See section 1613b of this title.

Section 1152(b)(1) of Pub. L. 99–570, which amended this section subsequently to repeal by Pub. L. 99–514, was repealed by section 101 of Pub. L. 100–71, which also provided in part that section 1152(b) of Pub. L. 99–570 be treated as though it had never been enacted.

§ 1613b. Customs Forfeiture Fund

(a) In general

(1) There is established in the Treasury of the United States a fund to be known as the ''Customs Forfeiture Fund'' (hereafter in this section referred to as the ''Fund''), which shall be available to the United States Customs Service, subject to appropriation, with respect to seizures and forfeitures by the United States Customs Service and the United States Coast Guard under any law enforced or administered by those agencies for payment, or for reimbursement to the appropriation from which payment was made, for—

(A) all proper expenses of the seizure (including investigative costs incurred by the United States Customs Service leading to seizures) or the proceedings of forfeiture and sale, including, but not limited to, the expenses of inventory, security, and maintenance of custody of the property, advertisement and sale of the

property, and if condemned by the court and a bond for such costs was not given, the costs as taxed by the court;

(B) awards of compensation to informers under section 1619 of this title;

(C) satisfaction of—

(i) liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law, and

(ii) other liens against forfeited property;

(D) amounts authorized by law with respect to remission and mitigation;

(E) claims of parties in interest to property disposed of under section 1612(b) of this title, in the amounts applicable to such claims at the time of seizure; and

(F) equitable sharing payments made to other Federal agencies, State and local law enforcement agencies, and foreign countries under the authority of section 1616a(c) of this title or section 981 of title 18.

(2)(A) Any payment made under subparagraph (C) or (D) of paragraph (1) with respect to a seizure or a forfeiture of property shall not exceed the value of the property at the time of the seizure.

(B) Any payment made under subparagraph (F) of paragraph (1) with respect to a seizure or forfeiture of property shall not exceed the value of the property at the time of disposition.

(3) In addition to the purposes described in paragraph (1), the Fund shall be available for—

(A) purchases by the United States Customs Service of evidence of—

(i) smuggling of controlled substances, and

(ii) violations of the currency and foreign transaction reporting requirements of chapter 51 of title 31, if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances;

(B) equipment for any vessel, vehicle, or aircraft available for official use by the United States Customs Service to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

(C) the reimbursement, at the discretion of the Secretary, of private persons for expenses incurred by such persons in cooperating with the United States Customs Service in investigations and undercover law enforcement operations;

(D) publication of the availability of awards under section 1619 of this title;

(E) equipment for any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Customs Service; and

(F) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Customs Service.

(b) United States Coast Guard

The Commissioner of Customs shall make available to the United States Coast Guard, from funds appropriated under subsection (f)(2) of this section in excess of $10,000,000 for a fiscal year, proceeds in the Fund derived from seizures by the Coast Guard. Funds made available under this subsection may be used for—

(1) equipment for any vessel, vehicle, or aircraft available for official use by the United States Coast Guard to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

(2) equipment for any vessel, vehicle, equipment, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Coast Guard;

(3) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Coast Guard; and

(4) expenses incurred in bringing vessels into compliance with applicable environmental laws prior to disposal by sinking.

(c) Deposits

There shall be deposited into the Fund all forfeited currency and proceeds from forfeiture under any law enforced or administered by the United States Customs Service or the United States Coast Guard and all income from investments made under subsection (d) of this section.

(d) Investment

Amounts in the Fund which are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

(e) Annual reports; audits

(1) The Commissioner of Customs shall transmit to the Congress, by no later than February 1 of each fiscal year the following detailed reports:

(A) a report on—

(i) the estimated total value of property forfeited under any law enforced or administered by the United States Customs Service or the United States Coast Guard with respect to which funds were not deposited in the Fund during the previous fiscal year, and

(ii) the estimated total value of all such property transferred to any State or local law enforcement agency;

(B) a report on—

(i) the balance of the Fund at the beginning of the preceding fiscal year;

(ii) liens and mortgages paid and amount of money shared with State and local law enforcement agencies during the previous fiscal year;

(iii) the net amount realized from the operations of the Fund during the previous fiscal year, the amount of seized cash being held as evidence, and the amount of money that has been carried over to the current fiscal year;

(iv) any defendant's equity in property valued at $1,000,000 or more;

(v) the balance of the Fund at the end of the previous fiscal year; and

(C) a report containing, for the previous fiscal year—

(i) a complete set of audited financial statements (including a balance sheet, income statement, and cash flow analysis) prepared in a manner consistent with the requirements of the Comptroller General, and

(ii) an analysis of income and expenses showing the revenue received or lost—

(I) by property category (general property, vehicles, vessels, aircraft, cash, and real property) and

(II) by type of disposition (sales, remissions, cancellations, placed into official use, sharing with State and local agencies, and destructions).

(2) The Fund shall be subject to audits conducted by the Comptroller General of the United States, under such conditions as the Comptroller General determines appropriate.

(f) Authorization of appropriations

(1) There are hereby appropriated from the Fund such sums as may be necessary to carry out the purposes set forth in subsection (a)(1) of this section.

(2)(A) Subject to subparagraph (B), there are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) of this section for such fiscal year.

(B) Of the amount authorized to be appropriated under subparagraph (A), not to exceed the following, shall be available to carry out the purposes set forth in subsection (a)(3) of this section:

(i) $14,855,000 for fiscal year 1991.

(ii) $15,598,000 for fiscal year 1992.

(3) At the end of each fiscal year, any unobligated amount in excess of $15,000,000 remaining in the Fund shall be deposited into the general fund of the Treasury of the United States.

(June 17, 1930, ch. 497, title IV, § 613A, as added Pub. L. 98–573, title II, § 213(a)(11), Oct. 30, 1984, 98 Stat. 2986; amended Pub. L. 99–570, title I, § 1152(b)(2), title III, § 3142(a), Oct. 27, 1986, 100 Stat. 3207–12, 3207–93; Pub. L. 100–71, title I, § 101, July 11, 1987, 101 Stat. 438; Pub. L. 100–202, § 101(m) [title I, § 106], Dec. 22, 1987, 101 Stat. 1329–390, 1329–397; Pub. L. 100–418, title I, § 1912, Aug. 23, 1988, 102 Stat. 1320; Pub. L. 100–690, title VII, § 7364, Nov. 18, 1988, 102 Stat. 4475; Pub. L. 101–382, title I, § 121, Aug. 20, 1990, 104 Stat. 640; Pub. L. 101–508, title X, § 10012(a), Nov. 5, 1990, 104 Stat. 1388–390; Pub. L. 104–316, title I, § 110(a), Oct. 19, 1996, 110 Stat. 3832.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 613a of act June 17, 1930, as added by Pub. L. 98–473, title II, § 317, Oct. 12, 1984, 98 Stat. 2054, which was classified to section 1613a of this title and subsequently repealed.

AMENDMENTS

1996—Subsec. (e)(2). Pub. L. 104–316 struck out ''annual financial'' before ''audits conducted'' and inserted before period at end '', under such conditions as the Comptroller General determines appropriate''.

1990—Subsec. (a)(1)(F). Pub. L. 101–382, § 121(1), added subpar. (F).

Subsec. (a)(2). Pub. L. 101–382, § 121(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 101–382, § 121(3), inserted ''forfeited currency and'' before ''proceeds''.

Subsec. (e)(1)(B). Pub. L. 101–382, § 121(4)(B)(i), (ii), redesignated cls. (iii) through (vi) as (ii) through (v), respectively, and struck out former cl. (ii), which read as follows: ''sources of receipts (seized cash, conveyances, and others) of the Fund during the previous fiscal year;''.

Subsec. (e)(1)(C). Pub. L. 101–382, § 121(4)(A), (B)(iii), (iv), (C), added subpar. (C).

Subsec. (f). Pub. L. 101–382, § 121(5), which amended subsec. (f) generally to read as follows:

''(1) Subject to paragraph (2), there are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) of this section for such fiscal year.

''(2) Of the amount authorized to be appropriated under paragraph (1), not to exceed the following shall be available to carry out the purposes set forth in subsection (a)(3) of this section:

''(A) $14,855,000 for fiscal year 1991.

''(B) $15,598,000 for fiscal year 1992.''

was repealed by Pub. L. 101–508, § 10012(a)(1). See Construction of 1990 Amendment note below.

Subsec. (f)(2). Pub. L. 101–508, § 10012(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''There are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) of this section for such fiscal year.''

1988—Pub. L. 100–690 amended section generally.

Subsec. (a)(iii). Pub. L. 100–418, § 1912(2), substituted ''private persons'' for ''private citizens''.

Subsec. (c). Pub. L. 100–418, § 1912(1), substituted ''described in subsection (a) of this section for which the fund is available to the United States Customs Service,'' for ''beginning on October 30, 1984, and ending on September 30, 1987,''.

1987—Pub. L. 100–71 repealed Pub. L. 99–570, § 1152(b)(2). See 1986 Amendment note below.

Subsec. (a)(5)(v), (vi). Pub. L. 100–202 added cls. (v) and (vi).

1986—Pub. L. 99–570, § 1152(b)(2), which directed the repeal of this section, was itself repealed by Pub. L. 100–71. See Repeal and Revival of Section note below.

Subsec. (a). Pub. L. 99–570, § 3142(a)(1)(A), (F), substituted ''1991'' for ''1987'' in introductory provisions and amended generally concluding provisions which had read as follows: ''In addition to the purposes described in paragraphs (1) through (6), the fund shall be available for purchases by the United States Customs Service of evidence of (A) smuggling of controlled substances, and (B) violations of the currency and foreign transaction reporting requirements of chapter 53 of title 31 if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances.''

Subsec. (a)(1). Pub. L. 99–570, § 3142(a)(1)(B), inserted ''(including investigative costs leading to seizures)'' after ''of the seizure''.

Subsec. (a)(5), (6). Pub. L. 99–570, § 3142(a)(1)(C)–(E), redesignated par. (6) as (5) and struck out former par. (5) which provided that the fund would be available with respect to seizures and forfeitures by the United States Customs Service for equipping for law enforcement functions of forfeited vessels, vehicles and aircraft retained as provided by law for official use by the Customs Service.

Subsec. (f). Pub. L. 99–570, § 3142(a)(2), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

''(1) There are authorized to be appropriated from the fund for each of the four fiscal years beginning with fiscal year 1984, not more than $10,000,000.

''(2) At the end of each of the first three of such four fiscal years, any amount in the fund in excess of $10,000,000 shall be deposited in the general fund of the

Treasury. At the end of the last of such four fiscal years, any amount in the fund shall be deposited in the general fund of the Treasury, and the fund shall cease to exist.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 10012(c) of Pub. L. 101–508 provided that: ''The provisions of this section [amending this section] take effect August 21, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 3142(b) of Pub. L. 99–570 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect October 1, 1986.''

EFFECTIVE DATE

Section effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

CONSTRUCTION OF 1990 AMENDMENT

Section 10012(a)(1) of Pub. L. 101–508 provided that: ''Paragraph (5) of section 121 of the Customs and Trade Act of 1990 [Pub. L. 101–382] is repealed and subsection (f) of section 613A of the Tariff Act of 1930 [subsec. (f) of this section] shall be applied as if the amendment made by such paragraph (5) had not been enacted.''

REPEAL AND REVIVAL OF SECTION

Section 1152(b)(2) of Pub. L. 99–570, which had directed the repeal of this section, was repealed by section 101 of Pub. L. 100–71, which also provided in part that section 1152(b) of Pub. L. 99–570 be treated as though it had never been enacted.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 1607, 1613 of this title; title 31 section 9703.

§ 1614. Release of seized property

If any person claiming an interest in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter offers to pay the value of such vessel, vehicle, aircraft, merchandise, or baggage, as determined under section 1606 of this title, and it appears that such person has in fact a substantial interest therein, the appropriate customs officer may, subject to the approval of the Secretary of the Treasury if under the customs laws, or the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, accept such offer and release the vessel, vehicle, aircraft, merchandise, or baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 1613 of this title.

(June 17, 1930, ch. 497, title IV, § 614, 46 Stat. 757; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 91–271, title III, § 301(b), June 2, 1970, 84 Stat. 287; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(12), Oct. 30, 1984, 98 Stat. 2987.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to this title.

The navigation laws, referred to in text, are classified generally to Title 33, Navigation and Navigable Waters.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 614, 42 Stat. 987. That section was superseded by section 614 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

A prior provision authorizing collectors, subject to the approval of the Secretary of the Treasury, to release seized merchandise on payment of the appraised value when the appraised value did not exceed $1,000, were contained in R.S. § 3081, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft in three places.

1970—Pub. L. 91–271 substituted reference to the appropriate customs officer for reference to the collector.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

Substitution in text of reference to Commandant of the Coast Guard or Commissioner of Customs for ''the Secretary of Commerce'' under the authority of Reorg. Plan No. 3 of 1946, see Transfer of Functions note set out under section 1613 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 2254 of this title.

§ 1615. Burden of proof in forfeiture proceedings

In all suits or actions (other than those arising under section 1592 of this title) brought for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, aircraft, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided*, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

(1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a vessel, vehicle, or aircraft, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

(2) Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying mechandise[1] or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.

(3) The fact that a vessel of any description is found, or discovered to have been, in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel, or by coming to in the vi-

[1] So in original. Probably should be ''merchandise''.

cinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person, or communication, or by any other means effecting contact or communication therewith, shall be prima facie evidence that the vessel in question has visited such hovering vessel.

(June 17, 1930, ch. 497, title IV, § 615, 46 Stat. 757; Aug. 5, 1935, ch. 438, title II, § 207, 49 Stat. 525; Pub. L. 95–410, title I, § 110(d), Oct. 3, 1978, 92 Stat. 896; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(13), Oct. 30, 1984, 98 Stat. 2987.)

PRIOR PROVISIONS

Provisions somewhat similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § III, T, 38 Stat. 189, the provisions of which were originally enacted in the Customs Administrative Act of June 10, 1890, ch. 407, § 21, 26 Stat. 140, and reenacted by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 101, and amended by the 1913 act. Section III of the 1913 act was superseded by act Sept. 21, 1922, ch. 356, title IV, § 615, 42 Stat. 987, and was repealed by section 643 thereof. Section 615 of the 1922 act was superseded by section 615 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft in provisions preceding par. (1) and in par. (1).

1978—Pub. L. 95–410 inserted ''(other than those arising under section 1592 of this title)'' after ''In all suits or actions''.

1935—Act Aug. 5, 1935, inserted a comma in place of a period at the end, inserted ''subject to the following rules of proof'', and added subds. (1) to (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 2610 of this title.

§ 1616. Repealed. Pub. L. 99–570, title I, § 1863(b), Oct. 27, 1986, 100 Stat. 3207–54

Section, act June 17, 1930, ch. 497, title IV, § 616, as added Oct. 12, 1984, Pub. L. 98–473, title II, § 318, 98 Stat. 2055, related to disposition of forfeited property.

Another section 616 of act June 17, 1930, as added by Pub. L. 98–573, title II, § 213(a)(4), Oct. 30, 1984, 98 Stat. 2987, is classified to section 1616a of this title.

A prior section 1616 of act June 17, 1930, ch. 497, title IV, § 616, 46 Stat. 757, related to prohibition against compromising Government claims and was classified to this section, prior to repeal by act June 25, 1948, ch. 645, § 24, 62 Stat. 682, eff. Sept. 1, 1948. See section 1915 of Title 18, Crimes and Criminal Procedure.

§ 1616a. Disposition of forfeited property

(a) State proceedings

The Secretary of the Treasury may discontinue forfeiture proceedings under this chapter in favor of forfeiture under State law. If a complaint for forfeiture is filed under this chapter, the Attorney General may seek dismissal of the complaint in favor of forfeiture under State law.

(b) Transfer of seized property; notice

If forfeiture proceedings are discontinued or dismissed under this section—

(1) the United States may transfer the seized property to the appropriate State or local official; and

(2) notice of the discontinuance or dismissal shall be provided to all known interested parties.

(c) Retention or transfer of forfeited property

(1) The Secretary of the Treasury may apply property forfeited under this chapter in accordance with subparagraph (A) or (B), or both:

(A) Retain any of the property for official use.

(B) Transfer any of the property to—

(i) any other Federal agency;

(ii) any State or local law enforcement agency that participated directly or indirectly in the seizure or forfeiture of the property; or

(iii) the Civil Air Patrol.

(2) The Secretary may transfer any forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 2291j(b) of title 22.

(3) Aircraft may be transferred to the Civil Air Patrol under paragraph (1)(B)(iii) in support of air search and rescue and other emergency services and, pursuant to a memorandum of understanding entered into with a Federal agency, illegal drug traffic surveillance. Jet-powered aircraft may not be transferred to the Civil Air Patrol under the authority of paragraph (1)(B)(iii).

(d) Liability of United States after transfer

The United States shall not be liable in any action relating to property transferred under this section if such action is based on an act or omission occurring after the transfer.

(June 17, 1930, ch. 497, title IV, § 616, as added Pub. L. 98–573, title II, § 213(a)(14), Oct. 30, 1984, 98 Stat. 2987; amended Pub. L. 99–570, title I, § 1863(a), Oct. 27, 1986, 100 Stat. 3207–54; Pub. L. 100–690, title VII, § 7366(a), Nov. 18, 1988, 102 Stat. 4478; Pub. L. 101–207, § 3(e), Dec. 7, 1989, 103 Stat. 1834; Pub. L. 103–447, title I, § 102(c), Nov. 2, 1994, 108 Stat. 4693.)

CODIFICATION

Another section 616 of act June 17, 1930, as added by Pub. L. 98–473, title II, § 318, Oct. 12, 1984, 98 Stat. 2055, was classified to section 1616 of this title and subsequently repealed.

AMENDMENTS

1994—Subsec. (c)(2)(C). Pub. L. 103–447 substituted ''section 2291j(b) of title 22'' for ''section 2291(h) of title 22''.

1989—Subsec. (c)(1)(B). Pub. L. 101–207, § 3(e)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Transfer any of the property to any—

''(i) other Federal agency; or

"(ii) State or local law enforcement agency that participated directly or indirectly in the seizure or forfeiture of the property."

Subsec. (c)(3). Pub. L. 101–207, § 3(e)(2), added par. (3).

1988—Subsec. (c). Pub. L. 100–690 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The Secretary of the Treasury may transfer any property forfeited under this chapter to any other Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property."

1986—Subsec. (c). Pub. L. 99–570 inserted "any other Federal agency or to" after "property forfeited under this chapter to".

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7366(b) of Pub. L. 100–690 provided that: "The amendment made by subsection (a) [amending this section] applies with respect to property forfeited under the Tariff Act of 1930 [this chapter] on or after the date of the enactment of this Act [Nov. 18, 1988]."

EFFECTIVE DATE

Section effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 1613b of this title; title 18 sections 1467, 2253, 2254; title 21 section 881; title 31 section 9703.

§ 1617. Compromise of Government claims by Secretary of the Treasury

Upon a report by a customs officer, United States attorney, or any special attorney, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury.

(June 17, 1930, ch. 497, title IV, § 617, 46 Stat. 757; May 10, 1934, ch. 277, § 512(b), 48 Stat. 759; June 25, 1948, ch. 646, § 1, 62 Stat. 869; Pub. L. 91–271, title III, § 301(gg), June 2, 1970, 84 Stat. 291.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 617, 42 Stat. 987. That section was superseded by section 617 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1970—Pub. L. 91–271 substituted reference to customs officer for reference to collector and struck out reference to customs agents.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "district attorney". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Note thereunder.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury, General Counsel of Department of the Treasury, or Department of the Treasury under this section with respect to functions transferred to Secretary of Commerce in sections 1303 and 1671 et seq. of this title by section 5(a)(1)(C) of Reorg. Plan No. 3 of 1979 were transferred to 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.

Act May 10, 1934, ch. 277, § 512(b), 48 Stat. 759, abolished offices of General Counsel and Assistant General Counsel for Bureau of Internal Revenue, and office of Solicitor and Assistant Solicitor of the Treasury and transferred powers, duties, and functions thereof to General Counsel for Department of the Treasury.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 2254 of this title.

§ 1618. Remission or mitigation of penalties

Whenever any person interested in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, before the sale of such vessel, vehicle, aircraft, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs officer to take testimony upon such petition: *Provided*, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

(June 17, 1930, ch. 497, title IV, § 618, 46 Stat. 757; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 91–271, title III, § 301(hh), June 2, 1970, 84 Stat. 291; Pub. L. 98–473, title II, § 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, § 213(a)(16), Oct. 30, 1984, 98 Stat. 2988.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to this title.

The navigation laws, referred to in text, are classified generally to Title 33, Navigation and Navigable Waters.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 618, 42 Stat. 987. That section was superseded by section 618 of

act June 17, 1930, comprising this section, and was repealed by section 651(a)(1) of the 1930 act.

Provisions for a petition to the judge of the district, a summary investigation before the judge or a United States Commissioner, and transmission of the facts appearing thereon, with a certified copy of the evidence, to the Secretary of the Treasury, and provisions authorizing the Secretary to remit fines and penalties, etc., were contained in act June 22, 1874, ch. 391, §§17, 18, 20, 18 Stat. 189, 190, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

AMENDMENTS

1984—Pub. L. 98–573 and Pub. L. 98–473 inserted reference to aircraft in two places.

1970—Pub. L. 91–271 substituted ''customs officer'' for ''customs agent, collector, judge of the United States Customs Court, or United States commissioner''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

Substitution in text of references to Commandant of the Coast Guard and Commissioner of Customs for ''the Secretary of Commerce'' under the authority of Reorg. Plan No. 3 of 1946, see note set out under section 1613 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1509, 1592, 1592a, 1593a, 1595a, 1600, 1641, 2254 of this title.

§ 1619. Award of compensation to informers

(a) In general

If—

(1) any person who is not an employee or officer of the United States—

(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning—

(i) any fraud upon the customs revenue, or

(ii) any violation of the customs laws or the navigation laws which is being, or has been, perpetrated or contemplated by any other person; and

(2) such detection and seizure or such information leads to a recovery of—

(A) any duties withheld, or

(B) any fine, penalty, or forfeiture of property incurred;

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

(b) Forfeited property not sold

If—

(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

(A) destroyed under the customs or navigation laws, or

(B) delivered to any governmental agency for official use, and

(2) any person would be eligible to receive an award under subsection (a) of this section but for the lack of sale of such forfeited property,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

(c) Dollar limitation

The amount awarded and paid to any person under this section may not exceed $250,000 for any case.

(d) Source of payment

Unless otherwise provided by law, any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

(e) Recovery of bail bond

For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.

(June 17, 1930, ch. 497, title IV, §619, 46 Stat. 758; Aug. 5, 1935, ch. 438, title III, §305, 49 Stat. 527; Pub. L. 98–473, title II, §§319, 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98–573, title II, §213(a)(15), Oct. 30, 1984, 98 Stat. 2988; Pub. L. 99–570, title III, §3125, Oct. 27, 1986, 100 Stat. 3207–88.)

REFERENCES IN TEXT

The customs laws, referred to in subsecs. (a)(1)(A), (B)(ii), and (b)(1)(A), are classified generally to this title.

The navigation laws, referred to in subsecs. (a)(1)(A), (B)(ii), and (b)(1)(A), are classified generally to Title 33, Navigation and Navigable Waters.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, §619, 42 Stat. 988. That section was superseded by section 619 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section, but applicable in part to any officer of the customs or other person, were contained in act June 22, 1874, ch. 391, §4, 18 Stat. 186. Section 3 of the 1874 act required the Secretary of the Treasury to make suitable compensation in certain cases, as thereinafter provided, made an appropriation and required payments to be reported to Congress. Section 6 required claims to compensation to be established to the satisfaction of the court or judge, and required satisfactory proof when the fine, etc., was collected without judicial proceedings. All of these sections were repealed by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989.

Section 2 of the act of June 22, 1874, ch. 391, repealed all provisions under which moieties of fines, etc., were paid to informers, etc., and required the proceeds of all fines, penalties, and forfeitures to be paid into the Treasury. This last provision was omitted from the Code as superseded by section 527 of this title (act Mar. 4, 1907, ch. 2918, §1, 34 Stat. 1315).

Section 26 of that Act repealed inconsistent laws and saved existing rights. It was omitted from the Code as temporary and executed.

R.S. §2948, providing that additional duties were not to be deemed fines, etc., for distribution to customs officers, became inoperative by the repeal of all provisions for payment of moieties of fines, etc., to informers or officers, by the act of June 2, 1874, ch. 391, §2, and

was repealed by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

An appropriation for compensation in lieu of moieties was made by act Mar. 2, 1926, ch. 43, § 1, 44 Stat. 141. Similar appropriations were contained in prior acts.

AMENDMENTS

1986—Pub. L. 99–570 amended section generally. Prior to amendment, section read as follows: ''Any person not an officer of the United States who detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws, and who reports the same to an officer of the customs, or who furnishes to a United States attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws or the navigation laws, perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed $250,000 in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed $250,000 in any case. In no event shall the Secretary delegate the authority to pay an award under this section in excess of $10,000 to an official below the level of the Commissioner of Customs.''

1984—Pub. L. 98–573, § 213(a)(15)(A), and Pub. L. 98–473, § 321, inserted reference to aircraft in two places.

Pub. L. 98–573, § 213(a)(15)(B), substituted ''$250,000'' for ''$50,000'' in two places.

Pub. L. 98–473, § 319(a), substituted ''$150,000'' for ''$50,000''.

Pub. L. 98–473, § 319(b), inserted ''In no event shall the Secretary delegate the authority to pay an award under this section in excess of $10,000 to an official below the level of the Commissioner of Customs.''

1935—Act Aug. 5, 1935, inserted ''or the navigation laws'' after ''customs laws'', and provisions authorizing award of compensation of 25 per centum of the appraised value, but not to exceed $50,000 in any case.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98–573, set out as a note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 1613b of this title; title 31 section 9703.

§ 1620. Acceptance of money by United States officers

Any officer of the United States who directly or indirectly receives, accepts, or contracts for any portion of the money which may accrue to any person making such detection and seizure, or furnishing such information, shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or both, and shall be thereafter ineligible to any office of honor, trust, or emolument. Any such person who pays to any such officer, or to any person for the use of such officer, any portion of such money, or anything of value for or because of such money, shall have a right of action against such officer, or his legal representatives, or against such person, or his legal representatives, and shall be entitled to recover the money so paid or the thing of value so given.

(June 17, 1930, ch. 497, title IV, § 620, 46 Stat. 758.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 620, 42 Stat. 988. That section was superseded by section 620 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions somewhat similar to those in this section but excepting cases of smuggling were contained in act June 22, 1874, ch. 391, § 7, 18 Stat. 187, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

CROSS REFERENCES

Extortion by officers or employees of the United States, see section 872 of Title 18, Crimes and Criminal Procedure.

Penalty for customs officers receiving any other or greater fee, compensation, or reward than is allowed by law, see section 60 of this title.

§ 1621. Limitation of actions

No suit or action to recover any duty under section 1592(d), 1593a(d) of this title, or any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered; except that—

(1) in the case of an alleged violation of section 1592 or 1593a of this title, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and

(2) the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.

(June 17, 1930, ch. 497, title IV, § 621, 46 Stat. 758; Aug. 5, 1935, ch. 438, title III, § 306, 49 Stat. 527; Pub. L. 95–410, title I, § 110(e), Oct. 3, 1978, 92 Stat. 897; Pub. L. 103–182, title VI, § 668, Dec. 8, 1993, 107 Stat. 2216.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 621, 42 Stat. 988. That section was superseded by section 621 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

Provisions substantially similar to those in this section, except that the period of limitation was three years, were contained in act June 22, 1874, ch. 391, § 22, 18 Stat. 190, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 643, 42 Stat. 989.

AMENDMENTS

1993—Pub. L. 103–182 inserted ''any duty under section 1592(d), 1593a(d) of this title, or'' before ''any pecuniary

penalty'' and substituted ''discovered; except that—'' along with pars. (1) and (2) for ''discovered: *Provided*, That in the case of an alleged violation of section 1592 of this title arising out of gross negligence or negligence, such suit or action shall not be instituted more than five years after the date the alleged violation was committed: *Provided further*, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.''

1978—Pub. L. 95–410 prescribed for any suit or action for violation of section 1592 of this title arising out of gross negligence or negligence a five year limitation period following date of alleged violation.

1935—Act Aug. 5, 1935, substituted ''the alleged offense was discovered'' for ''such penalty or forfeiture accrued''.

EFFECTIVE DATE OF 1978 AMENDMENT

Effective date of amendment by Pub. L. 95–410 for alleged violation of section 1592 of this title arising out of gross negligence or negligence committed on or after Oct. 3, 1978, or before such date without commencement of proceedings except where barred by provisions of this section in effect prior to such date, see section 110(f)(2) of Pub. L. 95–410, set out as a note under section 1592 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1641 of this title.

§ 1622. Foreign landing certificates

The Secretary of the Treasury may by regulations require the production of landing certificates in respect of merchandise exported from the United States, or in respect of residue cargo, in cases in which he deems it necessary for the protection of the revenue, or to comply with international obligations.

(June 17, 1930, ch. 497, title IV, § 622, 46 Stat. 759; Pub. L. 99–570, title III, § 3126, Oct. 27, 1986, 100 Stat. 3207–89.)

AMENDMENTS

1986—Pub. L. 99–570 inserted '', or to comply with international obligations'' before period at end.

§ 1623. Bonds and other security

(a) Requirement of bond by regulation

In any case in which bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation or specific instruction require, or authorize customs officers to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary of the Treasury or the Customs Service may be authorized to enforce.

(b) Conditions and form of bond

Whenever a bond is required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may—

(1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond and the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted to the Customs Service, and fix the amount of penalty thereof, whether for the payment of liquidated damages or of a penal sum: *Provided*, That when a consolidated bond authorized by paragraph 4 of this subsection is taken, the Secretary of the Treasury may fix the penalty of such bond without regard to any other provision of law, regulation, or instruction.

(2) Provide for the approval of the sureties on such bond, without regard to any general provision of law.

(3) Authorize the execution of a term bond the conditions of which shall extend to and cover similar cases of importations over such period of time, not to exceed one year, or such longer period as he may fix when in his opinion special circumstances existing in a particular instance require such longer period.

(4) Authorize, to the extent that he may deem necessary, the taking of a consolidated bond (single entry or term), in lieu of separate bonds to assure compliance with two or more provisions of law, regulations, or instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce. A consolidated bond taken pursuant to the authority contained in this subsection shall have the same force and effect in respect of every provision of law, regulation, or instruction for the purposes for which it is required as though separate bonds had been taken to assure compliance with each such provision.

(c) Cancellation of bond

The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient. In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.

(d) Validity of bond

No condition in any bond taken to assure compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce shall be held invalid on the ground that such condition is not specified in the law, regulation, or instruction authorizing or requiring the taking of such bond. Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.

(e) Deposit of money or obligation of United States in lieu of bond

The Secretary of the Treasury is authorized to permit the deposit of money or obligations of the United States, in such amount and upon such conditions as he may by regulation prescribe, in lieu of sureties on any bond required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce.

(June 17, 1930, ch. 497, title IV, § 623, 46 Stat. 759; June 25, 1938, ch. 679, § 30, 52 Stat. 1089; Pub. L. 91–271, title III, § 301(ii), June 2, 1970, 84 Stat. 291; Pub. L. 100—418, title I, § 1904, Aug. 23, 1988, 102 Stat. 1313; Pub. L. 103–182, title VI, § 647, Dec. 8, 1993, 107 Stat. 2207.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–182, § 647(1), inserted ''and the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted to the Customs Service'' after ''form of such bond''.

Subsec. (d). Pub. L. 103–182, § 647(2), inserted at end ''Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.''

1988—Subsec. (c). Pub. L. 100–418 provided for publication of guidelines establishing customs bond cancellation standards.

1970—Subsec. (a). Pub. L. 91–271 substituted reference to customs officers for reference to collectors of customs.

1938—Act June 25, 1938, amended section generally, among other changes adding subsecs. (c) to (e).

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs Service is under Department of the Treasury.

§ 1624. General regulations

In addition to the specific powers conferred by this chapter the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this chapter.

(June 17, 1930, ch. 497, title IV, § 624, 46 Stat. 759.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 623, 42 Stat. 988. That section was superseded by section 624 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1625. Interpretive rulings and decisions; public information

(a) Publication

Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.

(b) Appeals

A person may appeal an adverse interpretive ruling and any interpretation of any regulation prescribed to implement such ruling to a higher level of authority within the Customs Service for de novo review. Upon a reasonable showing of business necessity, any such appeal shall be considered and decided no later than 60 days following the date on which the appeal is filed. The Secretary shall issue regulations to implement this subsection.

(c) Modification and revocation

A proposed interpretive ruling or decision which would—

(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or

(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

(d) Publication of customs decisions that limit court decisions

A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.

(e) Public information

The Secretary may make available in writing or through electronic media, in an efficient, comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs[1] laws and regulations. All information which may be made available pursuant to this subsection shall be subject to any exemption from disclosure provided by section 552 of title 5.

(June 17, 1930, ch. 497, title IV, § 625, as added Pub. L. 95–410, title I, § 112, Oct. 3, 1978, 92 Stat. 898; amended Pub. L. 103–182, title VI, § 623, Dec. 8, 1993, 107 Stat. 2186; Pub. L. 104–295, § 21(e)(14), Oct. 11, 1996, 110 Stat. 3531.)

REFERENCES IN TEXT

The Customs laws, referred to in subsec. (e), are classified generally to this title.

[1] So in original. Probably should not be capitalized.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–295 made technical amendment to reference in original act which appears in text as reference to ''this chapter''.

1993—Pub. L. 103–182 amended section generally. Prior to amendment, section read as follows: ''Within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) under this chapter with respect to any customs transaction, the Secretary shall have such decision published in the Customs Bulletin or shall otherwise make such decision available for public inspection.''

§ 1626. Steel products trade enforcement

(a) Export validation requirement

In order to monitor and enforce export measures required by a foreign government or customs union, pursuant to an international arrangement with the United States, the Secretary of the Treasury may, upon receipt of a request by the President of the United States and by a foreign government or customs union, require the presentation of a valid export license or other documents issued by such foreign government or customs union as a condition for entry into the United States of steel mill products specified in the request. The Secretary may provide by regulation for the terms and conditions under which such merchandise attempted to be entered without an accompanying valid export license or other documents may be denied entry into the United States.

(b) Period of applicability

This section applies only to requests received by the Secretary of the Treasury prior to January 1, 1983, and for the duration of the arrangements.

(June 17, 1930, ch. 497, title IV, § 626, as added Pub. L. 96–276, § 153, Oct. 2, 1982, 96 Stat. 1202.)

§ 1627. Repealed. Pub. L. 100–690, title VII, § 7367(c)(6), Nov. 18, 1988, 102 Stat. 4480

Section, act June 17, 1930, ch. 497, title IV, § 627, as added Oct. 25, 1984, Pub. L. 98–547, title III, § 302, 98 Stat. 2771, related to unlawful importation or exportation of certain vehicles and equipment.

Another section 627 of act June 17, 1930, as added by Pub. L. 98–573, title II, § 205, Oct. 30, 1984, 98 Stat. 2974, is classified to section 1627a of this title.

§ 1627a. Unlawful importation or exportation of certain vehicles; inspections

(a) Violations; penalties; seizures and forfeitures

(1) Whoever knowingly imports, exports, or attempts to import or export—

(A) Any[1] stolen self-propelled vehicle, vessel, aircraft, or part of a self-propelled vehicle, vessel, or aircraft; or

(B) any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with, or altered;

shall be subject to a civil penalty in an amount determined by the Secretary, not to exceed $10,000 for each violation.

(2) Any violation of this subsection shall make such self-propelled vehicle, vessel, aircraft, or part thereof subject to seizure and forfeiture under this chapter.

(b) Regulations; violations; penalties

A person attempting to export a used self-propelled vehicle shall present, pursuant to regulations prescribed by the Secretary, to the appropriate customs officer both the vehicle and a document describing such vehicle which includes the vehicle identification number, before lading if the vehicle is to be transported by vessel or aircraft, or before export if the vehicle is to be transported by rail, highway, or under its own power. Failure to comply with the regulations of the Secretary shall subject such person to a civil penalty of not more than $500 for each violation.

(c) Definitions

For purposes of this section—

(1) the term ''self-propelled vehicle'' includes any automobile, truck, tractor, bus, motorcycle, motor home, self-propelled agricultural machinery, self-propelled construction equipment, self-propelled special use equipment, and any other self-propelled vehicle used or designed for running on land but not on rail;

(2) the term ''aircraft'' has the meaning given it in section 40102(a)(6) of title 49;

(3) the term ''used'' refers to any self-propelled vehicle the equitable or legal title to which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser; and

(4) the term ''ultimate purchaser'' means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a self-propelled vehicle for purposes other than resale.

(d) Cooperation of law enforcement and governmental authorities

Customs officers may cooperate and exchange information concerning motor vehicles, off-highway mobile equipment, vessels, or aircraft, either before exportation or after exportation or importation, with such Federal, State, local, and foreign law enforcement or governmental authorities, and with such organizations engaged in theft prevention activities, as may be designated by the Secretary.

(June 17, 1930, ch. 497, title IV, § 627, as added Pub. L. 98–573, title II, § 205, Oct. 30, 1984, 98 Stat. 2974.)

CODIFICATION

In subsec. (c)(2), ''section 40102(a)(6) of title 49'' substituted for ''section 101(5) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(5))'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Another section 627 of act June 17, 1930, as added by Pub. L. 98–547, title III, § 302, Oct. 25, 1984, 98 Stat. 2771, was classified to section 1627 of this title and subsequently repealed.

EFFECTIVE DATE

Section effective on 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

[1] So in original. Probably should not be capitalized.

§ 1628. Exchange of information

(a) In general

The Secretary may by regulation authorize customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange of information is necessary to—

(1) insure compliance with any law or regulation enforced or administered by the Customs Service;

(2) administer or enforce multilateral or bilateral agreements to which the United States is a party;

(3) assist in investigative, judicial and quasi-judicial proceedings in the United States; and

(4) an action comparable to any of those described in paragraphs (1) through (4)[1] undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.

(b) Nondisclosure and uses of information provided

(1) Information may be provided to foreign customs and law enforcement agencies under subsection (a) of this section only if the Secretary obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Secretary.

(2) No information may be provided under subsection (a) of this section to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (1).

(c) Government agency of NAFTA country

The Secretary may authorize the Customs Service to exchange information with any government agency of a NAFTA country, as defined in section 3301(4) of this title, if the Secretary—

(1) reasonably believes the exchange of information is necessary to implement chapter 3, 4, or 5 of the North American Free Trade Agreement, and

(2) obtains assurances from such country that the information will be held in confidence and used only for governmental purposes.

(June 17, 1930, ch. 497, title IV, § 628, as added Pub. L. 99–570, title III, § 3127, Oct. 27, 1986, 100 Stat. 3207–89; amended Pub. L. 103–182, title II, § 209, Dec. 8, 1993, 107 Stat. 2098.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–182 added subsec. (c).

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], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

§ 1629. Inspections and preclearance in foreign countries

(a) In general

When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in the United States.

(b) Functions and duties

Customs officers stationed in a foreign country under subsection (a) of this section may exercise such functions and perform such duties (including inspections, searches, seizures and arrests) as may be permitted by the treaty, agreement or law of the country in which they are stationed.

(c) Compliance

The Secretary may by regulation require compliance with the customs laws of the United States in a foreign country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the importation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station is a port of entry within the customs territory of the United States.

(d) Seizures

When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the customs territory to the United States to be proceeded against under the customs law.

(e) Stationing of foreign customs officers in the United States

The Secretary of State, in coordination with the Secretary, may enter into agreements with any foreign country authorizing the stationing in the United States of customs officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of insuring that persons and merchandise going directly to that country from the United States comply with the customs and other laws of that country governing the importation of merchandise. Any foreign customs official stationed in the United States under this subsection may exercise such functions and perform such duties as United States officials may be authorized to perform in that foreign country under reciprocal agreement.

(f) Application of certain laws

When customs officials of a foreign country are stationed in the United States in accordance with subsection (e) of this section, and if similar provisions are applied to United States officials stationed in that country—

(1) sections 111 and 1114 of title 18 shall apply as if the officials were designated in those sections; and

(2) any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, is liable for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

[1] So in original. Probably should be ''(3)''.

(June 17, 1930, ch. 497, title IV, § 629, as added Pub. L. 99–570, title III, § 3128, Oct. 27, 1986, 100 Stat. 3207–89.)

REFERENCES IN TEXT

The customs laws of the United States and the customs law, referred to in subsecs. (c) and (d), are classified generally to this title.

§ 1630. Authority to settle claims

(a) In general

With respect to a claim that cannot be settled under chapter 171 of title 28, the Secretary may settle, for not more than $50,000 in any one case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28) who is employed by the Customs Service and acting within the scope of his or her employment.

(b) Limitations

The Secretary may not pay a claim under subsection (a) that—

(1) concerns commercial property;

(2) is presented to the Secretary more than 1 year after it occurs; or

(3) is presented by an officer or employee of the United States Government and arose within the scope of employment.

(c) Final settlement

A claim may be paid under this section only if the claimant accepts the amount of settlement in complete satisfaction of the claim.

(June 17, 1930, ch. 497, title IV, § 630, as added Pub. L. 103–182, title VI, § 670, Dec. 8, 1993, 107 Stat. 2216.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 9703.

§ 1631. Use of private collection agencies

(a) In general

Notwithstanding any other provision of law, the Secretary, under such terms and conditions as the Secretary considers appropriate, shall enter into contracts and incur obligations with one or more persons for collection services to recover indebtedness arising under the customs laws and owed the United States Government, but only after the Customs Service has exhausted all administrative efforts, including all claims against applicable surety bonds, to collect the indebtedness.

(b) Contract requirements

Any contract entered into under subsection (a) of this section shall provide that—

(1) the Secretary retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and

(2) the person is subject to—

(A) section 552a of title 5 to the extent provided in subsection (m) of such section; and

(B) laws and regulations of the United States Government and State governments related to debt collection practices.

(c) Payment of costs

The debtor shall be assessed and pay any and all costs associated with collection efforts pursuant to this section. Notwithstanding section 3302(b) of title 31, any sum so collected shall be used to pay the costs of debt collection services.

(June 17, 1930, ch. 497, title IV, § 631, as added Pub. L. 103–182, title VI, § 671, Dec. 8, 1993, 107 Stat. 2217; amended Pub. L. 104–295, § 3(a)(9), Oct. 11, 1996, 110 Stat. 3516.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (a), are classified generally to this title.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–295, which directed amendment of subsec. (a) of this section by adding at the end a new subsec. (c), was executed by adding subsec. (c) at the end of this section, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

PART VI—MISCELLANEOUS PROVISIONS

§ 1641. Customs brokers

(a) Definitions

As used in this section:

(1) The term ''customs broker'' means any person granted a customs broker's license by the Secretary under subsection (b) of this section.

(2) The term ''customs business'' means those activities involving transactions with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

(3) The term ''Secretary'' means the Secretary of the Treasury.

(b) Customs broker's licenses

(1) In general

No person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker's license issued by the Secretary under paragraph (2) or (3).

(2) Licenses for individuals

The Secretary may grant an individual a customs broker's license only if that individual is a citizen of the United States. Before granting the license, the Secretary may require an applicant to show any facts deemed necessary to establish that the applicant is of good moral character and qualified to render valuable service to others in the conduct of customs business. In assessing the qualifica-

tions of an applicant, the Secretary may conduct an examination to determine the applicant's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters.

(3) Licenses for corporations, etc.

The Secretary may grant a customs broker's license to any corporation, association, or partnership that is organized or existing under the laws of any of the several States of the United States if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's license granted under paragraph (2).

(4) Duties

A customs broker shall exercise responsible supervision and control over the customs business that it conducts.

(5) Lapse of license

The failure of a customs broker that is licensed as a corporation, association, or partnership under paragraph (3) to have, for any continuous period of 120 days, at least one officer of the corporation or association, or at least one member of the partnership, validly licensed under paragraph (2) shall, in addition to causing the broker to be subject to any other sanction under this section (including paragraph (6)), result in the revocation by operation of law of its license.

(6) Prohibited acts

Any person who intentionally transacts customs business, other than solely on the behalf of that person, without holding a valid customs broker's license granted to that person under this subsection shall be liable to the United States for a monetary penalty not to exceed $10,000 for each such transaction as well as for each violation of any other provision of this section. This penalty shall be assessed in the same manner and under the same procedures as the monetary penalties provided for in subsection (d)(2)(A) of this section.

(c) Customs broker's permits

(1) In general

Each person granted a customs broker's license under subsection (b) of this section shall be issued, in accordance with such regulations as the Secretary shall prescribe, either or both of the following:

(A) A national permit for the conduct of such customs business as the Secretary prescribes by regulation.

(B) A permit for each customs district in which that person conducts customs business and, except as provided in paragraph (2), regularly employs at least 1 individual who is licensed under subsection (b)(2) of this section to exercise responsible supervision and control over the customs business conducted by that person in that district.

(2) Exception

If a person granted a customs broker's license under subsection (b) of this section can demonstrate to the satisfaction of the Secretary that—

(A) he regularly employs in the region in which that district is located at least one individual who is licensed under subsection (b)(2) of this section, and

(B) that sufficient procedures exist within the company for the person employed in that region to exercise responsible supervision and control over the customs business conducted by that person in that district,

the Secretary may waive the requirement in paragraph (1)(B).

(3) Lapse of permit

The failure of a customs broker granted a permit under paragraph (1) to employ, for any continuous period of 180 days, at least one individual who is licensed under subsection (b)(2) of this section within the district or region (if paragraph (2) applies) for which a permit was issued shall, in addition to causing the broker to be subject to any other sanction under this section (including any in subsection (d) of this section), result in the revocation by operation of law of the permit.

(4) Appointment of subagents

Notwithstanding subsection (c)(1) of this section, upon the implementation by the Secretary under section 1413(b)(2) of this title of the component of the National Customs Automation Program referred to in section 1411(a)(2)(B) of this title, a licensed broker may appoint another licensed broker holding a permit in a customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted by law or regulation to be filed electronically. A licensed broker appointing a subagent pursuant to this paragraph shall remain liable for any and all obligations arising under bond and any and all duties, taxes, and fees, as well as any other liabilities imposed by law, and shall be precluded from delegating to a subagent such liability.

(d) Disciplinary proceedings

(1) General rule

The Secretary may impose a monetary penalty in all cases with the exception of the infractions described in clause (iii) of subparagraph (B) of this subsection, or revoke or suspend a license or permit of any customs broker, if it is shown that the broker—

(A) has made or caused to be made in any application for any license or permit under this section, or report filed with the Customs Service, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein;

(B) has been convicted at any time after the filing of an application for license under subsection (b) of this section of any felony or misdemeanor which the Secretary finds—

(i) involved the importation or exportation of merchandise;

(ii) arose out of the conduct of its customs business; or

(iii) involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent

concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(C) has violated any provision of any law enforced by the Customs Service or the rules or regulations issued under any such provision;

(D) has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by the Customs Service, or the rules or regulations issued under any such provision;

(E) has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of such employment from the Secretary; or

(F) has, in the course of its customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client.

(2) Procedures

(A) Monetary penalty

Unless action has been taken under subparagraph (B), the appropriate customs officer shall serve notice in writing upon any customs broker to show cause why the broker should not be subject to a monetary penalty not to exceed $30,000 in total for a violation or violations of this section. The notice shall advise the customs broker of the allegations or complaints against him and shall explain that the broker has a right to respond to the allegations or complaints in writing within 30 days of the date of the notice. Before imposing a monetary penalty, the customs officer shall consider the allegations or complaints and any timely response made by the customs broker and issue a written decision. A customs broker against whom a monetary penalty has been issued under this section shall have a reasonable opportunity under section 1618 of this title to make representations seeking remission or mitigation of the monetary penalty. Following the conclusion of any proceeding under section 1618 of this title, the appropriate customs officer shall provide to the customs broker a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(B) Revocation or suspension

The Customs Service may, for good and sufficient reason, serve notice in writing upon any customs broker to show cause why a license or permit issued under this section should not be revoked or suspended. The notice shall be in the form of a statement specifically setting forth the grounds of the complaint, and shall allow the customs broker 30 days to respond. If no response is filed, or the Customs Service determines that the revocation or suspension is still warranted, it shall notify the customs broker in writing of a hearing to be held within 30 days, or at a later date if the broker requests an extension and shows good cause therefor, before an administrative law judge appointed pursuant to section 3105 of title 5 who shall serve as the hearing officer. If the customs broker waives the hearing, or the broker or his designated representative fails to appear at the appointed time and place, the hearing officer shall make findings and recommendations based on the record submitted by the parties. At the hearing, the customs broker may be represented by counsel, and all proceedings, including the proof of the charges and the response thereto shall be presented with testimony taken under oath and the right of cross-examination accorded to both parties. A transcript of the hearing shall be made and a copy will be provided to the Customs Service and the customs broker; which shall thereafter be provided reasonable opportunity to file a post-hearing brief. Following the conclusion of the hearing, the hearing officer shall transmit promptly the record of the hearing along with the findings of fact and recommendations to the Secretary for decision. The Secretary will issue a written decision, based solely on the record, setting forth the findings of fact and the reasons for the decision. Such decision may provide for the sanction contained in the notice to show cause or any lesser sanction authorized by this subsection, including a monetary penalty not to exceed $30,000, than was contained in the notice to show cause.

(3) Settlement and compromise

The Secretary may settle and compromise any disciplinary proceeding which has been instituted under this subsection according to the terms and conditions agreed to by the parties, including but not limited to the reduction of any proposed suspension or revocation to a monetary penalty.

(4) Limitation of actions

Notwithstanding section 1621 of this title, no proceeding under this subsection or subsection (b)(6) of this section shall be commenced unless such proceeding is instituted by the appropriate service of written notice within 5 years from the date the alleged violation was committed; except that if the alleged violation consists of fraud, the 5-year period of limitation shall commence running from the time such alleged violation was discovered.

(e) Judicial appeal

(1) In general

A customs broker, applicant, or other person directly affected may appeal any decision of the Secretary denying or revoking a license or permit under subsection (b) or (c) of this section, or revoking or suspending a license or permit or imposing a monetary penalty in lieu thereof under subsection (d)(2)(B) of this section, by filing in the Court of International Trade, within 60 days after the issuance of the decision or order, a written petition requesting that the decision or order be modified or set aside in whole or in part. A copy of the petition shall be transmitted promptly by the clerk of the court to the Secretary or his designee. In cases involving revocation or suspension of a license or permit or imposition of a monetary penalty in lieu thereof under sub-

section (d)(2)(B) of this section, after receipt of the petition, the Secretary shall file in court the record upon which the decision or order complained of was entered, as provided in section 2635(d) of title 28.

(2) Consideration of objections

The court shall not consider any objection to the decision or order of the Secretary, or to the introduction of evidence or testimony, unless that objection was raised before the hearing officer in suspension or revocation proceedings unless there were reasonable grounds for failure to do so.

(3) Conclusiveness of findings

The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) Additional evidence

If any party applies to the court for leave to present additional evidence and the court is satisfied that the additional evidence is material and that reasonable grounds existed for the failure to present the evidence in the proceedings before the hearing officer, the court may order the additional evidence to be taken before the hearing officer and to be presented in a manner and upon the terms and conditions prescribed by the court. The Secretary may modify the findings of facts on the basis of the additional evidence presented. The Secretary shall then file with the court any new or modified findings of fact which shall be conclusive if supported by substantial evidence, together with a recommendation, if any, for the modification or setting aside of the original decision or order.

(5) Effect of proceedings

The commencement of proceedings under this subsection shall, unless specifically ordered by the court, operate as a stay of the decision of the Secretary except in the case of a denial of a license or permit.

(6) Failure to appeal

If an appeal is not filed within the time limits specified in this section, the decision by the Secretary shall be final and conclusive. In the case of a monetary penalty imposed under subsection (d)(2)(B) of this section, if the amount is not tendered within 60 days after the decision becomes final, the license shall automatically be suspended until payment is made to the Customs Service.

(f) Regulations by the Secretary

The Secretary may prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary considers necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations governing the licensing of or issuance of permits to customs brokers, the keeping of books, accounts, and records by customs brokers, and documents and correspondence, and the furnishing by customs brokers of any other information relating to their customs business to any duly accredited officer or employee of the Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this chapter pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.

(g) Triennial reports by customs brokers

(1) In general

On February 1, 1985, and on February 1 of each third year thereafter, each person who is licensed under subsection (b) of this section shall file with the Secretary of the Treasury a report as to—

(A) whether such person is actively engaged in business as a customs broker; and

(B) the name under, and the address at, which such business is being transacted.

(2) Suspension and revocation

If a person licensed under subsection (b) of this section fails to file the required report by March 1 of the reporting year, the license is suspended, and may be thereafter revoked subject to the following procedures:

(A) The Secretary shall transmit written notice of suspension to the licensee no later than March 31 of the reporting year.

(B) If the licensee files the required report within 60 days of receipt of the Secretary's notice, the license shall be reinstated.

(C) In the event the required report is not filed within the 60-day period, the license shall be revoked without prejudice to the filing of an application for a new license.

(h) Fees and charges

The Secretary may prescribe reasonable fees and charges to defray the costs of the Customs Service in carrying out the provisions of this section, including, but not limited to, a fee for licenses issued under subsection (b) of this section and fees for any test administered by him or under his direction; except that no separate fees shall be imposed to defray the costs of an individual audit or of individual disciplinary proceedings of any nature.

(June 17, 1930, ch. 497, title IV, § 641, 46 Stat. 759; Aug. 26, 1935, ch. 689, §§ 3–5, 49 Stat. 864, 865; Pub. L. 85–791, § 8, Aug. 28, 1958, 72 Stat. 945; Pub. L. 91–271, title III, § 301(jj), June 2, 1970, 84 Stat. 291; Pub. L. 95–410, title I, § 113, Oct. 3, 1978, 92 Stat. 898; Pub. L. 96–417, title VI, § 611, Oct. 10, 1980, 94 Stat. 1746; Pub. L. 98–573, title II, § 212(a), Oct. 30, 1984, 98 Stat. 2978; Pub. L. 99–514, title XVIII, § 1888(8), Oct. 22, 1986, 100 Stat. 2925; Pub. L. 103–182, title VI, § 648, Dec. 8, 1993, 107 Stat. 2207; Pub. L. 104–295, § 21(e)(11), Oct. 11, 1996, 110 Stat. 3531; Pub. L. 105–258, title III, § 302(b), Oct. 14, 1998, 112 Stat. 1916.)

PRIOR PROVISIONS

This section relates to the same subject matter as act June 10, 1910, ch. 283, §§ 1–5, 36 Stat. 464, 465 (incor-

porated into the Code as former sections 415 to 419 of this title); and those sections were expressly repealed by paragraph (e) of this section which read as follows: ''(e) Licenses under Act of June 10, 1910.—The Act entitled 'An Act to license customhouse brokers,' approved June 10, 1910, is hereby repealed, except that any license issued under such Act shall continue in force and effect, subject to suspension and revocation in the same manner and upon the same conditions as licenses issued pursuant to subdivision (a) of this section.''

Act June 10, 1910, ch. 283, § 1, 36 Stat. 464, prior to its incorporation into the Code, referred to the collector or chief officer of the customs ''at any port of entry or delivery.'' Ports of delivery, not specifically mentioned as ports of entry, were abolished in the reorganization of the customs service by the President (see notes to section 1 of this title).

Act June 10, 1910, ch. 283, § 3, 36 Stat. 465, prior to its incorporation into the Code, referred to the United States Circuit Court instead of the District Court. Section 291 of the act of Mar. 3, 1911, provided that any reference, in any law not embraced in that act, to the Circuit Courts, or any power or duty conferred upon them, should be deemed to refer to, and to confer such power and duty upon, the District Courts.

AMENDMENTS

1998—Subsec. (i). Pub. L. 105–258 struck out subsec. (i) which prohibited conference or group of two or more ocean common carriers from denying any member the right to take independent action on any level of compensation paid to an ocean freight forwarder who was also a customs broker, and from agreeing to limit payment to such a forwarder to less than 1.25 percent of aggregate of tariff rates and charges, and set out provisions relating to administration of provisions, remedies for violations, and definitions.

1996—Subsec. (d)(2)(B). Pub. L. 104–295 substituted ''the findings of fact'' for ''his findings of fact'' in penultimate sentence.

1993—Subsec. (a)(2). Pub. L. 103–182, § 648(1), inserted at end ''It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.''

Subsec. (c)(1). Pub. L. 103–182, § 648(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Each person granted a customs broker's license under subsection (b) of this section shall—

''(A) be issued a permit, in accordance with regulations prescribed under this section, for each customs district in which that person conducts customs business; and

''(B) except as provided in paragraph (2), regularly employ in each customs district for which a permit is so issued at least one individual who is licensed under subsection (b)(2) of this section to exercise responsible supervision and control over the customs business conducted by that person in that district.''

Subsec. (c)(4). Pub. L. 103–182, § 648(3), added par. (4).

Subsec. (d)(2)(B). Pub. L. 103–182, § 648(4), in first sentence, substituted ''Customs Service'' for ''appropriate customs officer'', in third sentence, substituted ''Customs Service'' for ''appropriate customs officer'', ''it shall notify'' for ''he shall notify'', and ''30'' for ''15'', in sixth sentence, substituted ''the Customs Service and the customs broker; which'' for ''the appropriate customs officer and the customs broker; they'', in the seventh sentence, substituted ''the findings of fact'' for ''his findings of fact'', and in the eighth sentence, substituted ''for the decision'' for ''for his decision''.

Subsec. (f). Pub. L. 103–182, § 648(5), substituted ''Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this Act pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.'' for ''United States Customs Service.''

1986—Subsec. (i). Pub. L. 99–514 added subsec. (i).

1984—Pub. L. 98–573 amended section generally, substituting provisions relating to customs broker's licenses and permits for provisions relating to licensing of customhouse brokers.

1980—Subsec. (b). Pub. L. 96–417, in second par., substituted in second sentence ''filing, in the Court of International Trade'' for ''filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia'' and struck out penultimate sentence which read as follows: ''The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Secretary of the Treasury shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in 1254 of title 28.''

1978—Subsec. (e). Pub. L. 95–410 added subsec. (e).

1970—Subsec. (b). Pub. L. 91–271 substituted references to appropriate officer of the customs for references to collector or chief officer of customs wherever appearing.

1958—Subsec. (b). Pub. L. 85–791 in third sentence of second par., substituted ''transmitted by the clerk of the court to'' for ''served upon'', struck out ''upon'' before ''any officer'', ''certify and'' before ''file in the court'', ''a transcript of'' before ''the record upon'' and inserted ''as provided in section 2112 of title 28'', and in fourth sentence of second par., substituted ''petition'' for ''transcript''.

1935—Subsec. (a). Act Aug. 26, 1935, § 3, substituted ''(c)'' for ''(e)'' in last sentence.

Subsecs. (b) to (d). Act Aug. 26, 1935, § 4, amended subsecs. (b) to (d) generally.

Subsec. (e). Act Aug. 26, 1935, § 5, repealed subsec. (e) which related to licenses under the act of June 10, 1910.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of Title 46, Appendix, Shipping.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on close of 180th day following Oct. 30, 1984, with certain exceptions, except that subsec. (c)(1)(B), (2) of this section shall take effect three years after Oct. 30, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58c, 1484, 1509 of this title; title 28 sections 1581, 2631, 2636, 2640, 2643.

§ 1642. Omitted

CODIFICATION

In compliance with a request from the President on July 2, 1932, the survey authorized by this section, act June 17, 1930, ch. 497, title IV, § 642, 46 Stat. 760, was made and submitted to the President on February 28, 1933. See Tariff Commission Reports, No. 70, Second Series.

§ 1643. Application of customs reorganization act

The rights, privileges, powers, and duties vested in or imposed upon the Secretary of the Treasury by this chapter shall be subject to the provisions of subdivision (a) of section 2073 of this title.

(June 17, 1930, ch. 497, title IV, § 643, 46 Stat. 761.)

REFERENCES IN TEXT

Subdivision (a) of section 2073 of this title, referred to in text, was repealed by act Sept. 3, 1954, ch. 1263, § 10, 68 Stat. 1229.

§ 1644. Application of section 1644a(b)(1) of this title and section 1518(d) of title 33

(a) The authority vested by section 1644a(b)(1) of this title in the Secretary of the Treasury, by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of customs, and of the laws and regulations relating to the entry and clearance of vessels, shall extend to the application in like manner of any of the provisions of this chapter, or of the Anti-Smuggling Act of 1935 [19 U.S.C. 1701 et seq.], or of any regulations promulgated hereunder.

(b) For purposes of section 1518(d) of title 33, the term ''customs laws administered by the Secretary of the Treasury'' shall mean this chapter and any other provisions of law classified to this title.

(June 17, 1930, ch. 497, title IV, § 644, 46 Stat. 761; Pub. L. 96–467, § 21(2), (3), Oct. 17, 1980, 94 Stat. 2228; Pub. L. 98–473, title II, § 322, Oct. 12, 1984, 98 Stat. 2056.)

REFERENCES IN TEXT

The Anti-Smuggling Act of 1935, referred to in subsec. (a), probably means the Anti-Smuggling Act which is act Aug. 5, 1935, ch. 438, 49 Stat. 517, as amended, which is classified principally to chapter 5 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1711 of this title and Tables.

CODIFICATION

In subsec. (a), ''section 1644a(b)(1) of this title'' substituted for ''section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. 1509)'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–473 substituted reference to section 1509 of title 49, Appendix, for reference to section 177 of former title 49, struck out reference to the Commissioner of Customs, and inserted reference to the Anti-Smuggling Act of 1935.

Subsec. (b). Pub. L. 98–473 reenacted subsec. (b) without change.

1980—Pub. L. 96–467 designated existing provisions as subsec. (a) and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1436, 1459 of this title.

§ 1644a. Ports of entry

(a) Definitions

The definitions in section 40102(a) of title 49 apply to this section.

(b) Secretary of the Treasury

(1) The Secretary of the Treasury may—

(A) designate ports of entry in the United States for civil aircraft arriving in the United States from a place outside the United States and property transported on that aircraft;

(B) detail to ports of entry officers and employees of the United States Customs Service the Secretary considers necessary;

(C) give an officer or employee of the United States Government stationed at a port of entry (with the consent of the head of the department, agency, or instrumentality of the Government with jurisdiction over the officer or employee) duties and powers of officers or employees of the Customs Service;

(D) by regulation, apply to civil air navigation the laws and regulations on carrying out the customs laws, to the extent and under conditions the Secretary considers necessary; and

(E) by regulation, apply to civil aircraft the laws and regulations on entry and clearance of vessels, to the extent and under conditions the Secretary considers necessary.

(2) A person violating a customs regulation prescribed under paragraph (1)(A)–(D) of this subsection or a public health or customs law or regulation made applicable to aircraft by a regulation under paragraph (1)(A)–(D) is liable to the Government for a civil penalty of $5,000 for each violation. An aircraft involved in the violation may be seized and forfeited under the customs laws. The Secretary of the Treasury may remit or mitigate a penalty and forfeiture under this paragraph.

(3) A person violating a regulation made applicable under paragraph (1)(E) of this subsection or an immigration regulation prescribed under paragraph (1)(E) is liable to the Government for a civil penalty of $5,000 for each violation. The Secretary of the Treasury or the Attorney General may remit or mitigate a penalty under this paragraph.

(4) In addition to any other penalty, when a controlled substance described in section 1584 of this title is found on, or to have been unloaded from, an aircraft to which this subsection applies, the owner of, or individual commanding, the aircraft is liable to the Government for the penalties provided in section 1584 of this title for each violation unless the owner or individual, by a preponderance of the evidence, demonstrates that the owner or individual did not know, and by exercising the highest degree of care and dili-

gence, could not have known, that a controlled substance was on the aircraft.

(5) If a violation under this subsection is by the owner or operator of, or individual commanding, the aircraft, the aircraft is subject to a lien for the penalty.

(c) Secretary of Agriculture

(1) The Secretary of Agriculture by regulation may apply laws and regulations on animal and plant quarantine (including laws and regulations on importing, exporting, transporting, and quarantining animals, plants, animal and plant products, insects, bacterial and fungus cultures, viruses, and serums) to civil air navigation to the extent and under conditions the Secretary considers necessary.

(2) A person violating a law or regulation made applicable under paragraph (1) of this subsection is liable for the penalties provided under that law or regulation.

(d) Remission and mitigation of penalties

A decision to remit or mitigate a civil penalty under this section is final. When libel proceedings are pending during a proceeding to remit or mitigate a penalty, the appropriate Secretary shall notify the Attorney General of the remission or mitigation proceeding.

(e) Summary seizure of aircraft

(1) An aircraft subject to a lien under this section may be seized summarily by and placed in the custody of a person authorized by regulations of the appropriate Secretary or the Attorney General. A report of the case shall be sent to the Attorney General. The Attorney General shall bring promptly a civil action in rem to enforce the lien or notify the appropriate Secretary that the action will not be brought.

(2) An aircraft seized under this section shall be released from custody when—

(A) the civil penalty or amount not remitted or mitigated is paid;

(B) the aircraft is seized under process of a court in a civil action in rem to enforce the lien;

(C) the Attorney General gives notice that a civil action will not be brought under paragraph (1) of this subsection; or

(D) a bond is deposited with the appropriate Secretary or the Attorney General in an amount and with a surety the appropriate Secretary or the Attorney General prescribes, conditioned on payment of the penalty or amount not remitted or mitigated.

(f) Collection of civil penalties

A civil penalty under this section may be collected by bringing a civil action against the person subject to the penalty, a civil action in rem against an aircraft subject to a lien for a penalty, or both. The action shall conform as nearly as practicable to a civil action in admiralty, regardless of the place an aircraft in a civil action in rem is seized. However, a party may demand a trial by jury of an issue of fact if the value of the matter in controversy is more than $20. An issue of fact tried by jury may be reexamined only under common law rules.

(g) Authorization of appropriations

Necessary amounts may be appropriated to allow the head of a department, agency, or instrumentality of the Government to acquire space at a public airport (as defined in section 47102 of title 49) when the head decides the space is necessary to carry out inspections, clearance, collection of taxes or duties, or a similar responsibility of the head, related to transporting passengers or property in air commerce. The head must consult with the Secretary of Transportation before making a decision on space.

(Pub. L. 103–272, § 2, July 5, 1994, 108 Stat. 1358.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (b)(1)(D), (2), are classified generally to this title.

CODIFICATION

Section was not enacted as part of the Tariff Act of 1930 which comprises this chapter.

Section is based on sections 1474 and 1509(b)–(e) of former Title 49, Transportation, which were repealed and restated as this section by Pub. L. 103–272, §§ 2, 7(b), July 5, 1994, 108 Stat. 1358, 1379.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1436, 1459, 1644 of this title.

§ 1645. Transportation and interment of remains of deceased employees in foreign countries; travel or shipping expenses incurred on foreign ships

(a) Transfers in foreign countries

The expense of transporting the remains of customs officers and employees who die while in or in transit to foreign countries in the discharge of their official duties, to their former homes in this country for interment, and the ordinary and necessary expenses for such interment, at their posts of duty or at home, are authorized to be paid upon the written order of the Secretary of the Treasury. The expenses authorized by this subdivision shall be paid from the appropriation for the collection of the revenue from customs.

(b) Transportation on foreign ships

Notwithstanding the provisions of section 601 of the Merchant Marine Act, 1928, or of any other law, any allowance, within the limitations prescribed by law, for travel or shipping expenses incurred on a foreign ship by any officer or employee of the Bureau of Customs or the Customs Service, shall be credited if the Secretary of the Treasury certifies to the Comptroller General that transportation on such foreign ship was necessary to protect the revenue.

(June 17, 1930, ch. 497, title IV, § 645(a), (c), 46 Stat. 761; Aug. 2, 1946, ch. 744, § 2, 60 Stat. 807.)

REFERENCES IN TEXT

Section 601 of the Merchant Marine Act, 1928 [46 U.S.C. 891r], referred to in text, was repealed by the Merchant Marine Act, 1936 (approved June 29, 1936, ch. 858, § 903(c), 49 Stat. 2016), but was reenacted in substance by section 901 of that Act, which is classified to section 1241 of Title 46, Appendix, Shipping.

CODIFICATION

Section is comprised of subsecs. (a) and (c) of section 645 of act June 17, 1930. Subsec. (b) of section 645 repealed in part section 48 of this title.

AMENDMENTS

1946—Subsec. (a). Act Aug. 2, 1946, eff. Nov. 1, 1946, repealed first sentence relating to traveling expenses of

transferred employees. See section 5729 of Title 5, Government Organization and Employees.

CHANGE OF NAME

Bureau of Customs redesignated United States Customs Service by Treasury Department Order 165–23, Apr. 4, 1973, eff. Aug. 1, 1973, 38 F.R. 13037. See, also, section 308 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of those officers, agencies, and employees, by Reorg. Plan No. 26, of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Bureau of Customs and Customs Service, referred to in text, are under Department of the Treasury.

§ 1646. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section, act June 17, 1930, ch. 497, title IV, § 646, 46 Stat. 762, related to tenure and retirement of judges of United States Court of Customs and Patent Appeals. See sections 213, 371, and 372 of Title 28, Judiciary and Judicial Procedure.

§ 1646a. Supervision by customs officers

Wherever in this chapter any action or thing is required to be done or maintained under the supervision of customs officers, such supervision may be directed and continuous or by occasional verification as may be required by regulations of the Secretary of the Treasury, or, in the absence of such regulations for a particular case, as the principal customs officer concerned shall direct.

(June 17, 1930, ch. 497, title IV, § 646, as added Aug. 8, 1953, ch. 397, § 22, 67 Stat. 520.)

EFFECTIVE DATE

Section effective on and after thirtieth day following Aug. 8, 1953, see Effective Date of 1953 Amendments note set out under section 1304 of this title.

§ 1646b. Random customs inspections for stolen automobiles being exported

The Commissioner of Customs shall direct customs officers to conduct at random inspections of automobiles, and of shipping containers that may contain automobiles that are being exported, for purposes of determining whether such automobiles were stolen.

(June 17, 1930, ch. 497, title IV, § 646A, as added Pub. L. 102–519, title IV, § 401, Oct. 25, 1992, 106 Stat. 3400.)

PILOT STUDY AUTHORIZING UTILITY OF NONDESTRUCTIVE EXAMINATION SYSTEM

Section 402 of Pub. L. 102–519 provided that: ''The Secretary of the Treasury, acting through the Commissioner of Customs, shall conduct a pilot study of the utility of a nondestructive examination system to be used for inspection of containers that may contain automobiles leaving the country for the purpose of determining whether such automobiles have been stolen.''

§ 1646c. Export reporting requirement

The Commissioner of Customs shall require all persons or entities exporting used automobiles, including automobiles exported for personal use, by air or ship to provide to the Customs Service, at least 72 hours before the export, the vehicle identification number of each such automobile and proof of ownership of such automobile. The Commissioner shall establish specific criteria for randomly selecting used automobiles scheduled to be exported, consistent with the risk of stolen automobiles being exported and shall check the vehicle identification number of each automobile selected pursuant to such criteria against the information in the National Crime Information Center to determine whether such automobile has been reported stolen. At the request of the Director of the Federal Bureau of Investigation, the Commissioner shall make available to the Director all vehicle identification numbers obtained under this section.

(June 17, 1930, ch. 497, title IV, § 646B, as added Pub. L. 102–519, title IV, § 401, Oct. 25, 1992, 106 Stat. 3400.)

§ 1647. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section, act June 17, 1930, ch. 497, title IV, § 647, 46 Stat. 762, which repealed that part of section 195 of act Mar. 3, 1911, ch. 231, that read as follows: ''in any case in which there is drawn in question the construction of the Constitution of the United States, or any part thereof, or of any treaty made pursuant thereto, or in any other case when the Attorney General of the United States shall, before the decision of the Court of Customs Appeals is rendered, file with the court a certificate to the effect that the case is of such importance as to render expedient its review by the Supreme Court,'' was repealed by act June 25, 1948, which repealed section 195 of act Mar. 3, 1911, ch. 231.

§ 1648. Uncertified checks, United States notes, and national bank notes receivable for customs duties

Customs officers may receive uncertified checks, United States notes, and circulating notes of national banking associations in payment of duties on imports, during such time and under such rules and regulations as the Secretary of the Treasury shall prescribe; but if a check so received is not paid the person by whom such check has been tendered shall remain liable for the payment of the duties and for all legal penalties and additions to the same extent as if such check had not been tendered.

(June 17, 1930, ch. 497, title IV, § 648, 46 Stat. 762; Pub. L. 91–271, title III, § 301(kk), June 2, 1970, 84 Stat. 291.)

AMENDMENTS

1970—Pub. L. 91–271 substituted reference to customs officers for reference to collectors of customs.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–271, see section 203 of Pub. L. 91–271, set out as a note under section 1500 of this title.

§ 1649. Change in designation of customs attachés

On and after June 17, 1930, customs attachés shall be known as ''Treasury attachés.''

(June 17, 1930, ch. 497, title IV, § 649, 46 Stat. 762.)

§ 1650. Transferred

CODIFICATION

Section, act June 17, 1930, ch. 497, title IV, § 650, 46 Stat. 762, is set out as a part of section 2072 of this title.

§ 1651. Repeals

(a) Specific repeals

The following Acts and parts of Acts are repealed, subject to the limitations provided in subdivision (c) of this section:

(1) The Tariff Act of 1922, except that the repeal of sections 304 and 482 (relating to marking of imported articles and to certified invoices, respectively) shall take effect sixty days after the enactment of this chapter;

(2) Section 16 of the Act entitled ''An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes'', approved June 26, 1884, as amended (relating to supplies for certain vessels);

(3) The Joint Resolution entitled ''Joint Resolution Authorizing certain customs officials to administer oaths'', approved April 2, 1928; and

(4) Section 2804 of the Revised Statutes, as amended (relating to limitations on importation packages of cigars).

(b) General repeal

All Acts and parts of Acts inconsistent with the provisions of this chapter are repealed.

(c) Rights and liabilities under acts repealed or modified

The repeal of existing laws or modifications or reenactments thereof embraced in this chapter shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal case prior to such repeal, modifications, or reenactments, but all liabilities under such laws shall continue and may be enforced in the same manner as if such repeal, modifications, or reenactments had not been made. All offenses committed and all penalties, under any statute embraced in, or changed, modified, or repealed by this chapter, may be prosecuted and punished in the same manner and with the same effect as if this chapter had not been passed. No Acts of limitation now in force, whether applicable to civil causes and proceedings, or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in, modified, changed, or repealed by this chapter shall be affected thereby so far as they affect any suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to June 18, 1930, which may be commenced and prosecuted within the same time and with the same effect as if this chapter had not been passed.

(d) Certain acts not affected

Nothing in this chapter shall be construed to amend or repeal any of the following provisions of law:

(1) Sections 128, 130, and 131 of this title and section 146 of title 46, Appendix;

(2) Subsection 2 of paragraph N of Section IV of such Act of October 3, 1913, ch. 16 (relating to the manufacture of alcohol for denaturization only);

(3) Section 296 of title 5 (providing for an Assistant Attorney General in charge of customs matters);

(4) The Act entitled ''An Act relating to the use or disposal of vessels or vehicles forfeited to the United States for violation of the customs laws or the National Prohibition Act, and for other purposes'', approved March 3, 1925; nor

(5) The Antidumping Act, 1921 [19 U.S.C. 160 et seq.].

(June 17, 1930, ch. 497, title IV, § 651, 46 Stat. 762.)

REFERENCES IN TEXT

The Tariff Act of 1922, referred to in subsec. (a)(1), is act Sept. 21, 1922, ch. 356, 42 Stat. 858, as amended. For complete classification of this act to the Code, see Tables. Section 304 of that act was classified, prior to its repeal, to sections 132 and 133 of this title, and section 482 of that act was classified, prior to its repeal, to sections 334 to 337, 342, and 343 of this title.

Section 16 of the act approved June 26, 1884, referred to in subsec. (a)(2), is section 16 of act June 26, 1884, ch. 121, 23 Stat. 57, and was classified, prior to its repeal, to section 145 of this title. See section 1309 of this title.

Section 2804 of the Revised Statutes, referred to in subsec. (a)(4), was classified, prior to its repeal, to section 192 of this title.

Subsection 2 of paragraph N of Section IV of act of October 3, 1913, ch. 16, referred to in subsec. (d)(2), which appears at 38 Stat. 199 and which was classified to sections 487 and 488 of former Title 26, Internal Revenue, was repealed by act Feb. 10, 1939, ch. 2, § 4, 53 Stat. 1, which enacted the Internal Revenue Code of 1939.

Section 296 of title 5, referred to in subsec. (d)(3), was repealed in the general revision of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 636. The office of the Assistant Attorney General in charge of customs matters was abolished by Reorg. Plan No. 4 of 1953, § 2, eff. June 20, 1953.

Act of March 3, 1925, referred to in subsec. (d)(4), was repealed by act Aug. 27, 1935, ch. 740, § 308, 49 Stat. 880.

The Antidumping Act, 1921, referred to in subsec. (d)(5), 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.

PRIOR PROVISIONS

Provisions similar to those in subd. (c) of this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 641, 42 Stat. 989. That section was superseded by section 651 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

§ 1652. Separability

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(June 17, 1930, ch. 497, title IV, § 652, 46 Stat. 763.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, § 645, 42 Stat. 990. That section was superseded by section 652 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978

Pub. L. 95–410, title IV, § 401, Oct. 3, 1978, 92 Stat. 905, provided that: ''If any provision of this Act [see Short

Title of 1978 Amendment note set out under section 1654 of this title], or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this Act and the application of such provisions to other persons or circumstances shall not be affected thereby.''

§ 1653. Effective date of chapter

Except as otherwise provided, this chapter shall take effect on June 18, 1930.

(June 17, 1930, ch. 497, title IV, § 653, 46 Stat. 763.)

§ 1653a. Transferred

CODIFICATION

Section, act June 25, 1938, ch. 679, § 37, 52 Stat. 1094, related to the effective date of the Customs Administrative Act of 1938, and is set out as a note under section 1401 of this title.

Section was not part of Tariff Act of 1930 which constitutes this chapter.

§ 1654. Short title

This chapter may be cited as the ''Tariff Act of 1930.''

(June 17, 1930, ch. 497, title IV, § 654, 46 Stat. 763.)

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–295, § 1(a), Oct. 11, 1996, 110 Stat. 3514, provided that: ''This Act [amending sections 58c, 81c, 293, 294, 1304, 1313, 1321, 1337, 1401, 1413, 1431, 1436, 1441, 1484, 1490, 1491, 1504, 1505, 1508, 1509, 1514, 1515, 1516a, 1555, 1592, 1592a, 1625, 1631, 1641, 1671a, 1671b, 1671d, 1673a, 1673d, 1673f, 1675b, 1677, 1677–1, 1677n, 2171, 2192, 2252, 2411, 2414, 2416, 2462, 2514, 2515, 2518, 2532, 2541, 2543 to 2547, 2552, 2553, 2561, 2571, 2573, 2578a, 2707, 2905, 3007, 3010, 3332, 3358, 3381, 3432, 3437, 3451, 3552, 3571, 3572, 3591, 3592, and 3602 of this title, section 1854 of Title 7, Agriculture, section 104A of Title 17, Copyrights, and section 154 of Title 35, Patents, repealing sections 1707 and 2440 of this title, enacting provisions set out as notes under sections 58c, 81c, 1304, 1321, 1505, and 2462 of this title, and amending provisions set out as notes under sections 1466, 1553, and 2465 of this title] may be cited as the 'Miscellaneous Trade and Technical Corrections Act of 1996'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–570, title III, subtitle B, § 3101, Oct. 27, 1986, 100 Stat. 3207–79, provided that: ''This subtitle [subtitle B (§§ 3101–3161) of title III of Pub. L. 99–570, enacting sections 1590, 1628, 1629, and 2081 of this title, amending sections 507, 1401, 1433, 1436, 1454, 1459, 1497, 1509, 1584 to 1586, 1594 to 1595a, 1613, 1613b, 1619, and 1622 of this title, section 959 of Title 21, Food and Drugs, section 5316 of Title 31, Money and Finance, and section 12109 of Title 46, Shipping, repealing section 1460 of this title, and enacting provisions set out as a note under section 1613b of this title] may be cited as the 'Customs Enforcement Act of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–573, § 1, Oct. 30, 1984, 98 Stat. 2948, provided in part that this Act (see Tables for classification) may be cited as the ''Trade and Tariff Act of 1984''.

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–410, § 1, Oct. 3, 1978, 92 Stat. 888, provided: ''That this Act [enacting sections 58a, 1496a, 1504, 1508, 1625, and 2075 of this title, amending sections 467, 1202, 1315, 1321, 1466, 1483, 1484, 1491, 1505, 1509, 1510, 1520, 1526, 1557, 1559, 1584, 1592, 1599, 1603, 1607, 1610, 1612, 1613, 1615, 1621, and 1641 of this title, section 1124 of Title 15, Commerce and Trade, and section 883 of Title 46, Appendix, Shipping, repealing sections 58 and 1511 of this title and sections 329, 330, and 333 of former Title 46, and enacting provisions set out as notes under sections 1202, 1434, 1496a, 1504, 1557, 1592, and 1652 of this title] may be cited as the 'Customs Procedural Reform and Simplification Act of 1978'.''

SHORT TITLE OF 1970 AMENDMENT

Section 201 of Pub. L. 91–271, June 2, 1970, 84 Stat. 282, provided that: ''Titles II and III of this Act [amending sections 2, 6, 31, 32, 58, 66, 81c, 151, 161, 167 to 169, 261, 267, 282, 293, 341, 528, 1305, 1311, 1315, 1401, 1402, 1432, 1434, 1435b, 1438, 1441, 1443 to 1451, 1452 to 1455, 1457, 1467, 1482, 1484, 1485, 1490 to 1493, 1496, 1499 to 1503, 1505, 1506, 1509 to 1516, 1520, 1521, 1523, 1555, 1557, 1560, 1562 to 1565, 1584, 1586, 1595, 1602 to 1610, 1612 to 1614, 1617, 1618, 1623, 1641, and 1648 of this title, repealing sections 5, 5a, 7 to 11, 36, 37, 51, 63, and 1488 of this title, and enacting provisions set out as notes under this section] may be cited as 'The Customs Administrative Act of 1970'.''

SHORT TITLE OF 1966 AMENDMENT

Section 1(a) of Pub. L. 89–651, Oct. 14, 1966, 80 Stat. 897, provided: ''That this Act [enacting section 1544 of Title 28, Judiciary and Judicial Procedure, amending Schedules 2, 7, and 8 of the Tariff Schedules of the United States and section 2602 of Title 28, and enacting provisions set out as a note preceding section 1202 and under section 1981 of this title] may be cited as the 'Educational, Scientific, and Cultural Materials Importation Act of 1966'.''

SHORT TITLE OF 1965 AMENDMENT

Section 1(a) of Pub. L. 89–241, Oct. 7, 1965, 79 Stat. 933, provided: ''That this Act [amending section 1202 of this title and Schedules 1 to 8 and Appendix to Schedules, and enacting provisions set out as notes preceding section 1202 and under section 1981 of this title] may be cited as the 'Tariff Schedules Technical Amendments Act of 1965'.''

Section 1(c) of Pub. L. 89–241, Oct. 7, 1965, 79 Stat. 933, provided that: ''Title I of the Tariff Act of 1930 [subtitle I of this chapter], as in effect on or after August 31, 1963, may be cited as the 'Tariff Schedules of the United States'.''

SHORT TITLE OF 1962 AMENDMENT

Section 1 of Pub. L. 87–456, May 24, 1962, 76 Stat. 72, provided: ''That this Act [amending section 1312 of this title, section 1856 of Title 7, Agriculture, section 41 of Title 21, Food and Drugs, sections 4501 and 6418 of Title 26, Internal Revenue Code, section 474 of Title 40, Public Buildings, Property, and Works, and section 2201 of Title 42, The Public Health and Welfare, repealing sections 193 to 195, 196a, 420, 1301a, 1308, 1367, 1489, 1504, and 1508 of this title and section 2383 of Title 10, Armed Forces, and enacting provisions set out as notes preceding section 1202 of this title and under section 1861 of this title and section 4501 of Title 26] may be cited as the 'Tariff Classification Act of 1962'.''

SHORT TITLE OF 1958 AMENDMENT

Section 1 of Pub. L. 85–686, Aug. 20, 1958, 72 Stat. 673, provided: ''That this Act [enacting section 1335 of this title, amending sections 1333, 1336, 1337, 1351, 1352a, 1360, and 1364 of this title, and enacting provisions set out as notes under sections 1351 and 1352 of this title] may be cited as the 'Trade Agreements Extension Act of 1958'.''

SHORT TITLE OF 1956 AMENDMENT

Section 1 of act Aug. 2, 1956, ch. 887, 70 Stat. 943, provided: ''That this Act [enacting section 1401a of this title, amending sections 1001, 1402, 1500, and 1583 of this title, and section 372 of former Title 31, Money and Finance, repealing sections 12 to 18, 21, 24, 26 to 28, 30, 40, 53 to 57, 59, 61, 62, 67, 376, 379, 390, 494, 526, 541, 542, 549, and 579 of this title, and section 711 of former Title 31, and enacting provisions set out as notes under sections 2, 160, 1351, 1401a, and 1402 of this title] may be cited as the 'Customs Simplification Act of 1956'.''

SHORT TITLE OF 1955 AMENDMENT

Section 1 of act June 21, 1955, ch. 169, 69 Stat. 162, provided: ''That this Act [amending sections 1351, 1352,

1352a, 1363, and 1364 of this title] may be cited as the 'Trade Agreements Extension Act of 1955'.''

SHORT TITLE OF 1954 AMENDMENT

Section 1 of act Sept. 1, 1954, ch. 1213, 68 Stat. 1136, provided: ''That this Act [enacting sections 1301a and 1595a of this title, amending sections 161, 1001, 1201, 1441, 1451, 1581, 1605, 1607, 1610, 1612 of this title, section 545 of Title 18, Crimes and Criminal Procedure, section 91 of Title 46, Appendix, Shipping, sections 1421e, 1644 of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under sections 160 and 1332 of this title] may be cited as the 'Customs Simplification Act of 1954'.''

SHORT TITLE OF 1953 AMENDMENTS

Section 1 of act Aug. 8, 1953, ch. 397, 67 Stat. 507, provided in part: ''That this Act [amending sections 268, 1001, 1201, 1304, 1308, 1309, 1313, 1315, 1317, 1321, 1431, 1439, 1440, 1482, 1484, 1486, 1487, 1489, 1498, 1501, 1503, 1508, 1520, 1523, 1557, and 1562 of this title, enacting sections 1322 and 1646a of this title, and repealing sections 33–35, 39, 42–45, 273, 274, 472–475, 1320, and 1503a of this title] may be cited as the 'Customs Simplification Act of 1953'.''

Section 1 of act Aug. 7, 1953, ch. 348, 67 Stat. 472, provided: ''That this Act [amending sections 1330, 1352, and 1364 of this title, section 624 of Title 7, Agriculture, and provisions set out as notes under sections 1351, 1364, and section 1366 of this title] may be cited as the 'Trade Agreements Extension Act of 1953'.''

SHORT TITLE OF 1951 AMENDMENT

Section 1 of act June 16, 1951, ch. 141, 65 Stat. 72, provided: ''That this Act [enacting sections 1360 to 1367 of this title, amending sections 1352 and 1354 of this title, provisions set out as a note under section 1516 of this title, and section 624 of Title 7, Agriculture] may be cited as the 'Trade Agreements Extension Act of 1951'.''

SHORT TITLE OF 1949 AMENDMENT

Section 1 of act Sept. 26, 1949, ch. 585, 63 Stat. 697, provided: ''That this Act [amending sections 1351, 1352, and 1354 of this title and repealing sections 1357 to 1359 of this title] may be cited as the 'Trade Agreements Extension Act of 1949'.''

SHORT TITLE OF 1938 AMENDMENT

Section 1 of act June 25, 1938, ch. 679, 52 Stat. 1077, provided: ''That this Act [enacting sections 1321, 1467, 1528 of this title, amending sections 1001, 1201, 1304, 1308, 1309, 1315, 1317, 1401, 1402, 1451, 1459, 1460, 1484, 1485, 1491, 1499, 1501, 1516, 1520, 1524, 1553, 1557 to 1559, 1562, 1563, 1603, 1607, 1609, 1613, 1623, 1709 of this title, and section 331 of former Title 46, Shipping, and enacting provisions set out as a note under section 1516 of this title] may be cited as the 'Customs Administrative Act of 1938'.''

SUBTITLE IV—COUNTERVAILING AND ANTIDUMPING DUTIES

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1339, 1401a, 1514, 1516a, 3432, 3437, 3438, 3538, 3571 of this title; title 28 section 2635.

PART I—IMPOSITION OF COUNTERVAILING DUTIES

CODIFICATION

The designations ''SUBTITLE IV'' and ''PART I'' were in the original ''TITLE VII'' and ''Subtitle A'' respectively, and were 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.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1675b, 1677, 1677a, 1677c, 1677f, 1677m, 2171, 2252, 3437, 3571 of this title.

§ 1671. Countervailing duties imposed

(a) General rule

If—

(1) the administering authority determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and

(2) in the case of merchandise imported from a Subsidies Agreement country, the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,

then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net countervailable subsidy. For purposes of this subsection and section 1671d(b)(1) of this title, a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(b) Subsidies Agreement country

For purposes of this subtitle, the term ''Subsidies Agreement country'' means—

(1) a WTO member country,

(2) a country which the President has determined has assumed obligations with respect to the United States which are substantially equivalent to the obligations under the Subsidies Agreement, or

(3) a country with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on December 8, 1994, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States, and

(B) the agreement described in subparagraph (A) does not expressly permit—

(i) actions required or permitted by the GATT 1947 or GATT 1994, as defined in section 3501(1) of this title, or required by the Congress, or

(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(c) Countervailing duty investigations involving imports not entitled to a material injury determination

In the case of any article or merchandise imported from a country which is not a Subsidies Agreement country—

(1) no determination by the Commission under section 1671b(a), 1671c, or 1671d(b) of this title shall be required,

(2) an investigation may not be suspended under section 1671c(c) or 1671c(*l*) of this title,

(3) no determination as to the presence of critical circumstances shall be made under section 1671b(e) or 1671d(a)(2) of this title,

(4) section 1671e(c) of this title shall not apply,

(5) any reference to a determination described in paragraph (1) or (3), or to the suspension of an investigation under section 1671c(c) or 1671c(*l*) of this title, shall be disregarded, and

(6) section 1675(c) of this title shall not apply.

(d) Treatment of international consortia

For purposes of this part, if the members (or other participating entities) of an international consortium that is engaged in the production of subject merchandise receive countervailable subsidies from their respective home countries to assist, permit, or otherwise enable their participation in that consortium through production or manufacturing operations in their respective home countries, then the administering authority shall cumulate all such countervailable subsidies, as well as countervailable subsidies provided directly to the international consortium, in determining any countervailing duty upon such merchandise.

(e) Upstream subsidies

Whenever the administering authority has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 1677–1(a)(1)[1] of this title, is being paid or bestowed, the administering authority shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 1677–1(a)(3)[2] of this title.

(June 17, 1930, ch. 497, title VII, § 701, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 151; amended Pub. L. 98–573, title VI, §§ 602(a)(1), 613(b), Oct. 30, 1984, 98 Stat. 3024, 3035; Pub. L. 99–514, title XVIII, § 1886(a)(1), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100–418, title I, §§ 1314, 1315, Aug. 23, 1988, 102 Stat. 1185; Pub. L. 100–647, title IX, § 9001(a)(9), Nov. 10, 1988, 102 Stat. 3807; Pub. L. 103–465, title II, §§ 233(a)(5)(A), 261(d)(1)(B)(iii), 262, 270(b)(1)(A), Dec. 8, 1994, 108 Stat. 4899, 4910, 4917.)

AMENDMENTS

1994—Subsecs. (a) to (c). Pub. L. 103–465, § 262, amended subsecs. (a) to (c) generally, substituting present provisions for provisions which generally authorized the imposition of countervailing duties, defined ''country under the Agreement'', and provided for revocation of status as country under the Agreement.

Subsec. (d). Pub. L. 103–465, § 270(b)(1)(A), substituted ''countervailable subsidies'' for ''subsidies'' wherever appearing.

Pub. L. 103–465, § 233(a)(5)(A), substituted ''subject merchandise'' for ''a class or kind of merchandise subject to a countervailing duty investigation''.

Subsec. (f). Pub. L. 103–465, § 261(d)(1)(B)(iii), struck out subsec. (f) which provided for cross reference to section 1303 of this title for provisions of law applicable in the case of merchandise which was product of country other than country under the Agreement.

1988—Subsec. (c). Pub. L. 100–418, § 1314(2), added subsec. (c). Former subsec. (c) relating to upstream subsidies redesignated (d).

Subsec. (d). Pub. L. 100–647 redesignated subsec. (d), relating to cross reference, as (f).

Pub. L. 100–418, § 1315(2), added subsec. (d) relating to treatment of international consortia. Former subsec. (d), relating to upstream subsidies, redesignated (e).

Pub. L. 100–418, § 1314(1), redesignated subsec. (c), relating to upstream subsidies, as (d).

Subsec. (e). Pub. L. 100–418, § 1315(1), redesignated subsec. (d), relating to upstream subsidies, as (e).

Subsec. (f). Pub. L. 100–647 redesignated subsec (d), relating to cross reference, as (f).

1986—Subsecs. (c), (d), (g). Pub. L. 99–514 redesignated subsecs. (g) and (c) as (c) and (d), respectively.

1984—Subsec. (a). Pub. L. 98–573, § 602(a)(1)(C), inserted last sentence which provided that for purposes of this subsection and section 1671d(b)(1) of this title, a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

Subsec. (a)(1). Pub. L. 98–573, § 602(a)(1)(A), inserted '', or sold (or likely to be sold) for importation,'' in provisions following subpar. (B).

Subsec. (a)(2). Pub. L. 98–573, § 602(a)(1)(B), inserted ''or by reason of sales (or the likelihood of sales) of that merchandise for importation'' in provisions following subpar. (B).

Subsec. (g). Pub. L. 98–573, § 613(b), added subsec. (g).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 261(d)(1)(B)(iii) of Pub. L. 103–465 effective on the effective date of title II of Pub. L. 103–465, Jan. 1, 1995, see section 261(d)(2) of Pub. L. 103–465, set out as a note under section 1315 of this title.

Section 291 of title II of Pub. L. 103–465 provided that:

''(a) IN GENERAL.—Except as provided in section 261 [amending this section and sections 1315, 1337, 1677i, 2192, and 2194 of this title, repealing section 1303 of this title, enacting provisions set out as notes under sections 1303 and 1315 of this title, and amending provisions set out as a note under section 1303 of this title], the amendments made by this title [see Tables for classification] shall take effect on the date described in subsection (b) and apply with respect to—

''(1) investigations initiated—

''(A) on the basis of petitions filed under section 702(b), 732(b), or 783(b) of the Tariff Act of 1930 [19 U.S.C. 1671a(b), 1673a(b), or 1677n(b)] after the date described in subsection (b), or

''(B) by the administering authority under section 702(a) or 732(a) of such Act after such date,

''(2) reviews initiated under section 751 of such Act [19 U.S.C. 1675]—

''(A) by the administering authority or the Commission on their own initiative after such date, or

''(B) pursuant to a request filed after such date,

''(3) investigations initiated under section 753 of such Act [19 U.S.C. 1675b] after such date,

''(4) petitions filed under section 780 of such Act [19 U.S.C. 1677i] after such date, and

''(5) inquiries initiated under section 781 of such Act [19 U.S.C. 1677j]—

''(A) by the administering authority on its own initiative after such date, or

''(B) pursuant to a request filed after such date.

''(b) DATE DESCRIBED.—The date described in this subsection is the date on which the WTO Agreement (as defined in section 2(9) [19 U.S.C. 3501(9)]) enters into force with respect to the United States [Jan. 1, 1995].''

EFFECTIVE DATE OF 1988 AMENDMENTS

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

[1] So in original. Probably should be section ''1677–1(a)''.

[2] So in original. Probably should be section ''1677–1(c)''.

Section 1337 of Pub. L. 100–418, as amended by Pub. L. 100–647, title IX, § 9001(a)(6), Nov. 10, 1988, 102 Stat. 3807, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this part [part 2 (§§ 1311–1337) of subtitle C of title I of Pub. L. 100–418, enacting sections 1673h, 1677–2, 1677i to 1677k of this title, amending this section and sections 1516, 1671a to 1671d, 1673a to 1673e, 1675, 1677, 1677b, 1677e, 1677f, and 1677h of this section, and amending provisions set out as a note under section 2253 of this title] shall take effect on the date of enactment of this Act [Aug. 23, 1988].

''(b) INVESTIGATIONS AND REVIEWS AFTER ENACTMENT.—The amendments made by sections 1312, 1315, 1316, 1318, 1325, 1326, 1327, 1328, 1329, 1331, and 1332 [amending this section and sections 1516, 1671a to 1671c, 1673a to 1673c, 1673e, 1677, 1677b, 1677e, and 1677f of this title] shall only apply with respect to—

''(1) investigations initiated after the date of enactment of this Act [Aug. 23, 1988], and

''(2) reviews initiated under section 736(c) or 751 of the Tariff Act of 1930 [19 U.S.C. 1673e(c) or 1675] after the date of enactment of this Act [Aug. 23, 1988].

''(c) INVESTIGATIONS AFTER ENACTMENT.—The amendments made by sections 1324 and 1330 [amending sections 1671a, 1671b, 1671d, 1673a, 1673b, 1673d, and 1677 of this title] shall only apply with respect to investigations initiated after the date of enactment of this Act [Aug. 23, 1988].

''(d) PREVENTION OF CIRCUMVENTION OF DUTIES; DRAWBACK.—The provisions of section 781 of the Tariff Act of 1930, as added by section 1321(a) [19 U.S.C. 1677j], and the amendments made by section 1334 [amending section 1677h of this title] shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of enactment of this Act [Aug. 23, 1988].

''(e) GOVERNMENTAL IMPORTATIONS; STEEL.—The amendments made by sections 1322 [amending provisions set out as a note under section 2253 of this title] and 1335 [amending section 1677 of this title] shall apply with respect to entries, and withdrawals from warehouse for consumption, that are liquidated on or after the date of enactment of this Act [Aug. 23, 1988].

''(f) FICTITIOUS MARKETS.—The amendment made by section 1319 [amending section 1677b of this title] shall only apply with respect to—

''(1) reviews initiated under section 736(c) or 751 of the Tariff Act of 1930 [19 U.S.C. 1673e(c) or 1675] after the date of enactment of this Act [Aug. 23, 1988], and

''(2) reviews initiated under such sections—

''(A) which are pending on the date of enactment of this Act, and

''(B) in which a request for revocation is pending on the date of enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 626 of title VI of Pub. L. 98–573, as amended by Pub. L. 99–514, title XVIII, § 1886(b), Oct. 22, 1986, 100 Stat. 2922, provided that:

''(a) Except as provided in subsections (b) and (c), this Act [probably should be ''this title''], and the amendments made by it [enacting sections 1671h, 1677–1, and 1677h of this title, amending this section and sections 1671b to 1671e, 1673c, 1673d, 1677a to 1677f, and 1677g of this title, and repealing sections 1673h and 1673i of this title], shall take effect on the date of the enactment of this Act [Oct. 30, 1984].

''(b)(1) The amendments made by sections 602, 609, 611, 612, and 620 [enacting sections 1676, 1676a, and 1677f–1 of this title and amending this section and sections 1514, 1671c, 1671d, 1673, 1673a, 1673c, 1673d, 1675, 1677, and 1677b of this title, section 2631 of Title 28, Judiciary and Judicial Procedure, and provisions set out as a note under this section] shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 [parts I and II of this subtitle], and to reviews begun under section 751 of that Act [section 1675 of this title], on or after such effective date.

''(2) The amendments made by section 623 [amending section 1516a of this title and sections 2636 and 2647 of Title 28] shall apply with respect to civil actions pending on, or filed on or after, the date of the enactment of this Act [Oct. 30, 1984].

''(3) The administering authority may delay implementation of any of the amendments referred to in subsections (a) and (b)(1) with respect to any investigation in progress on the date of enactment of this Act [Oct. 30, 1984] if the administering authority determines that immediate implementation would prevent compliance with a statutory deadline in title VII of the Tariff Act of 1930 [this subtitle] that is applicable to that investigation.

''(4) The amendment made by section 621 [amending section 1677g of this title] shall apply with respect to merchandise that is unliquidated on or after November 4, 1984.

''(c)(1) No provision of title VII of the Tariff Act of 1930 [this subtitle] shall be interpreted to prevent the refiling of a petition under section 702 or 732 of that title [sections 1671a and 1673a of this title] that was filed before the date of the enactment of this title, if the purpose of such refiling is to avail the petitioner of the amendment made by section 612(a)(1) [amending section 1677(4)(A) of this title].

''(2) The amendment made by section 612(a)(1) shall not apply with respect to petitions filed (or refiled under paragraph (1)) under section 702 or 732 of the Tariff Act of 1930 after September 30, 1986.''

EFFECTIVE DATE

Section 107 of title I of Pub. L. 96–39 provided that: ''Except as otherwise provided in this title, this title and the amendments made by it [enacting this subtitle, amending sections 1303, 1337, 2033, and 2251 of this title, repealing sections 160 to 171 of this title, and enacting provisions set out as notes under this section and sections 160 and 1303 of this title] shall take effect on January 1, 1980, if—

''(1) 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), and

''(2) the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures),

approved by the Congress under section 2(a) of this Act [section 2503(a) of this title] have entered into force with respect to the United States as of that date.''

[These agreements entered into force with respect to the United States on Dec. 17, 1979.]

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section delegated to United States Trade Representative, see section 1–103(b) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2171 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.

INVESTIGATIONS PENDING ON JANUARY 1, 1980

Section 102 of Pub. L. 96–39 provided that:

''(a) PENDING INVESTIGATIONS OF BOUNTIES OR GRANTS.—If, on the effective date of the application of title VII of the Tariff Act of 1930 [see Effective Date note set out above] to imports from a country, there is an investigation in progress under section 303 of that

Act [section 1303 of this title] as to whether a bounty or grant is being paid or bestowed on imports from such country, then:

''(1) If the Secretary of the Treasury has not yet made a preliminary determination under section 303 of that Act [section 1303 of this title] as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under section 303 [section 1303 of this title] and the matter previously under investigation shall be subject to this title [this subtitle] as if the affirmative determination called for in section 702 of that Act [section 1671a of this title] were made with respect to that matter on the effective date of the application of title VII of that Act [this subtitle] to such country.

''(2) If the Secretary has made a preliminary determination under such section 303 [section 1303 of this title], but not a final determination, as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under such section 303 [section 1303 of this title] and the matter previously under investigation shall be subject to the provisions of title VII of that Act [this subtitle] as if the preliminary determination under section 303 [section 1303 of this title] were a preliminary determination under section 703 of that title [section 1671b of this title] made on the effective date of the application of that title [this subtitle] to such country.

''(b) PENDING INVESTIGATIONS OF LESS-THAN-FAIR-VALUE SALES.—If, on the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above], there is an investigation in progress under the Antidumping Act, 1921 [sections 160 to 171 of this title], as to whether imports from a country are being, or are likely to be, sold in the United States or elsewhere at less than fair value, then:

''(1) If the Secretary has not yet made a preliminary determination under the Antidumping Act, 1921 [sections 160 to 171 of this title], as to the question of less-than-fair-value sales, he shall terminate the investigation and the United States International Trade Commission shall terminate any investigation under section 201(c)(2) of the Antidumping Act, 1921 [section 160(c)(2) of this title], and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 [this subtitle] as if the affirmative determination called for in section 732 [section 1673a of this title] were made with respect to such matter on the effective date of title VII of the Tariff Act of 1930.

''(2) If the Secretary has made under the Antidumping Act, 1921 [sections 160 to 171 of this title], a preliminary determination, but not a final determination, that imports from such country are being or are likely to be sold in the United States or elsewhere at less than fair value, the investigation shall be terminated and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 [this subtitle] as if the preliminary determination under the Antidumping Act, 1921 [sections 160 to 171 of this title], were a preliminary determination under section 733 of that title [section 1673b of this title] made on the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above].

''(c) PENDING INVESTIGATIONS OF INJURY.—If, on the effective date of the application of title VII of the Tariff Act of 1930 [see Effective Date note set out above] to imports from a country, the United States International Trade Commission is conducting an investigation under section 303 of the Tariff Act of 1930 [section 1303 of this title] or section 201(a) of the Antidumping Act, 1921 [section 160(a) of this title], as to whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, it shall terminate any such investigation and initiate an investigation, under subtitle A or B of title VII of the Tariff Act of 1930 [part I or II of this subtitle], which shall be completed within 75 days, and—

''(1) treat any final determination of the Secretary of the Treasury under section 303 [section 1303 of this title] as a final determination under section 705(a) of the Tariff Act of 1930 [section 1671d(a) of this title] and consider the net amount of the bounty or grant estimated or determined under section 303 [section 1303 of this title] as the net subsidy amount under subtitle A of that title [part I of this subtitle]; and

''(2) treat any final determination of the Secretary of the Treasury under the Antidumping Act, 1921 [sections 160 to 171 of this title], as a final determination under section 735(a) of the Tariff Act of 1930 [section 1673d(a) of this title].''

TRANSITION RULES FOR COUNTERVAILING DUTY ORDERS

Section 104 of Pub. L. 96–39, as amended by Pub. L. 98–573, title VI, §611(c), Oct. 30, 1984, 98 Stat. 3033, provided that:

''(a) WAIVED COUNTERVAILING DUTY ORDERS.—

''(1) NOTIFICATION OF COMMISSION.—The administering authority shall notify the United States International Trade Commission by January 7, 1980, of any countervailing duty order in effect on January 1, 1980—

''(A)(i) for which the Secretary of the Treasury has waived the imposition of countervailing duties under section 303(d) of the Tariff Act of 1930 (19 U.S.C. 1303(d)), and

''(ii) which applies to merchandise other than quota cheese (as defined in section 701(c)(1) of this Act) [subsec. (c)(1) of this section], which is a product of a country under the Agreement,

''(B) published on or after the date of the enactment of this Act [July 26, 1979], and before January 1, 1980, with respect to products of a country under the Agreement (as defined in section 701(b) of the Tariff Act of 1930) [subsec. (b) of this section], or

''(C) applicable to frozen, boneless beef from the European Communities under Treasury Decision 76–109,

and shall furnish to the Commission the most current information it has with respect to the net subsidy benefitting the merchandise subject to the countervailing duty order.

''(2) DETERMINATION BY THE COMMISSION.—Within 180 days after the date on which it receives the information from the administering authority under paragraph (1), the Commission shall make a determination of whether—

''(A) an industry in the United States—

''(i) is materially injured, or

''(ii) is threatened with material injury, or

''(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise subject to the order.

''(3) EFFECT OF DETERMINATION.—

''(A) AFFIRMATIVE DETERMINATION.—Upon being notified by the Commission of an affirmative determination under paragraph (2), the administering authority shall terminate the waiver of imposition of countervailing duties for merchandise subject to the order, if any. The countervailing duty order under section 303 of the Tariff Act of 1930 [section 1303 of this title] which applies to that merchandise shall remain in effect until revoked, in whole or in part, under section 751(d) of such Act [section 1675(d) of this title].

''(B) NEGATIVE DETERMINATION.—Upon being notified by the Commission of a negative determination under paragraph (2), the administering authority shall revoke the countervailing duty order, and publish notice in the Federal Register of the revocation.

''(b) OTHER COUNTERVAILING DUTY ORDERS.—

''(1) REVIEW BY COMMISSION UPON REQUEST.—In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)—

''(A) which is not a countervailing duty order to which subsection (a) applies,

''(B) which applies to merchandise which is the product of a country under the Agreement, and

''(C) which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that Act [section 1516(d) of this title] before that date,

the Commission, upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States of merchandise which is covered by the order, submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above] shall make a determination under paragraph (2) of this subsection.

''(2) DETERMINATION BY THE COMMISSION.—In a case described in paragraph (1) with respect to which it has received a request for review, the Commission shall commence an investigation to determine whether—

''(A) an industry in the United States—

''(i) would be materially injured, or

''(ii) would be threatened with material injury, or

''(B) the establishment of an industry in the United States would be materially retarded,

by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked. A negative determination by the Commission under this paragraph shall not be based, in whole or in part, on any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

''(3) SUSPENSION OF LIQUIDATION; INVESTIGATION TIME LIMITS.—Whenever the Commission receives a request under paragraph (1), it shall promptly notify the administering authority and the administering authority shall suspend liquidation of entries of the affected merchandise made on or after the date of receipt of the Commission's notification, or in the case of butter from Australia, entries of merchandise subject to the assessment of countervailing duties under Treasury Decision 42937, as amended, and collect estimated countervailing duties pending the determination of the Commission. The Commission shall issue its determination in any investigation under this subsection not later than 3 years after the date of commencement of such investigation.

''(4) EFFECT OF DETERMINATION.—

''(A) AFFIRMATIVE DETERMINATION.—Upon being notified of an affirmative determination under paragraph (2) by the Commission, the administering authority shall liquidate entries of merchandise the liquidation of which was suspended under paragraph (3) of this subsection and impose countervailing duties in the amount of the estimated duties required to be deposited. The countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(c) of the Tariff Act of 1930 [section 1675(c) of this title].

''(B) NEGATIVE DETERMINATION.—Upon being notified of a negative determination under paragraph (2) by the Commission, the administering authority shall revoke the countervailing duty order then in effect, publish notice thereof in the Federal Register, and refund, without payment of interest, any estimated countervailing duties collected during the period of suspension of liquidation.

''(c) ALL OUTSTANDING COUNTERVAILING DUTY ORDERS.—Subject to the provisions of subsections (a) and (b), any countervailing duty order issued under section 303 of the Tariff Act of 1930 [section 1303 of this title] which is—

''(1) in effect on the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above] (as added by section 101 of this Act), or

''(2) issued pursuant to court order in a proceeding brought before that date under section 516(d) of the Tariff Act of 1930 [section 1516(d) of this title],

shall remain in effect after that date and shall be subject to review under section 751 of the Tariff Act of 1930 [section 1675 of this title].

''(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the Commission makes a determination under subsection (a) or (b), it shall publish notice of that determination in the Federal Register and notify the administering authority of its determination.

''(e) DEFINITIONS.—Whenever any term which is defined in section 771 of the Tariff Act of 1930 [section 1677 of this title] is used in this section, it has the same meaning as when it is used in title VII of that Act [this subtitle].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1315, 1337, 1671a, 1671e, 1675b, 1677 of this title.

§ 1671a. Procedures for initiating a countervailing duty investigation

(a) Initiation by administering authority

A countervailing duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 1671(a) of this title exist.

(b) Initiation by petition

(1) Petition requirements

A countervailing duty proceeding shall be initiated whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 1671(a) of this title, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) Simultaneous filing with Commission

The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) Petition based upon a derogation of an international undertaking on official export credits

If the sole basis of a petition filed under paragraph (1) is the derogation of an international undertaking on official export credits, the Administering Authority shall immediately notify the Secretary of the Treasury who shall, in consultation with the Administering Authority, within 5 days after the date on which the administering authority initiates an investigation under subsection (c) of this section, determine the existence and estimated value of the derogation, if any, and shall publish such determination in the Federal Register.

(4) Action with respect to petitions

(A) Notification of governments

Upon receipt of a petition filed under paragraph (1), the administering authority shall—

(i) notify the government of any exporting country named in the petition by de-

livering a public version of the petition to an appropriate representative of such country; and

(ii) provide the government of any exporting country named in the petition that is a Subsidies Agreement country an opportunity for consultations with respect to the petition.

(B) Acceptance of communications

The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 1677(9)(C), (D), (E), (F), or (G) of this title before the administering authority makes its decision whether to initiate an investigation, except as provided in subparagraph (A)(ii) and subsection (c)(4)(D) of this section, and except for inquiries regarding the status of the administering authority's consideration of the petition.

(C) Nondisclosure of certain information

The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under paragraph (1).

(c) Petition determination

(1) In general

(A) Time for initial determination

Except as provided in subparagraph (B), within 20 days after the date on which a petition is filed under subsection (b) of this section, the administering authority shall—

(i) after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 1671(a) of this title and contains information reasonably available to the petitioner supporting the allegations, and

(ii) determine if the petition has been filed by or on behalf of the industry.

(B) Extension of time

In any case in which the administering authority is required to poll or otherwise determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional circumstances, apply subparagraph (A) by substituting ''a maximum of 40 days'' for ''20 days''.

(C) Time limits where petition involves same merchandise as an order that has been revoked

If a petition is filed under this section with respect to merchandise that was the subject merchandise of—

(i) a countervailing duty order that was revoked under section 1675(d) of this title in the 24 months preceding the date the petition is filed, or

(ii) a suspended investigation that was terminated under section 1675(d) of this title in the 24 months preceding the date the petition is filed,

the administering authority and the Commission shall, to the maximum extent practicable, expedite any investigation initiated under this section with respect to the petition.

(2) Affirmative determinations

If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether a countervailable subsidy is being provided with respect to the subject merchandise.

(3) Negative determinations

If the determination under clause (i) or (ii) of paragraph (1)(A) is negative, the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) Determination of industry support

(A) General rule

For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the industry, if—

(i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and

(ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

(B) Certain positions disregarded

(i) Producers related to foreign producers

In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to foreign producers, as defined in section 1677(4)(B)(ii) of this title, unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of a countervailing duty order.

(ii) Producers who are importers

The administering authority may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise.

(C) Special rule for regional industries

If the petition alleges that the industry is a regional industry, the administering authority shall determine whether the petition has been filed by or on behalf of the industry by applying subparagraph (A) on the basis of production in the region.

(D) Polling the industry

If the petition does not establish support of domestic producers or workers accounting

for more than 50 percent of the total production of the domestic like product, the administering authority shall—

(i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

(E) Comments by interested parties

Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 1677(9) of this title if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

(5) "Domestic producers or workers" defined

For purposes of this subsection, the term ''domestic producers or workers'' means those interested parties who are eligible to file a petition under subsection (b)(1) of this section.

(d) Notification to Commission of determination

The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c) of this section, and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) Information regarding critical circumstances

If, at any time after the initiation of an investigation under this part, the administering authority finds a reasonable basis to suspect that the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the subject merchandise and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 1671d(a) of this title, the investigation is terminated, or the administering authority withdraws the request.

(June 17, 1930, ch. 497, title VII, § 702, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 151; amended Pub. L. 98–181, title VI, § 650(a), Nov. 30, 1983, 97 Stat. 1266; Pub. L. 99–514, title XVIII, § 1886(a)(2), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100–418, title I, §§ 1324(a)(1), 1326(d)(1), Aug. 23, 1988, 102 Stat. 1199, 1204; Pub. L. 103–465, title II, §§ 211(a), 212(a)(1), (b)(1)(E), 233(a)(5)(B), (6)(A)(i), (ii), 270(a)(1)(A), (d), Dec. 8, 1994, 108 Stat. 4842, 4843, 4848, 4899, 4901, 4917, 4918; Pub. L. 104–295, § 20(b)(3), Oct. 11, 1996, 110 Stat. 3527.)

AMENDMENTS

1996—Subsec. (c)(5). Pub. L. 104–295 substituted ''(b)(1)'' for ''(b)(1)(A)''.

1994—Subsecs. (a), (b)(1). Pub. L. 103–465, § 233(a)(6)(A)(i), (ii), substituted ''initiated'' for ''commenced''.

Subsec. (b)(3). Pub. L. 103–465, §§ 211(a)(1), 212(b)(1)(E), substituted ''paragraph (1)'' for ''subsection (b)(1) of this section'' and ''5 days after the date on which the administering authority initiates an investigation under subsection (c) of this section,'' for ''twenty days''.

Subsec. (b)(4). Pub. L. 103–465, § 211(a)(2), added par. (4).

Subsec. (c). Pub. L. 103–465, § 212(a)(1), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''Within 20 days after the date on which a petition is filed under subsection (b) of this section, the administering authority shall—

''(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 1671(a) of this title and contains information reasonably available to the petitioner supporting the allegations,

''(2) if the determination is affirmative, commence an investigation to determine whether a subsidy is being provided with respect to the class or kind of merchandise described in the petition, and provide for the publication of notice of the determination to commence an investigation in the Federal Register, and

''(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.''

Subsec. (e). Pub. L. 103–465, § 270(a)(1)(A), (d), substituted ''countervailable subsidy'' for ''subsidy'' and ''Subsidies Agreement'' for ''Agreement''.

Pub. L. 103–465, § 233(a)(5)(B), substituted ''subject merchandise'' for ''class or kind of merchandise that is the subject of the investigation'' in two places.

1988—Subsec. (b)(1). Pub. L. 100–418, § 1326(d)(1), substituted ''(F), or (G)'' for ''or (F)''.

Subsec. (e). Pub. L. 100–418, § 1324(a)(1), added subsec. (e).

1986—Subsec. (b)(1). Pub. L. 99–514 inserted reference to subpar. (F) of section 1677(9) of this title.

1983—Subsec. (b)(3). Pub. L. 98–181 added par. (3).

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 section 1324(a)(1) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and amendment by section 1326(d)(1) 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), (c) of Pub. L. 100–418, set out as a note under section 1671 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1671b, 1671c, 1677, 1677f, 1677i, 3437 of this title.

§ 1671b. Preliminary determinations

(a) Determination by Commission of reasonable indication of injury

(1) General rule

Except in the case of a petition dismissed by the administering authority under section 1671a(c)(3) of this title, the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the subject merchandise and that imports of the subject merchandise are not negligible. If the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated.

(2) Time for Commission determination

The Commission shall make the determination described in paragraph (1)—

(A) in the case of a petition filed under section 1671a(b) of this title—

(i) within 45 days after the date on which the petition is filed, or

(ii) if the time has been extended pursuant to section 1671a(c)(1)(B) of this title, within 25 days after the date on which the Commission receives notice from the administering authority of initiation of the investigation, and

(B) in the case of an investigation initiated under section 1671a(a) of this title, within 45 days after the date on which the Commission receives notice from the administering authority that an investigation has been initiated under such section.

(b) Preliminary determination by administering authority; expedited determinations; waiver of verification

(1) Within 65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title, or an investigation is initiated under section 1671a(a) of this title, but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a countervailable subsidy is being provided with respect to the subject merchandise.

(2) Notwithstanding paragraph (1), when the petition is one subject to section 1671a(b)(3) of this title, the Administering Authority shall, taking into account the nature of the countervailable subsidy concerned, make the determination required by paragraph (1) on an expedited basis and within 65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title unless the provisions of subsection (c) of this section apply.

(3) Within 55 days after the initiation of an investigation the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 50 days of the investigation, and, if there appears to be sufficient information available upon which the determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 1677f of this title. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made on an expedited basis on the basis of the record established during the first 50 days after the investigation was initiated.

(4) DE MINIMIS COUNTERVAILABLE SUBSIDY.—

(A) GENERAL RULE.—In making a determination under this subsection, the administering authority shall disregard any de minimis countervailable subsidy. For purposes of the preceding sentence, a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies is less than 1 percent ad valorem or the equivalent specific rate for the subject merchandise.

(B) EXCEPTION FOR DEVELOPING COUNTRIES.—In the case of subject merchandise imported from a Subsidies Agreement country (other than a country to which subparagraph (C) applies) designated by the Trade Representative as a developing country in accordance with

section 1677(36) of this title, a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies does not exceed 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(C) CERTAIN OTHER DEVELOPING COUNTRIES.—In the case of subject merchandise imported from a Subsidies Agreement country that is—

(i) a least developed country, as determined by the Trade Representative in accordance with section 1677(36) of this title, or

(ii) a developing country with respect to which the Trade Representative has notified the administering authority that the country has eliminated its export subsidies on an expedited basis within the meaning of Article 27.11 of the Subsidies Agreement,

subparagraph (B) shall be applied by substituting ''3 percent'' for ''2 percent''.

(D) LIMITATIONS ON APPLICATION OF SUBPARAGRAPH (C).—

(i) IN GENERAL.—In the case of a country described in subparagraph (C)(i), the provisions of subparagraph (C) shall not apply after the date that is 8 years after the date the WTO Agreement enters into force.

(ii) SPECIAL RULE FOR SUBPARAGRAPH (C)(ii) COUNTRIES.—In the case of a country described in subparagraph (C)(ii), the provisions of subparagraph (C) shall not apply after the earlier of—

(I) the date that is 8 years after the date the WTO Agreement enters into force, or

(II) the date on which the Trade Representative notifies the administering authority that such country is providing an export subsidy.

(5) NOTIFICATION OF ARTICLE 8 VIOLATION.—If the only subsidy under investigation is a subsidy with respect to which the administering authority received notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement, paragraph (1) shall be applied by substituting ''60 days'' for ''65 days''.

(c) Extension of period in extraordinarily complicated cases

(1) In general

If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b) of this section, or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the alleged countervailable subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b) of this section until not later than the 130th day after the date on which the administering authority initiates an investigation under section 1671a(c) of this title, or an investigation is initiated under section 1671a(a) of this title.

(2) Notice of postponement

The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b) of this section, if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement. Notice of the postponement shall be published in the Federal Register.

(d) Effect of determination by the administering authority

If the preliminary determination of the administering authority under subsection (b) of this section is affirmative, the administering authority—

(1)(A) shall—

(i) determine an estimated individual countervailable subsidy rate for each exporter and producer individually investigated, and, in accordance with section 1671d(c)(5) of this title, an estimated all-others rate for all exporters and producers not individually investigated and for new exporters and producers within the meaning of section 1675(a)(2)(B) of this title, or

(ii) if section 1677f–1(e)(2)(B) of this title applies, determine a single estimated country-wide subsidy rate, applicable to all exporters and producers, and

(B) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy rate, whichever is applicable,

(2) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date on which notice of the determination is published in the Federal Register, or

(B) the date that is 60 days after the date on which notice of the determination to initiate the investigation is published in the Federal Register, and

(3) shall make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confiden-

tial treatment has been given by the administering authority.

The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months.

(e) Critical circumstances determinations

(1) In general

If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this part) determine, on the basis of the information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

(2) Suspension of liquidation

If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(2) of this section shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or

(B) the date on which notice of the determination to initiate the investigation is published in the Federal Register.

(f) Notice of determination

Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2) of this section, the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

(g) Time period where upstream subsidization is involved

(1) In general

Whenever the administering authority concludes prior to a preliminary determination under subsection (b) of this section, that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed, the time period within which a preliminary determination must be made shall be extended to 250 days after the filing of a petition under section 1671a(b) of this title or initiation of an investigation under section 1671a(a) of this title (310 days in cases declared extraordinarily complicated under subsection (c) of this section), if the administering authority concludes that such additional time is necessary to make the required determination concerning upstream subsidization.

(2) Exceptions

Whenever the administering authority concludes, after a preliminary determination under subsection (b) of this section, that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed—

(A) in cases in which the preliminary determination was negative, the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 1671d(a)(1) of this title; or

(B) in cases in which the preliminary determination is affirmative, the determination concerning upstream subsidization—

(i) need not be made until the conclusion of the first annual review under section 1675 of this title of any eventual Countervailing Duty Order, or, at the option of the petitioner, or

(ii) will be made in the investigation and the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 1671d(a)(1) of this title, as appropriate,[1] except that the suspension of liquidation ordered in the preliminary determination shall terminate at the end of 120 days from the date of publication of that determination and not be resumed unless and until the publication of a Countervailing Duty Order under section 1671e(a) of this title.

There may be an extension of time for the making of a final determination under this subsection only if the administering authority determines that such additional time is necessary to make the required determination concerning upstream subsidization.

(June 17, 1930, ch. 497, title VII, § 703, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 152; amended Pub. L. 98–181, title VI, § 650(b), Nov. 30, 1983, 97 Stat. 1266; Pub. L. 98–573, title VI, §§ 603, 613(c), Oct. 30, 1984, 98 Stat. 3024, 3036; Pub. L. 99–514, title XVIII, § 1886(a)(3), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100–418, title I, §§ 1324(a)(2), 1326(d)(1), Aug. 23, 1988, 102 Stat. 1200, 1204; Pub. L. 103–465, title II, §§ 212(b)(1)(A), (C), (D), (F), 214(a)(1), 215(a), 233(a)(5)(C), (6)(A)(iii), (iv), (B), 263(a), 264(a), (c)(1), (2), 270(a)(1)(B)–(D), (b)(1)(B), 283(a), Dec. 8, 1994, 108 Stat. 4847, 4848, 4850, 4852, 4899, 4901, 4911, 4912, 4914, 4917, 4930; Pub. L. 104–295, § 20(b)(5), Oct. 11, 1996, 110 Stat. 3527.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–295 amended Pub. L. 103–465, § 212(b)(1)(C)(i)(I). See 1994 Amendment note below.

[1] So in original. The words "as appropriate," probably should not appear.

1994—Subsec. (a). Pub. L. 103–465, § 212(b)(1)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Except in the case of a petition dismissed by the administering authority under section 1671a(c)(3) of this title, the Commission, within 45 days after the date on which a petition is filed under section 1671a(b) of this title or on which it receives notice from the administering authority of an investigation commenced under section 1671a(a) of this title, shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

''(1) an industry in the United States—

''(A) is materially injured, or

''(B) is threatened with material injury, or

''(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.''

Subsec. (b)(1). Pub. L. 103–465, § 270(a)(1)(B), substituted ''countervailable subsidy'' for ''subsidy''.

Pub. L. 103–465, § 233(a)(5)(B), (6)(A)(iii), substituted ''initiated'' for ''commenced'' and ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Pub. L. 103–465, § 212(b)(1)(C)(i)(II), (III), substituted ''based upon the information'' for ''based upon the best information'' and struck out at end ''If the determination of the administering authority under this subsection is affirmative, the determination shall include an estimate of the net subsidy.''

Pub. L. 103–465, § 212(b)(1)(C)(i)(I), as amended by Pub. L. 104–295, substituted ''65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title'' for ''85 days after the date on which a petition is filed under section 1671a(b) of this title''.

Subsec. (b)(2). Pub. L. 103–465, § 270(a)(1)(C), substituted ''countervailable subsidy'' for ''subsidy''.

Pub. L. 103–465, § 264(c)(1), substituted ''paragraph (1)'' for ''subsection (b)(1) of this section'' in two places and made technical amendments to references to section 1671a(b)(3) of this title and subsection (c) of this section to correct references to corresponding provisions of original act.

Pub. L. 103–465, § 212(b)(1)(C)(ii), substituted ''65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title'' for ''85 days after the date on which the petition is filed under section 1671a(b) of this title''.

Subsec. (b)(4). Pub. L. 103–465, § 263(a), added par. (4).

Subsec. (b)(5). Pub. L. 103–465, § 283(a), added par. (5).

Subsec. (c)(1). Pub. L. 103–465, §§ 212(b)(1)(D), 233(a)(6)(A)(iv), in concluding provisions, substituted ''130th day after the date on which the administering authority initiates an investigation under section 1671a(c) of this title'' for ''150th day after the date on which a petition is filed under section 1671a(b) of this title'' and ''initiated'' for ''commenced''.

Subsec. (c)(1)(B)(i). Pub. L. 103–465, § 270(a)(1)(D), (b)(1)(B), substituted ''countervailable subsidy'' for ''subsidy'' in subcl. (I) and ''countervailable subsidies'' for ''subsidies'' in subcl. (III).

Subsec. (d). Pub. L. 103–465, § 215(a)(1)(B), inserted concluding provisions.

Subsec. (d)(1). Pub. L. 103–465, § 264(a)(4), added par. (1). Former par. (1) redesignated (2).

Pub. L. 103–465, § 215(a)(1)(A), substituted ''warehouse, for consumption on or after the later of—'' and subpars. (A) and (B), for ''warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,''.

Subsec. (d)(2). Pub. L. 103–465, § 264(a)(1)–(3), redesignated par. (1) as (2), inserted ''and'' at end, and struck out former par. (2) which read as follows: ''shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated amount of the net subsidy, and''.

Subsec. (e)(1). Pub. L. 103–465, § 214(a)(1), in introductory provisions, struck out ''best'' before ''information'' and amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) the alleged subsidy is inconsistent with the Agreement, and

''(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.''

Subsec. (e)(2). Pub. L. 103–465, §§ 215(a)(2), 264(c)(2), substituted ''subsection (d)(2)'' for ''subsection (d)(1)'' and ''warehouse, for consumption on or after the later of—'' and subpars. (A) and (B) for ''warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.''

Subsec. (f). Pub. L. 103–465, § 212(b)(1)(F), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.''

Subsec. (g)(1). Pub. L. 103–465, § 233(a)(6)(B), substituted ''initiation'' for ''commencement''.

1988—Subsec. (b)(3). Pub. L. 100–418, § 1326(d)(1), substituted ''(F), or (G)'' for ''or (F)'' in two places.

Subsec. (e)(1). Pub. L. 100–418, § 1324(a)(2), inserted ''(at any time after the initiation of the investigation under this part)'' after ''promptly'' in introductory provisions.

1986—Subsecs. (g), (h). Pub. L. 99–514 redesignated subsec. (h) as (g) and substituted ''or 225 days, as appropriate, under section 1671d(a)(1) of this title'' for ''days under section 1671d(a)(1) of this title or 225 days under section 1671d(a)(2) of this title, as appropriate'' in par. (2)(A), and ''or 225 days, as appropriate, under section 1671d(a)(1) of this title'' for ''days under section 1671d(a)(2) of this title'' in par. (2)(B)(ii).

1984—Subsec. (b)(3). Pub. L. 98–573, § 603, added par. (3).

Subsec. (h). Pub. L. 98–573, § 613(c), added subsec. (h).

1983—Subsec. (b). Pub. L. 98–181 designated existing provisions as par. (1) and added par. (2).

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 section 1324(a)(2) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and amendment by section 1326(d)(1) 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), (c) 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.

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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1671, 1671c, 1671d, 1671e, 1671f, 1671g, 1673d, 1677, 1677f, 1677f–1, 1677i, 1677m of this title.

§ 1671c. Termination or suspension of investigation

(a) Termination of investigation upon withdrawal of petition

(1) In general

(A) Withdrawal of petition

Except as provided in paragraphs (2) and (3), an investigation under this part may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 1671a(a) of this title.

(B) Refiling of petition

If, within 3 months after the withdrawal of a petition under subparagraph (A), a new petition is filed seeking the imposition of duties on both the subject merchandise of the withdrawn petition and the subject merchandise from another country, the administering authority and the Commission may use in the investigation initiated pursuant to the new petition any records compiled in an investigation conducted pursuant to the withdrawn petition. This subparagraph applies only with respect to the first withdrawal of a petition.

(2) Special rules for quantitative restriction agreements

(A) In general

Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting, with the government of the country in which the countervailable subsidy practice is alleged to occur, an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) Public interest factors

In making a decision under subparagraph (A) regarding the public interest, the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of countervailing duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations

Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) Limitation on termination by Commission

The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 1671b(b) of this title.

(b) Agreements to eliminate or offset completely a countervailable subsidy or to cease exports of subject merchandise

The administering authority may suspend an investigation if the government of the country in which the countervailable subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the subject merchandise agree—

(1) to eliminate the countervailable subsidy completely or to offset completely the amount of the net countervailable subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

(c) Agreements eliminating injurious effect

(1) General rule

If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement from a government described in subsection (b) of this section, or from exporters described in subsection (b) of this section, if the agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise.

(2) Certain additional requirements

Except in the case of an agreement by a foreign government to restrict the volume of imports of the subject merchandise into the

United States, the administering authority may not accept an agreement under this subsection unless—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) at least 85 percent of the net countervailable subsidy will be offset.

(3) Quantitative restrictions agreements

The administering authority may accept an agreement with a foreign government under this subsection to restrict the volume of imports of subject merchandise into the United States, but it may not accept such an agreement with exporters.

(4) Definition of extraordinary circumstances

(A) Extraordinary circumstances

For purposes of this subsection, the term ''extraordinary circumstances'' means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) Complex

For purposes of this paragraph, the term ''complex'' means—

(i) there are a large number of alleged countervailable subsidy practices and the practices are complicated,

(ii) the issues raised are novel, or

(iii) the number of exporters involved is large.

(d) Additional rules and conditions

(1) Public interest; monitoring

The administering authority shall not accept an agreement under subsection (b) or (c) of this section unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon. In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c) of this section, the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B)(i), (ii), and (iii) of this section as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C)(i) and (ii) of this section.

(2) Exports of merchandise to United States not to increase during interim period

The administering authority may not accept any agreement under subsection (b) of this section unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the countervailable subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(3) Regulations governing entry or withdrawals

In order to carry out an agreement concluded under subsection (b) or (c) of this section, the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of subject merchandise.

(e) Suspension of investigation procedure

Before an investigation may be suspended under subsection (b) or (c) of this section the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d) of this section, and

(3) permit all interested parties described in section 1677(9) of this title to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A) of this section.

(f) Effects of suspension of investigation

(1) In general

If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c) of this section, then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 1671b(b) of this title with respect to the subject merchandise, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) Liquidation of entries

(A) Cessation of exports; complete elimination of net countervailable subsidy

If the agreement accepted by the administering authority is an agreement described in subsection (b) of this section, then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries

of subject merchandise shall not be suspended under section 1671b(d)(2) of this title,

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 1671b(d)(1)(B) of this title.

(B) Other agreements

If the agreement accepted by the administering authority is an agreement described in subsection (c) of this section, then the liquidation of entries of the subject merchandise shall be suspended under section 1671b(d)(2) of this title, or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3) of this section, but the security required under section 1671b(d)(1)(B) of this title may be adjusted to reflect the effect of the agreement.

(3) Where investigation is continued

If, pursuant to subsection (g) of this section, the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c) of this section, then—

(A) if the final determination by the administering authority or the Commission under section 1671d of this title is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue a countervailing duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d) of this section, and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) Investigation to be continued upon request

If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the countervailable subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) Review of suspension

(1) In general

Within 20 days after the suspension of an investigation under subsection (c) of this section, an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) Commission investigation

Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 1671b(b) of this title had been made on that date.

(3) Suspension of liquidation to continue during review period

The suspension of liquidation of entries of the subject merchandise shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 1671b(d)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1671b(d)(1)(B) of this title.

(i) Violation of agreement

(1) In general

If the administering authority determines that an agreement accepted under subsection (b) or (c) of this section is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1) of this section, of elimination of injury) and subsection (d) of this section, then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 1671b(d)(2) of this title of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d) of this section, was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 1671b(b) of this title were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g) of this section, issue a countervailing duty order under section 1671e(a) of this title effective with respect to entries of merchandise the liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) Intentional violation to be punished by civil penalty

Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) of this section shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 1592(a) of this title.

(j) Determination not to take agreement into account

In making a final determination under section 1671d of this title, or in conducting a review under section 1675 of this title, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1) of this section, or continued an investigation under subsection (g) of this section, the Commission and the administering authority shall consider all of the subject merchandise, without regard to the effect of any agreement under subsection (b) or (c) of this section.

(k) Termination of investigations initiated by administering authority

The administering authority may terminate any investigation initiated by the administering authority under section 1671a(a) of this title after providing notice of such termination to all parties to the investigation.

(*l*) Special rule for regional industry investigations

(1) Suspension agreements

If the Commission makes a regional industry determination under section 1677(4)(C) of this title, the administering authority shall offer exporters of the subject merchandise who account for substantially all exports of that merchandise for sale in the region concerned the opportunity to enter into an agreement described in subsection (b) or (c) of this section.

(2) Requirements for suspension agreements

Any agreement described in paragraph (1) shall be subject to all the requirements imposed under this section for other agreements under subsection (b) or (c) of this section, except that if the Commission makes a regional industry determination described in paragraph (1) in the final affirmative determination under section 1671d(b) of this title but not in the preliminary affirmative determination under section 1671b(a) of this title, any agreement described in paragraph (1) may be accepted within 60 days after the countervailing duty order is published under section 1671e of this title.

(3) Effect of suspension agreement on countervailing duty order

If an agreement described in paragraph (1) is accepted after the countervailing duty order is published, the administering authority shall rescind the order, refund any cash deposit and release any bond or other security deposited under section 1671b(d)(1)(B) of this title, and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to countervailing duties.

(June 17, 1930, ch. 497, title VII, § 704, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 154; amended Pub. L. 98–573, title VI, §§ 604(a), 612(b)(2), Oct. 30, 1984, 98 Stat. 3025, 3034; Pub. L. 99–514, title XVIII, § 1886(a)(4), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100–418, title I, § 1326(d)(2), Aug. 23, 1988, 102 Stat. 1204; Pub. L. 103–465, title II, §§ 216(a), 217(a), 218(a)(1), 233(a)(5)(D)–(M), 264(c)(3)–(6), 270(a)(1)(E), (2)(A), (c)(1), Dec. 8, 1994, 108 Stat. 4853, 4854, 4899, 4914, 4917.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–465, § 217(a), designated existing provisions as subpar. (A), inserted heading, realigned margin, and added subpar. (B).

Subsec. (a)(2)(A). Pub. L. 103–465, §§ 233(a)(5)(D), 270(a)(1)(E), substituted ''countervailable subsidy'' for ''subsidy'' and ''subject merchandise'' for ''merchandise that is subject to the investigation''.

Subsec. (b). Pub. L. 103–465, § 270(a)(2)(A), (c)(1), in heading, substituted ''countervailable subsidy'' for ''subsidy'' and ''subject merchandise'' for ''subsidized merchandise''.

Pub. L. 103–465, §§ 233(a)(5)(E), 270(a)(1)(E), in introductory provisions, substituted ''countervailable subsidy'' for ''subsidy'' and ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Subsec. (b)(1). Pub. L. 103–465, § 270(a)(1)(E), substituted ''countervailable subsidy'' for ''subsidy'' in two places.

Subsec. (c)(1), (2). Pub. L. 103–465, § 233(a)(5)(F), (G), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Subsec. (c)(2)(B). Pub. L. 103–465, § 270(a)(1)(E), substituted ''countervailable subsidy'' for ''subsidy''.

Subsec. (c)(3). Pub. L. 103–465, § 233(a)(5)(H), substituted ''subject merchandise'' for ''merchandise which is the subject of an investigation''.

Subsec. (c)(4)(B)(i). Pub. L. 103–465, § 270(a)(1)(E), substituted ''countervailable subsidy'' for ''subsidy''.

Subsec. (d)(1). Pub. L. 103–465, § 216(a), in concluding provisions, substituted ''Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon. In applying'' for ''In applying''.

Subsec. (d)(2). Pub. L. 103–465, § 270(a)(1)(E), substituted ''countervailable subsidy'' for ''subsidy''.

Subsec. (d)(3). Pub. L. 103–465, § 233(a)(5)(I), substituted ''subject merchandise'' for ''merchandise covered by such agreement''.

Subsec. (f)(1)(A). Pub. L. 103–465, § 233(a)(5)(J), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Subsec. (f)(2)(A). Pub. L. 103–465, § 270(a)(1)(E), substituted ''countervailable subsidy'' for ''subsidy'' in heading.

Subsec. (f)(2)(A)(i), (iii). Pub. L. 103–465, §§ 233(a)(5)(K), 264(c)(3), in cl. (i), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation'' and ''1671b(d)(2)'' for ''1671b(d)(1)'', and in cl. (iii), substituted ''1671b(d)(1)(B)'' for ''1671b(d)(1)''.

Subsec. (f)(2)(B). Pub. L. 103–465, §§ 233(a)(5)(K), 264(c)(4), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation'', ''1671b(d)(2)'' for ''1671b(d)(1)'', and ''1671b(d)(1)(B)'' for ''1671b(d)(2)''.

Subsec. (g)(1). Pub. L. 103–465, § 270(a)(1)(E), substituted ''countervailable subsidy'' for ''subsidy''.

Subsec. (h)(2). Pub. L. 103–465, § 233(a)(5)(L), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Subsec. (h)(3). Pub. L. 103–465, §§ 233(a)(5)(L), 264(c)(5), in introductory provisions, substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation'', in subpar. (A), substituted ''1671b(d)(2)'' for ''1671b(d)(1)'', and in subpar. (B), substituted ''1671b(d)(1)(B)'' for ''1671b(d)(2)''.

Subsec. (i)(1)(A). Pub. L. 103–465, § 264(c)(6), substituted ''1671b(d)(2)'' for ''1671b(d)(1)'' in introductory provisions.

Subsec. (j). Pub. L. 103–465, § 233(a)(5)(M), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Subsec. (*l*). Pub. L. 103–465, § 218(a)(1), added subsec. (*l*).

1988—Subsecs. (g)(2), (h)(1). Pub. L. 100–418 substituted ''subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title'' for ''subparagraph (C), (D), (E), and (F) of section 1677(9) of this title''.

1986—Subsec. (d)(2), (3). Pub. L. 99–514, § 1886(a)(4)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (i)(1)(D). Pub. L. 99–514, § 1886(a)(4)(B), substituted ''intentional'' for ''international''.

1984—Subsec. (a). Pub. L. 98–573, § 604(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''An investigation under this part may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 1671b(b) of this title.''

Subsec. (d)(1). Pub. L. 98–573, § 604(a)(2)(A), inserted provision, following subpar. (B), that in applying subpar. (A) with respect to any quantitative restriction agreement under subsec. (c) of this section, the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsec. (a)(2)(B)(i), (ii), and (iii) of this section as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsec. (a)(2)(C)(i) and (ii) of this section.

Subsec. (d)(2), (3). Pub. L. 98–573, § 604(a)(2)(B), (C), redesignated par. (3) as (2) and struck out former par. (2) which provided that exports of merchandise to the United States were not to increase during the interim period.

Subsec. (e)(3). Pub. L. 98–573, § 604(a)(3), substituted ''all interested parties described in section 1677(9) of this title'' for ''all parties to the investigation''.

Subsecs. (g)(2), (h)(1). Pub. L. 98–573, § 612(b)(2), substituted reference to subpar. ''(C), (D), (E), and (F)'' for ''(C), (D), or (E)'' of section 1677(9) of this title.

Subsec. (i)(1)(D), (E). Pub. L. 98–573, § 604(a)(4)(A)–(C), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (k). Pub. L. 98–573, § 604(a)(5), added subsec. (k).

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 section 604(a) of Pub. L. 98–573 effective Oct. 30, 1984, and amendment by section 612(b)(2) of 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, see section 626(a), (b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1671, 1675, 1675a, 1675b, 1676, 1676a, 1677, 1677i, 1677m of this title; title 28 section 1582.

§ 1671d. Final determinations

(a) Final determination by administering authority

(1) In general

Within 75 days after the date of the preliminary determination under section 1671b(b) of this title, the administering authority shall make a final determination of whether or not a countervailable subsidy is being provided with respect to the subject merchandise; except that when an investigation under this part is initiated simultaneously with an investigation under part II of this subtitle, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under part II of this subtitle.

(2) Critical circumstances determinations

If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 1671b(e) of this title, shall also contain a finding as to whether—

(A) the countervailable subsidy is inconsistent with the Subsidies Agreement, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 1671b(e)(1) of this title was negative.

(3) De minimis countervailable subsidy

In making a determination under this subsection, the administering authority shall disregard any countervailable subsidy that is de minimis as defined in section 1671b(b)(4) of this title.

(b) Final determination by Commission

(1) In general

The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section. If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.

(2) Period for injury determination following affirmative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1671b(b) of this title is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 1671b(b) of this title, or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a) of this section.

(3) Period for injury determination following negative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1671b(b) of this title is negative, and its final determination under subsection (a) of this section is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) Certain additional findings

(A) COMMISSION STANDARD FOR RETROACTIVE APPLICATION.—

(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(2) of this section is affirmative, then the final determination of the Commission shall include a finding as to whether the imports subject to the affirmative determination under subsection (a)(2) of this section are likely to undermine seriously the remedial effect of the countervailing duty order to be issued under section 1671e of this title.

(ii) FACTORS TO CONSIDER.—In making the evaluation under clause (i), the Commission shall consider, among other factors it considers relevant—

(I) the timing and the volume of the imports,

(II) any rapid increase in inventories of the imports, and

(III) any other circumstances indicating that the remedial effect of the countervailing duty order will be seriously undermined.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section would have been found but for any suspension of liquidation of entries of that merchandise.

(c) Effect of final determinations

(1) Effect of affirmative determination by the administering authority

If the determination of the administering authority under subsection (a) of this section is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority,

(B)(i) the administering authority shall—

(I) determine an estimated individual countervailable subsidy rate for each exporter and producer individually investigated, and, in accordance with paragraph (5), an estimated all-others rate for all exporters and producers not individually investigated and for new exporters and producers within the meaning of section 1675(a)(2)(B) of this title, or

(II) if section 1677f–1(e)(2)(B) of this title applies, determine a single estimated country-wide subsidy rate, applicable to all exporters and producers,

(ii) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy rate, whichever is applicable, and

(C) in cases where the preliminary determination by the administering authority under section 1671b(b) of this title was negative, the administering authority shall order the suspension of liquidation under paragraph (2) of section 1671b(d) of this title.

(2) Issuance of order; effect of negative determination

If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) of this section are affirmative, then the administering authority shall issue a countervailing duty order under section 1671e(a) of this title. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 1671b(d)(2) of this title, and

(B) release any bond or other security and refund any cash deposit required under section 1671b(d)(1)(B) of this title.

(3) Effect of negative determinations under subsections (a)(2) and (b)(4)(A) of this section

If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A) of this section, respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 1671b(e)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit required, under section 1671b(d)(1)(B) of this title with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 1671b(e)(2) of this title.

(4) Effect of affirmative determination under subsection (a)(2) of this section

If the determination of the administering authority under subsection (a)(2) of this section is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 1671b(b) and 1671b(e)(1) of this title were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 1671b(e)(2) of this title;

(B) in cases where the preliminary determination by the administering authority under section 1671b(b) of this title was affirmative, but the preliminary determination under section 1671b(e)(1) of this title was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 1671b(d) of this title to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 1671b(b) of this title was negative, shall apply any suspension of liquidation and security requirement ordered under subsection (c)(1)(B) of this section to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(5) Method for determining the all-others rate and the country-wide subsidy rate

(A) All-others rate

(i) General rule

For purposes of this subsection and section 1671b(d) of this title, the all-others rate shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely under section 1677e of this title.

(ii) Exception

If the countervailable subsidy rates established for all exporters and producers individually investigated are zero or de minimis rates, or are determined entirely under section 1677e of this title, the administering authority may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated.

(B) Country-wide subsidy rate

The administering authority may calculate a single country-wide subsidy rate, applicable to all exporters and producers, if the administering authority limits its examination pursuant to section 1677f–1(e)(2)(B) of this title. The estimated country-wide rate determined under section 1671b(d)(1)(A)(ii) of this title or paragraph (1)(B)(i)(II) of this subsection shall be based on industry-wide data regarding the use of subsidies determined to be countervailable.

(d) Publication of notice of determinations

Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) Correction of ministerial errors

The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term ''ministerial error'' in-

cludes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

(June 17, 1930, ch. 497, title VII, § 705, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 159; amended Pub. L. 98–573, title VI, §§ 602(a)(2), 605(a), 606, Oct. 30, 1984, 98 Stat. 3024, 3028, 3029; Pub. L. 100–418, title I, §§ 1324(a)(3), 1333(a), Aug. 23, 1988, 102 Stat. 1200, 1209; Pub. L. 103–465, title II, §§ 212(b)(1)(B), 214(a)(2), 233(a)(5)(N), 263(b), 264(b), (c)(7), (8), 270(a)(1)(F), (G), Dec. 8, 1994, 108 Stat. 4848, 4850, 4899, 4912–4914, 4917; Pub. L. 104–295, § 20(b)(15), Oct. 11, 1996, 110 Stat. 3527.)

AMENDMENTS

1996—Subsec. (c)(1)(B)(i)(II). Pub. L. 104–295 inserted ''section'' after ''if''.

1994—Subsec. (a)(1). Pub. L. 103–465, §§ 233(a)(5)(N), 270(a)(1)(F), substituted ''countervailable subsidy'' for ''subsidy'' and ''the subject merchandise'' for ''the merchandise''.

Subsec. (a)(2)(A). Pub. L. 103–465, §§ 214(a)(2)(A)(i), 270(a)(1)(G), substituted ''countervailable subsidy'' for ''subsidy'' and ''Subsidies Agreement'' for ''Agreement''.

Subsec. (a)(2)(B). Pub. L. 103–465, § 214(a)(2)(A)(ii), substituted ''subject merchandise'' for ''class or kind of merchandise involved''.

Subsec. (a)(3). Pub. L. 103–465, § 263(b), added par. (3).

Subsec. (b)(1). Pub. L. 103–465, § 212(b)(1)(B), inserted at end of concluding provisions ''If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.''

Subsec. (b)(4)(A). Pub. L. 103–465, § 214(a)(2)(B), amended subpar. (A) generally, substituting present provisions for provisions requiring, in the case of an affirmative critical circumstances determination, an additional finding as to whether retroactive imposition of a countervailing duty would be necessary to prevent recurrence of material injury caused by massive imports of subject merchandise over a relatively short period of time.

Subsec. (c)(1). Pub. L. 103–465, § 264(b)(1), struck out ''and'' at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C) and substituted ''the suspension of liquidation under paragraph (2) of section 1671b(d) of this title'' for ''under paragraphs (1) and (2) of section 1671b(d) of this title the suspension of liquidation and the posting of a cash deposit, bond, or other security''.

Subsec. (c)(2). Pub. L. 103–465, § 264(c)(7), in subpar. (A), substituted ''1671b(d)(2)'' for ''1671b(d)(1)'' and in subpar. (B), substituted ''1671b(d)(1)(B)'' for ''1671b(d)(2)''.

Subsec. (c)(3)(B). Pub. L. 103–465, § 264(c)(8), substituted ''1671b(d)(1)(B)'' for ''1671b(d)(2)''.

Subsec. (c)(5). Pub. L. 103–465, § 264(b)(2), added par. (5).

1988—Subsec. (b)(4)(A). Pub. L. 100–418, § 1324(a)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If the finding of the administering authority under subsection (a)(2) of this section is affirmative, then the final determination of the Commission shall include findings as to whether—

''(i) there is material injury which will be difficult to repair, and

''(ii) the material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.''

Subsec. (e). Pub. L. 100–418, § 1333(a), added subsec. (e).

1984—Subsec. (a)(1). Pub. L. 98–573, § 606, inserted provision that when an investigation under this part is initiated simultaneously with an investigation under part II of this subtitle, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under part II of this subtitle.

Subsec. (a)(2). Pub. L. 98–573, § 605(a)(1), inserted provision after subpar. (B) that such findings may be affirmative even though the preliminary determination under section 1671b(e)(1) of this title was negative.

Subsec. (b)(1). Pub. L. 98–573, § 602(a)(2), inserted '', or sales (or the likelihood of sales for importation,'' in provision after subpar. (B).

Subsec. (c)(3)(A). Pub. L. 98–573, § 605(a)(3), inserted reference to par. (4).

Subsec. (c)(4). Pub. L. 98–573, § 605(a)(2), added par. (4).

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 section 1333(a) of Pub. L. 100–418 effective Aug. 23, 1988, and amendment by section 1324(a)(3) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, see section 1337(a), (c) of Pub. L. 100–418, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 602(a)(2) of 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, and amendment by sections 605(a) and 606 of Pub. L. 98–573 effective Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1671, 1671a, 1671b, 1671c, 1671e, 1671f, 1675, 1675a, 1675b, 1676a, 1677, 1677c, 1677f, 1677f–1, 1677m of this title.

§ 1671e. Assessment of duty

(a) Publication of countervailing duty order

Within 7 days after being notified by the Commission of an affirmative determination under section 1671d(b) of this title, the administering authority shall publish a countervailing duty order which—

(1) directs customs officers to assess a countervailing duty equal to the amount of the net countervailable subsidy determined or estimated to exist, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption,

(2) includes a description of the subject merchandise, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated countervailing duties pending liquidation of entries of

merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) Imposition of duties

(1) General rule

If the Commission, in its final determination under section 1671d(b) of this title, finds material injury or threat of material injury which, but for the suspension of liquidation under section 1671b(d)(2) of this title, would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 1671b(d)(2) of this title, shall be subject to the imposition of countervailing duties under section 1671(a) of this title.

(2) Special rule

If the Commission, in its final determination under section 1671d(b) of this title, finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to a countervailing duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 1671d(b) of this title shall be subject to the imposition of countervailing duties under section 1671(a) of this title, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) Special rule for regional industries

(1) In general

In an investigation under this part in which the Commission makes a regional industry determination under section 1677(4)(C) of this title, the administering authority shall, to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region concerned during the period of investigation.

(2) Exception for new exporters and producers

After publication of the countervailing duty order, if the administering authority finds that a new exporter or producer is exporting the subject merchandise for sale in the region concerned, the administering authority shall direct that duties be assessed on the subject merchandise of the new exporter or producer consistent with the provisions of section 1675(a)(2)(B) of this title.

(June 17, 1930, ch. 497, title VII, § 706, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 160; amended Pub. L. 98–573, title VI, § 607, Oct. 30, 1984, 98 Stat. 3029; Pub. L. 99–514, title XVIII, § 1886(a)(5), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 103–465, title II, §§ 218(b)(1), 233(a)(5)(O), 264(c)(9), 265, 270(a)(1)(H), Dec. 8, 1994, 108 Stat. 4855, 4899, 4914, 4917.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–465, § 270(a)(1)(H), substituted ''countervailable subsidy'' for ''subsidy''.

Subsec. (a)(2) to (4). Pub. L. 103–465, §§ 233(a)(5)(O), 265, redesignated par. (3) as (2) and substituted ''subject merchandise'' for ''class or kind of merchandise to which it applies'', redesignated par. (4) as (3), and struck out former par. (2) which read as follows:

''(2) shall presumptively apply to all merchandise of such class or kind exported from the country investigated, except that if—

''(A) the administering authority determines there is a significant differential between companies receiving subsidy benefits, or

''(B) a State-owned enterprise is involved,

the order may provide for differing countervailing duties,''.

Subsec. (b)(1). Pub. L. 103–465, § 264(c)(9), substituted ''1671b(d)(2)'' for ''1671b(d)(1)'' in two places.

Subsec. (c). Pub. L. 103–465, § 218(b)(1), added subsec. (c).

1986—Subsec. (a)(2). Pub. L. 99–514 realigned the margins in provisions following subpar. (B), which realignment had been editorially supplied, thereby requiring no change in text.

1984—Subsec. (a)(2) to (4). Pub. L. 98–573 added par. (2) and redesignated pars. (2) and (3) as (3) and (4), respectively.

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 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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1671, 1671b, 1671c, 1671d, 1671f, 1671g, 1676a, 1677, 1677f, 1677j, 1677m of this title.

§ 1671f. Treatment of difference between deposit of estimated countervailing duty and final assessed duty under countervailing duty orders

(a) Deposit of estimated countervailing duty under section 1671b(d)(1)(B) of this title

If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated countervailing duty under section 1671b(d)(1)(B) of this title is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 1671e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption be-

fore notice of the affirmative determination of the Commission under section 1671d(b) of this title is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) Deposit of estimated countervailing duty under section 1671e(a)(3) of this title

If the amount of an estimated countervailing duty deposited under section 1671e(a)(3) of this title is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 1671e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 1671d(b) of this title is published shall be—

(1) collected, to the extent that the deposit under section 1671e(a)(3) of this title is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 1671e(a)(3) of this title is higher than the duty determined under the order,

together with interest as provided by section 1677g of this title.

(June 17, 1930, ch. 497, title VII, § 707, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 161; amended Pub. L. 103–465, title II, § 264(c)(10), Dec. 8, 1994, 108 Stat. 4914.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–465 substituted ''1671b(d)(1)(B)'' for ''1671b(d)(2)'' in heading and text.

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.

§ 1671g. Effect of derogation of Export-Import Bank financing

Nothing in this subtitle shall be interpreted as superseding the provisions of section 635a–3 of title 12, except that in the event of an assessment of duty based on a derogation under section 1671e of this title or action under section 1671b(d)(1)(B) of this title, the Secretary of the Treasury shall not authorize the Bank to provide guarantees, insurance and credits to competing United States sellers pursuant to section 635a–3 of title 12.

(June 17, 1930, ch. 497, title VII, § 708, as added Pub. L. 98–181, title VI, § 650(c), Nov. 30, 1983, 97 Stat. 1266; amended Pub. L. 99–514, title XVIII, § 1886(a)(6)(A), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 103–465, title II, § 264(c)(11), Dec. 8, 1994, 108 Stat. 4914.)

AMENDMENTS

1994—Pub. L. 103–465 substituted ''1671b(d)(1)(B)'' for ''1671b(d)(2)''.

1986—Pub. L. 99–514 added section catchline.

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.

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.

§ 1671h. Conditional payment of countervailing duties

(a) In general

For all entries, or withdrawals from warehouse, for consumption of merchandise subject to a countervailing duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirement of subsection (b) of this section and deposits with the appropriate customs officer an estimated countervailing duty in an amount determined by the administering authority.

(b) Importer requirements

In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for ascertaining any countervailing duty to be imposed under this part,

(2) maintain and furnish to the customs officer such records concerning such merchandise as the administering authority, by regulation, requires, and

(3) pay, or agree to pay on demand, to the customs officer the amount of countervailing duty imposed under this part on that merchandise.

(June 17, 1930, ch. 497, title VII, § 709, as added Pub. L. 98–573, title VI, § 608, Oct. 30, 1984, 98 Stat. 3029.)

EFFECTIVE DATE

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

PART II—IMPOSITION OF ANTIDUMPING DUTIES

CODIFICATION

The designation ''PART II'' was in the original ''Subtitle B'' 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.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1337, 1671d, 1677, 1677b–1, 1677c, 1677f, 1677f–1, 1677m, 2033, 2171, 2252 of this title; title 28 section 1582.

§ 1673. Imposition of antidumping duties

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,

then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise. For purposes of this section and section 1673d(b)(1) of this title, a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(June 17, 1930, ch. 497, title VII, § 731, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 162; amended Pub. L. 98–573, title VI, § 602(b), Oct. 30, 1984, 98 Stat. 3024; Pub. L. 103–465, title II, § 233(a)(1)(A), (2)(A)(i), Dec. 8, 1994, 108 Stat. 4898.)

AMENDMENTS

1994—Pub. L. 103–465 substituted ''normal value exceeds the export price (or the constructed export price)'' for ''foreign market value exceeds the United States price'' in concluding provisions.

1984—Pub. L. 98–573 inserted ''or by reason of sales (or the likelihood of sales) of that merchandise for importation'' after ''by reason of imports of that merchandise'' in par. (2), and inserted sentence at end providing that for purposes of this section and section 1673d(b)(1) of this title, a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

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 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, see section 626(b)(1) of Pub. L. 98–573, as amended, set out as a 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1337, 1673a, 1673e, 1673g, 1673i of this title.

§ 1673a. Procedures for initiating an antidumping duty investigation

(a) Initiation by administering authority

(1) In general

An antidumping duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 1673 of this title exist.

(2) Cases involving persistent dumping

(A) Monitoring

The administering authority may establish a monitoring program with respect to imports of a class or kind of merchandise from any additional supplier country for a period not to exceed one year if—

(i) more than one antidumping order is in effect with respect to that class or kind of merchandise;

(ii) in the judgment of the administering authority there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping from one or more additional supplier countries; and

(iii) in the judgment of the administering authority this extraordinary pattern is causing a serious commercial problem for the domestic industry.

(B) Initiation of investigation

If during the period of monitoring referred to in subparagraph (A), the administering authority determines that there is sufficient information to initiate a formal investigation under this subsection regarding an additional supplier country, the administering authority shall immediately initiate such an investigation.

(C) Definition

For purposes of this paragraph, the term ''additional supplier country'' means a country regarding which no antidumping investigation is currently pending, and no antidumping duty order is currently in effect, with respect to imports of the class or kind of merchandise covered by subparagraph (A).

(D) Expeditious action

The administering authority and the Commission, to the extent practicable, shall expedite proceedings under this part undertaken as a result of a formal investigation initiated under subparagraph (B).

(b) Initiation by petition

(1) Petition requirements

An antidumping proceeding shall be initiated whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of sec-

tion 1677(9) of this title files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 1673 of this title, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) Simultaneous filing with Commission

The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) Action with respect to petitions

(A) Notification of governments

Upon receipt of a petition filed under paragraph (1), the administering authority shall notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country.

(B) Acceptance of communications

The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 1677(9)(C), (D), (E), (F), or (G) of this title before the administering authority makes its decision whether to initiate an investigation, except as provided in subsection (c)(4)(D) of this section, and except for inquiries regarding the status of the administering authority's consideration of the petition.

(C) Nondisclosure of certain information

The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under paragraph (1).

(c) Petition determination

(1) In general

(A) Time for initial determination

Except as provided in subparagraph (B), within 20 days after the date on which a petition is filed under subsection (b) of this section, the administering authority shall—

(i) after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 1673 of this title and contains information reasonably available to the petitioner supporting the allegations, and

(ii) determine if the petition has been filed by or on behalf of the industry.

(B) Extension of time

In any case in which the administering authority is required to poll or otherwise determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional circumstances, apply subparagraph (A) by substituting ''a maximum of 40 days'' for ''20 days''.

(C) Time limits where petition involves same merchandise as an order that has been revoked

If a petition is filed under this section with respect to merchandise that was the subject merchandise of—

(i) an antidumping duty order or finding that was revoked under section 1675(d) of this title in the 24 months preceding the date the petition is filed, or

(ii) a suspended investigation that was terminated under section 1675(d) of this title in the 24 months preceding the date the petition is filed,

the administering authority and the Commission shall, to the maximum extent practicable, expedite any investigation initiated under this section with respect to the petition.

(2) Affirmative determinations

If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value.

(3) Negative determinations

If the determination under clause (i) or (ii) of paragraph (1)(A) is negative, the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) Determination of industry support

(A) General rule

For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the industry, if—

(i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and

(ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

(B) Certain positions disregarded

(i) Producers related to foreign producers

In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to foreign producers, as defined in section 1677(4)(B)(ii) of this title, unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an antidumping duty order.

(ii) Producers who are importers

The administering authority may disregard the position of domestic producers

of a domestic like product who are importers of the subject merchandise.

(C) Special rule for regional industries

If the petition alleges the industry is a regional industry, the administering authority shall determine whether the petition has been filed by or on behalf of the industry by applying subparagraph (A) on the basis of production in the region.

(D) Polling the industry

If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering authority shall—

(i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

(E) Comments by interested parties

Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 1677(9) of this title if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

(5) "Domestic producers or workers" defined

For purposes of this subsection, the term ''domestic producers or workers'' means those interested parties who are eligible to file a petition under subsection (b)(1) of this section.

(d) Notification to Commission of determination

The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c) of this section, and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) Information regarding critical circumstances

If, at any time after the initiation of an investigation under this part, the administering authority finds a reasonable basis to suspect that—

(1) there is a history of dumping in the United States or elsewhere of the subject merchandise, or

(2) the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less than its fair value,

the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the subject merchandise and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 1673d(a) of this title, the investigation is terminated, or the administering authority withdraws the request.

(June 17, 1930, ch. 497, title VII, § 732, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 162; amended Pub. L. 98–573, title VI, § 609, Oct. 30, 1984, 98 Stat. 3030; Pub. L. 99–514, title XVIII, § 1886(a)(2), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100–418, title I, §§ 1324(b)(1), 1326(d)(1), Aug. 23, 1988, 102 Stat. 1200, 1204; Pub. L. 103–465, title II, §§ 211(b), 212(a)(2), 233(a)(5)(P)–(R), (6)(A)(v)–(vii), (C), Dec. 8, 1994, 108 Stat. 4843, 4845, 4900, 4901; Pub. L. 104–295, § 20(b)(4), (8), (9), Oct. 11, 1996, 110 Stat. 3527.)

AMENDMENTS

1996—Subsec. (a)(2)(B). Pub. L. 104–295, § 20(b)(9), amended directory language of Pub. L. 103–465, § 233(a)(6)(C). See 1994 Amendment note below.

Subsec. (c)(5). Pub. L. 104–295, § 20(b)(4), substituted ''(b)(1)'' for ''(b)(1)(A)''.

Subsec. (e)(1). Pub. L. 104–295, § 20(b)(8), substituted ''the'' for ''the the'' before ''subject merchandise''.

1994—Subsec. (a)(1). Pub. L. 103–465, § 233(a)(6)(A)(v), substituted ''initiated'' for ''commenced''.

Subsec. (a)(2)(B). Pub. L. 103–465, § 233(a)(6)(C), as amended by Pub. L. 104–295, § 20(b)(9), substituted ''initiate'' for ''commerce'' in two places.

Subsec. (a)(2)(D). Pub. L. 103–465, § 233(a)(6)(A)(vi), substituted ''initiated'' for ''commenced''.

Subsec. (b)(1). Pub. L. 103–465, § 233(a)(6)(A)(vii), substituted ''initiated'' for ''commenced''.

Subsec. (b)(3). Pub. L. 103–465, § 211(b), added par. (3).

Subsec. (c). Pub. L. 103–465, § 212(a)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''Within 20 days after the date on which a petition is filed under subsection (b) of this section, the administering authority shall—

''(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 1673 of this title and contains information reasonably available to the petitioner supporting the allegations,

''(2) if the determination is affirmative, commence an investigation to determine whether the class or kind of merchandise described in the petition is being, or is likely to be, sold in the United States at less than its fair value, and provide for the publication of notice of the determination in the Federal Register, and

''(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.''

Subsec. (e). Pub. L. 103–465, § 233(a)(5)(R), in concluding provisions, substituted ''subject merchandise'' for ''class or kind of merchandise that is the subject of the investigation'' in two places.

Subsec. (e)(1). Pub. L. 103–465, § 233(a)(5)(P), substituted ''the subject merchandise'' for ''class or kind

of the merchandise which is the subject of the investigation''.

Subsec. (e)(2). Pub. L. 103–465, § 233(a)(5)(Q), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

1988—Subsec. (b)(1). Pub. L. 100–418, § 1326(d)(1), substituted ''(F), or (G)'' for ''or (F)''.

Subsec. (e). Pub. L. 100–418, § 1324(b)(1), added subsec. (e).

1986—Subsec. (b)(1). Pub. L. 99–514 inserted reference to subpar. (F) of section 1677(9) of this title.

1984—Subsec. (a). Pub. L. 98–573 designated existing provisions as par. (1) and added par. (2).

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 section 1324(b)(1) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and amendment by section 1326(d)(1) 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), (c) 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 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, see section 626(b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1673b, 1673c, 1677, 1677b, 1677f, 1677i of this title.

§ 1673b. Preliminary determinations

(a) Determination by Commission of reasonable indication of injury

(1) General rule

Except in the case of a petition dismissed by the administering authority under section 1673a(c)(3) of this title, the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the subject merchandise and that imports of the subject merchandise are not negligible. If the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated.

(2) Time for Commission determination

The Commission shall make the determination described in paragraph (1)—

(A) in the case of a petition filed under section 1673a(b) of this title—

(i) within 45 days after the date on which the petition is filed, or

(ii) if the time has been extended pursuant to section 1673a(c)(1)(B) of this title, within 25 days after the date on which the Commission receives notice from the administering authority of initiation of the investigation, and

(B) in the case of an investigation initiated under section 1673a(a) of this title, within 45 days after the date on which the Commission receives notice from the administering authority that an investigation has been initiated under such section.

(b) Preliminary determination by administering authority

(1) Period of antidumping duty investigation

(A) In general

Except as provided in subparagraph (B), within 140 days after the date on which the administering authority initiates an investigation under section 1673a(c) of this title, or an investigation is initiated under section 1673a(a) of this title, but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold, at less than fair value.

(B) If certain short life cycle merchandise involved

If a petition filed under section 1673a(b) of this title, or an investigation initiated under section 1673a(a) of this title, concerns short life cycle merchandise that is included in a product category established under section 1673h(a) of this title, subparagraph (A) shall be applied—

(i) by substituting ''100 days'' for ''140 days'' if manufacturers that are second offenders account for a significant proportion of the merchandise under investigation, and

(ii) by substituting ''80 days'' for ''140 days'' if manufacturers that are multiple offenders account for a significant proportion of the merchandise under investigation.

(C) Definitions of offenders

For purposes of subparagraph (B)—

(i) The term ''second offender'' means a manufacturer that is specified in 2 affirm-

ative dumping determinations (within the meaning of section 1673h of this title) as the manufacturer of short life cycle merchandise that is—

(I) specified in both such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(ii) The term ''multiple offender'' means a manufacturer that is specified in 3 or more affirmative dumping determinations (within the meaning of section 1673h of this title) as the manufacturer of short life cycle merchandise that is—

(I) specified in each of such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(2) Preliminary determination under waiver of verification

Within 75 days after the initiation of an investigation, the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 1677f of this title. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a preliminary determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made within 90 days after the initiation of the investigation on the basis of the record established during the first 60 days after the investigation was initiated.

(3) De minimis dumping margin

In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis. For purposes of the preceding sentence, a weighted average dumping margin is de minimis if the administering authority determines that it is less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(c) Extension of period in extraordinarily complicated cases

(1) In general

If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1) of this section, or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented, or

(III) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b)(1) of this section until not later than the 190th day after the date on which the administering authority initiates an investigation under section 1673a(c) of this title, or an investigation is initiated under section 1673a(a) of this title. No extension of a determination date may be made under this paragraph for any investigation in which a determination date provided for in subsection (b)(1)(B) of this section applies unless the petitioner submits written notice to the administering authority of its consent to the extension.

(2) Notice of postponement

The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1) of this section, if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

(d) Effect of determination by the administering authority

If the preliminary determination of the administering authority under subsection (b) of this section is affirmative, the administering authority—

(1)(A) shall—

(i) determine an estimated weighted average dumping margin for each exporter and producer individually investigated, and

(ii) determine, in accordance with section 1673d(c)(5) of this title, an estimated all-others rate for all exporters and producers not individually investigated, and

(B) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping

margin or the estimated all-others rate, whichever is applicable,

(2) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date on which notice of the determination is published in the Federal Register, or

(B) the date that is 60 days after the date on which notice of the determination to initiate the investigation is published in the Federal Register, and

(3) shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months, except that the administering authority may, at the request of exporters representing a significant proportion of exports of the subject merchandise, extend that 4-month period to not more than 6 months.

(e) Critical circumstances determinations

(1) In general

If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this part) determine, on the basis of the information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

The administering authority shall be treated as having made an affirmative determination under subparagraph (A) in any investigation to which subsection (b)(1)(B) of this section is applied.

(2) Suspension of liquidation

If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(2) of this section shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or

(B) the date on which notice of the determination to initiate the investigation is published in the Federal Register.

(f) Notice of determination

Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2) of this section, the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

(June 17, 1930, ch. 497, title VII, § 733, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 163; amended Pub. L. 99–514, title XVIII, § 1886(a)(2), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100–418, title I, §§ 1323(b), 1324(b)(2), 1326(d)(1), Aug. 23, 1988, 102 Stat. 1198, 1201, 1204; Pub. L. 103–465, title II, §§ 212(b)(2)(A), (C)–(E), 213(a), 214(b)(1), 215(b), 219(a), (c)(1), 233(a)(6)(A)(viii)–(x), (B), Dec. 8, 1994, 108 Stat. 4848–4852, 4855, 4857, 4901.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–465, § 212(b)(2)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Except in the case of a petition dismissed by the administering authority under section 1673a(c)(3) of this title, the Commission, within 45 days after the date on which a petition is filed under section 1673a(b) of this title or on which it receives notice from the administering authority of an investigation commenced under section 1673a(a) of this title, shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

''(1) an industry in the United States—

''(A) is materially injured, or

''(B) is threatened with material injury, or

''(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.''

Subsec. (b)(1)(A). Pub. L. 103–465, § 219(a)(2), struck out at end ''If the determination of the administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.''

Pub. L. 103–465, §§ 212(b)(2)(C)(i), 233(a)(6)(A)(viii), substituted ''140 days after the date on which the administering authority initiates an investigation under section 1673a(c) of this title'' for ''160 days after the date on which a petition is filed under section 1673a(b) of this title'', ''initiated'' for ''commenced'', and ''information'' for ''best information''.

Subsec. (b)(1)(B). Pub. L. 103–465, §§212(b)(2)(C)(ii), 233(a)(6)(A)(viii), in introductory provisions, substituted ''initiated'' for ''commenced'', in cl. (i), substituted ''100'' for ''120'' and ''140'' for ''160'', and in cl. (ii), substituted ''80'' for ''100'' and ''140'' for ''160''.

Subsec. (b)(2). Pub. L. 103–465, §233(a)(6)(A)(ix), (B), substituted ''initiation'' for ''commencement'' after ''90 days after the'' and ''initiated'' for ''commenced''.

Subsec. (b)(3). Pub. L. 103–465, §213(a), added par. (3).

Subsec. (c)(1). Pub. L. 103–465, §§212(b)(2)(D), 233(a)(6)(A)(x), in concluding provisions, substituted ''190th day after the date on which the administering authority initiates an investigation under section 1673a(c) of this title'' for ''210th day after the date on which a petition is filed under section 1673a(b) of this title'' and ''initiated'' for ''commenced''.

Subsec. (d). Pub. L. 103–465, §215(b)(1)(B), inserted concluding provisions.

Subsec. (d)(1). Pub. L. 103–465, §219(a)(1)(D), added par. (1). Former par. (1) redesignated (2).

Pub. L. 103–465, §215(b)(1)(A), substituted ''warehouse, for consumption on or after the later of—'' and subpars. (A) and (B) for ''warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,''.

Subsec. (d)(2). Pub. L. 103–465, §219(a)(1)(A)–(C), redesignated par. (1) as (2), inserted ''and'' at end, and struck out former par. (2) which read as follows: ''shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated average amount by which the foreign market value exceeds the United States price, and''.

Subsec. (e)(1). Pub. L. 103–465, §214(b)(1), in introductory provisions, substituted ''information'' for ''best information'' and amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

''(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

''(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.''

Subsec. (e)(2). Pub. L. 103–465, §§215(b)(2), 219(c)(1), substituted ''subsection (d)(2)'' for ''subsection (d)(1)'' and ''warehouse, for consumption on or after the later of—'' and subpars. (A) and (B) for ''warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.''

Subsec. (f). Pub. L. 103–465, §212(b)(2)(E), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.''

1988—Subsec. (b)(1). Pub. L. 100–418, §1323(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Within 160 days after the date on which a petition is filed under section 1673a(b) of this title, or an investigation is commenced under section 1673a(a) of this title, but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value. If the determination of the administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.''

Subsec. (b)(2). Pub. L. 100–418, §1326(d)(1), substituted ''(F), or (G)'' for ''or (F)'' in two places.

Subsec. (c)(1). Pub. L. 100–418, §1323(b)(2), inserted sentence at end relating to notice for extensions under subsec. (b)(1)(B).

Subsec. (e)(1). Pub. L. 100–418, §1324(b)(2), inserted ''(at any time after the initiation of the investigation under this part)'' after ''promptly'' in introductory provisions.

Pub. L. 100–418, §1323(b)(3), inserted sentence at end relating to investigations in which subsec. (b)(1)(B) is applied.

1986—Subsec. (b)(2). Pub. L. 99–514 inserted reference to subpar. (F) of section 1677(9) of this title in two places.

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 section 1323(b) of Pub. L. 100–418 effective Aug. 23, 1988, amendment by section 1324(b)(2) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and amendment by section 1326(d)(1) 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(a) to (c) of Pub. L. 100–418, set out as a note under section 1671 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1673c, 1673d, 1673e, 1673f, 1673h, 1677, 1677f, 1677f–1, 1677i, 1677m of this title.

§ 1673c. Termination or suspension of investigation

(a) Termination of investigation upon withdrawal of petition

(1) In general

(A) Withdrawal of petition

Except as provided in paragraphs (2) and (3), an investigation under this part may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 1673a(a) of this title.

(B) Refiling of petition

If, within 3 months after the withdrawal of a petition under subparagraph (A), a new pe-

tition is filed seeking the imposition of duties on both the subject merchandise of the withdrawn petition and the subject merchandise from another country, the administering authority and the Commission may use in the investigation initiated pursuant to the new petition any records compiled in an investigation conducted pursuant to the withdrawn petition. This subparagraph applies only with respect to the first withdrawal of a petition.

(2) Special rules for quantitative restriction agreements

(A) In general

Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) Public interest factors

In making a decision under subparagraph (A) regarding the public interest the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of antidumping duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations

Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) Limitation on termination by Commission

The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 1673b(b) of this title.

(b) Agreements to eliminate completely sales at less than fair value or to cease exports of merchandise

The administering authority may suspend an investigation if the exporters of the subject merchandise who account for substantially all of the imports of that merchandise agree—

(1) to cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended, or

(2) to revise their prices to eliminate completely any amount by which the normal value of the merchandise which is the subject of the agreement exceeds the export price (or the constructed export price) of that merchandise.

(c) Agreements eliminating injurious effect

(1) General rule

If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the subject merchandise who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious effect of exports to the United States of that merchandise and if—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(2) "Extraordinary circumstances" defined

(A) Extraordinary circumstances

For purposes of this subsection, the term ''extraordinary circumstances'' means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) "Complex" defined

For purposes of this paragraph, the term ''complex'' means—

(i) there are a large number of transactions to be investigated or adjustments to be considered,

(ii) the issues raised are novel, or

(iii) the number of firms involved is large.

(d) Additional rules and conditions

The administering authority may not accept an agreement under subsection (b) or (c) of this section unless—

(1) it is satisfied that suspension of the investigation is in the public interest, and

(2) effective monitoring of the agreement by the United States is practicable.

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon.

(e) Suspension of investigation procedure

Before an investigation may be suspended under subsection (b) or (c) of this section the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced, and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d) of this section, and

(3) permit all interested parties described in section 1677(9) of this title to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A) of this section.

(f) Effects of suspension of investigation

(1) In general

If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c) of this section, then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 1673b(b) of this title with respect to the subject merchandise, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) Liquidation of entries

(A) Cessation of exports; complete elimination of dumping margin

If the agreement accepted by the administering authority is an agreement described in subsection (b) of this section, then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of subject merchandise shall not be suspended under section 1673b(d)(2) of this title,

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 1673b(d)(1)(B) of this title.

(B) Other agreements

If the agreement accepted by the administering authority is an agreement described in subsection (c) of this section, the liquidation of entries of the subject merchandise shall be suspended under section 1673b(d)(2) of this title, or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3) of this section, but the security required under section 1673b(d)(1)(B) of this title may be adjusted to reflect the effect of the agreement.

(3) Where investigation is continued

If, pursuant to subsection (g) of this section, the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c) of this section, then—

(A) if the final determination by the administering authority or the Commission under section 1673d of this title is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue an antidumping duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d), or (c) and (d) of this section, and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) Investigation to be continued upon request

If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the subject merchandise, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) Review of suspension

(1) In general

Within 20 days after the suspension of an investigation under subsection (c) of this section, an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) Commission investigation

Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative pre-

liminary determination under section 1673b(b) of this title had been made on that date.

(3) Suspension of liquidation to continue during review period

The suspension of liquidation of entries of the subject merchandise shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 1673b(d)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1673b(d)(1)(B) of this title.

(i) Violation of agreement

(1) In general

If the administering authority determines that an agreement accepted under subsection (b) or (c) of this section is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1) of this section, of elimination of injury) and subsection (d) of this section, then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 1673b(d)(2) of this title of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d), or (c) and (d) of this section, was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g) of this section, issue an antidumping duty order under section 1673e(a) of this title effective with respect to entries of merchandise liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) Intentional violation to be punished by civil penalty

Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) of this section shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures, as the penalty imposed for a fraudulent violation of section 1592(a) of this title.

(j) Determination not to take agreement into account

In making a final determination under section 1673d of this title, or in conducting a review under section 1675 of this title, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1) of this section, or continued an investigation under subsection (g) of this section, the Commission and the administering authority shall consider all of the subject merchandise without regard to the effect of any agreement under subsection (b) or (c) of this section.

(k) Termination of investigation initiated by administering authority

The administering authority may terminate any investigation initiated by the administering authority under section 1673a(a) of this title after providing notice of such termination to all parties to the investigation.

(*l*) Special rule for nonmarket economy countries

(1) In general

The administering authority may suspend an investigation under this part upon acceptance of an agreement with a nonmarket economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that—

(A) such agreement satisfies the requirements of subsection (d) of this section, and

(B) will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) Failure of agreements

If the administering authority determines that an agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (i) of this section shall apply.

(m) Special rule for regional industry investigations

(1) Suspension agreements

If the Commission makes a regional industry determination under section 1677(4)(C) of this title, the administering authority shall offer exporters of the subject merchandise who account for substantially all exports of that merchandise for sale in the region concerned the opportunity to enter into an agreement described in subsection (b), (c), or (*l*) of this section.

(2) Requirements for suspension agreements

Any agreement described in paragraph (1) shall be subject to all the requirements im-

posed under this section for other agreements under subsection (b), (c), or (*l*) of this section, except that if the Commission makes a regional industry determination described in paragraph (1) in the final affirmative determination under section 1673d(b) of this title but not in the preliminary affirmative determination under section 1673b(a) of this title, any agreement described in paragraph (1) may be accepted within 60 days after the antidumping order is published under section 1673e of this title.

(3) Effect of suspension agreement on antidumping duty order

If an agreement described in paragraph (1) is accepted after the antidumping duty order is published, the administering authority shall rescind the order, refund any cash deposit and release any bond or other security deposited under section 1673b(d)(1)(B) of this title, and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to antidumping duties.

(June 17, 1930, ch. 497, title VII, § 734, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 165; amended Pub. L. 98–573, title VI, §§ 604(b), 612(b)(2), Oct. 30, 1984, 98 Stat. 3026, 3034; Pub. L. 100–418, title I, §§ 1316(c), 1326(d)(2), Aug. 23, 1988, 102 Stat. 1187, 1204; Pub. L. 103–465, title II, §§ 216(b), 217(b), 218(a)(2), 219(c)(2)–(5), 233(a)(1)(B), (2)(A)(ii), (5)(S)–(U), Dec. 8, 1994, 108 Stat. 4853, 4854, 4857, 4898, 4900.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–465, § 217(b), designated existing provisions as subpar. (A), inserted heading and realigned margin, and added subpar. (B).

Subsec. (a)(2)(A). Pub. L. 103–465, § 233(a)(5)(S), substituted ''subject merchandise'' for ''merchandise that is subject to the investigation''.

Subsec. (b). Pub. L. 103–465, § 233(a)(5)(T), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation'' in introductory provisions.

Subsec. (b)(2). Pub. L. 103–465, § 233(a)(1)(B), (2)(A)(ii), substituted ''normal value'' for ''foreign market value'' and ''export price (or the constructed export price)'' for ''United States price''.

Subsec. (c)(1). Pub. L. 103–465, § 233(a)(5)(T), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation'' in introductory provisions.

Subsec. (c)(1)(B). Pub. L. 103–465, § 233(a)(1)(B), (2)(A)(ii), substituted ''normal value'' for ''foreign market value'' in two places and ''export price (or the constructed export price)'' for ''United States price'' in two places.

Subsec. (d). Pub. L. 103–465, § 216(b), inserted concluding provisions.

Subsec. (f)(1)(A). Pub. L. 103–465, § 233(a)(5)(T), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Subsec. (f)(2)(A)(i). Pub. L. 103–465, §§ 219(c)(2)(A), 233(a)(5)(T), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation'' and ''1673b(d)(2)'' for ''1673b(d)(1)''.

Subsec. (f)(2)(A)(iii). Pub. L. 103–465, § 219(c)(2)(B), substituted ''1673b(d)(1)(B)'' for ''1673b(d)(2)''.

Subsec. (f)(2)(B). Pub. L. 103–465, §§ 219(c)(3), 233(a)(5)(U), substituted ''subject merchandise'' for ''merchandise subject to the investigation'', ''1673b(d)(2)'' for ''1673b(d)(1)'', and ''1673b(d)(1)(B)'' for ''1673b(d)(2)''.

Subsecs. (g)(1), (h)(2). Pub. L. 103–465, § 233(a)(5)(T), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Subsec. (h)(3). Pub. L. 103–465, §§ 219(c)(4), 233(a)(5)(T), in introductory provisions, substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation'', in subpar. (A), substituted ''1673b(d)(2)'' for ''1673b(d)(1)'', and in subpar. (B), substituted ''1673b(d)(1)(B)'' for ''1673b(d)(2)''.

Subsec. (i)(1)(A). Pub. L. 103–465, § 219(c)(5), substituted ''1673b(d)(2)'' for ''1673b(d)(1)'' in introductory provisions.

Subsec. (j). Pub. L. 103–465, § 233(a)(5)(T), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Subsec. (m). Pub. L. 103–465, § 218(a)(2), added subsec. (m).

1988—Subsecs. (g)(2), (h)(1). Pub. L. 100–418, § 1326(d)(2), substituted ''(F), or (G)'' for ''and (F)''.

Subsec. (*l*). Pub. L. 100–418, § 1316(c), added subsec. (*l*).

1984—Subsec. (a). Pub. L. 98–573, § 604(b)(1), amended subsec. (a) generally, which prior to amendment read as follows: ''An investigation under this part may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 1673b(b) of this title.''

Subsec. (d). Pub. L. 98–573, § 604(b)(2), struck out designation ''(1)'' preceding first sentence, substituted ''may not accept'' for ''shall not accept'', redesignated former subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out former par. (2), which had provided that exports of merchandise to the United States were not to increase during the interim period.

Subsec. (e)(3). Pub. L. 98–573, § 604(b)(3), substituted ''all interested parties described in section 1677(9) of this title'' for ''all parties to the investigation''.

Subsecs. (g)(2), (h)(1). Pub. L. 98–573, § 612(b)(2), substituted reference to subpar. ''(C), (D), (E), and (F)'' for ''(C), (D), or (E)'' of section 1677(9) of this title.

Subsec. (i)(1)(D), (E). Pub. L. 98–573, § 604(b)(4), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (k). Pub. L. 98–573, § 604(b)(5), added subsec. (k).

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 section 604(b) of Pub. L. 98–573 effective Oct. 30, 1984, and amendment by section 612(b)(2) of 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, see section 626(a), (b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1673h, 1675, 1675a, 1677, 1677i, 1677m of this title; title 28 section 1582.

§ 1673d. Final determinations

(a) Final determination by administering authority

(1) General rule

Within 75 days after the date of its preliminary determination under section 1673b(b) of this title, the administering authority shall make a final determination of whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value.

(2) Extension of period for determination

The administering authority may postpone making the final determination under paragraph (1) until not later than the 135th day after the date on which it published notice of its preliminary determination under section 1673b(b) of this title if a request in writing for such a postponement is made by—

(A) exporters who account for a significant proportion of exports of the merchandise which is the subject of the investigation, in a proceeding in which the preliminary determination by the administering authority under section 1673b(b) of this title was affirmative, or

(B) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 1673b(b) of this title was negative.

(3) Critical circumstances determinations

If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 1673b(e) of this title, shall also contain a finding of whether—

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 1673b(e)(1) of this title was negative.

(4) De minimis dumping margin

In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis as defined in section 1673b(b)(3) of this title.

(b) Final determination by Commission

(1) In general

The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1) of this section. If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.

(2) Period for injury determination following affirmative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1673b(b) of this title is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 1673b(b) of this title, or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a) of this section.

(3) Period for injury determination following negative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1673b(b) of this title is negative, and its final determination under subsection (a) of this section is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) Certain additional findings

(A) COMMISSION STANDARD FOR RETROACTIVE APPLICATION.—

(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(3) of this section is affirmative, then the final determination of the Commission shall include a finding as to whether the imports subject to the affirmative determination under subsection (a)(3) of this section are likely to undermine seriously the remedial effect of the antidumping duty order to be issued under section 1673e of this title.

(ii) FACTORS TO CONSIDER.—In making the evaluation under clause (i), the Commission shall consider, among other factors it considers relevant—

(I) the timing and the volume of the imports,

(II) a rapid increase in inventories of the imports, and

(III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the administering authority has made

an affirmative determination under subsection (a) of this section would have been found but for any suspension of liquidation of entries of the merchandise.

(c) Effect of final determinations

(1) Effect of affirmative determination by the administering authority

If the determination of the administering authority under subsection (a) of this section is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information as to which confidential treatment has been given by the administering authority,

(B)(i) the administering authority shall—

(I) determine the estimated weighted average dumping margin for each exporter and producer individually investigated, and

(II) determine, in accordance with paragraph (5), the estimated all-others rate for all exporters and producers not individually investigated, and

(ii) the administering authority shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable, and

(C) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was negative, the administering authority shall order the suspension of liquidation under section 1673b(d)(2) of this title.

(2) Issuance of order; effect of negative determination

If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) of this section are affirmative, then the administering authority shall issue an antidumping duty order under section 1673e(a) of this title. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 1673b(d)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1673b(d)(1)(B) of this title.

(3) Effect of negative determinations under subsections (a)(3) and (b)(4)(A) of this section

If the determination of the administering authority or the Commission under subsection (a)(3) or (b)(4)(A) of this section, respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 1673b(e)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit required, under section 1673b(d)(1)(B) of this title with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 1673b(e)(2) of this title.

(4) Effect of affirmative determination under subsection (a)(3) of this section

If the determination of the administering authority under subsection (a)(3) of this section is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 1673b(b) and 1673b(e)(1) of this title were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 1673b(e)(2) of this title;

(B) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was affirmative, but the preliminary determination under section 1673b(e)(1) of this title was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 1673b(d) of this title to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was negative, shall apply any suspension of liquidation and security requirement ordered under subsection (c)(1)(B) of this section to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(5) Method for determining estimated all-others rate

(A) General rule

For purposes of this subsection and section 1673b(d) of this title, the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 1677e of this title.

(B) Exception

If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 1677e of this title, the

administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.

(d) Publication of notice of determinations

Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) Correction of ministerial errors

The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term ''ministerial error'' includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

(June 17, 1930, ch. 497, title VII, § 735, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 169; amended Pub. L. 98–573, title VI, §§ 602(c), 605(b), Oct. 30, 1984, 98 Stat. 3024, 3028; Pub. L. 100–418, title I, §§ 1324(b)(3), 1333(a), Aug. 23, 1988, 102 Stat. 1201, 1209; Pub. L. 103–465, title II, §§ 212(b)(2)(B), 213(b), 214(b)(2), 219(b), (c)(6)–(8), 233(a)(5)(V), Dec. 8, 1994, 108 Stat. 4849–4851, 4856, 4857, 4900; Pub. L. 104–295, § 20(b)(6), Oct. 11, 1996, 110 Stat. 3527.)

AMENDMENTS

1996—Subsec. (a)(3)(A)(i). Pub. L. 104–295 amended Pub. L. 103–465, § 214(b)(2)(A)(i). See 1994 Amendment note below.

1994—Subsec. (a)(1). Pub. L. 103–465, § 233(a)(5)(V), substituted ''subject merchandise'' for ''merchandise which was the subject of the investigation''.

Subsec. (a)(3)(A)(i). Pub. L. 103–465, § 214(b)(2)(A)(i), as amended by Pub. L. 104–295, inserted ''and material injury by reason of dumped imports'' after ''history of dumping'' and substituted ''subject merchandise'' for ''class or kind of merchandise which is the subject of the investigation''.

Subsec. (a)(3)(A)(ii). Pub. L. 103–465, § 214(b)(2)(A)(ii), substituted ''subject merchandise at less than its fair value and that there would be material injury by reason of such sales'' for ''merchandise which is the subject of the investigation at less than its fair value''.

Subsec. (a)(3)(B). Pub. L. 103–465, § 214(b)(2)(A)(iii), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Subsec. (a)(4). Pub. L. 103–465, § 213(b), added par. (4).

Subsec. (b)(1). Pub. L. 103–465, § 212(b)(2)(B), inserted at end of concluding provisions ''If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.''

Subsec. (b)(4)(A). Pub. L. 103–465, § 214(b)(2)(B), amended subpar. (A) generally, substituting present provisions for provisions requiring, in the case of an affirmative critical circumstances determination, a further finding as to whether retroactive imposition of antidumping duties on the subject merchandise would be necessary to prevent recurrence of material injury caused by massive imports of the merchandise over a relatively short period of time.

Subsec. (c)(1). Pub. L. 103–465, § 219(b)(1), struck out ''and'' at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C) and substituted ''the suspension of liquidation under section 1673b(d)(2) of this title'' for ''under paragraphs (1) and (2) of section 1673b(d) of this title the suspension of liquidation and the posting of a cash deposit, bond, or other security''.

Subsec. (c)(2)(A). Pub. L. 103–465, § 219(c)(6), substituted ''1673b(d)(2)'' for ''1671b(d)(1)''.

Subsec. (c)(2)(B). Pub. L. 103–465, § 219(c)(7), substituted ''1673b(d)(1)(B)'' for ''1673b(d)(2)''.

Subsec. (c)(3)(B). Pub. L. 103–465, § 219(c)(8), substituted ''1673b(d)(1)(B)'' for ''1673b(d)(2)''.

Subsec. (c)(5). Pub. L. 103–465, § 219(b)(2), added par. (5).

1988—Subsec. (b)(4)(A). Pub. L. 100–418, § 1324(b)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If the finding of the administering authority under subsection (a)(2) of this section is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) of this section to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 1673 of this title retroactively on those imports.''

Subsec. (e). Pub. L. 100–418, § 1333(a), added subsec. (e).

1984—Subsec. (a)(3). Pub. L. 98–573, § 605(b)(1), inserted provision that such findings may be affirmative even though the preliminary determination under section 1673b(e)(1) of this title was negative.

Subsec. (b)(1). Pub. L. 98–573, § 602(c), inserted '', or sales (or the likelihood of sales) for importation,'' in provisions after subpar. (B).

Subsec. (c)(3)(A). Pub. L. 98–573, § 605(b)(3), inserted reference to par. (4).

Subsec. (c)(4). Pub. L. 98–573, § 605(b)(2), added par. (4).

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 section 1333(a) of Pub. L. 100–418 effective Aug. 23, 1988, and amendment by section 1324(b)(3) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, see section 1337(a), (c) of Pub. L. 100–418, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 602(c) of 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, and amendment by section 605(b) of Pub. L. 98–573 effective Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1673, 1673a, 1673b, 1673c, 1673e, 1673f, 1673h, 1675, 1675a, 1677, 1677c, 1677f, 1677f–1, 1677m, 1677n of this title.

§ 1673e. Assessment of duty

(a) Publication of antidumping duty order

Within 7 days after being notified by the Commission of an affirmative determination under section 1673d(b) of this title, the administering authority shall publish an antidumping duty order which—

(1) directs customs officers to assess an antidumping duty equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than—

(A) 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption, or

(B) in the case of merchandise not sold prior to its importation into the United States, 12 months after the end of the annual accounting period of the manufacturer or exporter within which it is sold in the United States to a person who is not the exporter of that merchandise,

(2) includes a description of the subject merchandise, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) Imposition of duty

(1) General rule

If the Commission, in its final determination under section 1673d(b) of this title, finds material injury or threat of material injury which, but for the suspension of liquidation under section 1673b(d)(2) of this title would have led to a finding of material injury, then entries of the subject merchandise, the liquidation of which has been suspended under section 1673b(d)(2) of this title, shall be subject to the imposition of antidumping duties under section 1673 of this title.

(2) Special rule

If the Commission, in its final determination under section 1673d(b) of this title, finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then subject merchandise which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 1673d(b) of this title shall be subject to the assessment of antidumping duties under section 1673 of this title, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) Security in lieu of estimated duty pending early determination of duty

(1) Conditions for waiver of deposit of estimated duties

The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a) of this section, the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) of this section if—

(A) the investigation has not been designated as extraordinarily complicated by reason of—

(i) the number and complexity of the transactions to be investigated or adjustments to be considered,

(ii) the novelty of the issues presented, or

(iii) the number of firms whose activities must be investigated,

(B) the final determination in the investigation has not been postponed under section 1673d(a)(2)(A) of this title;

(C) on the basis of information presented to the administering authority by any manufacturer, producer, or exporter in such form and within such time as the administering authority may require, the administering authority is satisfied that a determination will be made, within 90 days after the date of publication of an order under subsection (a) of this section, of the normal value and the export price (or the constructed export price) for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

(i) an affirmative preliminary determination by the administering authority under section 1673b(b) of this title, or

(ii) if its determination under section 1673b(b) of this title was negative, an affirmative final determination by the administering authority under section 1673d(a) of this title,

and before the date of publication of the affirmative final determination by the Commission under section 1673d(b) of this title;

(D) the party described in subparagraph (C) provides credible evidence that the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise is significantly less than the amount of such excess specified in the antidumping duty order published under subsection (a) of this section; and

(E) the data concerning the normal value and the export price (or the constructed export price) apply to sales in the usual commercial quantities and in the ordinary course of trade and the number of such sales are sufficient to form an adequate basis for comparison.

(2) Notice; hearing

If the administering authority permits the posting of a bond or other security in lieu of

the deposit of estimated antidumping duties under paragraph (1), it shall—

(A) publish notice of its action in the Federal Register, and

(B) upon the request of any interested party, hold a hearing in accordance with section 1677c of this title before determining the normal value and the export price (or the constructed export price) of the merchandise.

(3) Determinations to be basis of antidumping duty

The administering authority shall publish notice in the Federal Register of the results of its determination of normal value and export price (or the constructed export price), and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this subsection applies and also shall be the basis for the deposit of estimated antidumping duties on future entries of merchandise of manufacturers, producers, or exporters described in paragraph (1) to which the order issued under subsection (a) of this section applies.

(4) Provision of business proprietary information; written comments

Before determining whether to permit the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties, the administering authority shall—

(A) make all business proprietary information supplied to the administering authority under paragraph (1) available under a protective order in accordance with section 1677f(c) of this title to all interested parties described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title, and

(B) afford all interested parties an opportunity to file written comments on whether the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties should be permitted.

(d) Special rule for regional industries

(1) In general

In an investigation in which the Commission makes a regional industry determination under section 1677(4)(C) of this title, the administering authority shall, to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region concerned during the period of investigation.

(2) Exception for new exporters and producers

After publication of the antidumping duty order, if the administering authority finds that a new exporter or producer is exporting the subject merchandise for sale in the region concerned, the administering authority shall direct that duties be assessed on the subject merchandise of the new exporter or producer consistent with the provisions of section 1675(a)(2)(B) of this title.

(June 17, 1930, ch. 497, title VII, § 736, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 172; amended Pub. L. 99–514, title XVIII, § 1886(a)(7), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 100–418, title I, § 1325, Aug. 23, 1988, 102 Stat. 1201; Pub. L. 103–465, title II, §§ 218(b)(2), 219(c)(9), 233(a)(1)(C), (2)(A)(iii), (5)(W)–(Y), Dec. 8, 1994, 108 Stat. 4855, 4857, 4898, 4900.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–465, § 233(a)(1)(C), (2)(A)(iii), substituted ''normal value'' for ''foreign market value'' and ''export price (or the constructed export price)'' for ''United States price''.

Subsec. (a)(2). Pub. L. 103–465, § 233(a)(5)(W), substituted ''subject merchandise'' for ''class or kind of merchandise to which it applies''.

Subsec. (b)(1). Pub. L. 103–465, §§ 219(c)(9), 233(a)(5)(X), substituted ''1673b(d)(2)'' for ''1673b(d)(1)'' in two places and ''subject merchandise'' for ''merchandise subject to the antidumping duty order''.

Subsec. (b)(2). Pub. L. 103–465, § 233(a)(5)(Y), substituted ''subject merchandise'' for ''merchandise subject to an antidumping duty order''.

Subsec. (c). Pub. L. 103–465, § 233(a)(1)(C), (2)(A)(iii), substituted ''normal value'' for ''foreign market value'' and ''export price (or the constructed export price)'' for ''United States price'' in pars. (1)(C) to (E), (2)(B), and (3).

Subsec. (d). Pub. L. 103–465, § 218(b)(2), added subsec. (d).

1988—Subsec. (c)(1). Pub. L. 100–418, § 1325(a), amended par. (1) generally, designating existing provisions as cl. (C) and adding cls. (A), (B), (D), and (E).

Subsec. (c)(4). Pub. L. 100–418, § 1325(b), added par. (4).

1986—Subsec. (c)(1). Pub. L. 99–514 inserted '', and was sold to any person that is not related to such manufacturer, producer, or exporter,'' before ''on or after the date''.

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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1673c, 1673d, 1673f, 1673h, 1675, 1677, 1677f, 1677j, 1677m, 1677n of this title.

§ 1673f. Treatment of difference between deposit of estimated antidumping duty and final assessed duty under antidumping duty order

(a) Deposit of estimated antidumping duty under section 1673b(d)(1)(B) of this title

If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated antidumping duty under section 1673b(d)(1)(B) of this title is different from the amount of the antidumping duty determined under an antidumping duty order published under section 1673e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 1673d(b) of this title is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) Deposit of estimated antidumping duty under section 1673e(a)(3) of this title

If the amount of an estimated antidumping duty deposited under section 1673e(a)(3) of this title is different from the amount of the antidumping duty determined under an antidumping duty order published under section 1673e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 1673d(b) of this title is published shall be—

(1) collected, to the extent that the deposit under section 1673e(a)(3) of this title is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 1673e(a)(3) of this title is higher than the duty determined under the order,

together with interest as provided by section 1677g of this title.

(June 17, 1930, ch. 497, title VII, § 737, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 173; amended Pub. L. 103–465, title II, § 219(c)(10), Dec. 8, 1994, 108 Stat. 4857; Pub. L. 104–295, § 40, Oct. 11, 1996, 110 Stat. 3541.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–295, § 40(1), substituted ''deposit, or the amount of any bond or other security, required'' for ''deposit collected'' in introductory provisions.

Subsec. (a)(1). Pub. L. 104–295, § 40(2), substituted ''that the cash deposit, bond, or other security'' for ''the cash deposit collected''.

Subsec. (a)(2). Pub. L. 104–295, § 40(3), substituted ''refunded or released, to the extent that the cash deposit, bond, or other security'' for ''refunded, to the extent the cash deposit''.

1994—Subsec. (a). Pub. L. 103–465 substituted ''1673b(d)(1)(B)'' for ''1673b(d)(2)'' in heading and text.

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.

§ 1673g. Conditional payment of antidumping duty

(a) General rule

For all entries, or withdrawals from warehouse, for consumption of merchandise subject to an antidumping duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirements of subsection (b) of this section and deposits with the appropriate customs officer an estimated antidumping duty in an amount determined by the administering authority.

(b) Importer requirements

In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for determining the export price (or the constructed export price) of the merchandise imported by or for the account of that person, and such other information as the administering authority deems necessary for ascertaining any antidumping duty to be imposed under this subtitle;

(2) maintain and furnish to the customs officer such records concerning the sale of the merchandise as the administering authority, by regulation, requires;

(3) state under oath before the customs officer that he is not an exporter, or if he is an exporter, declare under oath at the time of entry the constructed export price of the merchandise to the customs officer if it is then known, or, if not, so declare within 30 days after the merchandise has been sold, or has been made the subject of an agreement to be sold, in the United States; and

(4) pay, or agree to pay on demand, to the customs officer the amount of antidumping duty imposed under section 1673 of this title on that merchandise.

(June 17, 1930, ch. 497, title VII, § 738, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 174; amended Pub. L. 103–465, title II, § 233(a)(2)(A)(iv), (B), Dec. 8, 1994, 108 Stat. 4898.)

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–465, § 233(a)(2)(A)(iv), substituted ''export price (or the constructed export price)'' for ''United States price''.

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

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

(a) Establishment of product categories

(1) Petitions

(A) In general

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

(B) Contents

A petition filed under subparagraph (A) shall—

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

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

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

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

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

(2) Determinations on sufficiency of petition

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

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

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

(3) Notice; hearings

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

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

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

(4) Determinations

(A) In general

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

(B) Modifications not requested by petition

(i) In general

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

(ii) Notice and hearing

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

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

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

(C) Basis of determinations

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

(b) Definitions

For purposes of this section—

(1) Eligible domestic entity

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

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

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

(2) Affirmative dumping determination

The term ''affirmative dumping determination'' means—

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

(B) any affirmative preliminary determination that—

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

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

(3) Subject of affirmative dumping determination

(A) In general

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

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

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

(B) Exclusion

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

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

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

(4) Short life cycle merchandise

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

(c) Transitional rules

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

(2) No affirmative dumping determination that—

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

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

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

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

REFERENCES IN TEXT

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

PRIOR PROVISIONS

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

AMENDMENTS

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1673b of this title.

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

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

EFFECTIVE DATE OF REPEAL

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

PART III—REVIEWS; OTHER ACTIONS REGARDING AGREEMENTS

CODIFICATION

The designation ''PART III'' was in the original ''Subtitle C'' 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.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1677, 3571 of this title.

SUBPART A—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

§ 1675. Administrative review of determinations

(a) Periodic review of amount of duty

(1) In general

At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this subtitle or under section 1303[1] of this title, an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall—

(A) review and determine the amount of any net countervailable subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net countervailable subsidy or dumping margin involved in the agreement,

and shall publish in the Federal Register the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed.

(2) Determination of antidumping duties

(A) In general

For the purpose of paragraph (1)(B), the administering authority shall determine—

(i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and

(ii) the dumping margin for each such entry.

(B) Determination of antidumping or countervailing duties for new exporters and producers

(i) In general

If the administering authority receives a request from an exporter or producer of the subject merchandise establishing that—

(I) such exporter or producer did not export the merchandise that was the subject of an antidumping duty or countervailing duty order to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation, and

(II) such exporter or producer is not affiliated (within the meaning of section 1677(33) of this title) with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during that period,

the administering authority shall conduct a review under this subsection to establish an individual weighted average dumping margin or an individual countervailing duty rate (as the case may be) for such exporter or producer.

(ii) Time for review under clause (i)

The administering authority shall commence a review under clause (i) in the calendar month beginning after—

(I) the end of the 6-month period beginning on the date of the countervailing duty or antidumping duty order under review, or

(II) the end of any 6-month period occurring thereafter,

if the request for the review is made during that 6-month period.

(iii) Posting bond or security

The administering authority shall, at the time a review under this subparagraph is initiated, direct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise.

(iv) Time limits

The administering authority shall make a preliminary determination in a review conducted under this subparagraph within 180 days after the date on which the review is initiated, and a final determination within 90 days after the date the preliminary determination is issued, except that if the administering authority concludes that the case is extraordinarily complicated, it may extend the 180-day period to 300 days and may extend the 90-day period to 150 days.

(C) Results of determinations

The determination under this paragraph shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(3) Time limits

(A) Preliminary and final determinations

The administering authority shall make a preliminary determination under subparagraph (A), (B), or (C) of paragraph (1) within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under paragraph (1) is requested, and a final determination under paragraph (1) within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245-day period to 365 days and may extend that 120-day period to 180 days. The administering authority may ex-

[1] See References in Text note below.

tend the time for making a final determination without extending the time for making a preliminary determination, if such final determination is made not later than 300 days after the date on which the preliminary determination is published.

(B) Liquidation of entries

If the administering authority orders any liquidation of entries pursuant to a review under paragraph (1), such liquidation shall be made promptly and, to the greatest extent practicable, within 90 days after the instructions to Customs are issued. In any case in which liquidation has not occurred within that 90-day period, the Secretary of the Treasury shall, upon the request of the affected party, provide an explanation thereof.

(C) Effect of pending review under section 1516a

In a case in which a final determination under paragraph (1) is under review under section 1516a of this title and a liquidation of entries covered by the determination is enjoined under section 1516a(c)(2) of this title or suspended under section 1516a(g)(5)(C) of this title, the administering authority shall, within 10 days after the final disposition of the review under section 1516a of this title, transmit to the Federal Register for publication the final disposition and issue instructions to the Customs Service with respect to the liquidation of entries pursuant to the review. In such a case, the 90-day period referred to in subparagraph (B) shall begin on the day on which the administering authority issues such instructions.

(4) Absorption of antidumping duties

During any review under this subsection initiated 2 years or 4 years after the publication of an antidumping duty order under section 1673e(a) of this title, the administering authority, if requested, shall determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. The administering authority shall notify the Commission of its findings regarding such duty absorption for the Commission to consider in conducting a review under subsection (c) of this section.

(b) Reviews based on changed circumstances

(1) In general

Whenever the administering authority or the Commission receives information concerning, or a request from an interested party for a review of—

(A) a final affirmative determination that resulted in an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, or in a countervailing duty order under this subtitle or section 1303[1] of this title,

(B) a suspension agreement accepted under section 1671c or 1673c of this title, or

(C) a final affirmative determination resulting from an investigation continued pursuant to section 1671c(g) or 1673c(g) of this title,

which shows changed circumstances sufficient to warrant a review of such determination or agreement, the administering authority or the Commission (as the case may be) shall conduct a review of the determination or agreement after publishing notice of the review in the Federal Register.

(2) Commission review

In conducting a review under this subsection, the Commission shall—

(A) in the case of a countervailing duty order or antidumping duty order or finding, determine whether revocation of the order or finding is likely to lead to continuation or recurrence of material injury,

(B) in the case of a determination made pursuant to section 1671c(h)(2) or 1673c(h)(2) of this title, determine whether the suspension agreement continues to eliminate completely the injurious effects of imports of the subject merchandise, and

(C) in the case of an affirmative determination resulting from an investigation continued under section 1671c(g) or 1673c(g) of this title, determine whether termination of the suspended investigation is likely to lead to continuation or recurrence of material injury.

(3) Burden of persuasion

During a review conducted by the Commission under this subsection—

(A) the party seeking revocation of an order or finding described in paragraph (1)(A) shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant such revocation, and

(B) the party seeking termination of a suspended investigation or a suspension agreement shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant such termination.

(4) Limitation on period for review

In the absence of good cause shown—

(A) the Commission may not review a determination made under section 1671d(b) or 1673d(b) of this title, or an investigation suspended under section 1671c or 1673c of this title, and

(B) the administering authority may not review a determination made under section 1671d(a) or 1673d(a) of this title, or an investigation suspended under section 1671c or 1673c of this title,

less than 24 months after the date of publication of notice of that determination or suspension.

(c) Five-year review

(1) In general

Notwithstanding subsection (b) of this section and except in the case of a transition order defined in paragraph (6), 5 years after the date of publication of—

(A) a countervailing duty order (other than a countervailing duty order to which

subparagraph (B) applies or which was issued without an affirmative determination of injury by the Commission under section 1303[1] of this title), an antidumping duty order, or a notice of suspension of an investigation, described in subsection (a)(1) of this section,

(B) a notice of injury determination under section 1675b of this title with respect to a countervailing duty order, or

(C) a determination under this section to continue an order or suspension agreement,

the administering authority and the Commission shall conduct a review to determine, in accordance with section 1675a of this title, whether revocation of the countervailing or antidumping duty order or termination of the investigation suspended under section 1671c or 1673c of this title would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

(2) Notice of initiation of review

Not later than 30 days before the fifth anniversary of the date described in paragraph (1), the administering authority shall publish in the Federal Register a notice of initiation of a review under this subsection and request that interested parties submit—

(A) a statement expressing their willingness to participate in the review by providing information requested by the administering authority and the Commission,

(B) a statement regarding the likely effects of revocation of the order or termination of the suspended investigation, and

(C) such other information or industry data as the administering authority or the Commission may specify.

(3) Responses to notice of initiation

(A) No response

If no interested party responds to the notice of initiation under this subsection, the administering authority shall issue a final determination, within 90 days after the initiation of a review, revoking the order or terminating the suspended investigation to which such notice relates. For purposes of this paragraph, an interested party means a party described in section 1677(9)(C), (D), (E), (F), or (G) of this title.

(B) Inadequate response

If interested parties provide inadequate responses to a notice of initiation, the administering authority, within 120 days after the initiation of the review, or the Commission, within 150 days after such initiation, may issue, without further investigation, a final determination based on the facts available, in accordance with section 1677e of this title.

(4) Waiver of participation by certain interested parties

(A) In general

An interested party described in section 1677(9)(A) or (B) of this title may elect not to participate in a review conducted by the administering authority under this subsection and to participate only in the review conducted by the Commission under this subsection.

(B) Effect of waiver

In a review in which an interested party waives its participation pursuant to this paragraph, the administering authority shall conclude that revocation of the order or termination of the investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) with respect to that interested party.

(5) Conduct of review

(A) Time limits for completion of review

Unless the review has been completed pursuant to paragraph (3) or paragraph (4) applies, the administering authority shall make its final determination pursuant to section 1675a(b) or (c) of this title within 240 days after the date on which a review is initiated under this subsection. If the administering authority makes a final affirmative determination, the Commission shall make its final determination pursuant to section 1675a(a) of this title within 360 days after the date on which a review is initiated under this subsection.

(B) Extension of time limit

The administering authority or the Commission (as the case may be) may extend the period of time for making their respective determinations under this subsection by not more than 90 days, if the administering authority or the Commission (as the case may be) determines that the review is extraordinarily complicated. In a review in which the administering authority extends the time for making a final determination, but the Commission does not extend the time for making a determination, the Commission's determination shall be made not later than 120 days after the date on which the final determination of the administering authority is published.

(C) Extraordinarily complicated

For purposes of this subsection, the administering authority or the Commission (as the case may be) may treat a review as extraordinarily complicated if—

(i) there is a large number of issues,

(ii) the issues to be considered are complex,

(iii) there is a large number of firms involved,

(iv) the orders or suspended investigations have been grouped as described in subparagraph (D), or

(v) it is a review of a transition order.

(D) Grouped reviews

The Commission, in consultation with the administering authority, may group orders or suspended investigations for review if it considers that such grouping is appropriate and will promote administrative efficiency. Where orders or suspended investigations have been grouped, the Commission shall, subject to subparagraph (B), make its final

determination under this subsection not later than 120 days after the date that the administering authority publishes notice of its final determination with respect to the last order or agreement in the group.

(6) Special transition rules

(A) Schedule for reviews of transition orders

(i) Initiation

The administering authority shall begin its review of transition orders in the 42d calendar month after the date such orders are issued. A review of all transition orders shall be initiated not later than the 5th anniversary after the date such orders are issued.

(ii) Completion

A review of a transition order shall be completed not later than 18 months after the date such review is initiated. Reviews of all transition orders shall be completed not later than 18 months after the 5th anniversary of the date such orders are issued.

(iii) Subsequent reviews

The time limits set forth in clauses (i) and (ii) shall be applied to all subsequent 5-year reviews of transition orders by substituting ''date of the determination to continue such orders'' for ''date such orders are issued''.

(iv) Revocation and termination

No transition order may be revoked under this subsection before the date that is 5 years after the date the WTO Agreement enters into force with respect to the United States.

(B) Sequence of transition reviews

The administering authority, in consultation with the Commission, shall determine such sequence of review of transition orders as it deems appropriate to promote administrative efficiency. To the extent practicable, older orders shall be reviewed first.

(C) "Transition order" defined

For purposes of this section, the term ''transition order'' means—

(i) a countervailing duty order under this subtitle or under section 1303[2] of this title,

(ii) an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, or

(iii) a suspension of an investigation under section 1671c or 1673c of this title,

which is in effect on the date the WTO Agreement enters into force with respect to the United States.

(D) Issue date for transition orders

For purposes of this subsection, a transition order shall be treated as issued on the date the WTO Agreement enters into force with respect to the United States, if such order is based on an investigation conducted by both the administering authority and the Commission.

[2] See References in Text note below.

(d) Revocation of order or finding; termination of suspended investigation

(1) In general

The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, after review under subsection (a) or (b) of this section. The administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other charges levied on the export of the subject merchandise to the United States which are specifically intended to offset the countervailable subsidy received.

(2) Five-year reviews

In the case of a review conducted under subsection (c) of this section, the administering authority shall revoke a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, unless—

(A) the administering authority makes a determination that dumping or a countervailable subsidy, as the case may be, would be likely to continue or recur, and

(B) the Commission makes a determination that material injury would be likely to continue or recur as described in section 1675a(a) of this title.

(3) Application of revocation or termination

A determination under this section to revoke an order or finding or terminate a suspended investigation shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.

(e) Hearings

Whenever the administering authority or the Commission conducts a review under this section, it shall, upon the request of an interested party, hold a hearing in accordance with section 1677c(b) of this title in connection with that review.

(f) Determination that basis for suspension no longer exists

If the determination of the Commission under subsection (b)(2)(B) of this section is negative, the suspension agreement shall be treated as not accepted, beginning on the date of publication of the Commission's determination, and the administering authority and the Commission shall proceed, under section 1671c(i) or 1673c(i) of this title, as if the suspension agreement had been violated on that date, except that no duty under any order subsequently issued shall be assessed on merchandise entered, or withdrawn from warehouse, for consumption before that date.

(g) Reviews to implement results of subsidies enforcement proceeding

(1) Violations of article 8 of the subsidies agreement

If—

(A) the administering authority receives notice from the Trade Representative of a

violation of Article 8 of the Subsidies Agreement,

(B) the administering authority has reason to believe that merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement, and

(C) no review pursuant to subsection (a)(1) of this section is in progress,

the administering authority shall conduct a review of the order or suspended investigation to determine whether the subject merchandise benefits from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement. If the administering authority determines that the subject merchandise is benefiting from the subsidy or subsidy program, it shall make appropriate adjustments in the estimated duty to be deposited or appropriate revisions to the terms of the suspension agreement.

(2) Withdrawal of subsidy or imposition of countermeasures

If the Trade Representative notifies the administering authority that, pursuant to Article 4 or Article 7 of the Subsidies Agreement—

(A)(i) the United States has imposed countermeasures, and

(ii) such countermeasures are based on the effects in the United States of imports of merchandise that is the subject of a countervailing duty order, or

(B) a WTO member country has withdrawn a countervailable subsidy provided with respect to merchandise subject to a countervailing duty order,

the administering authority shall conduct a review to determine if the amount of the estimated duty to be deposited should be adjusted or the order should be revoked.

(3) Expedited review

The administering authority shall conduct reviews under this subsection on an expedited basis, and shall publish the results of such reviews in the Federal Register.

(h) Correction of ministerial errors

The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term ''ministerial error'' includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

(June 17, 1930, ch. 497, title VII, § 751, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 175; amended Pub. L. 98–573, title VI, § 611(a)(2), (3), Oct. 30, 1984, 98 Stat. 3031; Pub. L. 99–514, title XVIII, § 1886(a)(8), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 100–418, title I, § 1333(b), Aug. 23, 1988, 102 Stat. 1209; Pub. L. 103–465, title II, §§ 220(a), 283(c), Dec. 8, 1994, 108 Stat. 4857, 4930.)

REFERENCES IN TEXT

Section 1303 of this title, referred to in subsecs. (a)(1), (b)(1)(A), and (c)(1)(A), (6)(C)(i), is defined in section 1677(26) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

The Antidumping Act, 1921, referred to in subsecs. (a)(1), (b)(1)(A), and (c)(6)(C)(ii), 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.

AMENDMENTS

1994—Pub. L. 103–465, § 283(c), added subsec. (g) and redesignated former subsec. (g) as (h).

Pub. L. 103–465, § 220(a), amended section generally, substituting present provisions for provisions relating to administrative review of determinations, which provided for periodic review of amount of duty in subsec. (a), review upon information or request in subsec. (b), revocation of countervailing duty order or antidumping duty order in subsec. (c), hearings in subsec. (d), determination that basis for suspension no longer existed in subsec. (e), and correction of ministerial errors in subsec. (f).

1988—Subsec. (f). Pub. L. 100–418 added subsec. (f).

1986—Subsec. (b)(1). Pub. L. 99–514 inserted ''or countervailing duty'' after ''antidumping'' in two places in last sentence.

1984—Subsec. (a)(1). Pub. L. 98–573, § 611(a)(2)(A), inserted ''if a request for such a review has been received and'' in provisions preceding subpar. (A).

Subsec. (b)(1). Pub. L. 98–573, § 611(a)(2)(B), substituted ''1671c of this title (other than a quantitative restriction agreement described in subsection (a)(2) or (c)(3)) or 1673c of this title (other than a quantitative restriction agreement described in subsection (a)(2))'' for ''1671c or 1673c of this title'', inserted reference to section 1676a(a)(1) or 1676a(a)(2) of this title, and inserted provision that during an investigation by the Commission, the party seeking revocation of an antidumping order shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant revocation of the antidumping order.

Subsec. (c). Pub. L. 98–573, § 611(a)(3), inserted provision that the administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

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 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, see section 626(b)(1) of Pub. L. 98–573, as amended, set out as a 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.

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements an-

nexed 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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1504, 1516a, 1671, 1671a, 1671b, 1671c, 1671d, 1671e, 1673a, 1673c, 1673e, 1675a, 1675b, 1677, 1677b, 1677e, 1677f, 1677f–1, 1677m, 1677n of this title.

§ 1675a. Special rules for section 1675(b) and 1675(c) reviews

(a) Determination of likelihood of continuation or recurrence of material injury

(1) In general

In a review conducted under section 1675(b) or (c) of this title, the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account—

(A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,

(B) whether any improvement in the state of the industry is related to the order or the suspension agreement,

(C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and

(D) in an antidumping proceeding under section 1675(c) of this title, the findings of the administering authority regarding duty absorption under section 1675(a)(4) of this title.

(2) Volume

In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including—

(A) any likely increase in production capacity or existing unused production capacity in the exporting country,

(B) existing inventories of the subject merchandise, or likely increases in inventories,

(C) the existence of barriers to the importation of such merchandise into countries other than the United States, and

(D) 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.

(3) Price

In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether—

(A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and

(B) imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.

(4) Impact on the industry

In evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to—

(A) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(B) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

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

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

(5) Basis for determination

The presence or absence of any factor which the Commission is required to consider under this subsection shall not necessarily give decisive guidance with respect to the Commission's determination of whether material injury is likely to continue or recur within a reasonably foreseeable time if the order is revoked or the suspended investigation is terminated. In making that determination, the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.

(6) Magnitude of margin of dumping and net countervailable subsidy; nature of countervailable subsidy

In making a determination under section 1675(b) or (c) of this title, the Commission may

consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy. If a countervailable subsidy is involved the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.

(7) Cumulation

For purposes of this subsection, the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.

(8) Special rule for regional industries

In a review under section 1675(b) or (c) of this title involving a regional industry, the Commission may base its determination on the regional industry defined in the original investigation under this subtitle, another region that satisfies the criteria established in section 1677(4)(C) of this title, or the United States as a whole. In determining if a regional industry analysis is appropriate for the determination in the review, the Commission shall consider whether the criteria established in section 1677(4)(C) of this title are likely to be satisfied if the order is revoked or the suspended investigation is terminated.

(b) Determination of likelihood of continuation or recurrence of a countervailable subsidy

(1) In general

In a review conducted under section 1675(c) of this title, the administering authority shall determine whether revocation of a countervailing duty order or termination of a suspended investigation under section 1671c of this title would be likely to lead to continuation or recurrence of a countervailable subsidy. The administering authority shall consider—

(A) the net countervailable subsidy determined in the investigation and subsequent reviews, and

(B) whether any change in the program which gave rise to the net countervailable subsidy described in subparagraph (A) has occurred that is likely to affect that net countervailable subsidy.

(2) Consideration of other factors

If good cause is shown, the administering authority shall also consider—

(A) programs determined to provide countervailable subsidies in other investigations or reviews under this subtitle, but only to the extent that such programs—

(i) can potentially be used by the exporters or producers subject to the review under section 1675(c) of this title, and

(ii) did not exist at the time that the countervailing duty order was issued or the suspension agreement was accepted, and

(B) programs newly alleged to provide countervailable subsidies but only to the extent that the administering authority makes an affirmative countervailing duty determination with respect to such programs and with respect to the exporters or producers subject to the review.

(3) Net countervailable subsidy

The administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated. The administering authority shall normally choose a net countervailable subsidy that was determined under section 1671d of this title or subsection (a) or (b)(1) of section 1675 of this title.

(4) Special rule

(A) Treatment of zero and de minimis rates

A net countervailable subsidy described in paragraph (1)(A) that is zero or de minimis shall not by itself require the administering authority to determine that revocation of a countervailing duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of a countervailable subsidy.

(B) Application of de minimis standards

For purposes of this paragraph, the administering authority shall apply the de minimis standards applicable to reviews conducted under subsections (a) and (b)(1) of section 1675 of this title.

(c) Determination of likelihood of continuation or recurrence of dumping

(1) In general

In a review conducted under section 1675(c) of this title, the administering authority shall determine whether revocation of an antidumping duty order or termination of a suspended investigation under section 1673c of this title would be likely to lead to continuation or recurrence of sales of the subject merchandise at less than fair value. The administering authority shall consider—

(A) the weighted average dumping margins determined in the investigation and subsequent reviews, and

(B) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order or acceptance of the suspension agreement.

(2) Consideration of other factors

If good cause is shown, the administering authority shall also consider such other price, cost, market, or economic factors as it deems relevant.

(3) Magnitude of the margin of dumping

The administering authority shall provide to the Commission the magnitude of the margin of dumping that is likely to prevail if the

order is revoked or the suspended investigation is terminated. The administering authority shall normally choose a margin that was determined under section 1673d of this title or under subsection (a) or (b)(1) of section 1675 of this title.

(4) Special rule

(A) Treatment of zero or de minimis margins

A dumping margin described in paragraph (1)(A) that is zero or de minimis shall not by itself require the administering authority to determine that revocation of an antidumping duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of sales at less than fair value.

(B) Application of de minimis standards

For purposes of this paragraph, the administering authority shall apply the de minimis standards applicable to reviews conducted under subsections (a) and (b) of section 1675 of this title.

(June 17, 1930, ch. 497, title VII, § 752, as added Pub. L. 103–465, title II, § 221(a), Dec. 8, 1994, 108 Stat. 4865.)

EFFECTIVE DATE

Section 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 an Effective Date of 1994 Amendment note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1675, 1677 of this title.

§ 1675b. Special rules for injury investigations for certain section 1303 or section 1671(c) countervailing duty orders and investigations

(a) In general

(1) Investigation by the commission upon request

In the case of a countervailing duty order described in paragraph (2), which—

(A) applies to merchandise that is the product of a Subsidies Agreement country, and

(B)(i) is in effect on the date on which such country becomes a Subsidies Agreement country, or

(ii) is issued on a date that is after the date described in clause (i) pursuant to a court order in an action brought under section 1516a of this title,

the Commission, upon receipt of a request from an interested party described in section 1677(9)(C), (D), (E), (F), or (G) of this title for an injury investigation with respect to such order, shall initiate an investigation and shall determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked.

(2) Description of countervailing duty orders

A countervailing duty order described in this paragraph is an order issued under section 1303[1] of this title or section 1671(c) of this title with respect to which the requirement of an affirmative determination of material injury was not applicable at the time such order was issued.

(3) Requirements of request for investigation

A request for an investigation under this subsection shall be submitted—

(A) in the case of an order described in paragraph (1)(B)(i), within 6 months after the date on which the country described in paragraph (1)(A) becomes a Subsidies Agreement country, or

(B) in the case of an order described in paragraph (1)(B)(ii), within 6 months after the date the order is issued.

(4) Suspension of liquidation

With respect to entries of subject merchandise made on or after—

(A) in the case of an order described in paragraph (1)(B)(i), the date on which the country described in paragraph (1)(A) becomes a Subsidies Agreement country, or

(B) in the case of an order described in paragraph (1)(B)(ii), the date on which the order is issued,

liquidation shall be suspended at the cash deposit rate in effect on the date described in subparagraph (A) or (B) (whichever is applicable).

(b) Investigation procedure and schedule

(1) Commission procedure

(A) In general

Except as otherwise provided in this section, the provisions of this subtitle regarding evidence in and procedures for investigations conducted under part I of this subtitle shall apply to investigations conducted by the Commission under this section.

(B) Time for Commission determination

Except as otherwise provided in subparagraph (C), the Commission shall issue its determination under subsection (a)(1) of this section, to the extent possible, not later than 1 year after the date on which the investigation is initiated under this section.

(C) Special rule to permit administrative flexibility

In the case of requests for investigations received under this section within 1 year after the date on which the WTO Agreement enters into force with respect to the United States, the Commission may, after consulting with the administering authority, initiate its investigations in a manner that results in determinations being made in all such investigations during the 4-year period beginning on such date.

(2) Net countervailable subsidy; nature of subsidy

(A) Net countervailable subsidy

The administering authority shall provide to the Commission the net countervailable

[1] See References in Text note below.

subsidy that is likely to prevail if the order which is the subject of the investigation is revoked. The administering authority normally shall choose a net countervailable subsidy that was determined under section 1671d of this title or subsection (a) or (b)(1) of section 1675 of this title. If the Commission considers the magnitude of the net countervailable subsidy in making its determination under this section, the Commission shall use the net countervailable subsidy provided by the administering authority.

(B) Nature of subsidy

The administering authority shall inform the Commission of, and the Commission, in making its determination under this section, shall consider, the nature of the countervailable subsidy and whether the countervailable subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

(3) Effect of Commission determination

(A) Affirmative determination

Upon being notified by the Commission that it has made an affirmative determination under subsection (a)(1) of this section—

(i) the administering authority shall order the termination of the suspension of liquidation required pursuant to subsection (a)(4) of this section, and

(ii) the countervailing duty order shall remain in effect until revoked, in whole or in part, under section 1675(d) of this title.

For purposes of section 1675(c) of this title, a countervailing duty order described in this section shall be treated as issued on the date of publication of the Commission's determination under this subsection.

(B) Negative determination

(i) In general

Upon being notified by the Commission that it has made a negative determination under subsection (a)(1) of this section, the administering authority shall revoke the countervailing duty order, and shall refund, with interest, any estimated countervailing duties collected during the period liquidation was suspended pursuant to subsection (a)(4) of this section.

(ii) Limitation on negative determination

A determination by the Commission that revocation of the order is not likely to result in material injury to an industry by reason of imports of the subject merchandise shall not be based, in whole or in part, on any export taxes, duties, or other charges levied on the export of the subject merchandise to the United States that were specifically intended to offset the countervailable subsidy received.

(4) Countervailing duty orders with respect to which no request for injury investigation is made

If, with respect to a countervailing duty order described in subsection (a) of this section, a request for an investigation is not made within the time required by subsection (a)(3) of this section, the Commission shall notify the administering authority that a negative determination has been made under subsection (a) of this section and the provisions of paragraph (3)(B) shall apply with respect to the order.

(c) Pending and suspended countervailing duty investigations

If, on the date on which a country becomes a Subsidies Agreement country, there is a countervailing duty investigation in progress or suspended under section 1303[2] of this title or section 1671(c) of this title that applies to merchandise which is a product of that country and with respect to which the requirement of an affirmative determination of material injury was not applicable at the time the investigation was initiated, the Commission shall—

(1) in the case of an investigation in progress, make a final determination under section 1671d(b) of this title within 75 days after the date of an affirmative final determination, if any, by the administering authority,

(2) in the case of a suspended investigation to which section 1671c(i)(1)(B) of this title applies, make a final determination under section 1671d(b) of this title within 120 days after receiving notice from the administering authority of the resumption of the investigation pursuant to section 1671c(i) of this title, or within 45 days after the date of an affirmative final determination, if any, by the administering authority, whichever is later, or

(3) in the case of a suspended investigation to which section 1671c(i)(1)(C) of this title applies, treat the countervailing duty order issued pursuant to such section as if it were—

(A) an order issued under subsection (a)(1)(B)(ii) of this section for purposes of subsection (a)(3) of this section; and

(B) an order issued under subsection (a)(1)(B)(i) of this section for purposes of subsection (a)(4) of this section.

(d) Publication in Federal Register

The administering authority or the Commission, as the case may be, shall publish in the Federal Register a notice of the initiation of any investigation, and a notice of any determination or revocation, made pursuant to this section.

(e) Request for simultaneous expedited review under section 1675(c)

(1) General rule

(A) Requests for reviews

Notwithstanding section 1675(c)(6)(A) of this title and except as provided in subparagraph (B), an interested party may request a review of an order under section 1675(c) of this title at the same time the party requests an investigation under subsection (a) of this section, if the order involves the same or comparable subject merchandise. Upon receipt of such request, the administering authority, after consulting with the

[2] See References in Text note below.

Commission, shall initiate a review of the order under section 1675(c) of this title. The Commission shall combine such review with the investigation under this section.

(B) Exception

If the administering authority determines that the interested party who requested an investigation under this section is a related party or an importer within the meaning of section 1677(4)(B) of this title, the administering authority may decline a request by such party to initiate a review of an order under section 1675(c) of this title which involves the same or comparable subject merchandise.

(2) Cumulation

If a review under section 1675(c) of this title is initiated under paragraph (1), such review shall be treated as having been initiated on the same day as the investigation under this section, and the Commission may, in accordance with section 1677(7)(G) of this title, cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which such investigations are treated as initiated on the same day.

(3) Time and procedure for Commission determination

The Commission shall render its determination in the investigation conducted under this section at the same time as the Commission's determination is made in the review under section 1675(c) of this title that is initiated pursuant to this subsection. The Commission shall in all other respects apply the procedures and standards set forth in section 1675(c) of this title to such section 1675(c) of this title reviews.

(June 17, 1930, ch. 497, title VII, § 753, as added Pub. L. 103–465, title II, § 271(a), Dec. 8, 1994, 108 Stat. 4918; amended Pub. L. 104–295, § 39, Oct. 11, 1996, 110 Stat. 3540.)

REFERENCES IN TEXT

Section 1303 of this title, referred to in subsecs. (a)(2) and (c), is defined in section 1677(26) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

AMENDMENTS

1996—Pub. L. 104–295, § 39(1), inserted ''or section 1671(c)'' after ''section 1303'' in section catchline.

Subsecs. (a)(2), (c). Pub. L. 104–295 inserted ''or section 1671(c) of this title'' after ''section 1303 of this title'' and struck out ''under section 1303(a)(2) of this title'' after ''material injury''.

EFFECTIVE DATE

Section 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 an Effective Date of 1994 Amendment note under section 1671 of this title.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1675, 1677e, 1677f, 1677m of this title.

SUBPART B—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

§ 1676. Required consultations

(a) Agreements in response to countervailable subsidies

Within 90 days after the administering authority accepts a quantitative restriction agreement under section 1671c(a)(2) or (c)(3) of this title, the President shall enter into consultations with the government that is party to the agreement for purposes of—

(1) eliminating the countervailable subsidy completely, or

(2) reducing the net countervailable subsidy to a level that eliminates completely the injurious effect of exports to the United States of the merchandise.

(b) Modification of agreements on basis of consultations

At the direction of the President, the administering authority shall modify a quantitative restriction agreement as a result of consultations entered into under subsection (a) of this section.

(c) Special rule regarding agreements under section 1671c(c)(3) of this title

This chapter shall cease to apply to a quantitative restriction agreement described in section 1671c(c)(3) of this title at such time as that agreement ceases to have force and effect under section 1671c(f) of this title or violation is found under section 1671c(i) of this title.

(June 17, 1930, ch. 497, title VII, § 761, as added Pub. L. 98–573, title VI, § 611(a)(4), Oct. 30, 1984, 98 Stat. 3031; amended Pub. L. 103–465, title II, § 270(a)(1)(I), (b)(1)(C), (2), Dec. 8, 1994, 108 Stat. 4917.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–465, § 270(b)(1)(C), (2), inserted ''countervailable'' before ''subsidies'' in heading.

Subsec. (a)(1), (2). Pub. L. 103–465, § 270(a)(1)(I), inserted ''countervailable'' before ''subsidy''.

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, and to 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 amend-

ed, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

§ 1676a. Required determinations

(a) In general

Before the expiration date, if any, of a quantitative restriction agreement accepted under section 1671c(a)(2) or 1671c(c)(3) of this title (if suspension of the related investigation is still in effect)—

(1) the administering authority shall, at the direction of the President, initiate a proceeding to determine whether any countervailable subsidy is being provided with respect to the subject merchandise and, if being so provided, the net countervailable subsidy; and

(2) if the administering authority initiates a proceeding under paragraph (1), the Commission 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 contribution, 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 (wheth-

er 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,

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

(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 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 para-

graph (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 expedited 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 Commission 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 (in-

cluding 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

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 shall 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1337, 1516, 1516a, 1671a, 1671b, 1671c, 1671e, 1673a, 1673b, 1673c, 1673e, 1675, 1675a, 1675b, 1677–1, 1677a, 1677b, 1677d, 1677m, 3435, 3531, 3538, 3571, 3572 of this title; title 28 section 2631.

§ 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 pro-

ceeding 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 being or has been paid or bestowed regarding the subject merchandise, the administering authority shall include in the amount of any countervailing duty imposed on the merchandise an amount equal to the amount of the competitive benefit referred to in subparagraph (1)(B),[1] except that in no event shall the amount be greater than the amount of the countervailable subsidy determined with respect to the upstream product.

(June 17, 1930, ch. 497, title VII, § 771A, as added Pub. L. 98–573, title VI, § 613(a), Oct. 30, 1984, 98 Stat. 3035; amended Pub. L. 99–514, title XVIII, § 1886(a)(10), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 103–465, title II, §§ 233(a)(5)(GG), 268, 270(a)(1)(K), (L), (2)(B), (c)(3), Dec. 8, 1994, 108 Stat. 4901, 4916, 4917; Pub. L. 104–295, § 20(b)(2), Oct. 11, 1996, 110 Stat. 3527.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–295 amended directory language of Pub. L. 103–465, § 270(a)(2)(B). See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103–465, § 268, inserted introductory provisions and struck out former introductory provisions which read as follows: ''The term 'upstream subsidy' means any subsidy described in section 1677(5)(B)(i), (ii), (iii), or (iv) of this title by the government of a country that—'', and in concluding provisions, inserted ''countervailable'' before ''subsidy''.

Subsec. (a)(1). Pub. L. 103–465, § 268(1), added par. (1) and struck out former par. (1) which read as follows: ''is paid or bestowed by that government with respect to a product (hereafter referred to as an 'input product') that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;''.

Subsec. (b)(2). Pub. L. 103–465, § 270(a)(1)(K), inserted ''countervailable'' before ''subsidy'' in two places.

Subsec. (c). Pub. L. 103–465, § 270(a)(2)(B), as amended by Pub. L. 104–295, inserted ''countervailable'' before ''subsidy'' in heading.

Pub. L. 103–465, § 270(a)(1)(L), (c)(3), inserted ''countervailable'' after ''upstream'' and substituted ''the countervailable subsidy determined'' for ''subsidization determined''.

Pub. L. 103–465, § 233(a)(5)(GG), substituted ''subject merchandise'' for ''merchandise under investigation''.

1986—Subsec. (a). Pub. L. 99–514 substituted ''(ii), (iii), or (iv)'' for ''(ii), or (iii)'' in introductory provisions.

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

[1] So in original. Probably should be ''subsection (a)(2) of this section,''.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1671 of this title.

§ 1677–2. Calculation of countervailable subsidies on certain processed agricultural products

In the case of an agricultural product processed from a raw agricultural product in which—

(1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and

(2) the processing operation adds only limited value to the raw commodity,

countervailable subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

(June 17, 1930, ch. 497, title VII, § 771B, as added Pub. L. 100–418, title I, § 1313(a), Aug. 23, 1988, 102 Stat. 1185; amended Pub. L. 100–647, title IX, § 9001(a)(4), Nov. 10, 1988, 102 Stat. 3806; Pub. L. 103–465, title II, § 270(b)(1)(D), (2), Dec. 8, 1994, 108 Stat. 4917.)

AMENDMENTS

1994—Pub. L. 103–465 inserted ''countervailable'' before ''subsidies'' in section catchline and concluding provisions.

1988—Pub. L. 100–647 amended section generally. Prior to amendment, section read as follows: ''In the case of an agricultural product processed from a raw agricultural product in which (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and (2) the processing operation adds only limited value to the raw commodity, subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.''

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

§ 1677a. Export price and constructed export price

(a) Export price

The term ''export price'' means the price at which the subject merchandise is first sold (or

agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c) of this section.

(b) Constructed export price

The term ''constructed export price'' means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d) of this section.

(c) Adjustments for export price and constructed export price

The price used to establish export price and constructed export price shall be—

(1) increased by—

(A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States,

(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and

(C) the amount of any countervailing duty imposed on the subject merchandise under part I of this subtitle to offset an export subsidy, and

(2) reduced by—

(A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 1677(6)(C) of this title.

(d) Additional adjustments to constructed export price

For purposes of this section, the price used to establish constructed export price shall also be reduced by—

(1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)—

(A) commissions for selling the subject merchandise in the United States;

(B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;

(C) any selling expenses that the seller pays on behalf of the purchaser; and

(D) any selling expenses not deducted under subparagraph (A), (B), or (C);

(2) the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e) of this section; and

(3) the profit allocated to the expenses described in paragraphs (1) and (2).

(e) Special rule for merchandise with value added after importation

Where the subject merchandise is imported by a person affiliated with the exporter or producer, and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the administering authority shall determine the constructed export price for such merchandise by using one of the following prices if there is a sufficient quantity of sales to provide a reasonable basis for comparison and the administering authority determines that the use of such sales is appropriate:

(1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person.

(2) The price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraph (1) or (2), or the administering authority determines that neither of the prices described in such paragraphs is appropriate, then the constructed export price may be determined on any other reasonable basis.

(f) Special rule for determining profit

(1) In general

For purposes of subsection (d)(3) of this section, profit shall be an amount determined by multiplying the total actual profit by the applicable percentage.

(2) Definitions

For purposes of this subsection:

(A) Applicable percentage

The term ''applicable percentage'' means the percentage determined by dividing the total United States expenses by the total expenses.

(B) Total United States expenses

The term ''total United States expenses'' means the total expenses described in subsection (d)(1) and (2) of this section.

(C) Total expenses

The term ''total expenses'' means all expenses in the first of the following categories which applies and which are incurred by or on behalf of the foreign producer and foreign exporter of the subject merchandise and by or on behalf of the United States seller affiliated with the producer or exporter with respect to the production and sale of such merchandise:

(i) The expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price.

(ii) The expenses incurred with respect to the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise.

(iii) The expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise.

(D) Total actual profit

The term ''total actual profit'' means the total profit earned by the foreign producer, exporter, and affiliated parties described in subparagraph (C) with respect to the sale of the same merchandise for which total expenses are determined under such subparagraph.

(June 17, 1930, ch. 497, title VII, § 772, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 181; amended Pub. L. 98–573, title VI, § 614, Oct. 30, 1984, 98 Stat. 3036; Pub. L. 103–465, title II, § 223, Dec. 8, 1994, 108 Stat. 4876.)

AMENDMENTS

1994—Pub. L. 103–465 amended section generally, substituting present provisions for provisions defining ''United States price'', ''purchase price'', and ''exporter's sales price'' and providing for adjustments to purchase price and exporter's sales price.

1984—Subsec. (b). Pub. L. 98–573 inserted ''a reseller or'' before ''the manufacturer''.

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 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1677b, 1677f–1 of this title.

§ 1677b. Normal value

(a) Determination

In determining under this subtitle whether subject merchandise is being, or is likely to be, sold at less than fair value, a fair comparison shall be made between the export price or constructed export price and normal value. In order to achieve a fair comparison with the export price or constructed export price, normal value shall be determined as follows:

(1) Determination of normal value

(A) In general

The normal value of the subject merchandise shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price under section 1677a(a) or (b) of this title.

(B) Price

The price referred to in subparagraph (A) is—

(i) the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price, or

(ii) in a case to which subparagraph (C) applies, the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States, if—

(I) such price is representative,

(II) the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by the exporter or producer in such other country is 5 percent or more of the aggregate quantity (or value) of the subject merchandise sold in the United States or for export to the United States, and

(III) the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price or constructed export price.

(C) Third country sales

This subparagraph applies when—

(i) the foreign like product is not sold (or offered for sale) for consumption in the exporting country as described in subparagraph (B)(i),

(ii) the administering authority determines that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold in the exporting country is insufficient to permit a proper comparison with the sales of the subject merchandise to the United States, or

(iii) the particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price.

For purposes of clause (ii), the aggregate quantity (or value) of the foreign like product sold in the exporting country shall normally be considered to be insufficient if such quantity (or value) is less than 5 percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

(2) Fictitious markets

No pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account in determining normal value. The occurrence of different movements in the prices at which different forms of the foreign like product are sold (or, in the absence of sales, offered for

sale) in the exporting country after the issuance of an antidumping duty order may be considered by the administering authority as evidence of the establishment of a fictitious market for the foreign like product if the movement in such prices appears to reduce the amount by which the normal value exceeds the export price (or the constructed export price) of the subject merchandise.

(3) Exportation from an intermediate country

Where the subject merchandise is exported to the United States from an intermediate country, normal value shall be determined in the intermediate country, except that normal value may be determined in the country of origin of the subject merchandise if—

(A) the producer knew at the time of the sale that the subject merchandise was destined for exportation;

(B) the subject merchandise is merely transshipped through the intermediate country;

(C) sales of the foreign like product in the intermediate country do not satisfy the conditions of paragraph (1)(C); or

(D) the foreign like product is not produced in the intermediate country.

(4) Use of constructed value

If the administering authority determines that the normal value of the subject merchandise cannot be determined under paragraph (1)(B)(i), then, notwithstanding paragraph (1)(B)(ii), the normal value of the subject merchandise may be the constructed value of that merchandise, as determined under subsection (e) of this section.

(5) Indirect sales or offers for sale

If the foreign like product is sold or, in the absence of sales, offered for sale through an affiliated party, the prices at which the foreign like product is sold (or offered for sale) by such affiliated party may be used in determining normal value.

(6) Adjustments

The price described in paragraph (1)(B) shall be—

(A) increased by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States;

(B) reduced by—

(i) when included in the price described in paragraph (1)(B), the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the foreign like product in condition packed ready for shipment to the place of delivery to the purchaser,

(ii) the amount, if any, included in the price described in paragraph (1)(B), attributable to any additional costs, charges, and expenses incident to bringing the foreign like product from the original place of shipment to the place of delivery to the purchaser, and

(iii) the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product, and

(C) increased or decreased by the amount of any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—

(i) the fact that the quantities in which the subject merchandise is sold or agreed to be sold to the United States are greater than or less than the quantities in which the foreign like product is sold, agreed to be sold, or offered for sale,

(ii) the fact that merchandise described in subparagraph (B) or (C) of section 1677(16) of this title is used in determining normal value, or

(iii) other differences in the circumstances of sale.

(7) Additional adjustments

(A) Level of trade

The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade between the export price or constructed export price and normal value, if the difference in level of trade—

(i) involves the performance of different selling activities; and

(ii) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

In a case described in the preceding sentence, the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.

(B) Constructed export price offset

When normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine under subparagraph (A)(ii) a level of trade adjustment, normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 1677a(d)(1)(D) of this title.

(8) Adjustments to constructed value

Constructed value as determined under subsection (e) of this section, may be adjusted, as appropriate, pursuant to this subsection.

(b) Sales at less than cost of production

(1) Determination; sales disregarded

Whenever the administering authority has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of that product, the administering authority shall determine whether, in fact, such sales were made at less than the cost of production. If the administering authority determines that sales made at less than the cost of production—

(A) have been made within an extended period of time in substantial quantities, and

(B) were not at prices which permit recovery of all costs within a reasonable period of time,

such sales may be disregarded in the determination of normal value. Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the merchandise.

(2) Definitions and special rules

For purposes of this subsection—

(A) Reasonable grounds to believe or suspect

There are reasonable grounds to believe or suspect that sales of the foreign like product were made at prices that are less than the cost of production of the product, if—

(i) in an investigation initiated under section 1673a of this title or a review conducted under section 1675 of this title, an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title provides information, based upon observed prices or constructed prices or costs, that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of the product; or

(ii) in a review conducted under section 1675 of this title involving a specific exporter, the administering authority disregarded some or all of the exporter's sales pursuant to paragraph (1) in the investigation or if a review has been completed, in the most recently completed review.

(B) Extended period of time

The term ''extended period of time'' means a period that is normally 1 year, but not less than 6 months.

(C) Substantial quantities

Sales made at prices below the cost of production have been made in substantial quantities if—

(i) the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value, or

(ii) the weighted average per unit price of the sales under consideration for the determination of normal value is less than the weighted average per unit cost of production for such sales.

(D) Recovery of costs

If prices which are below the per unit cost of production at the time of sale are above the weighted average per unit cost of production for the period of investigation or review, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

(3) Calculation of cost of production

For purposes of this part, the cost of production shall be an amount equal to the sum of—

(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business;

(B) an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the foreign like product in condition packed ready for shipment.

For purposes of subparagraph (A), if the normal value is based on the price of the foreign like product sold for consumption in a country other than the exporting country, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation.

(c) Nonmarket economy countries

(1) In general

If—

(A) the subject merchandise is exported from a nonmarket economy country, and

(B) the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined under subsection (a) of this section,

the administering authority shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

(2) Exception

If the administering authority finds that the available information is inadequate for purposes of determining the normal value of sub-

ject merchandise under paragraph (1), the administering authority shall determine the normal value on the basis of the price at which merchandise that is—

(A) comparable to the subject merchandise, and

(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country,

is sold in other countries, including the United States.

(3) Factors of production

For purposes of paragraph (1), the factors of production utilized in producing merchandise include, but are not limited to—

(A) hours of labor required,

(B) quantities of raw materials employed,

(C) amounts of energy and other utilities consumed, and

(D) representative capital cost, including depreciation.

(4) Valuation of factors of production

The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—

(A) at a level of economic development comparable to that of the nonmarket economy country, and

(B) significant producers of comparable merchandise.

(d) Special rule for certain multinational corporations

Whenever, in the course of an investigation under this subtitle, the administering authority determines that—

(1) subject merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of the foreign like product which are located in another country or countries,

(2) subsection (a)(1)(C) of this section applies, and

(3) the normal value of the foreign like product produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like product produced in the facilities located in the exporting country,

it shall determine the normal value of the subject merchandise by reference to the normal value at which the foreign like product is sold in substantial quantities from one or more facilities outside the exporting country. The administering authority, in making any determination under this paragraph, shall make adjustments for the difference between the cost of production (including taxes, labor, materials, and overhead) of the foreign like product produced in facilities outside the exporting country and costs of production of the foreign like product produced in facilities in the exporting country, if such differences are demonstrated to its satisfaction. For purposes of this subsection, in determining the normal value of the foreign like product produced in a country outside of the exporting country, the administering authority shall determine its price at the time of exportation from the exporting country and shall make any adjustments required by subsection (a) of this section for the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the exporting country.

(e) Constructed value

For purposes of this subtitle, the constructed value of imported merchandise shall be an amount equal to the sum of—

(1) the cost of materials and fabrication or other processing of any kind employed in producing the merchandise, during a period which would ordinarily permit the production of the merchandise in the ordinary course of business;

(2)(A) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or

(B) if actual data are not available with respect to the amounts described in subparagraph (A), then—

(i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,

(ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or

(iii) the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the subject merchandise in condition packed ready for shipment to the United States.

For purposes of paragraph (1), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials.

(f) Special rules for calculation of cost of production and for calculation of constructed value

For purposes of subsections (b) and (e) of this section.—

(1) Costs

(A) In general

Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

(B) Nonrecurring costs

Costs shall be adjusted appropriately for those nonrecurring costs that benefit current or future production, or both.

(C) Startup costs

(i) In general

Costs shall be adjusted appropriately for circumstances in which costs incurred during the time period covered by the investigation or review are affected by startup operations.

(ii) Startup operations

Adjustments shall be made for startup operations only where—

(I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and

(II) production levels are limited by technical factors associated with the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles.

(iii) Adjustment for startup operations

The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the merchandise at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation or review under this subtitle, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation or review. For purposes of this subparagraph, the startup period ends at the point at which the level of commercial production that is characteristic of the merchandise, producer, or industry concerned is achieved.

(2) Transactions disregarded

A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

(3) Major input rule

If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

(June 17, 1930, ch. 497, title VII, § 773, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 182; amended Pub. L. 98–573, title VI, §§ 615, 620(b), Oct. 30, 1984, 98 Stat. 3036, 3039; Pub. L. 99–514, title XVIII, § 1886(a)(11), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 100–418, title I, §§ 1316(a), 1318, 1319, Aug. 23, 1988, 102 Stat. 1186, 1189; Pub. L. 103–465, title II, § 224, Dec. 8, 1994, 108 Stat. 4878.)

AMENDMENTS

1994—Pub. L. 103–465 amended section generally, substituting present provisions for provisions relating to foreign market value, which provided for determination of value in subsec. (a), sales at less than cost of production in subsec. (b), treatment of merchandise from nonmarket economy countries in subsec. (c), special rule for certain multinational corporations in subsec. (d), determination of constructed value in subsec. (e), and exportation from an intermediate country in subsec. (f).

1988—Subsec. (a)(5). Pub. L. 100–418, § 1319, added par. (5).

Subsec. (c). Pub. L. 100–418, § 1316(a), amended subsec. (c) generally, substituting provisions relating to nonmarket economy countries, for provisions relating to State-controlled economies.

Subsec. (e)(2) to (4). Pub. L. 100–418, § 1318, substituted ''(4)'' for ''(3)'' wherever appearing in par. (2), added par.

(3), and redesignated former par. (3) as (4) and in introductory provisions substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

1986—Subsecs. (f), (g). Pub. L. 99–514 redesignated subsec. (g) as (f).

1984—Subsec. (a)(1). Pub. L. 98–573, § 615(1), substituted ''time such merchandise is first sold within the United States by the person for whom (or for whose account) the merchandise is imported to any other person who is not described in subsection (e)(3) of this section with respect to such person'' for ''time of exportation of such merchandise to the United States'' in provisions before subpar. (A).

Subsecs. (a)(1)(A), (4)(A), (e)(1)(B). Pub. L. 98–573, § 615(2), substituted ''commercial quantities'' for ''wholesale quantities'' wherever appearing.

Subsec. (f). Pub. L. 98–573, § 620(b), struck out subsec. (f) which related to the authority to use sampling techniques and to disregard insignificant adjustments.

Subsec. (g). Pub. L. 98–573, § 615(3), added subsec. (g).

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 sections 1316(a) and 1318 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, and amendment by section 1319 of Pub. L. 100–418 applicable with respect to reviews initiated under section 1673e(c) or 1675 of this title after Aug. 23, 1988, and to reviews initiated under such sections which are pending on Aug. 23, 1988, and in which a request for revocation is pending on Aug. 23, 1988, see section 1337(b), (f) of Pub. L. 100–418, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 615 of Pub. L. 98–573 effective Oct. 30, 1984, and amendment by section 620(b) of 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, see section 626(a), (b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1677, 1677f–1 of this title.

§ 1677b–1. Currency conversion

(a) In general

In an antidumping proceeding under this subtitle, the administering authority shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise, except that, if it is established that a currency transaction on forward markets is directly linked to an export sale under consideration, the exchange rate specified with respect to such currency in the forward sale agreement shall be used to convert the foreign currency. Fluctuations in exchange rates shall be ignored.

(b) Sustained movement in foreign currency value

In an investigation under part II of this subtitle, if there is a sustained movement in the value of the foreign currency relative to the United States dollar, the administering authority shall allow exporters at least 60 days to adjust their export prices to reflect such sustained movement.

(June 17, 1930, ch. 497, title VII, § 773A, as added Pub. L. 103–465, title II, § 225(a), Dec. 8, 1994, 108 Stat. 4886.)

EFFECTIVE DATE

Section 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 an Effective Date of 1994 Amendment note under section 1671 of this title.

§ 1677c. Hearings

(a) Investigation hearings

(1) In general

Except as provided in paragraph (2), the administering authority and the Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 1671d or 1673d of this title.

(2) Exception

If investigations are initiated under part I and part II of this subtitle regarding the same merchandise from the same country within 6 months of each other (but before a final determination is made in either investigation), the holding of a hearing by the Commission in the course of one of the investigations shall be treated as compliance with paragraph (1) for both investigations, unless the Commission considers that special circumstances require that a hearing be held in the course of each of the investigations. During any investigation regarding which the holding of a hearing is waived under this paragraph, the Commission shall allow any party to submit such additional written comment as it considers relevant.

(b) Procedures

Any hearing required or permitted under this subtitle shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, or to section 702 of such title.

(June 17, 1930, ch. 497, title VII, § 774, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 186; amended Pub. L. 98–573, title VI, § 616, Oct. 30, 1984, 98 Stat. 3037.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–573 designated existing provisions as par. (1), inserted ''Except as provided in paragraph (2),'', and added par. (2).

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1673e, 1675, 1676a, 1677f of this title.

§ 1677d. Countervailable subsidy practices discovered during a proceeding

If, in the course of a proceeding under this subtitle, the administering authority discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition, or if the administering authority receives notice from the Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, then the administering authority—

(1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding, or

(2) shall transfer the information (other than confidential information) concerning the practice, subsidy, or subsidy program to the library maintained under section 1677f(a)(1) of this title, if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to any other merchandise.

(June 17, 1930, ch. 497, title VII, § 775, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 186; amended Pub. L. 98–573, title VI, § 617, Oct. 30, 1984, 98 Stat. 3037; Pub. L. 99–514, title XVIII, § 1886(a)(12), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 103–465, title II, § 283(b), Dec. 8, 1994, 108 Stat. 4930.)

AMENDMENTS

1994—Pub. L. 103–465 substituted ''Countervailable subsidy'' for ''Subsidy'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''If, in the course of a proceeding under this subtitle, the administering authority discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then the administering authority—

''(1) shall include the practice in the proceeding if it appears to be a subsidy with respect to the merchandise which is the subject of the proceeding, or

''(2) shall transfer the information concerning the practice (other than confidential information) to the library maintained under section 1677f(a)(1) of this title, if the practice appears to be a subsidy with respect to any other merchandise.''

1986—Pub. L. 99–514 substituted ''a proceeding'' for ''an proceeding'' in introductory provisions.

1984—Pub. L. 98–573 substituted ''proceeding'' for ''investigation'' wherever appearing.

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 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.

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.

§ 1677e. Determinations on basis of facts available

(a) In general

If—

(1) necessary information is not available on the record, or

(2) an interested party or any other person—

(A) withholds information that has been requested by the administering authority or the Commission under this subtitle,

(B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 1677m of this title,

(C) significantly impedes a proceeding under this subtitle, or

(D) provides such information but the information cannot be verified as provided in section 1677m(i) of this title,

the administering authority and the Commission shall, subject to section 1677m(d) of this title, use the facts otherwise available in reaching the applicable determination under this subtitle.

(b) Adverse inferences

If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this subtitle, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—

(1) the petition,

(2) a final determination in the investigation under this subtitle,

(3) any previous review under section 1675 of this title or determination under section 1675b of this title, or

(4) any other information placed on the record.

(c) Corroboration of secondary information

When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation or review, the administering authority or the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

(June 17, 1930, ch. 497, title VII, § 776, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 186; amended Pub. L. 98–573, title VI, § 618, Oct. 30, 1984, 98 Stat. 3037; Pub. L. 100–418, title I, §§ 1326(d)(1), 1331, Aug. 23, 1988, 102 Stat. 1204, 1207; Pub. L. 103–465, title II, § 231(c), Dec. 8, 1994, 108 Stat. 4896.)

AMENDMENTS

1994—Pub. L. 103–465 amended section generally, substituting present provisions for provisions relating to 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1671d, 1673d, 1675 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 Commission 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 Commis-

sion, 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 addresses 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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1671b, 1673e, 1677, 1677n, 3432, 3451 of this title; title 28 sections 1581, 1584, 2631, 2635, 2636, 2640, 2643.

§ 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 the administering authority. The administering authority shall, to the greatest extent possible, consult with the exporters and producers regarding the method to be used to select exporters, producers, or types of products under this section.

(c) Determination of dumping margin

(1) General rule

In determining weighted average dumping margins under section 1673b(d), 1673d(c), or 1675(a) of this title, the administering authority shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise.

(2) Exception

If it is not practicable to make individual weighted average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may determine the weighted average dumping margins for a reasonable number of exporters or producers by limiting its examination to—

(A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or

(B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

(d) Determination of less than fair value

(1) Investigations

(A) In general

In an investigation under part II of this subtitle, the administering authority shall determine whether the subject merchandise is being sold in the United States at less than fair value—

(i) by comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise, or

(ii) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(B) Exception

The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if—

(i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and

(ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

(2) Reviews

In a review under section 1675 of this title, when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.

(e) Determination of countervailable subsidy rate

(1) General rule

In determining countervailable subsidy rates under section 1671b(d), 1671d(c), or 1675(a) of this title, the administering authority shall determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.

(2) Exception

If the administering authority determines that it is not practicable to determine individual countervailable subsidy rates under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may—

(A) determine individual countervailable subsidy rates for a reasonable number of exporters or producers by limiting its examination to—

(i) a sample of exporters or producers that the administering authority determines is statistically valid based on the information available to the administering authority at the time of selection, or

(ii) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the administering authority determines can be reasonably examined; or

(B) determine a single country-wide subsidy rate to be applied to all exporters and producers.

The individual countervailable subsidy rates determined under subparagraph (A) shall be

used to determine the all-others rate under section 1671d(c)(5) of this title.

(June 17, 1930, ch. 497, title VII, § 777A, as added Pub. L. 98–573, title VI, § 620(a), Oct. 30, 1984, 98 Stat. 3039; amended Pub. L. 103–465, title II, §§ 229(a), 269(a), (b)(1), Dec. 8, 1994, 108 Stat. 4889, 4916.)

AMENDMENTS

1994—Pub. L. 103–465, § 269(b)(1), inserted ''and countervailable subsidy rate'' after ''margin'' in section catchline.

Pub. L. 103–465, § 269(a), added subsec. (e).

Pub. L. 103–465, § 229(a), amended section generally, substituting present provisions for provisions authorizing use of averaging or generally recognized sampling techniques for purposes of determining United States price or foreign market value and for purposes of annual reviews under section 1675 of this title, and providing for selection of samples and averages by administering authority.

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, and to 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1671b, 1671d, 1677m of this title.

§ 1677g. Interest on certain overpayments and underpayments

(a) General rule

Interest shall be payable on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on and after—

(1) the date of publication of a countervailing or antidumping duty order under this subtitle or section 1303[1] of this title, or

(2) the date of a finding under the Antidumping Act, 1921.

(b) Rate

The rate of interest payable under subsection (a) of this section for any period of time is the rate of interest established under section 6621 of title 26 for such period.

(June 17, 1930, ch. 497, title VII, § 778, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 188; amended Pub. L. 98–573, title VI, § 621, Oct. 30, 1984, 98 Stat. 3039; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Section 1303 of this title, referred to in subsec. (a)(1), is defined in section 1677(26) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

[1] See References in Text note below.

The Antidumping Act, 1921, referred to in subsec. (a)(2), 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.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1984—Subsec. (a). Pub. L. 98–573 amended subsec. (a) generally, substituting provisions making interest payable on and after the date of publication of a countervailing or antidumping duty order under this subtitle or section 1303 of this title or the date of a finding under the Antidumping Act, 1921 for provisions making interest payable on and after the date on which notice of an affirmative determination by the Commission under section 1671d(b) or 1673d(b) of this title with respect to such merchandise was published.

Subsec. (b). Pub. L. 98–573 amended subsec. (b) generally, substituting provisions that the rate of interest payable under subsec. (a) for any period of time is the rate of interest established under section 6621 of title 26 for such period for provision that the rate at which such interest was payable would be 8 percent per annum or, if higher, the rate in effect under section 6621 of title 26 on the date on which the rate or amount of the duty was finally determined.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 applicable with respect to merchandise that is unliquidated on or after Nov. 4, 1984, see section 626(b)(4) of Pub. L. 98–573, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1671f, 1673f, 3556 of this title.

§ 1677h. Drawback treatment

For purposes of any law relating to the drawback of customs duties, countervailing duties and antidumping duties imposed by this subtitle shall not be treated as being regular customs duties.

(June 17, 1930, ch. 497, title VII, § 779, as added Pub. L. 98–573, title VI, § 622(a)(2), Oct. 30, 1984, 98 Stat. 3039; amended Pub. L. 100–418, title I, § 1334(a), (b)(1), Aug. 23, 1988, 102 Stat. 1209, 1210.)

AMENDMENTS

1988—Pub. L. 100–418 substituted ''Drawback treatment'' for ''Drawbacks'' in section catchline and ''not be treated as being regular'' for ''be treated as any other'' in text.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable with respect to articles entered, or withdrawn from warehouse for consumption, on or after Aug. 23, 1988, see section 1337(d) of Pub. L. 100–418, set out as a note under section 1671 of this title.

EFFECTIVE DATE

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

§ 1677i. Downstream product monitoring

(a) Petition requesting monitoring

(1) In general

A domestic producer of an article that is like a component part or a downstream prod-

uct may petition the administering authority to designate a downstream product for monitoring under subsection (b) of this section. The petition shall specify—

(A) the downstream product,

(B) the component product incorporated into such downstream product, and

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

(2) Determination regarding petition

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

(A) whether there is a reasonable likelihood that imports into the United States of the downstream product will increase as an indirect result of any diversion with respect to the component part, and

(B) whether—

(i) the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement (within the meaning of section 804 of the Trade and Tariff Act of 1984),

(ii) merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of investigations suspended under section 1671c or 1673c of this title or countervailing or antidumping duty orders issued under this subtitle or section 1303[1] of this title, or

(iii) merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least 2 investigations suspended under section 1671c or 1673c of this title or countervailing or antidumping duty orders issued under this subtitle or section 1303[1] of this title.

(3) Factors to take into account

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

(A) the value of the component part in relation to the value of the downstream product,

(B) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product, and

(C) the relationship between the producers of component parts and producers of downstream products.

(4) Publication of determination

The administering authority shall publish in the Federal Register notice of each determination made under paragraph (2) and, if the determination made under paragraph (2)(A) and a determination made under any subparagraph of paragraph (2)(B) are affirmative, shall transmit a copy of such determinations and the petition to the Commission.

(5) Determinations not subject to judicial review

Notwithstanding any other provision of law, any determination made by the administering authority under paragraph (2) shall not be subject to judicial review.

(b) Monitoring by Commission

(1) In general

If the determination made under subsection (a)(2)(A) of this section and a determination made under any clause of subsection (a)(2)(B) of this section with respect to a petition are affirmative, the Commission shall immediately commence monitoring of trade in the downstream product that is the subject of the determination made under subsection (a)(2)(A) of this section. If the Commission finds that imports of a downstream product being monitored increased during any calendar quarter by 5 percent or more over the preceding quarter, the Commission shall analyze that increase in the context of overall economic conditions in the product sector.

(2) Reports

The Commission shall make quarterly reports to the administering authority regarding the monitoring and analyses conducted under paragraph (1). The Commission shall make the reports available to the public.

(c) Action on basis of monitoring reports

The administering authority shall review the information in the reports submitted by the Commission under subsection (b)(2) of this section and shall—

(1) consider the information in determining whether to initiate an investigation under section 1671a(a) or 1673a(a) of this title regarding any downstream product, and

(2) request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to component parts.

(d) Definitions

For purposes of this section—

(1) The term ''component part'' means any imported article that—

(A) during the 5-year period ending on the date on which the petition is filed under subsection (a) of this section, has been subject to—

(i) a countervailing or antidumping duty order issued under this subtitle or section 1303[2] of this title that requires the deposit of estimated countervailing or antidumping duties imposed at a rate of at least 15 percent ad valorem, or

(ii) an agreement entered into under section 1671c, 1673c, or 1303[2] of this title after a preliminary affirmative determination under section 1671b(b), 1673b(b)(1), or 1303[2] of this title was made by the administer-

[1] See References in Text note below.

[2] See References in Text note below.

ing authority which included a determination that the estimated net countervailable subsidy was at least 15 percent ad valorem or that the estimated average amount by which the normal value exceeded the export price (or the constructed export price) was at least 15 percent ad valorem, and

(B) because of its inherent characteristics, is routinely used as a major part, component, assembly, subassembly, or material in a downstream product.

(2) The term ''downstream product'' means any manufactured article—

(A) which is imported into the United States, and

(B) into which is incorporated any component part.

(June 17, 1930, ch. 497, title VII, § 780, as added Pub. L. 100–418, title I, § 1320(a), Aug. 23, 1988, 102 Stat. 1189; amended Pub. L. 103–465, title II, §§ 233(a)(1)(E), (2)(A)(vi), 261(d)(1)(B)(iv), 270(a)(1)(M), Dec. 8, 1994, 108 Stat. 4898, 4910, 4917.)

REFERENCES IN TEXT

Section 804 of the Trade and Tariff Act of 1984, referred to in subsec. (a)(2)(B)(i), is section 804 of Pub. L. 98–573, which is set out as a note under section 2253 of this title.

Section 1303 of this title, referred to in subsecs. (a)(2)(B)(ii), (iii) and (d)(1)(A)(i), (ii), is defined in section 1677(26) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–465, § 261(d)(1)(B)(iv), substituted ''or 1673a(a)'' for '', 1673a(a), or 1303''.

Subsec. (d)(1)(A)(ii). Pub. L. 103–465, § 270(a)(1)(M), inserted ''countervailable'' before ''subsidy''.

Pub. L. 103–465, § 233(a)(1)(E), (2)(A)(vi), substituted ''normal value'' for ''foreign market value'' and ''export price (or the constructed export price)'' for ''United States price''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 233(a)(1)(E), (2)(A)(vi) and 270(a)(1)(M) of Pub. L. 103–465 effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of this chapter after such date, see section 291 of Pub. L. 103–465, set out as a note under section 1671 of this title.

Amendment by section 261(d)(1)(B)(iv) of Pub. L. 103–465 effective on the effective date of title II of Pub. L. 103–465, Jan. 1, 1995, see section 261(d)(2) of Pub. L. 103–465, set out as a note under section 1315 of this title.

§ 1677j. Prevention of circumvention of antidumping and countervailing duty orders

(a) Merchandise completed or assembled in United States

(1) In general

If—

(A) merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—

(i) an antidumping duty order issued under section 1673e of this title,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 1671e of this title or section 1303[1] of this title,

(B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies,

(C) the process of assembly or completion in the United States is minor or insignificant, and

(D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise,

the administering authority, after taking into account any advice provided by the Commission under subsection (e) of this section, may include within the scope of such order or finding the imported parts or components referred to in subparagraph (B) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.

(2) Determination of whether process is minor or insignificant

In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account—

(A) the level of investment in the United States,

(B) the level of research and development in the United States,

(C) the nature of the production process in the United States,

(D) the extent of production facilities in the United States, and

(E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

(3) Factors to consider

In determining whether to include parts or components in a countervailing or antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

(A) the pattern of trade, including sourcing patterns,

(B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order or finding described in paragraph (1) applies, and

(C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

(b) Merchandise completed or assembled in other foreign countries

(1) In general

If—

[1] See References in Text note below.

(A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of—

(i) an antidumping duty order issued under section 1673e of this title,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 1671e of this title or section 1303[1] of this title,

(B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

(i) is subject to such order or finding, or

(ii) is produced in the foreign country with respect to which such order or finding applies,

(C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is minor or insignificant,

(D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States, and

(E) the administering authority determines that action is appropriate under this paragraph to prevent evasion of such order or finding,

the administering authority, after taking into account any advice provided by the Commission under subsection (e) of this section, may include such imported merchandise within the scope of such order or finding at any time such order or finding is in effect.

(2) Determination of whether process is minor or insignificant

In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account—

(A) the level of investment in the foreign country,

(B) the level of research and development in the foreign country,

(C) the nature of the production process in the foreign country,

(D) the extent of production facilities in the foreign country, and

(E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

(3) Factors to consider

In determining whether to include merchandise assembled or completed in a foreign country in a countervailing duty order or an antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

(A) the pattern of trade, including sourcing patterns,

(B) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B) is affiliated with the person who uses the merchandise described in paragraph (1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and

(C) whether imports into the foreign country of the merchandise described in paragraph (1)(B) have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

(c) Minor alterations of merchandise

(1) In general

The class or kind of merchandise subject to—

(A) an investigation under this subtitle,

(B) an antidumping duty order issued under section 1673e of this title,

(C) a finding issued under the Antidumping Act, 1921, or

(D) a countervailing duty order issued under section 1671e of this title or section 1303[2] of this title,

shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) Exception

Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

(d) Later-developed merchandise

(1) In general

For purposes of determining whether merchandise developed after an investigation is initiated under this subtitle or section 1303[2] of this title (hereafter in this paragraph referred to as the ''later-developed merchandise'') is within the scope of an outstanding antidumping or countervailing duty order issued under this subtitle or section 1303[2] of this title as a result of such investigation, the administering authority shall consider whether—

(A) the later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the ''earlier product''),

(B) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product,

(C) the ultimate use of the earlier product and the later-developed merchandise are the same,

(D) the later-developed merchandise is sold through the same channels of trade as the earlier product, and

(E) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

The administering authority shall take into account any advice provided by the Commis-

[2] See References in Text note below.

sion under subsection (e) of this section before making a determination under this subparagraph.

(2) Exclusion from orders

The administering authority may not exclude a later-developed merchandise from a countervailing or antidumping duty order merely because the merchandise—

(A) is classified under a tariff classification other than that identified in the petition or the administering authority's prior notices during the proceeding, or

(B) permits the purchaser to perform additional functions, unless such additional functions constitute the primary use of the merchandise and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the merchandise.

(e) Commission advice

(1) Notification to Commission of proposed action

Before making a determination—

(A) under subsection (a) of this section with respect to merchandise completed or assembled in the United States (other than minor completion or assembly),

(B) under subsection (b) of this section with respect to merchandise completed or assembled in other foreign countries, or

(C) under subsection (d) of this section with respect to any later-developed merchandise which incorporates a significant technological advance or significant alteration of an earlier product,

with respect to an antidumping or countervailing duty order or finding as to which the Commission has made an affirmative injury determination, the administering authority shall notify the Commission of the proposed inclusion of such merchandise in such countervailing or antidumping order or finding. Notwithstanding any other provision of law, a decision by the administering authority regarding whether any merchandise is within a category for which notice is required under this paragraph is not subject to judicial review.

(2) Request for consultation

After receiving notice under paragraph (1), the Commission may request consultations with the administering authority regarding the inclusion. Upon the request of the Commission, the administering authority shall consult with the Commission and any such consultation shall be completed within 15 days after the date of the request.

(3) Commission advice

If the Commission believes, after consultation under paragraph (2), that a significant injury issue is presented by the proposed inclusion, the Commission may provide written advice to the administering authority as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order or finding is based. If the Commission decides to provide such written advice, it shall promptly notify the administering authority of its intention to do so, and must provide such advice within 60 days after the date of notification under paragraph (1). For purposes of formulating its advice with respect to merchandise completed or assembled in the United States from parts or components produced in a foreign country, the Commission shall consider whether the inclusion of such parts or components taken as a whole would be inconsistent with its prior affirmative determination.

(f) Time limits for administering authority determinations

The administering authority shall, to the maximum extent practicable, make the determinations under this section within 300 days from the date of the initiation of a countervailing duty or antidumping circumvention inquiry under this section.

(June 17, 1930, ch. 497, title VII, § 781, as added Pub. L. 100–418, title I, § 1321(a), Aug. 23, 1988, 102 Stat. 1192; amended Pub. L. 103–465, title II, § 230, Dec. 8, 1994, 108 Stat. 4891.)

REFERENCES IN TEXT

The Antidumping Act, 1921, referred to in subsecs. (a)(1)(A)(ii), (b)(1)(A)(ii), and (c)(1)(C), 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.

Section 1303 of this title, referred to in subsecs. (a)(1)(A)(iii), (b)(1)(A)(iii), (c)(1)(D), and (d)(1), is defined in section 1677(26) of this title to mean section 1330 as in effect on the day before Jan. 1, 1995.

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–465, § 230(a), amended subsecs. (a) and (b) generally, to include provisions relating to whether process of assembly or completion of merchandise in United States or foreign countries is minor or insignificant.

Subsec. (f). Pub. L. 103–465, § 230(b), added subsec. (f).

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 articles entered, or withdrawn from warehouse for consumption, on or after Aug. 23, 1988, see section 1337(d) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 1671 of this title.

§ 1677k. Third-country dumping

(a) Definitions

For purposes of this section:

(1)(A) The term ''Agreement'' means the Agreement on Implementation of Article VI of the GATT 1994 (relating to antidumping measures).

(B) The term ''GATT 1994'' has the meaning given that term in section 3501(1)(B) of this title.

(2) The term ''Agreement country'' means a foreign country that has accepted the Agreement.

(3) The term ''Trade Representative'' means the United States Trade Representative.

(b) Petition by domestic industry

(1) A domestic industry that produces a product that is like or directly competitive with merchandise produced by a foreign country (whether or not an Agreement country) may, if it has reason to believe that—

(A) such merchandise is being dumped in an Agreement country; and

(B) such domestic industry is being materially injured, or threatened with material injury, by reason of such dumping;

submit a petition to the Trade Representative that alleges the elements referred to in subparagraphs (A) and (B) and requests the Trade Representative to take action under subsection (c) of this section on behalf of the domestic industry.

(2) A petition submitted under paragraph (1) shall contain such detailed information as the Trade Representative may require in support of the allegations in the petition.

(c) Application for antidumping action on behalf of domestic industry

(1) If the Trade Representative, on the basis of the information contained in a petition submitted under paragraph (1), determines that there is a reasonable basis for the allegations in the petition, the Trade Representative shall submit to the appropriate authority of the Agreement country where the alleged dumping is occurring an application pursuant to Article 12 of the Agreement which requests that appropriate antidumping action under the law of that country be taken, on behalf of the United States, with respect to imports into that country of the merchandise concerned.

(2) At the request of the Trade Representative, the appropriate officers of the Department of Commerce and the United States International Trade Commission shall assist the Trade Representative in preparing the application under paragraph (1).

(d) Consultation after submission of application

After submitting an application under subsection (c)(1) of this section, the Trade Representative shall seek consultations with the appropriate authority of the Agreement country regarding the request for antidumping action.

(e) Action upon refusal of Agreement country to act

If the appropriate authority of an Agreement country refuses to undertake antidumping measures in response to a request made therefor by the Trade Representative under subsection (c) of this section, the Trade Representative shall promptly consult with the domestic industry on whether action under any other law of the United States is appropriate.

(Pub. L. 100–418, title I, § 1317, Aug. 23, 1988, 102 Stat. 1188; Pub. L. 103–465, title VI, § 621(a)(1), Dec. 8, 1994, 108 Stat. 4992.)

CODIFICATION

Section was enacted as part of the Omnibus Trade and Competitiveness Act of 1988, and not as part of the Tariff Act of 1930 which comprises this chapter.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–465 designated existing provisions as subpar. (A), substituted ''GATT 1994'' for ''General Agreement on Tariffs and Trade'', and added subpar. (B).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 621(b) of Pub. L. 103–465 provided that: ''The amendments made by this section [amending this section and sections 2171, 2411, 2702, 2905, 2906, 3107, 3111, and 3202 of this title] shall take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995].''

§ 1677*l*. Antidumping and countervailing duty collections

The Commissioner of Customs shall before the 60th day of each fiscal year after fiscal year 1994 submit to Congress a report regarding the collection during the preceding fiscal year of duties imposed under the antidumping and countervailing duty laws.

(Pub. L. 103–182, title VI, § 691(a), Dec. 8, 1993, 107 Stat. 2223.)

CODIFICATION

Section was enacted as part of the North American Free Trade Agreement Implementation Act, and not as part of the Tariff Act of 1930 which comprises this chapter.

§ 1677m. Conduct of investigations and administrative reviews

(a) Treatment of voluntary responses in countervailing or antidumping duty investigations and reviews

In any investigation under part I or II of this subtitle or a review under section 1675(a) of this title in which the administering authority has, under section 1677f–1(c)(2) of this title or section 1677f–1(e)(2)(A) of this title (whichever is applicable), limited the number of exporters or producers examined, or determined a single country-wide rate, the administering authority shall establish an individual countervailable subsidy rate or an individual weighted average dumping margin for any exporter or producer not initially selected for individual examination under such sections who submits to the administering authority the information requested from exporters or producers selected for examination, if—

(1) such information is so submitted by the date specified—

(A) for exporters and producers that were initially selected for examination, or

(B) for the foreign government, in a countervailing duty case where the administering authority has determined a single country-wide rate; and

(2) the number of exporters or producers who have submitted such information is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation.

(b) Certification of submissions

Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this sub-

title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

(c) Difficulties in meeting requirements

(1) Notification by interested party

If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

(2) Assistance to interested parties

The administering authority and the Commission shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority or the Commission in connection with investigations and reviews under this subtitle, and shall provide to such interested parties any assistance that is practicable in supplying such information.

(d) Deficient submissions

If the administering authority or the Commission determines that a response to a request for information under this subtitle does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this subtitle. If that person submits further information in response to such deficiency and either—

(1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

(2) such response is not submitted within the applicable time limits,

then the administering authority or the Commission (as the case may be) may, subject to subsection (e) of this section, disregard all or part of the original and subsequent responses.

(e) Use of certain information

In reaching a determination under section 1671b, 1671d, 1673b, 1673d, 1675, or 1675b of this title the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission, if—

(1) the information is submitted by the deadline established for its submission,

(2) the information can be verified,

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and

(5) the information can be used without undue difficulties.

(f) Nonacceptance of submissions

If the administering authority or the Commission declines to accept into the record any information submitted in an investigation or review under this subtitle, it shall, to the extent practicable, provide to the person submitting the information a written explanation of the reasons for not accepting the information.

(g) Public comment on information

Information that is submitted on a timely basis to the administering authority or the Commission during the course of a proceeding under this subtitle shall be subject to comment by other parties to the proceeding within such reasonable time as the administering authority or the Commission shall provide. The administering authority and the Commission, before making a final determination under section 1671d, 1673d, 1675, or 1675b of this title shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.

(h) Termination of investigation or revocation of order for lack of interest

The administering authority may—

(1) terminate an investigation under part I or II of this subtitle with respect to a domestic like product if, prior to publication of an order under section 1671e or 1673e of this title, the administering authority determines that producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in issuance of an order; and

(2) revoke an order issued under section 1671e or 1673e of this title with respect to a domestic like product, or terminate an investigation suspended under section 1671c or 1673c of this title with respect to a domestic like product, if the administering authority determines that producers accounting for substantially all of the production of that domestic like product, have expressed a lack of interest in the order or suspended investigation.

(i) Verification

The administering authority shall verify all information relied upon in making—

(1) a final determination in an investigation,

(2) a revocation under section 1675(d) of this title, and

(3) a final determination in a review under section 1675(a) of this title, if—

(A) verification is timely requested by an interested party as defined in section 1677(9)(C), (D), (E), (F), or (G) of this title, and

(B) no verification was made under this subparagraph during the 2 immediately preceding reviews and determinations under section 1675(a) of this title of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

(June 17, 1930, ch. 497, title VII, § 782, as added Pub. L. 103–465, title II, § 231(a), Dec. 8, 1994, 108 Stat. 4893.)

EFFECTIVE DATE

Section 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 an Effective Date of 1994 Amendment note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1677e of this title.

§ 1677n. Antidumping petitions by third countries

(a) Filing of petition

The government of a WTO member may file with the Trade Representative a petition requesting that an investigation be conducted to determine if—

(1) imports from another country are being sold in the United States at less than fair value, and

(2) an industry in the petitioning country is materially injured by reason of those imports.

(b) Initiation

The Trade Representative, after consultation with the administering authority and the Commission and obtaining the approval of the WTO Council for Trade in Goods, shall determine whether to initiate an investigation described in subsection (a) of this section.

(c) Determinations

Upon initiation of an investigation under this section, the Trade Representative shall request the following determinations be made according to substantive and procedural requirements specified by the Trade Representative, notwithstanding any other provision of this subtitle:

(1) The administering authority shall determine whether imports into the United States of the subject merchandise are being sold at less than fair value.

(2) The Commission shall determine whether an industry in the petitioning country is materially injured by reason of imports of the subject merchandise into the United States.

(d) Public comment

An opportunity for public comment shall be provided, as appropriate—

(1) by the Trade Representative, in making the determination required by subsection (b) of this section, and

(2) by the administering authority and the Commission, in making the determination required by subsection (c) of this section.

(e) Issuance of order

If the administering authority makes an affirmative determination under paragraph (1) of subsection (c) of this section, and the Commission makes an affirmative determination under paragraph (2) of subsection (c) of this section, the administering authority shall issue an antidumping duty order in accordance with section 1673e of this title and take such other actions as are required by section 1673e of this title.

(f) Reviews of determinations

For purposes of review under section 1516a of this title or review under section 1675 of this title, if an order is issued under subsection (e) of this section, the final determinations of the administering authority and the Commission under this section shall be treated as final determinations made under section 1673d of this title.

(g) Access to information

Section 1677f of this title shall apply to investigations under this section, to the extent specified by the Trade Representative, after consultation with the administering authority and the Commission.

(June 17, 1930, ch. 497, title VII, § 783, as added Pub. L. 103–465, title II, § 232(a), Dec. 8, 1994, 108 Stat. 4897; amended Pub. L. 104–295, § 20(b)(17), Oct. 11, 1996, 110 Stat. 3528.)

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–295 substituted ''subsection (e)'' for ''subsection (d)''.

EFFECTIVE DATE

Section 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 an Effective Date of 1994 Amendment note under section 1671 of this title.

CHAPTER 5—SMUGGLING

Sec.
1701. Customs-enforcement area.
(a) Establishment; extent and duration; enforcement of laws applicable to waters adjacent to customs waters.
(b) Boarding vessels; arrest and seizure; compliance with treaty provisions; authority of Secretary of Commerce unaffected.
1702. Repealed.
1703. Seizure and forfeiture of vessels.
(a) Vessels subject to seizure and forfeiture.
(b) ''Vessels of the United States'' defined.
(c) Acts constituting prima facie evidence vessel engaged in smuggling.
1704. Refusal or revocation of registry, enrollment, license or number on evidence that vessel engaging in smuggling; appeal; immunity from liability.
1705. Destruction of forfeited vessel or vehicle.
1706. Importation in vessels under thirty tons and aircraft; licenses; labels as prima facie evidence of foreign origin of merchandise.