



Australian Government

AusAID

**VIETNAM INTEGRATION INTO THE
WORLD ECONOMY – CAPACITY BUILDING FOR ANTI-DUMPING**
Vietnam-Australia Capacity Building for Effective Governance Facility

**A COMPARATIVE STUDY ON
REGULATORY AND ADMINISTRATIVE
FRAMEWORK FOR ANTI-DUMPING**

READING MATERIALS



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ANNEX I : INTRODUCTION ABOUT TRADE REMEDY COMPLIANCE STAFF OF THE U.S. DEPARTMENT OF COMMERCE

Trade Remedy Compliance Staff:

In recent years, the U.S. Congress has called for more pro-active steps to address unfair practices hindering U.S. trade and Import Administration (IA) has taken up the responsibility to this charge in part through the creation of the Trade Remedy Compliance Staff (TRCS). The TRCS is a team of trade analysts working in tandem with new IA officers stationed overseas in such locations as China and Korea. Their mission is to support administration of the U.S. unfair trade laws, including by monitoring foreign policies and trade trends in order to better detect and address developing unfair trade problems.

Focused initially on major trading partners of the U.S. in East Asia, the TRCS has in place an ongoing monitoring program which tracks import trends as well as certain government policies, business conditions and company practices. The goal is to help determine and analyze the problematic development of foreign legislation and trade policy which can cause unfair treatment to the U.S. exports. At present time, IA has its officers in China and Korea to closely monitoring these two countries.

TRCS activities include:

- (i) For key countries, monitor data on imports into the United States, as well as foreign government policies and economic/business trends that may contribute to unfair trade problems.
- (ii) Monitor other countries' development and use of their AD, CVD and other trade remedy statutes.
- (iii) Provide information related to the enforcement of U.S. AD/CVD laws to foreign and domestic parties.

Overseas

- (i) Support Washington-based case analysts in matters directly related to the administration of U.S. AD/CVD laws.
- (ii) Collect, assess, and confirm information about certain foreign market conditions, trade

practices, and governmental policies that would facilitate administration of U.S. unfair trade laws or U.S. monitoring of unfair trade commitments.

- (iii) Report on developments in use of foreign unfair trade laws, particularly as they affect U.S. interests.
- (iv) Actively assist countries to meet WTO obligations, through discussion and technical assistance.

ANNEX II: INDIAN ANTIDUMPING LAW

1. THE CUSTOMS TARIFF ACT, 1975

(ACT NO. 51 OF 1975)

[18th August, 1975] An Act to consolidate and amend the law relating to Customs Duties.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows

1. Short title, extent and commencement. - (1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Duties specified in the Schedules to be levied. - The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

3. Levy of additional duty equal to excise duty.

(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

*Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the official gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different states, or, if a like alcoholic liquor is not produced or manufactured in any state,

then, having regard to excise duty which would be leviable for the time being in different states on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

Explanation. — In this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India, or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

(2) For the purpose of calculating under this section, the additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in Section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of —

(i) the value of the imported article determined under sub-section (1) of the said Section 14 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(ii) any duty of customs chargeable on that article under Section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include (with retrospective effect from 1st day of March 2002)-

(a) the special additional duty referred to in section 3(A)

(b) the safeguard duty referred to in section 8B and 8C;

(c) the countervailing duty referred to in section 9.

(d) anti-dumping duty referred to in section 9A and

(e) the duty referred to in sub section (1).

(a) In relation to which it is required, under the provisions of the standards of Weights and Measures Act, 1976 or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such article; and

(b) where the like article produced or manufactured in India, or in case where such like article is not so produced or manufactured, then, the class or description of articles to which the imported article belongs, is the goods specified by notification in the Official Gazette under sub-section (1) of section 4A of the Central Excise Act, 1944.

Explanation:- Where on any imported article more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section.

(3) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article whether on such article duty is leviable under sub-section (1) or not such additional duty as would counter-balance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.

(4) In making any rules for the purposes of sub-section (3), the Central Government shall have regard to the average quantum of the excise duty payable on the raw materials, components or ingredients used in the production or manufacture of such like article.

(5) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(6) The provisions of the Customs Act, 1962 (52 of 1962), and the rules and regulations

made thereunder, including those relating to drawbacks, refunds and exemption from duties, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.

3A. Special additional duty.

(1) Any article which is imported into India shall in addition be liable to a duty (hereinafter referred to in this section as the special additional duty), which shall be levied at a rate to be specified by the Central Government, by notification in the Official Gazette, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India :

Provided that until such rate is specified by the Central Government, the special additional duty shall be levied and collected at the rate of eight per cent of the value of the article imported into India.

Explanation. — In this sub-section, the expression "maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India" means the maximum sales-tax, local tax, other charges for the time being in force, which shall be leviable on a like article, if sold or purchased in India, or if a like article is not so sold or purchased which shall be leviable on the class or description of articles to which the imported article belongs.

(2) For the purpose of calculating under this section the special additional duty on any imported article, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962) or section 3 of this Act, be the aggregate of-

- (i) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be;
- (ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article

under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include (with retrospective effect from 1st day of March 2002) -

- (a) the safeguard duty referred to in section 8B and 8C;
- (b) the countervailing duty referred to in section 9.
- (c) anti-dumping duty referred to in section 9A;
- (d) special additional duty referred to in sub-section (1) and
- (iii) the additional duty of customs chargeable on that article under section 3 of this Act.

(3) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(4) The provisions of the Customs Act, 1962 (52 of 1962), and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.

(5) Nothing contained in this section shall apply to any article, which is chargeable to additional duties levied under sub-section (1) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).

4. Levy of duty where standard rate and preferential rate are specified.

- (1) Where in respect of any article a preferential rate of revenue duty is specified in the First Schedule, or is admissible by virtue of a notification under Section 25 of the Customs Act, 1962 (52 of 1962), the duty to be levied and collected shall be at the standard rate, unless the owner of the article claims at the time of importation that it is chargeable with a preferential rate of duty, being the produce or manufacture of such preferential area as is notified under sub-section (3) and the article is determined, in accordance with the rules made under sub-

section (2), to be such produce or manufacture.

(2) The Central Government may, by notification in the Official Gazette, make rules for determining if any article is the produce or manufacture of any preferential area.

(3) For the purposes of this section and the First Schedule, "preferential area" means any country or territory which the Central Government may, by notification in the Official Gazette, declare to be such area.

(4) Notwithstanding anything contained in sub-section (1), where the Central Government is satisfied that, in the interests of trade including promotion of exports, it is necessary to take immediate action for discontinuing the preferential rate, or increasing the preferential rate to a rate not exceeding the standard rate, or decreasing the preferential rate, in respect of an article specified in the First Schedule, the Central Government may, by notification in the Official Gazette, direct an amendment of the said Schedule to be made so as to provide for such discontinuance of, or increase or decrease, as the case may be, in the preferential rate.

(5) Every notification issued under sub-section (3) or sub-section (4) shall, as soon as may be after it is issued, be laid before each House of Parliament.

Also see Notification 101/82-Cus., dated 1-4-1982

5. Levy of a lower rate of duty under a trade agreement.

(1) Whereunder a trade agreement between the Government of India and the Government of a foreign country or territory, duty at a rate lower than that specified in the First Schedule is to be charged on articles which are the produce or manufacture of such foreign country or territory, the Central Government may, by notification in the Official Gazette, make rules for determining if any article is the produce or manufacture of such foreign country or territory and for requiring the owner to make a claim at the time of importation, supported by such evidence as may be prescribed in the said rules, for assessment at the

appropriate lower rate under such agreement.

(2) If any question arises whether any trade agreement applies to any country or territory, or whether it has ceased to apply to India or any foreign country or territory, it shall be referred to the Central Government for decision and the decision of the Central Government shall be final and shall not be liable to be questioned in any court of law.

6. Power of Central Government to levy protective duties in certain cases.

(1) Where the Central Government, upon a recommendation made to it in this behalf by the Tariff Commission established under the Tariff Commission Act, 1951 (50 of 1951), is satisfied that circumstances exist which render it necessary to take immediate action to provide for the protection of the interests of any industry established in India, the Central Government may, by notification in the Official Gazette, impose on any goods imported into India in respect of which the said recommendation is made, a duty of customs of such amount, not exceeding the amount proposed in the said recommendation, as it thinks fit.

(2) Every duty imposed on any goods under sub-section (1) shall, for the purposes of this Act, be deemed to have been specified in the First Schedule as the duty leviable in respect of such goods.

(3) Where a notification has been issued under sub-section (1), the Central Government shall, unless the notification is in the meantime rescinded, have a Bill introduced in Parliament, as soon as may be, but in any case during the next session of Parliament following the date of the issue of the notification to give effect to the proposals in regard to the continuance of a protective duty of customs on the goods to which the notification relates, and the notification shall cease to have effect when such Bill becomes law, whether with or without modifications, but without prejudice to the validity of anything previously done thereunder :

Provided that if the notification under sub-section (1) is issued when Parliament

is in session, such a Bill shall be introduced in Parliament during that session :

Provided further that where for any reason a Bill as aforesaid does not become law within six months from the date of its introduction in Parliament, the notification shall cease to have effect on the expiration of the said period of six months, but without prejudice to the validity of anything previously done thereunder.

7. Duration of protective duties and power of Central Government to alter them.

(1) When the duty specified in respect of any article in the First Schedule is characterized as protective in Column (5) of that Schedule, that duty shall have effect only up to and inclusive of the date, if any, specified in that Schedule.

(2) Where in respect of any such article the Central Government is satisfied after such inquiry as it thinks necessary that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it to a similar article manufactured in India and that circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, increase or reduce such duty to such extent as it thinks necessary.

(3) Every notification under sub-section (2), insofar as it relates to increase of such duty, shall be laid before each House of Parliament if it is sitting as soon as may be after the issue of the notification, and if it is not sitting within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(4) For the removal of doubts, it is hereby declared that any notification issued under sub-section (2), including any such notification approved or modified

under sub-section (3), may be rescinded by the Central Government at any time by notification in the Official Gazette.

8. Emergency power of Central Government to increase or levy export duties.

(1) Where, in respect of any article, whether included in the Second Schedule or not, the Central Government is satisfied that the export duty leviable thereon should be increased or that an export duty should be levied, and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct an amendment of the Second Schedule to be made so as to provide for an increase in the export duty leviable or, as the case may be, for the levy of an export duty, on that article.

(2) The provisions of sub-sections (3) and (4) of Section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of Section 7.

8A. Emergency power of Central Government to increase im port duties.

(1) Where in respect of any article included in the First Schedule, the Central Government is satisfied that the import duty leviable thereon under section 12 of the Customs Act, 1962 (52 of 1962) should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, direct an amendment of that Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary:

Provided that the Central Government shall not issue any notification under this sub-section for substituting the rate of import duty in respect of any article as specified by an earlier notification issued under this sub-section by that Government before such earlier notification has been approved with or without modifications under sub-section (2).

(2) The provisions of sub-sections (3) and (4) of section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of section 7.

8B. Power of Central Government to impose safeguard duty.

(1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article:

Provided that no such duty shall be imposed on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per cent or where the article is originating from more than one developing countries, then, so long as the aggregate of the imports from all such countries taken together does not exceed nine percent of the total imports of that article into India.

* Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

(2) The Central Government may, pending the determination under sub-section (1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry :

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected :

Provided further that the provisional safeguard duty shall not remain in

force for more than two hundred days from the date on which it was imposed.

* (2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

Explanation:- For the purposes of this section, the expressions "hundred per cent. export-oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings assigned to them in Explanation 2 to sub-section (1) of section 3 of Central Excise Act, 1944.

(3) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(4) The duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition :

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition :

Provided further that in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.

(5) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for safeguard duty may be identified and for the manner in which the causes of serious injury or causes of threat of serious injury in relation to such articles may be determined and for the assessment and collection of such safeguard duty.

(6) For the purposes of this section, -

(a) "developing country" means a country notified by the Central Government in the Official Gazette for the purposes of this section;

(b) "domestic industry" means the producers -

(i) as a whole of the like article or a directly competitive article in India; or

(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;

(c) "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;

(d) "threat of serious injury" means a clear and imminent danger of serious injury.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

8C. Power of Central Government to impose transitional product specific safeguard duty on imports from the people's Republic of China.

(1) Notwithstanding anything contained in section 8B, if the Central government after conducting such enquiry as it deems fit, is satisfied that any article is imported into India, from the people's Republic of China, in such condition so as to cause or threatening to cause market disruption to domestic industry, then it may, by notification in the official Gazette, impose a safeguard duty on that article:

Provided that the central government may, by notification in the official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from people's republic of China into India, from payment of the whole or part of the safeguard duty leviable thereon.

(2) The Central government may, pending the determination under sub-section

(1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause market disruption to a domestic industry:

Provided that where, on final determination, the Central government is of the opinion that increased imports have not caused or threatened to cause market disruption to a domestic industry, it shall refund the duty so collected:

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

(3) Notwithstanding anything contained in sub- (1) and (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2) , unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred percent. Export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

Explanation:-For the purpose of this section , the expressions "hundred percent. Export-oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings respectively assigned to them in Explanation 2 to sub-section (1) of section 3 of the central Excise Act, 1944.

(4) The duty chargeable under this section shall be in addition to any other duty imposed under this act or under any other law for the time being in force.

(5) the duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition;

Provided that if the Central government is of the opinion that such article continues to be imported into

India, from people's Republic of china, in such increased quantities so as to cause or threatening to cause market disruption to domestic industry

and the safeguard duty should continue to be imposed, it may extend the period of such imposition for a period not beyond the period of ten years from the date on which the safeguard duty was first imposed.

(6) The central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for safeguard duty may be identified and for the manner in which the cause of market disruption or cause of threat of market disruption in relation to such articles may be determined and for the assessment and collection of such safeguard duty.

(7) For the purpose of this section,-

" domestic industry" means the producers as a whole of a like article or a directly competitive article in India ; or

Whose collective output of a like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;

" Market disruption" shall be caused whenever imports a like article or a directly competitive article produced by the domestic industry, increase rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry;

"Threat of market disruption" means a clear and imminent danger of market disruption.

(8) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each house of Parliament;

Refund of additional duty of Customs in certain cases.

(1) Notwithstanding anything contained in section 25 of the Customs Act, barge mounted power plants, falling under heading 98.01 of the First

Schedule to the Customs Tariff Act, shall be deemed to have been exempted from the whole of the additional duty of Customs leviable thereon under sub-section (1) of section 3 of the customs Tariff Act, within the period commencing from the 8th December,2000 and ending with the 28th february,2002 (both the dates inclusive) and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, barge mounted power plants shall be deemed to be, and always to have been, exempted from the said additional duty of customs as if the exemption given by this sub-section had been in force at all material times.

(2) for the purpose of sub-section (1), the central Government shall have and shall be deemed to have the power to exempt the goods referred to in the said sub-section with retrospective effect as the Central Government had the power to exempt the said goods under sub-section (1) of section 25 of the customs act, retrospectively at all material times.

(3) Refund shall be made of all such additional duty of customs which have been collected but which would have not been so collected if the exemption referred to in sub-section (1) had been in force at all material times.

(4) Notwithstanding anything contained in section 27 of the Customs Act, an application for the claim of refund of the additional duty of customs under sub-section (3) shall be made within six months from the date on which the Finance Bill, 2002 receive the assent of the President.

9. Countervailing duty on subsidized articles.

(1) Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country

of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.

Explanation. - For the purposes of this section, a subsidy shall be deemed to exist if -

(a) there is financial contribution by a Government, or any public body within the territory of the exporting or producing country, that is, where -

(i) a Government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;

(ii) Government revenue that is otherwise due is foregone or not collected (including fiscal incentives);

(iii) a Government provides goods or services other than general infrastructure or purchases goods;

(iv) a Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments;
or

(b) a Government grants or maintains any form of income or price support, which operates directly or indirectly to increase export of any article from, or to reduce import of any article into, its territory, and a benefit is thereby conferred.

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the amount of subsidy, impose a countervailing duty under this sub-section not exceeding the

amount of such subsidy as provisionally estimated by it and if such countervailing duty exceeds the subsidy as so determined, -

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such countervailing duty; and

(b) refund shall be made of so much of such countervailing duty which has been collected as is in excess of the countervailing duty as so reduced.

(3) Subject to any rules made by the Central Government, by notification in the Official Gazette, the countervailing duty under sub-section (1) or sub-section (2) shall not be levied unless it is determined that -

(a) the subsidy relates to export performance;

(b) the subsidy relates to the use of domestic goods over imported goods in the export article; or

(c) the subsidy has been conferred on a limited number of persons engaged in manufacturing, producing or exporting the article unless such a subsidy is for -

(i) research activities conducted by or on behalf of persons engaged in the manufacture, production or export;

(ii) assistance to disadvantaged regions within the territory of the exporting country; or

(iii) assistance to promote adaptation of existing facilities to new environmental requirements.

(4) If the Central Government, is of the opinion that the injury to the domestic industry which is difficult to repair, is caused by massive imports in a relatively short period, of the article benefiting from subsidies paid or bestowed and where in order to preclude the recurrence of such injury, it is necessary to levy countervailing duty retrospectively, the Central Government may, by notification

in the Official Gazette, levy countervailing duty from a date prior to the date of imposition of countervailing duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section and notwithstanding anything contained in any law for the time being in force, such duty shall be payable from the date as specified in the notification issued under this sub-section.

(5) The countervailing duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(6) The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(7) The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such article and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.

(8) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

9A. Anti-dumping duty on dumped articles.

(1) Where any article is exported from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Explanation. - For the purposes of this section, -

(a) "margin of dumping", in relation to an article, means the difference between its export price and its normal value;

(b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

(c) "normal value", in relation to an article, means -

(i) the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper

comparison, the normal value shall be either -

(a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined : -

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and

(b) refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.

* (2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed

under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

Explanation:- For the purposes of this section, the expressions "hundred per cent. export-oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings assigned to them in Explanation 2 to sub-section (1) of section 3 of Central Excise Act, 1944.

(3) If the Central Government, in respect of the dumped article under inquiry, is of the opinion that -

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously under-mine the remedial effect of the anti-dumping duty liable to be levied, the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such

imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension :

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, relating to non-levy, short levy, refunds and appeals shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

9AA. Refund of anti-dumping duty in certain cases.

(1) Where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed under sub-section (1) of section 9A

on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty :

Provided that such importer shall not be entitled to refund of so much of such excess duty under this sub-section which is refundable under sub-section (2) of section 9A.

Explanation - For the purposes of this sub-section, the expressions, "margin of dumping", "export price" and "normal value" shall have the meanings respectively assigned to them in the Explanation to sub-section (1) of section 9A.

(2) The Central Government may, by notification in the Official Gazette, make rules to -

(i) provide for the manner in which and the time within which the importer may make application for the purposes of sub-section (1);

(ii) authorise the officer of the Central Government who shall dispose of such application on behalf of the Central Government within the time specified in such rules; and

(iii) provide the manner in which the excess duty referred to in sub-section (1) shall be -

(A) determined by the officer referred to in clause (ii); and

(B) refunded by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, after such determination.

9B. No levy under section 9 or section 9A in certain cases.

(1) Notwithstanding anything contained in section 9 or section 9A,-

(a) no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization;

(b) the Central Government shall not levy any countervailing duty or anti-dumping duty -

(i) under section 9 or section 9A by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes;

(ii) under sub-section (1) of each of these sections, on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement (hereinafter referred as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India; and

(iii) under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless in accordance with the rules made under sub-section (2) of this section, a preliminary findings has been made of subsidy or dumping and consequent injury to domestic industry; and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation:

Provided that nothing contained in sub-clauses (ii) and (iii) of clause (b) shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India;

(c) the Central Government may not levy -

(i) any countervailing duty under section 9, at any time, upon

receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and if the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby;

(ii) any anti-dumping duty under section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.

(2) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be at in any such investigation and for all matters connected with such investigation.

9C. Appeal.

(1) An appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the Customs, Excise and Service tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal).

(2) Every appeal under this section shall be filed within ninety days of the date of order under appeal:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming,

modifying or annulling the order appealed against.

(4) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962) shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962 (52 of 1962).

(5) Every appeal under sub-section (1) shall be heard by a Special Bench constituted by the President of the Appellate Tribunal for hearing such appeals and such Bench shall consist of the President and not less than two members and shall include one judicial member and one technical member.

10. Rules to be laid before Parliament.

Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

11. Power of Central Government to alter duties under certain circumstances.

(1) Where the Central Government is satisfied that it is necessary so to do for the purpose of giving effect to any agreement entered into before the commencement of this Act with a foreign Government, it may, by notification in the Official Gazette, increase or reduce the duties referred to in section 2 to such extent as each case may require :

Provided that no notification under this sub-section increasing or reducing the duties as aforesaid shall be issued by the Central Government after the expiration of a period of one year from the

commencement of this Act.

(2) Every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.

12. Repeal and saving.

(1) The Indian Tariff Act, 1934 (32 of 1934), and the Indian Tariff (Amendment) Act, 1949 (1 of 1949), are hereby repealed.

(2) Notwithstanding the repeal of any of the Acts mentioned in sub-section (1), anything done or any action taken (including any notification published and any rules and orders made or deemed to have been made under the provisions of those Acts and in force immediately before the commencement of this Act) shall, insofar as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of this Act and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

13. Consequential amendment of Act 52 of 1962

In the Customs Act, 1962, in sub-section (1) of Section 12 and in sub-section (1) of Section 14, for the words and figures "Indian Tariff Act, 1934", the words and figures "Customs Tariff Act, 1975" shall be substituted.

2. THE CUSTOMS TARIFF (AMENDMENT) BILL, 1995

A BILL further to amend the Customs Tariff Act, 1975.

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:--

Short title and commencement.

1.

(1) This Act may be called the Customs Tariff (Amendment) Act, 1995.

(2) It shall be deemed to have come into force on the 1st day of January, 1995.

Substitution of new sections for sections 9, 9A and 9B.

2.

For sections 9, 9A and 9B of the Customs Tariff Act, 1975 (51 of 1975.) (hereinafter referred to as the principal Act), the following sections shall be substituted, namely: Countervailing duty on subsidized articles.

9.

(1) Where any country or territory pays, or bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.

Explanation.--For the purposes of this section, a "subsidy" shall be deemed to exist if--

(a) there is financial contribution by a government, or any public body within the territory of the exporting or producing country, that is, where--

(i) a government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;

(ii) government revenue that is otherwise due is foregone or not collected (including fiscal incentives);

(iii) a government provides goods or services other than general infrastructure or purchases goods;

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in sub-clauses (i) to (iii) above which would normally be vested in the government and the practice in, no real sense, differs from practice normally followed by governments; or

(b) a government grants or maintains any form of income or price support, which operates directly or indirectly to increase export of any article from, or to reduce import of any article into, its territory, and a benefit is thereby conferred.

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the amount of subsidy, impose a countervailing duty under this sub-section not exceeding the amount of such subsidy as provisionally estimated by it and if such countervailing duty exceeds the subsidy as so determined,--

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such countervailing duty; and

(b) refund shall be made of so much of such countervailing duty which has been collected as is in excess of the countervailing duty as so reduced.

(3) Subject to any rules made by the Central Government, by notification in the Official Gazette, the countervailing duty under sub-section (1) or sub-section (2) shall not be levied unless it is determined that--

(a) the subsidy relates to export performance;

(b) the subsidy relates to the use of domestic goods over imported goods in the export article; or

(c) the subsidy has been conferred on a limited number of persons engaged in manufacturing, producing or exporting the article unless such a subsidy is for--

(i) research activities conducted by or on behalf of persons engaged in the manufacture, production or export;

(ii) assistance to disadvantaged regions within the territory of the exporting country; or

(iii) assistance to promote adaptation of existing facilities to new environmental requirements.

(4) If the Central Government is of the opinion, that the injury to the domestic industry which is difficult to repair, is caused by massive imports in a relatively short period, of the article benefiting from subsidies paid or bestowed and where in order to preclude the recurrence of such injury, it is necessary to levy countervailing duty retrospectively, the Central Government may, by notification in the Official Gazette, levy countervailing duty from a date prior to the date of imposition of countervailing duty under subsection (2) but not beyond ninety days from the date of notification under that sub-section and notwithstanding anything contained in any other law for the time being in force, such duty shall be payable from the date as specified in the notification issued under this subsection.

(5) The countervailing duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(6) The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall

commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(7) The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such articles and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.

(8) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

Antidumping duty on dumped articles.

9A.

(1) Where any article is exported from any country or territory (hereafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Explanation.--For the purposes of this section,--

(a) "margin of dumping", in relation to an article, means the difference between its export price and its normal value;

(b) "export price", in relation to an article, means the price of an article

exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

(c) "normal value", in relation to an article, means--

(i) the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either--

(a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined,--

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and

(b) refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.

(3) If the Central Government, in respect of the dumped article under inquiry, is of the opinion that--

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied, the Central Government may, by notification in the Official

Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that subsection, and notwithstanding anything contained in any other law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which

the export price and the normal value of and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

No levy under section 9 or section 9A in certain cases.

9B.

(1) Notwithstanding anything contained in section 9 or section 9A,--

(a) no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization;

(b) the Central Government shall not levy any countervailing duty or anti-dumping duty--

(i) under section 9 or section 9A by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes;

(ii) under sub-section (1) of either of section 9 and section 9A, on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement hereafter referred to as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any

industry in India; and

(iii) under sub-section (2) of either of section 9 and section 9A, on import into India of any article from the specified countries unless in accordance with the rules made under sub-section (2) of this section, a preliminary findings has been made of subsidy or dumping and consequent injury to domestic industry; and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation:

Provided that nothing contained in sub-clauses (ii) and (iii) of this clause shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India;

(c) the Central Government may not levy--

(i) any countervailing duty under section 9, at any time, upon receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and if the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby;

(ii) any anti-dumping duty under section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.

(2) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of

the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be had in any such investigation and for all matters connected with such investigation.

Appeal.

9C.

(1) An appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962.) (hereafter referred to as the Appellate Tribunal).

(2) Every appeal under this section shall be filed within ninety days of the date of order under appeal:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

(4) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962.) shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962.

(5) Every appeal under sub-section (1) shall be heard by a Special Branch constituted by the President of the Appellate Tribunal for hearing such appeals and such Bench shall consist of the President and not less than two members and shall include one judicial member and one technical member.'

Repeal and saving.

3.

(1) The Customs Tariff (Amendment) Ordinance, 1994 (Ord. 14 of 1994.) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

ANNEX II: AUSTRALIAN ANTIDUMPING LAW

1. CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

Act No. 76 of 1975 as amended

This compilation was prepared on 29 September 2003 taking into account amendments up to Act No. 27 of 1999

The text of any of those amendments not in force on that date is appended in the Notes section

Prepared by the Office of Legislative Drafting, Attorney-General's Department, Canberra

An Act relating to certain Special Duties of Customs

1 Short title *[see Note 1]*

This Act may be cited as the Customs Tariff (Anti-Dumping) Act 1975.

2 Commencement *[see Note 1]*

This Act shall come into operation on the day on which it receives the Royal Assent.

6 Incorporation

The *Customs Act 1901* (in this Act referred to as the Customs Act) is incorporated and shall be read as one with this Act.

7 Imposition of duties of Customs

Duties of Customs are imposed in accordance with this Act.

8 Dumping duties

(1) This section does not apply to goods that are:

- (a) the produce or manufacture of New Zealand; and
- (b) imported into Australia after the commencement of this subsection.

(2) There is imposed, and there must be collected and paid, on goods:

- (a) to which this section applies by virtue of a notice under subsection 269TG(1) or (2) of the Customs Act; and
 - (b) in relation to which the amount of the export price is less than the amount of the normal value; a special duty of Customs, to be known as dumping duty, calculated in accordance with subsection (6).
- (3) Pending final assessment of the dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act, an interim dumping duty is payable on those goods.
- (4) Subject to subsection (5), the interim dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act is an amount equal to the sum of:
- (a) the difference between the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice and the normal value of goods of that kind as so ascertained, or last so ascertained; and
 - (b) if the export price of those particular goods is lower than the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice— the amount by which the latter export price exceeds the former.
- (5) The Minister must, by signed notice, direct that the element of interim dumping duty referred to in paragraph (4)(a) in respect of particular goods be ascertained:
- (a) as a proportion of the export price of those particular goods or of the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the dumping duty notice, whichever is the greater; or
 - (b) by reference to a measure of the quantity of those particular goods; or
 - (c) by reference to a combination of a proportion of the kind referred to in paragraph (a) and a measure of the quantity of those particular goods; and the notice has effect accordingly.
- (5A) The Minister must, in exercising his or her powers under subsection (5) in respect of particular goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act, if the non-injurious price of goods of that kind as ascertained or last ascertained by the Minister for the purposes of the notice is less than the normal value of goods of that kind as so ascertained,

or last so ascertained, have regard to the desirability of fixing a lesser amount of duty such that the sum of:

- (a) the export price of goods of that kind as so ascertained or last so ascertained; and
- (b) that lesser duty; does not exceed that non-injurious price.

(5B) If, in the circumstances specified in section 269TJA of the Customs Act, both a notice under section 269TG of that Act and a notice under section 269TJ of that Act are published at the same time and in respect of the same goods, the Minister must, in exercising his or her powers under subsection (5) in relation to interim dumping duty in respect of the goods, have regard to the desirability of fixing the amount of interim dumping duty in respect of the goods such that the sum of:

- (a) the export price of those particular goods; and
- (b) the amount of the interim dumping duty as so fixed; and
- (c) the amount of interim countervailing duty as fixed under section 10; does not exceed the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of those notices.

(5C) If the Minister signs a notice under subsection (5), the Minister must cause a copy of that notice to be published in the *Gazette* unless, in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.

(5D) A notice under subsection (5) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

(6) The dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act is an amount equal to:

- (a) unless paragraph (b) applies—the difference between the amounts that the Minister ascertains to be the export price and the normal value of those particular goods; or
- (b) if, in a notice under subsection (5), the Minister determines that the whole or a part of the interim dumping duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind as ascertained, or last

ascertained, by the Minister for the purpose of the first-mentioned notice—the difference between:

- (i) the amount that the Minister ascertains to be the export price of those particular goods; and
- (ii) the lower of the amount that the Minister ascertains to be the normal value of those particular goods and that non-injurious price.

(7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he is satisfied:

(a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

(b) that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force;

(c) that:

(i) where the goods are goods to which section 8 of the *Customs Tariff Act 1995* applies—the item in Schedule 4 to that Act that applies to the goods is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and

(ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available;

(d) that:

(i) the tariff classification in Schedule 3 to that Act that applies to the goods is such that no duty is payable in respect of the goods or the duty payable in respect of the goods is at a rate equivalent to a rate payable under Schedule 4 on the goods; and

(ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available; or

(e) that the goods, being articles of merchandise, are for use as samples for the sale of

similar goods.

(8) Where the Minister exempts goods from interim dumping duty and dumping duty under subsection (7) by reason of his being satisfied as to a matter specified in paragraph (7)(a), (c) or (d), the instrument of exemption shall be published in the *Gazette*.

(9) In this section, a reference to a Tariff Concession Order includes a reference to a Commercial Tariff Concession Order made under Part XVA of the Customs Act as in force before section 10 of the

2. CUSTOMS LEGISLATION (TARIFF CONCESSIONS AND ANTI-DUMPING) AMENDMENT ACT 1992 COMMENCES.

9 Third country dumping duties

(1) This section does not apply to goods that are:

- (a) the produce or manufacture of New Zealand; and
- (b) imported into Australia after the commencement of this subsection.

(2) There is imposed, and there must be collected and paid, on goods:

- (a) to which this section applies by virtue of a notice under subsection 269TH(1) or (2) of the Customs Act; and
- (b) in relation to which the amount of the export price is less than the amount of the normal value; a special duty of Customs, to be known as third country dumping duty, calculated in accordance with subsection (6).

(3) Pending final assessment of the third country dumping duty payable on goods the subject of a notice under subsection 269TH(1) or (2) of the Customs Act, an interim third country dumping duty is payable on those goods.

(4) Subject to subsection (5), the interim third country dumping duty payable on goods the subject of a notice under subsection 269TH(1) or (2) of the Customs Act is an amount equal to the sum of:

- (a) the difference between the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice and the normal value of goods of that kind as so ascertained, or last so ascertained; and

(b) if the export price of those particular goods is lower than the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice— the amount by which the latter export price exceeds the former.

(5) The Minister must, by signed notice, direct that the element of interim third country dumping duty referred to in paragraph (4)(a) in respect of particular goods be ascertained:

(a) as a proportion of the export price of those particular goods or of the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the dumping duty notice, whichever is the greater; or

(b) by reference to a measure of the quantity of those particular goods; or

(c) by reference to a combination of a proportion of the kind referred to in paragraph (a) and a measure of the quantity of those particular goods; and the notice has effect accordingly.

(5A) The Minister must, in exercising his or her powers under subsection (5) in respect of particular goods the subject of a dumping duty notice under subsection 269TH(1) or (2) of the Customs Act, if the non-injurious price of goods of that kind as ascertained or last ascertained by the Minister for the purposes of the notice is less than the normal value of goods of that kind as so ascertained, or last so ascertained, have regard to the desirability of fixing a lesser amount of duty such that the sum of:

(a) the export price of goods of that kind as so ascertained or last so ascertained; and

(b) that lesser duty;
does not exceed that non-injurious price.

(5B) If the Minister signs a notice under subsection (5), the Minister must cause a copy of that notice to be published in the *Gazette* unless, in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.

(5C) A notice under subsection (5) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of

publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

(6) The third country dumping duty payable on goods the subject of a notice under subsection 269TH(1) or (2) of the Customs Act is an amount equal to:

(a) unless paragraph (b) applies—the difference between the amounts that the Minister ascertains to be the export price and the normal value of those particular goods; or

(b) if, in a notice under subsection (5), the Minister determines that the whole or a part of the interim third country dumping duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the first-mentioned notice—the difference between:

(i) the amount that the Minister ascertains to be the export price of those particular goods; and

(ii) the lower of the amount that the Minister ascertains to be the normal value of those particular goods and that non-injurious price.

(7) The Minister may, by notice in writing, exempt goods from interim third country dumping duty and third country dumping duty if he is satisfied:

(a) that like or directly competitive goods are not offered or sold in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade; or

(c) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(8) Where the Minister exempts goods from the interim third country dumping duty and third country dumping duty under subsection (7) by reason of his being satisfied as to a matter specified under paragraph (7)(a), the instrument of exemption shall be published in the *Gazette*.

10 Countervailing duties

(1) There is imposed, and there must be collected and paid, on goods:

(a) to which this section applies by virtue of a notice under subsection 269TJ(1), (2), (4), (5) or (6) of the Customs Act; and

(b) if the goods are goods to which this section applies by virtue of a notice under subsection 269TJ(1) or (2)—in relation to which a countervailable subsidy is received; a special duty of Customs, to be known as countervailing duty.

(2) The countervailing duty on goods to which this section applies is to be calculated in accordance with subsection (3E).

(3) Pending final assessment of the countervailing duty payable on goods the subject of a notice under subsection 269TJ(1) or (2) of the Customs Act of the Customs Act, an interim countervailing duty is payable on those goods.

(3A) Subject to subsection (3B), the interim countervailing duty payable on goods the subject of a notice under subsection 269TJ(1) or (2) of the Customs Act is an amount equal to the countervailable subsidy in respect of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice.

(3B) The Minister must, by signed notice, direct that the interim countervailing duty in respect of particular goods to which this section applies by virtue of a declaration under subsection 269TJ(1) or (2) of the Customs Act be ascertained:

(a) as a proportion of the export price of those particular goods; or

(b) by reference to a measure of the quantity of those particular goods; or

(c) by reference to a combination of a proportion of the export price of those particular goods and a measure of the quantity of those particular goods; and the notice has effect accordingly.

(3C) The Minister must, in exercising his or her powers under subsection (3B) in respect of particular goods the subject of a notice under subsection 269TJ(1) or (2) of the Customs Act, if the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice is less than the sum of:

(a) the countervailable subsidy in respect of goods of that kind as so ascertained, or last so ascertained; and

(b) the export price of those particular goods; have regard to the desirability of

fixing a lesser amount of duty such that the sum of the export price of those particular goods and the lesser duty does not exceed that non-injurious price.

(3D) If, in the circumstances specified in section 269TJA of the Customs Act, both a notice under section 269TJ of that Act and a notice under section 269TG of that Act are published at the same time and in respect of the same goods, the Minister must, in exercising his or her powers under subsection (3B) in relation to interim countervailing duty in respect of the goods, have regard to the desirability of fixing the amount of interim countervailing duty in respect of the goods such that the sum of:

- (a) the export price of those particular goods; and
- (b) the amount of the interim countervailing duty as so fixed; and
- (c) the amount of interim dumping duty as fixed under section 8; does not exceed the non-injurious price of goods of that kind, as ascertained, or last ascertained, by the Minister for the purpose of those notices.

(3E) The countervailing duty payable on goods the subject of a notice under subsection 269TJ(1) or (2) of the Customs Act is an amount equal to:

- (a) unless paragraph (b) applies—the countervailable subsidy in respect of those particular goods; or
- (b) if, in a notice under subsection (3B), the Minister determines that the interim countervailing duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind—the difference between:

- (i) the amount that the Minister ascertains to be the export price of those particular goods; and
- (ii) the lower of the sum of the amounts that the Minister ascertains to be the export price of, and the countervailable subsidy in respect of, those particular goods and the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice under subsection 269TJ(1) or (2).

(5B) Where the Minister signs a notice under subsection (3B), the Minister shall cause a copy of that notice to be published in the *Gazette* unless in the opinion of the

Minister, the publication of that notice would adversely affect the business or commercial interests of any person.

(6) A notice under subsection (3B) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

(8) The Minister may, by notice in writing, exempt goods from interim countervailing duty or countervailing duty if he or she is satisfied:

(a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

(aa) that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force;

(b) that:

(i) where the goods are goods to which section 8 of the *Customs Tariff Act 1995* applies—the item in Schedule 4 to that Act that applies to the goods is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and

(ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available;

(c) that:

(i) the tariff classification in Schedule 3 to that Act that applies to the goods is such that no duty is payable in respect of the goods or the duty payable in respect of the goods is at a rate equivalent to a rate payable under Schedule 4 on the goods; and

(ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available; or

(d) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(9) Where the Minister exempts goods from interim countervailing duty or countervailing duty under subsection (8) because he or she is satisfied as to a matter specified in paragraphs (8)(a), (b) and (c), the instrument of exemption shall be published in the *Gazette*.

(10) In this section, a reference to a Tariff Concession Order includes a reference to a Commercial Tariff Concession Order made under Part XVA of the Customs Act as in force before section 10 of the

3. CUSTOMS LEGISLATION (TARIFF CONCESSIONS AND ANTI-DUMPING) AMENDMENT ACT 1992 COMMENCES.

11 Third country countervailing duties

(1) There is imposed, and there must be collected and paid, on goods:

(a) to which this section applies by virtue of a notice under subsection 269TK(1) or (2) of the Customs Act; and

(b) in relation to which a countervailable subsidy is received; a special duty of Customs, to be known as third country countervailing duty, calculated in accordance with subsection (7).

(2) Pending final assessment of the third country countervailing duty payable on goods the subject of a notice under subsection 269TK(1) or (2) of the Customs Act, an interim third country countervailing duty is payable on those goods.

(3) Subject to subsection (4), the interim third country countervailing duty payable on goods the subject of a notice under subsection 269TK(1) or (2) of the Customs Act is an amount equal to the countervailable subsidy in respect of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice.

(4) The Minister must, by signed notice, direct that the interim countervailing duty in respect of particular goods to which this section applies by virtue of a notice under subsection 269TK(1) or (2) of the Customs Act be ascertained:

(a) as a proportion of the export price of those particular goods; or

(b) by reference to a measure of the quantity of those particular goods; or

(c) by reference to a combination of a proportion of the export

price of those particular goods and a measure of the quantity of those particular goods; and the notice has effect accordingly.

(5) The Minister must, in exercising his or her powers under subsection (4) in respect of particular goods the subject of a notice under subsection 269TK(1) or (2) of the Customs Act, if the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice is less than the sum of:

- (a) the countervailable subsidy as so ascertained, or last so ascertained; and
- (b) the export price of those particular goods; have regard to the desirability of fixing a lesser amount of duty such that the sum of the export price of those particular goods and the lesser duty does not exceed that non-injurious price.

(6) If the Minister signs a notice under subsection (4), the Minister must cause a copy of that notice to be published in the *Gazette* unless, in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.

(7) The third country countervailing duty payable on goods the subject of a notice under subsection 269TK(1) or (2) of the Customs Act is an amount equal to:

(a) unless paragraph (b) applies—the countervailable subsidy in respect of those particular goods; or

(b) if, in a notice under subsection (4), the Minister determines that the interim countervailing duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind—the difference between:

(i) the amount that the Minister ascertains to be the export price of those particular goods; and

(ii) the lower of the sum of the amounts that the Minister ascertains to be the export price of, and the countervailable subsidy in respect of, those particular goods and the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice under subsection 269TK(1) or (2).

(7A) A notice under subsection (4) applies to goods entered for home

consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

(7B) If the Minister has determined, under subsection 269TK(3) of the Customs Act, the amount of any countervailable subsidy in respect of goods to which this section applies by virtue of a notice under subsection 269TK(1) or (2) of that Act, that amount is to be taken to be the amount of that countervailable subsidy for the purposes of this section.

(8) The Minister may, by notice in writing, exempt goods from interim third country countervailing duties third country countervailing duty if he or she is satisfied:

(a) that like or directly competitive goods are not offered or sold in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade; or

(b) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(9) Where the Minister exempts goods from interim third country countervailing duties third country countervailing duty under subsection (8) because he or she is satisfied as to a matter specified under paragraph (8)(a), the instrument of exemption shall be published in the *Gazette*.

12 Interim duty not to exceed security taken

If:

(a) a security has been taken under section 42 of the *Customs Act 1901* in respect of interim duty that may become payable under section 8, 9, 10 or 11 of this Act in respect of goods imported into Australia; and

(b) the amount of interim duty that would be so payable under section 8, 9, 10 or 11 of this Act would, but for the operation of this section, exceed the amount of the security taken; the interim duty payable is equal to the amount of security taken.

16 Duties to be charged separately

The several duties imposed by this Act shall be separately charged, notwithstanding that more than one duty applies to any particular goods.

21 Special duties to be additional to ordinary duties

The special duties of Customs payable under this Act are in addition to such other duties of Customs (if any) as are payable under any other Act.

Notes to the Customs Tariff (Anti-Dumping) Act 1975

ANNEX III: THE U.S. ANTIDUMPING LAW

TITLE 19--CUSTOMS DUTIES

CHAPTER 4--TARIFF ACT OF 1930

SUBTITLE IV--COUNTERVAILING AND ANTIDUMPING DUTIES

PART II--IMPOSITION OF ANTIDUMPING DUTIES

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.

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 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 [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.

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 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 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.

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 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 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 preliminary 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 imposed 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.

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 \(c\)\(2\)](#) 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 \(c\)\(1\)](#) 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 \(c\)\(2\)](#) 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 \(c\)\(1\)](#) 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.

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.

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.

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.

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.

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, [23](#) 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.