which a petition is filed under section 1673a(b) of this title, or an investigation is commenced under section 1673a(a) of this title, but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value. If the determination of the administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.''

Subsec. (b)(2). Pub. L. 100–418, § 1326(d)(1), substituted ''(F), or (G)'' for ''or (F)'' in two places.

Subsec. (c)(1). Pub. L. 100–418, § 1323(b)(2), inserted sentence at end relating to notice for extensions under subsec. (b)(1)(B).

Subsec. (e)(1). Pub. L. 100–418, § 1324(b)(2), inserted ''(at any time after the initiation of the investigation under this part)'' after ''promptly'' in introductory provisions.

Pub. L. 100–418, § 1323(b)(3), inserted sentence at end relating to investigations in which subsec. (b)(1)(B) is applied.

1986—Subsec. (b)(2). Pub. L. 99–514 inserted reference to subpar. (F) of section 1677(9) of this title in two places.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1323(b) of Pub. L. 100–418 effective Aug. 23, 1988, amendment by section 1324(b)(2) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and amendment by section 1326(d)(1) of Pub. L. 100–418 applicable with respect to investigations initiated after Aug. 23, 1988, and to reviews initiated under section 1673e(c) or 1675 of this title after Aug. 23, 1988, see section 1337(a) to (c) of Pub. L. 100–418, set out as a note under section 1671 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 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.

(June 17, 1930, ch. 497, title VII, § 734, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 165; amended Pub. L. 98–573, title VI, §§ 604(b), 612(b)(2), Oct. 30, 1984, 98 Stat. 3026, 3034; Pub. L. 100–418, title I, §§ 1316(c), 1326(d)(2), Aug. 23, 1988, 102 Stat. 1187, 1204; Pub. L. 103–465, title II, §§ 216(b), 217(b), 218(a)(2), 219(c)(2)–(5), 233(a)(1)(B), (2)(A)(ii), (5)(S)–(U), Dec. 8, 1994, 108 Stat. 4853, 4854, 4857, 4898, 4900.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–465, § 217(b), designated existing provisions as subpar. (A), inserted heading and realigned margin, and added subpar. (B).

Subsec. (a)(2)(A). Pub. L. 103–465, § 233(a)(5)(S), substituted ''subject merchandise'' for ''merchandise that is subject to the investigation''.

Subsec. (b). Pub. L. 103–465, § 233(a)(5)(T), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation'' in introductory provisions.

Subsec. (b)(2). Pub. L. 103–465, § 233(a)(1)(B), (2)(A)(ii), substituted ''normal value'' for ''foreign market value'' and ''export price (or the constructed export price)'' for ''United States price''.

Subsec. (c)(1). Pub. L. 103–465, § 233(a)(5)(T), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation'' in introductory provisions.

Subsec. (c)(1)(B). Pub. L. 103–465, § 233(a)(1)(B), (2)(A)(ii), substituted ''normal value'' for ''foreign mar-

ket value'' in two places and ''export price (or the constructed export price)'' for ''United States price'' in two places.

Subsec. (d). Pub. L. 103–465, § 216(b), inserted concluding provisions.

Subsec. (f)(1)(A). Pub. L. 103–465, § 233(a)(5)(T), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Subsec. (f)(2)(A)(i). Pub. L. 103–465, §§ 219(c)(2)(A), 233(a)(5)(T), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation'' and ''1673b(d)(2)'' for ''1673b(d)(1)''.

Subsec. (f)(2)(A)(iii). Pub. L. 103–465, § 219(c)(2)(B), substituted ''1673b(d)(1)(B)'' for ''1673b(d)(2)''.

Subsec. (f)(2)(B). Pub. L. 103–465, §§ 219(c)(3), 233(a)(5)(U), substituted ''subject merchandise'' for ''merchandise subject to the investigation'', ''1673b(d)(2)'' for ''1673b(d)(1)'', and ''1673b(d)(1)(B)'' for ''1673b(d)(2)''.

Subsecs. (g)(1), (h)(2). Pub. L. 103–465, § 233(a)(5)(T), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Subsec. (h)(3). Pub. L. 103–465, §§ 219(c)(4), 233(a)(5)(T), in introductory provisions, substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation'', in subpar. (A), substituted ''1673b(d)(2)'' for ''1673b(d)(1)'', and in subpar. (B), substituted ''1673b(d)(1)(B)'' for ''1673b(d)(2)''.

Subsec. (i)(1)(A). Pub. L. 103–465, § 219(c)(5), substituted ''1673b(d)(2)'' for ''1673b(d)(1)'' in introductory provisions.

Subsec. (j). Pub. L. 103–465, § 233(a)(5)(T), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

Subsec. (m). Pub. L. 103–465, § 218(a)(2), added subsec. (m).

1988—Subsecs. (g)(2), (h)(1). Pub. L. 100–418, § 1326(d)(2), substituted ''(F), or (G)'' for ''and (F)''.

Subsec. (*l*). Pub. L. 100–418, § 1316(c), added subsec. (*l*).

1984—Subsec. (a). Pub. L. 98–573, § 604(b)(1), amended subsec. (a) generally, which prior to amendment read as follows: ''An investigation under this part may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 1673b(b) of this title.''

Subsec. (d). Pub. L. 98–573, § 604(b)(2), struck out designation ''(1)'' preceding first sentence, substituted ''may not accept'' for ''shall not accept'', redesignated former subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out former par. (2), which had provided that exports of merchandise to the United States were not to increase during the interim period.

Subsec. (e)(3). Pub. L. 98–573, § 604(b)(3), substituted ''all interested parties described in section 1677(9) of this title'' for ''all parties to the investigation''.

Subsecs. (g)(2), (h)(1). Pub. L. 98–573, § 612(b)(2), substituted reference to subpar. ''(C), (D), (E), and (F)'' for ''(C), (D), or (E)'' of section 1677(9) of this title.

Subsec. (i)(1)(D), (E). Pub. L. 98–573, § 604(b)(4), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (k). Pub. L. 98–573, § 604(b)(5), added subsec. (k).

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 604(b) of Pub. L. 98–573 effective Oct. 30, 1984, and amendment by section 612(b)(2) of Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, and to reviews begun under section 1675 of this title, on or after Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 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