ury Decision 42937, as amended, and collect estimated countervailing duties pending the determination of the Commission. The Commission shall issue its determination in any investigation under this subsection not later than 3 years after the date of commencement of such investigation.

''(4) EFFECT OF DETERMINATION.—

''(A) AFFIRMATIVE DETERMINATION.—Upon being notified of an affirmative determination under paragraph (2) by the Commission, the administering authority shall liquidate entries of merchandise the liquidation of which was suspended under paragraph (3) of this subsection and impose countervailing duties in the amount of the estimated duties required to be deposited. The countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(c) of the Tariff Act of 1930 [section 1675(c) of this title].

''(B) NEGATIVE DETERMINATION.—Upon being notified of a negative determination under paragraph (2) by the Commission, the administering authority shall revoke the countervailing duty order then in effect, publish notice thereof in the Federal Register, and refund, without payment of interest, any estimated countervailing duties collected during the period of suspension of liquidation.

''(c) ALL OUTSTANDING COUNTERVAILING DUTY ORDERS.—Subject to the provisions of subsections (a) and (b), any countervailing duty order issued under section 303 of the Tariff Act of 1930 [section 1303 of this title] which is—

''(1) in effect on the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above] (as added by section 101 of this Act), or

''(2) issued pursuant to court order in a proceeding brought before that date under section 516(d) of the Tariff Act of 1930 [section 1516(d) of this title],

shall remain in effect after that date and shall be subject to review under section 751 of the Tariff Act of 1930 [section 1675 of this title].

''(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the Commission makes a determination under subsection (a) or (b), it shall publish notice of that determination in the Federal Register and notify the administering authority of its determination.

''(e) DEFINITIONS.—Whenever any term which is defined in section 771 of the Tariff Act of 1930 [section 1677 of this title] is used in this section, it has the same meaning as when it is used in title VII of that Act [this subtitle].''

§ 1671a. Procedures for initiating a countervailing duty investigation

(a) Initiation by administering authority

A countervailing duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 1671(a) of this title exist.

(b) Initiation by petition

(1) Petition requirements

A countervailing duty proceeding shall be initiated whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 1671(a) of this title, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) Simultaneous filing with Commission

The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) Petition based upon a derogation of an international undertaking on official export credits

If the sole basis of a petition filed under paragraph (1) is the derogation of an international undertaking on official export credits, the Administering Authority shall immediately notify the Secretary of the Treasury who shall, in consultation with the Administering Authority, within 5 days after the date on which the administering authority initiates an investigation under subsection (c) of this section, determine the existence and estimated value of the derogation, if any, and shall publish such determination in the Federal Register.

(4) Action with respect to petitions

(A) Notification of governments

Upon receipt of a petition filed under paragraph (1), the administering authority shall—

(i) notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country; and

(ii) provide the government of any exporting country named in the petition that is a Subsidies Agreement country an opportunity for consultations with respect to the petition.

(B) Acceptance of communications

The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 1677(9)(C), (D), (E), (F), or (G) of this title before the administering authority makes its decision whether to initiate an investigation, except as provided in subparagraph (A)(ii) and subsection (c)(4)(D) of this section, and except for inquiries regarding the status of the administering authority's consideration of the petition.

(C) Nondisclosure of certain information

The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under paragraph (1).

(c) Petition determination

(1) In general

(A) Time for initial determination

Except as provided in subparagraph (B), within 20 days after the date on which a petition is filed under subsection (b) of this section, the administering authority shall—

(i) after examining, on the basis of sources readily available to the administering authority, the accuracy and ade-

quacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 1671(a) of this title and contains information reasonably available to the petitioner supporting the allegations, and

(ii) determine if the petition has been filed by or on behalf of the industry.

(B) Extension of time

In any case in which the administering authority is required to poll or otherwise determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional circumstances, apply subparagraph (A) by substituting ''a maximum of 40 days'' for ''20 days''.

(C) Time limits where petition involves same merchandise as an order that has been revoked

If a petition is filed under this section with respect to merchandise that was the subject merchandise of—

(i) a countervailing duty order that was revoked under section 1675(d) of this title in the 24 months preceding the date the petition is filed, or

(ii) a suspended investigation that was terminated under section 1675(d) of this title in the 24 months preceding the date the petition is filed,

the administering authority and the Commission shall, to the maximum extent practicable, expedite any investigation initiated under this section with respect to the petition.

(2) Affirmative determinations

If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether a countervailable subsidy is being provided with respect to the subject merchandise.

(3) Negative determinations

If the determination under clause (i) or (ii) of paragraph (1)(A) is negative, the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) Determination of industry support

(A) General rule

For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the industry, if—

(i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and

(ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

(B) Certain positions disregarded

(i) Producers related to foreign producers

In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to foreign producers, as defined in section 1677(4)(B)(ii) of this title, unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of a countervailing duty order.

(ii) Producers who are importers

The administering authority may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise.

(C) Special rule for regional industries

If the petition alleges that the industry is a regional industry, the administering authority shall determine whether the petition has been filed by or on behalf of the industry by applying subparagraph (A) on the basis of production in the region.

(D) Polling the industry

If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering authority shall—

(i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

(E) Comments by interested parties

Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 1677(9) of this title if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

(5) "Domestic producers or workers" defined

For purposes of this subsection, the term ''domestic producers or workers'' means those interested parties who are eligible to file a petition under subsection (b)(1) of this section.

(d) Notification to Commission of determination

The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c) of this section, and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under

investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) Information regarding critical circumstances

If, at any time after the initiation of an investigation under this part, the administering authority finds a reasonable basis to suspect that the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the subject merchandise and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 1671d(a) of this title, the investigation is terminated, or the administering authority withdraws the request.

(June 17, 1930, ch. 497, title VII, § 702, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 151; amended Pub. L. 98–181, title VI, § 650(a), Nov. 30, 1983, 97 Stat. 1266; Pub. L. 99–514, title XVIII, § 1886(a)(2), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100–418, title I, §§ 1324(a)(1), 1326(d)(1), Aug. 23, 1988, 102 Stat. 1199, 1204; Pub. L. 103–465, title II, §§ 211(a), 212(a)(1), (b)(1)(E), 233(a)(5)(B), (6)(A)(i), (ii), 270(a)(1)(A), (d), Dec. 8, 1994, 108 Stat. 4842, 4843, 4848, 4899, 4901, 4917, 4918; Pub. L. 104–295, § 20(b)(3), Oct. 11, 1996, 110 Stat. 3527.)

AMENDMENTS

1996—Subsec. (c)(5). Pub. L. 104–295 substituted ''(b)(1)'' for ''(b)(1)(A)''.

1994—Subsecs. (a), (b)(1). Pub. L. 103–465, § 233(a)(6)(A)(i), (ii), substituted ''initiated'' for ''commenced''.

Subsec. (b)(3). Pub. L. 103–465, §§ 211(a)(1), 212(b)(1)(E), substituted ''paragraph (1)'' for ''subsection (b)(1) of this section'' and ''5 days after the date on which the administering authority initiates an investigation under subsection (c) of this section,'' for ''twenty days''.

Subsec. (b)(4). Pub. L. 103–465, § 211(a)(2), added par. (4).

Subsec. (c). Pub. L. 103–465, § 212(a)(1), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''Within 20 days after the date on which a petition is filed under subsection (b) of this section, the administering authority shall—

''(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 1671(a) of this title and contains information reasonably available to the petitioner supporting the allegations,

''(2) if the determination is affirmative, commence an investigation to determine whether a subsidy is being provided with respect to the class or kind of merchandise described in the petition, and provide for the publication of notice of the determination to commence an investigation in the Federal Register, and

''(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.''

Subsec. (e). Pub. L. 103–465, § 270(a)(1)(A), (d), substituted ''countervailable subsidy'' for ''subsidy'' and ''Subsidies Agreement'' for ''Agreement''.

Pub. L. 103–465, § 233(a)(5)(B), substituted ''subject merchandise'' for ''class or kind of merchandise that is the subject of the investigation'' in two places.

1988—Subsec. (b)(1). Pub. L. 100–418, § 1326(d)(1), substituted ''(F), or (G)'' for ''or (F)''.

Subsec. (e). Pub. L. 100–418, § 1324(a)(1), added subsec. (e).

1986—Subsec. (b)(1). Pub. L. 99–514 inserted reference to subpar. (F) of section 1677(9) of this title.

1983—Subsec. (b)(3). Pub. L. 98–181 added par. (3).

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

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.

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.

§ 1671b. Preliminary determinations

(a) Determination by Commission of reasonable indication of injury

(1) General rule

Except in the case of a petition dismissed by the administering authority under section 1671a(c)(3) of this title, the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,