dise'' in par. (2), and inserted sentence at end providing that for purposes of this section and section 1673d(b)(1) of this title, a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE

Part effective Jan. 1, 1980, see section 107 of Pub. L. 96–39, set out as a note under section 1671 of this title.

§ 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 admin-

istering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 1673 of this title and contains information reasonably available to the petitioner supporting the allegations, and

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

(B) Extension of time

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

(C) Time limits where petition involves same merchandise as an order that has been revoked

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

(i) an antidumping duty order or finding that was revoked under section 1675(d) of this title in the 24 months preceding the date the petition is filed, or

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

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

(2) Affirmative determinations

If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value.

(3) Negative determinations

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

(4) Determination of industry support

(A) General rule

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

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

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

(B) Certain positions disregarded

(i) Producers related to foreign producers

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

(ii) Producers who are importers

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

(C) Special rule for regional industries

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

(D) Polling the industry

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

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

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

(E) Comments by interested parties

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

(5) "Domestic producers or workers" defined

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

(d) Notification to Commission of determination

The administering authority shall—

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

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

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

(e) Information regarding critical circumstances

If, at any time after the initiation of an investigation under this part, the administering authority finds a reasonable basis to suspect that—

(1) there is a history of dumping in the United States or elsewhere of the subject merchandise, or

(2) the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less than its fair value,

the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the subject merchandise and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 1673d(a) of this title, the investigation is terminated, or the administering authority withdraws the request.

(June 17, 1930, ch. 497, title VII, § 732, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 162; amended Pub. L. 98–573, title VI, § 609, Oct. 30, 1984, 98 Stat. 3030; Pub. L. 99–514, title XVIII, § 1886(a)(2), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100–418, title I, §§ 1324(b)(1), 1326(d)(1), Aug. 23, 1988, 102 Stat. 1200, 1204; Pub. L. 103–465, title II, §§ 211(b), 212(a)(2), 233(a)(5)(P)–(R), (6)(A)(v)–(vii), (C), Dec. 8, 1994, 108 Stat. 4843, 4845, 4900, 4901; Pub. L. 104–295, § 20(b)(4), (8), (9), Oct. 11, 1996, 110 Stat. 3527.)

AMENDMENTS

1996—Subsec. (a)(2)(B). Pub. L. 104–295, § 20(b)(9), amended directory language of Pub. L. 103–465, § 233(a)(6)(C). See 1994 Amendment note below.

Subsec. (c)(5). Pub. L. 104–295, § 20(b)(4), substituted ''(b)(1)'' for ''(b)(1)(A)''.

Subsec. (e)(1). Pub. L. 104–295, § 20(b)(8), substituted ''the'' for ''the the'' before ''subject merchandise''.

1994—Subsec. (a)(1). Pub. L. 103–465, § 233(a)(6)(A)(v), substituted ''initiated'' for ''commenced''.

Subsec. (a)(2)(B). Pub. L. 103–465, § 233(a)(6)(C), as amended by Pub. L. 104–295, § 20(b)(9), substituted ''initiate'' for ''commerce'' in two places.

Subsec. (a)(2)(D). Pub. L. 103–465, § 233(a)(6)(A)(vi), substituted ''initiated'' for ''commenced''.

Subsec. (b)(1). Pub. L. 103–465, § 233(a)(6)(A)(vii), substituted ''initiated'' for ''commenced''.

Subsec. (b)(3). Pub. L. 103–465, § 211(b), added par. (3).

Subsec. (c). Pub. L. 103–465, § 212(a)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''Within 20 days after the date on which a petition is filed under subsection (b) of this section, the administering authority shall—

''(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 1673 of this title and contains information reasonably available to the petitioner supporting the allegations,

''(2) if the determination is affirmative, commence an investigation to determine whether the class or kind of merchandise described in the petition is being, or is likely to be, sold in the United States at less than its fair value, and provide for the publication of notice of the determination in the Federal Register, and

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

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

Subsec. (e)(1). Pub. L. 103–465, § 233(a)(5)(P), substituted ''the subject merchandise'' for ''class or kind of the merchandise which is the subject of the investigation''.

Subsec. (e)(2). Pub. L. 103–465, § 233(a)(5)(Q), substituted ''subject merchandise'' for ''merchandise which is the subject of the investigation''.

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

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

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

1984—Subsec. (a). Pub. L. 98–573 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

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.

§ 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