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

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 avail-

able to it at that time, whether there is a reasonable basis to believe or suspect that—

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

The administering authority shall be treated as having made an affirmative determination under subparagraph (A) in any investigation to which subsection (b)(1)(B) of this section is applied.

(2) Suspension of liquidation

If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(2) of this section shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or

(B) the date on which notice of the determination to initiate the investigation is published in the Federal Register.

(f) Notice of determination

Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2) of this section, the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

(June 17, 1930, ch. 497, title VII, § 733, as added Pub. L. 96–39, title I, § 101, July 26, 1979, 93 Stat. 163; amended Pub. L. 99–514, title XVIII, § 1886(a)(2), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100–418, title I, §§ 1323(b), 1324(b)(2), 1326(d)(1), Aug. 23, 1988, 102 Stat. 1198, 1201, 1204; Pub. L. 103–465, title II, §§ 212(b)(2)(A), (C)–(E), 213(a), 214(b)(1), 215(b), 219(a), (c)(1), 233(a)(6)(A)(viii)–(x), (B), Dec. 8, 1994, 108 Stat. 4848–4852, 4855, 4857, 4901.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–465, § 212(b)(2)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Except in the case of a petition dismissed by the administering authority under section 1673a(c)(3) of this title, the Commission, within 45 days after the date on which a petition is filed under section 1673a(b) of this title or on which it receives notice from the administering authority of an investigation commenced under section 1673a(a) of this title, shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

''(1) an industry in the United States—

''(A) is materially injured, or

''(B) is threatened with material injury, or

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

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.''

Subsec. (b)(1)(A). Pub. L. 103–465, § 219(a)(2), struck out at end ''If the determination of the administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.''

Pub. L. 103–465, §§ 212(b)(2)(C)(i), 233(a)(6)(A)(viii), substituted ''140 days after the date on which the administering authority initiates an investigation under section 1673a(c) of this title'' for ''160 days after the date on which a petition is filed under section 1673a(b) of this title'', ''initiated'' for ''commenced'', and ''information'' for ''best information''.

Subsec. (b)(1)(B). Pub. L. 103–465, §§ 212(b)(2)(C)(ii), 233(a)(6)(A)(viii), in introductory provisions, substituted ''initiated'' for ''commenced'', in cl. (i), substituted ''100'' for ''120'' and ''140'' for ''160'', and in cl. (ii), substituted ''80'' for ''100'' and ''140'' for ''160''.

Subsec. (b)(2). Pub. L. 103–465, § 233(a)(6)(A)(ix), (B), substituted ''initiation'' for ''commencement'' after ''90 days after the'' and ''initiated'' for ''commenced''.

Subsec. (b)(3). Pub. L. 103–465, § 213(a), added par. (3).

Subsec. (c)(1). Pub. L. 103–465, §§ 212(b)(2)(D), 233(a)(6)(A)(x), in concluding provisions, substituted ''190th day after the date on which the administering authority initiates an investigation under section 1673a(c) of this title'' for ''210th day after the date on which a petition is filed under section 1673a(b) of this title'' and ''initiated'' for ''commenced''.

Subsec. (d). Pub. L. 103–465, § 215(b)(1)(B), inserted concluding provisions.

Subsec. (d)(1). Pub. L. 103–465, § 219(a)(1)(D), added par. (1). Former par. (1) redesignated (2).

Pub. L. 103–465, § 215(b)(1)(A), substituted ''warehouse, for consumption on or after the later of—'' and subpars. (A) and (B) for ''warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,''.

Subsec. (d)(2). Pub. L. 103–465, § 219(a)(1)(A)–(C), redesignated par. (1) as (2), inserted ''and'' at end, and struck out former par. (2) which read as follows: ''shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated average amount by which the foreign market value exceeds the United States price, and''.

Subsec. (e)(1). Pub. L. 103–465, § 214(b)(1), in introductory provisions, substituted ''information'' for ''best information'' and amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

''(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

''(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.''

Subsec. (e)(2). Pub. L. 103–465, §§215(b)(2), 219(c)(1), substituted ''subsection (d)(2)'' for ''subsection (d)(1)'' and ''warehouse, for consumption on or after the later of—'' and subpars. (A) and (B) for ''warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.''

Subsec. (f). Pub. L. 103–465, §212(b)(2)(E), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.''

1988—Subsec. (b)(1). Pub. L. 100–418, §1323(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Within 160 days after the date on which a petition is filed under section 1673a(b) of this title, or an investigation is commenced under section 1673a(a) of this title, but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value. If the determination of the administering authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.''

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

§ 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