

title, amending sections 1001, 1402, 1500, and 1583 of this title, and section 372 of former Title 31, Money and Finance, repealing sections 12 to 18, 21, 24, 26 to 28, 30, 40, 53 to 57, 59, 61, 62, 67, 376, 379, 390, 494, 526, 541, 542, 549, and 579 of this title, and section 711 of former Title 31, and enacting provisions set out as notes under sections 2, 160, 1351, 1401a, and 1402 of this title] may be cited as the ‘Customs Simplification Act of 1956’.”

SHORT TITLE OF 1955 AMENDMENT

Section 1 of act June 21, 1955, ch. 169, 69 Stat. 162, provided: “That this Act [amending sections 1351, 1352, 1352a, 1363, and 1364 of this title] may be cited as the ‘Trade Agreements Extension Act of 1955’.”

SHORT TITLE OF 1954 AMENDMENT

Section 1 of act Sept. 1, 1954, ch. 1213, 68 Stat. 1136, provided: “That this Act [enacting sections 1301a and 1595a of this title, amending sections 161, 1001, 1201, 1441, 1451, 1581, 1605, 1607, 1610, 1612 of this title, section 545 of Title 18, Crimes and Criminal Procedure, section 91 of Title 46, Appendix, Shipping, sections 1421e, 1644 of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under sections 160 and 1332 of this title] may be cited as the ‘Customs Simplification Act of 1954’.”

SHORT TITLE OF 1953 AMENDMENTS

Section 1 of act Aug. 8, 1953, ch. 397, 67 Stat. 507, provided in part: “That this Act [amending sections 268, 1001, 1201, 1304, 1308, 1309, 1313, 1315, 1317, 1321, 1431, 1439, 1440, 1482, 1484, 1486, 1487, 1489, 1498, 1501, 1503, 1508, 1520, 1523, 1557, and 1562 of this title, enacting sections 1322 and 1646a of this title, and repealing sections 33-35, 39, 42-45, 273, 274, 472-475, 1320, and 1503a of this title] may be cited as the ‘Customs Simplification Act of 1953’.”

Section 1 of act Aug. 7, 1953, ch. 348, 67 Stat. 472, provided: “That this Act [amending sections 1330, 1352, and 1364 of this title, section 624 of Title 7, Agriculture, and provisions set out as notes under sections 1351, 1364, and section 1366 of this title] may be cited as the ‘Trade Agreements Extension Act of 1953’.”

SHORT TITLE OF 1951 AMENDMENT

Section 1 of act June 16, 1951, ch. 141, 65 Stat. 72, provided: “That this Act [enacting sections 1360 to 1367 of this title, amending sections 1352 and 1354 of this title, provisions set out as a note under section 1516 of this title, and section 624 of Title 7, Agriculture] may be cited as the ‘Trade Agreements Extension Act of 1951’.”

SHORT TITLE OF 1949 AMENDMENT

Section 1 of act Sept. 26, 1949, ch. 585, 63 Stat. 697, provided: “That this Act [amending sections 1351, 1352, and 1354 of this title and repealing sections 1357 to 1359 of this title] may be cited as the ‘Trade Agreements Extension Act of 1949’.”

SHORT TITLE OF 1938 AMENDMENT

Section 1 of act June 25, 1938, ch. 679, 52 Stat. 1077, provided: “That this Act [enacting sections 1321, 1467, 1528 of this title, amending sections 1001, 1201, 1304, 1308, 1309, 1315, 1317, 1401, 1402, 1451, 1459, 1460, 1484, 1485, 1491, 1499, 1501, 1516, 1520, 1524, 1553, 1557 to 1559, 1562, 1563, 1603, 1607, 1609, 1613, 1623, 1709 of this title, and section 331 of former Title 46, Shipping, and enacting provisions set out as a note under section 1516 of this title] may be cited as the ‘Customs Administrative Act of 1938’.”

SUBTITLE IV—COUNTERVAILING AND ANTIDUMPING DUTIES

PART I—IMPOSITION OF COUNTERVAILING DUTIES

CODIFICATION

The designations “SUBTITLE IV” and “PART I” were in the original “TITLE VII” and “Subtitle A” respec-

tively, and were editorially changed in order to conform the numbering format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.

§ 1671. Countervailing duties imposed

(a) General rule

If—

(1) the administering authority determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and

(2) in the case of merchandise imported from a Subsidies Agreement country, the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

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

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,

then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net countervailable subsidy. For purposes of this subsection and section 1671d(b)(1) of this title, a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(b) Subsidies Agreement country

For purposes of this subtitle, the term “Subsidies Agreement country” means—

(1) a WTO member country,

(2) a country which the President has determined has assumed obligations with respect to the United States which are substantially equivalent to the obligations under the Subsidies Agreement, or

(3) a country with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on December 8, 1994, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States, and

(B) the agreement described in subparagraph (A) does not expressly permit—

(i) actions required or permitted by the GATT 1947 or GATT 1994, as defined in section 3501(1) of this title, or required by the Congress, or

(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(c) Countervailing duty investigations involving imports not entitled to a material injury determination

In the case of any article or merchandise imported from a country which is not a Subsidies Agreement country—

(1) no determination by the Commission under section 1671b(a), 1671c, or 1671d(b) of this title shall be required,

(2) an investigation may not be suspended under section 1671c(c) or 1671c(l) of this title,

(3) no determination as to the presence of critical circumstances shall be made under section 1671b(e) or 1671d(a)(2) of this title,

(4) section 1671e(c) of this title shall not apply,

(5) any reference to a determination described in paragraph (1) or (3), or to the suspension of an investigation under section 1671c(c) or 1671c(l) of this title, shall be disregarded, and

(6) section 1675(c) of this title shall not apply.

(d) Treatment of international consortia

For purposes of this part, if the members (or other participating entities) of an international consortium that is engaged in the production of subject merchandise receive countervailable subsidies from their respective home countries to assist, permit, or otherwise enable their participation in that consortium through production or manufacturing operations in their respective home countries, then the administering authority shall cumulate all such countervailable subsidies, as well as countervailable subsidies provided directly to the international consortium, in determining any countervailing duty upon such merchandise.

(e) Upstream subsidies

Whenever the administering authority has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 1677-1(a)(1)¹ of this title, is being paid or bestowed, the administering authority shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 1677-1(a)(3)² of this title.

(June 17, 1930, ch. 497, title VII, § 701, as added Pub. L. 96-39, title I, § 101, July 26, 1979, 93 Stat. 151; amended Pub. L. 98-573, title VI, §§ 602(a)(1), 613(b), Oct. 30, 1984, 98 Stat. 3024, 3035; Pub. L. 99-514, title XVIII, § 1886(a)(1), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100-418, title I, §§ 1314, 1315, Aug. 23, 1988, 102 Stat. 1185; Pub. L. 100-647, title IX, § 9001(a)(9), Nov. 10, 1988, 102 Stat. 3807; Pub. L. 103-465, title II, §§ 233(a)(5)(A), 261(d)(1)(B)(iii), 262, 270(b)(1)(A), Dec. 8, 1994, 108 Stat. 4899, 4910, 4917.)

AMENDMENTS

1994—Subsecs. (a) to (c). Pub. L. 103-465, § 262, amended subsecs. (a) to (c) generally, substituting present provisions for provisions which generally authorized the imposition of countervailing duties, defined “country under the Agreement”, and provided for revocation of status as country under the Agreement.

¹ So in original. Probably should be section “1677-1(a)”.

² So in original. Probably should be section “1677-1(c)”.

Subsec. (d). Pub. L. 103-465, § 270(b)(1)(A), substituted “countervailable subsidies” for “subsidies” wherever appearing.

Pub. L. 103-465, § 233(a)(5)(A), substituted “subject merchandise” for “a class or kind of merchandise subject to a countervailing duty investigation”.

Subsec. (f). Pub. L. 103-465, § 261(d)(1)(B)(iii), struck out subsec. (f) which provided for cross reference to section 1303 of this title for provisions of law applicable in the case of merchandise which was product of country other than country under the Agreement.

1988—Subsec. (c). Pub. L. 100-418, § 1314(2), added subsec. (c). Former subsec. (c) relating to upstream subsidies redesignated (d).

Subsec. (d). Pub. L. 100-647 redesignated subsec. (d), relating to cross reference, as (f).

Pub. L. 100-418, § 1315(2), added subsec. (d) relating to treatment of international consortia. Former subsec. (d), relating to upstream subsidies, redesignated (e).

Pub. L. 100-418, § 1314(1), redesignated subsec. (c), relating to upstream subsidies, as (d).

Subsec. (e). Pub. L. 100-418, § 1315(1), redesignated subsec. (d), relating to upstream subsidies, as (e).

Subsec. (f). Pub. L. 100-647 redesignated subsec (d), relating to cross reference, as (f).

1986—Subsecs. (c), (d), (g). Pub. L. 99-514 redesignated subsecs. (g) and (c) as (c) and (d), respectively.

1984—Subsec. (a). Pub. L. 98-573, § 602(a)(1)(C), inserted last sentence which provided that for purposes of this subsection and section 1671d(b)(1) of this title, a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

Subsec. (a)(1). Pub. L. 98-573, § 602(a)(1)(A), inserted “, or sold (or likely to be sold) for importation,” in provisions following subpar. (B).

Subsec. (a)(2). Pub. L. 98-573, § 602(a)(1)(B), inserted “or by reason of sales (or the likelihood of sales) of that merchandise for importation” in provisions following subpar. (B).

Subsec. (g). Pub. L. 98-573, § 613(b), added subsec. (g).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 261(d)(1)(B)(iii) of Pub. L. 103-465 effective on the effective date of title II of Pub. L. 103-465, Jan. 1, 1995, see section 261(d)(2) of Pub. L. 103-465, set out as a note under section 1315 of this title.

Section 291 of title II of Pub. L. 103-465 provided that:

“(a) IN GENERAL.—Except as provided in section 261 [amending this section and sections 1315, 1337, 1677i, 2192, and 2194 of this title, repealing section 1303 of this title, enacting provisions set out as notes under sections 1303 and 1315 of this title, and amending provisions set out as a note under section 1303 of this title], the amendments made by this title [see Tables for classification] shall take effect on the date described in subsection (b) and apply with respect to—

“(1) investigations initiated—

“(A) on the basis of petitions filed under section 702(b), 732(b), or 783(b) of the Tariff Act of 1930 [19 U.S.C. 1671a(b), 1673a(b), or 1677n(b)] after the date described in subsection (b), or

“(B) by the administering authority under section 702(a) or 732(a) of such Act after such date,

“(2) reviews initiated under section 751 of such Act [19 U.S.C. 1675]—

“(A) by the administering authority or the Commission on their own initiative after such date, or

“(B) pursuant to a request filed after such date,

“(3) investigations initiated under section 753 of such Act [19 U.S.C. 1675b] after such date,

“(4) petitions filed under section 780 of such Act [19 U.S.C. 1677i] after such date, and

“(5) inquiries initiated under section 781 of such Act [19 U.S.C. 1677j]—

“(A) by the administering authority on its own initiative after such date, or

“(B) pursuant to a request filed after such date.

“(b) DATE DESCRIBED.—The date described in this subsection is the date on which the WTO Agreement (as

defined in section 2(9) [19 U.S.C. 3501(9)] enters into force with respect to the United States [Jan. 1, 1995].”

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-647 applicable as if such amendment took effect on Aug. 23, 1988, see section 9001(b) of Pub. L. 100-647, set out as an Effective and Termination Dates of 1988 Amendments note under section 58c of this title.

Section 1337 of Pub. L. 100-418, as amended by Pub. L. 100-647, title IX, §9001(a)(6), Nov. 10, 1988, 102 Stat. 3807, provided that:

“(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this part [part 2 (§§1311-1337) of subtitle C of title I of Pub. L. 100-418, enacting sections 1673h, 1677-2, 1677i to 1677k of this title, amending this section and sections 1516, 1671a to 1671d, 1673a to 1673e, 1675, 1677, 1677b, 1677e, 1677f, and 1677h of this section, and amending provisions set out as a note under section 2253 of this title] shall take effect on the date of enactment of this Act [Aug. 23, 1988].

“(b) INVESTIGATIONS AND REVIEWS AFTER ENACTMENT.—The amendments made by sections 1312, 1315, 1316, 1318, 1325, 1326, 1327, 1328, 1329, 1331, and 1332 [amending this section and sections 1516, 1671a to 1671c, 1673a to 1673c, 1673e, 1677, 1677b, 1677e, and 1677f of this title] shall only apply with respect to—

“(1) investigations initiated after the date of enactment of this Act [Aug. 23, 1988], and

“(2) reviews initiated under section 736(c) or 751 of the Tariff Act of 1930 [19 U.S.C. 1673e(c) or 1675] after the date of enactment of this Act [Aug. 23, 1988].

“(c) INVESTIGATIONS AFTER ENACTMENT.—The amendments made by sections 1324 and 1330 [amending sections 1671a, 1671b, 1671d, 1673a, 1673b, 1673d, and 1677 of this title] shall only apply with respect to investigations initiated after the date of enactment of this Act [Aug. 23, 1988].

“(d) PREVENTION OF CIRCUMVENTION OF DUTIES; DRAWBACK.—The provisions of section 781 of the Tariff Act of 1930, as added by section 1321(a) [19 U.S.C. 1677j], and the amendments made by section 1334 [amending section 1677h of this title] shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of enactment of this Act [Aug. 23, 1988].

“(e) GOVERNMENTAL IMPORTATIONS; STEEL.—The amendments made by sections 1322 [amending provisions set out as a note under section 2253 of this title] and 1335 [amending section 1677 of this title] shall apply with respect to entries, and withdrawals from warehouse for consumption, that are liquidated on or after the date of enactment of this Act [Aug. 23, 1988].

“(f) FICTITIOUS MARKETS.—The amendment made by section 1319 [amending section 1677b of this title] shall only apply with respect to—

“(1) reviews initiated under section 736(c) or 751 of the Tariff Act of 1930 [19 U.S.C. 1673e(c) or 1675] after the date of enactment of this Act [Aug. 23, 1988], and

“(2) reviews initiated under such sections—

“(A) which are pending on the date of enactment of this Act, and

“(B) in which a request for revocation is pending on the date of enactment of this Act.”

EFFECTIVE DATE OF 1984 AMENDMENT

Section 626 of title VI of Pub. L. 98-573, as amended by Pub. L. 99-514, title XVIII, §1886(b), Oct. 22, 1986, 100 Stat. 2922, provided that:

“(a) Except as provided in subsections (b) and (c), this Act [probably should be “this title”], and the amendments made by it [enacting sections 1671h, 1677-1, and 1677h of this title, amending this section and sections 1671b to 1671e, 1673c, 1673d, 1677a to 1677f, and 1677g of this title, and repealing sections 1673h and 1673i of this title], shall take effect on the date of the enactment of this Act [Oct. 30, 1984].

“(b)(1) The amendments made by sections 602, 609, 611, 612, and 620 [enacting sections 1676, 1676a, and

1677f-1 of this title and amending this section and sections 1514, 1671c, 1671d, 1673, 1673a, 1673c, 1673d, 1675, 1677, and 1677b of this title, section 2631 of Title 28, Judiciary and Judicial Procedure, and provisions set out as a note under this section] shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 [parts I and II of this subtitle], and to reviews begun under section 751 of that Act [section 1675 of this title], on or after such effective date.

“(2) The amendments made by section 623 [amending section 1516a of this title and sections 2636 and 2647 of Title 28] shall apply with respect to civil actions pending on, or filed on or after, the date of the enactment of this Act [Oct. 30, 1984].

“(3) The administering authority may delay implementation of any of the amendments referred to in subsections (a) and (b)(1) with respect to any investigation in progress on the date of enactment of this Act [Oct. 30, 1984] if the administering authority determines that immediate implementation would prevent compliance with a statutory deadline in title VII of the Tariff Act of 1930 [this subtitle] that is applicable to that investigation.

“(4) The amendment made by section 621 [amending section 1677g of this title] shall apply with respect to merchandise that is unliquidated on or after November 4, 1984.

“(c)(1) No provision of title VII of the Tariff Act of 1930 [this subtitle] shall be interpreted to prevent the refiling of a petition under section 702 or 732 of that title [sections 1671a and 1673a of this title] that was filed before the date of the enactment of this title, if the purpose of such refiling is to avail the petitioner of the amendment made by section 612(a)(1) [amending section 1677(4)(A) of this title].

“(2) The amendment made by section 612(a)(1) shall not apply with respect to petitions filed (or refiled under paragraph (1)) under section 702 or 732 of the Tariff Act of 1930 after September 30, 1986.”

EFFECTIVE DATE

Section 107 of title I of Pub. L. 96-39 provided that: “Except as otherwise provided in this title, this title and the amendments made by it [enacting this subtitle, amending sections 1303, 1337, 2033, and 2251 of this title, repealing sections 160 to 171 of this title, and enacting provisions set out as notes under this section and sections 160 and 1303 of this title] shall take effect on January 1, 1980, if—

“(1) the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures), and

“(2) the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures),

approved by the Congress under section 2(a) of this Act [section 2503(a) of this title] have entered into force with respect to the United States as of that date.”

[These agreements entered into force with respect to the United States on Dec. 17, 1979.]

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section delegated to United States Trade Representative, see section 1-103(b) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2171 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.

INVESTIGATIONS PENDING ON JANUARY 1, 1980

Section 102 of Pub. L. 96-39 provided that:

“(a) PENDING INVESTIGATIONS OF BOUNTIES OR GRANTS.—If, on the effective date of the application of title VII of the Tariff Act of 1930 [see Effective Date note set out above] to imports from a country, there is an investigation in progress under section 303 of that Act [section 1303 of this title] as to whether a bounty or grant is being paid or bestowed on imports from such country, then:

“(1) If the Secretary of the Treasury has not yet made a preliminary determination under section 303 of that Act [section 1303 of this title] as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under section 303 [section 1303 of this title] and the matter previously under investigation shall be subject to this title [this subtitle] as if the affirmative determination called for in section 702 of that Act [section 1671a of this title] were made with respect to that matter on the effective date of the application of title VII of that Act [this subtitle] to such country.

“(2) If the Secretary has made a preliminary determination under such section 303 [section 1303 of this title], but not a final determination, as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under such section 303 [section 1303 of this title] and the matter previously under investigation shall be subject to the provisions of title VII of that Act [this subtitle] as if the preliminary determination under section 303 [section 1303 of this title] were a preliminary determination under section 703 of that title [section 1671b of this title] made on the effective date of the application of that title [this subtitle] to such country.

“(b) PENDING INVESTIGATIONS OF LESS-THAN-FAIR-VALUE SALES.—If, on the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above], there is an investigation in progress under the Antidumping Act, 1921 [sections 160 to 171 of this title], as to whether imports from a country are being, or are likely to be, sold in the United States or elsewhere at less than fair value, then:

“(1) If the Secretary has not yet made a preliminary determination under the Antidumping Act, 1921 [sections 160 to 171 of this title], as to the question of less-than-fair-value sales, he shall terminate the investigation and the United States International Trade Commission shall terminate any investigation under section 201(c)(2) of the Antidumping Act, 1921 [section 160(c)(2) of this title], and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 [this subtitle] as if the affirmative determination called for in section 732 [section 1673a of this title] were made with respect to such matter on the effective date of title VII of the Tariff Act of 1930.

“(2) If the Secretary has made under the Antidumping Act, 1921 [sections 160 to 171 of this title], a preliminary determination, but not a final determination, that imports from such country are being or are likely to be sold in the United States or elsewhere at less than fair value, the investigation shall be terminated and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 [this subtitle] as if the preliminary determination under the Antidumping Act, 1921 [sections 160 to 171 of this title], were a preliminary determination under section 733 of that title [section 1673b of this title] made on the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above].

“(c) PENDING INVESTIGATIONS OF INJURY.—If, on the effective date of the application of title VII of the Tariff Act of 1930 [see Effective Date note set out above] to imports from a country, the United States International Trade Commission is conducting an investiga-

tion under section 303 of the Tariff Act of 1930 [section 1303 of this title] or section 201(a) of the Antidumping Act, 1921 [section 160(a) of this title], as to whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, it shall terminate any such investigation and initiate an investigation, under subtitle A or B of title VII of the Tariff Act of 1930 [part I or II of this subtitle], which shall be completed within 75 days, and—

“(1) treat any final determination of the Secretary of the Treasury under section 303 [section 1303 of this title] as a final determination under section 705(a) of the Tariff Act of 1930 [section 1671d(a) of this title] and consider the net amount of the bounty or grant estimated or determined under section 303 [section 1303 of this title] as the net subsidy amount under subtitle A of that title [part I of this subtitle]; and

“(2) treat any final determination of the Secretary of the Treasury under the Antidumping Act, 1921 [sections 160 to 171 of this title], as a final determination under section 735(a) of the Tariff Act of 1930 [section 1673d(a) of this title].”

TRANSITION RULES FOR COUNTERVAILING DUTY ORDERS

Section 104 of Pub. L. 96-39, as amended by Pub. L. 98-573, title VI, §611(c), Oct. 30, 1984, 98 Stat. 3033, provided that:

“(a) WAIVED COUNTERVAILING DUTY ORDERS.—

“(1) NOTIFICATION OF COMMISSION.—The administering authority shall notify the United States International Trade Commission by January 7, 1980, of any countervailing duty order in effect on January 1, 1980—

“(A)(i) for which the Secretary of the Treasury has waived the imposition of countervailing duties under section 303(d) of the Tariff Act of 1930 (19 U.S.C. 1303(d)), and

“(ii) which applies to merchandise other than quota cheese (as defined in section 701(c)(1) of this Act) [subsec. (c)(1) of this section], which is a product of a country under the Agreement,

“(B) published on or after the date of the enactment of this Act [July 26, 1979], and before January 1, 1980, with respect to products of a country under the Agreement (as defined in section 701(b) of the Tariff Act of 1930) [subsec. (b) of this section], or

“(C) applicable to frozen, boneless beef from the European Communities under Treasury Decision 76-109,

and shall furnish to the Commission the most current information it has with respect to the net subsidy benefitting the merchandise subject to the countervailing duty order.

“(2) DETERMINATION BY THE COMMISSION.—Within 180 days after the date on which it receives the information from the administering authority under paragraph (1), the Commission shall make a determination of whether—

“(A) an industry in the United States—

“(i) is materially injured, or

“(ii) is threatened with material injury, or

“(B) the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise subject to the order.

“(3) EFFECT OF DETERMINATION.—

“(A) AFFIRMATIVE DETERMINATION.—Upon being notified by the Commission of an affirmative determination under paragraph (2), the administering authority shall terminate the waiver of imposition of countervailing duties for merchandise subject to the order, if any. The countervailing duty order under section 303 of the Tariff Act of 1930 [section 1303 of this title] which applies to that merchandise shall remain in effect until revoked, in whole or in part, under section 751(d) of such Act [section 1675(d) of this title].

“(B) NEGATIVE DETERMINATION.—Upon being notified by the Commission of a negative determination under paragraph (2), the administering authority

shall revoke the countervailing duty order, and publish notice in the Federal Register of the revocation.

“(b) OTHER COUNTERVAILING DUTY ORDERS.—

“(1) REVIEW BY COMMISSION UPON REQUEST.—In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)—

“(A) which is not a countervailing duty order to which subsection (a) applies,

“(B) which applies to merchandise which is the product of a country under the Agreement, and

“(C) which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that Act [section 1516(d) of this title] before that date,

the Commission, upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States of merchandise which is covered by the order, submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 [see Effective Date note set out above] shall make a determination under paragraph (2) of this subsection.

“(2) DETERMINATION BY THE COMMISSION.—In a case described in paragraph (1) with respect to which it has received a request for review, the Commission shall commence an investigation to determine whether—

“(A) an industry in the United States—

“(i) would be materially injured, or

“(ii) would be threatened with material injury,

or

“(B) the establishment of an industry in the United States would be materially retarded,

by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked. A negative determination by the Commission under this paragraph shall not be based, in whole or in part, on any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

“(3) SUSPENSION OF LIQUIDATION; INVESTIGATION TIME LIMITS.—Whenever the Commission receives a request under paragraph (1), it shall promptly notify the administering authority and the administering authority shall suspend liquidation of entries of the affected merchandise made on or after the date of receipt of the Commission's notification, or in the case of butter from Australia, entries of merchandise subject to the assessment of countervailing duties under Treasury 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 adequacy 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 termi-

nated, 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,

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 1671a(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 1671a(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 1671a(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; expedited determinations; waiver of verification

(1) Within 65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title, or an investigation is initiated under section 1671a(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 a countervailable subsidy is being provided with respect to the subject merchandise.

(2) Notwithstanding paragraph (1), when the petition is one subject to section 1671a(b)(3) of this title, the Administering Authority shall, taking into account the nature of the countervailable subsidy concerned, make the determination required by paragraph (1) on an expedited basis and within 65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title unless the provisions of subsection (c) of this section apply.

(3) Within 55 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 50 days of the investigation, and, if there appears to be sufficient information available upon which the 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 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 on an expedited basis on the basis of the record established during the first 50 days after the investigation was initiated.

(4) DE MINIMIS COUNTERVAILEABLE SUBSIDY.—

(A) GENERAL RULE.—In making a determination under this subsection, the administering authority shall disregard any de minimis

countervailable subsidy. For purposes of the preceding sentence, a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies is less than 1 percent ad valorem or the equivalent specific rate for the subject merchandise.

(B) EXCEPTION FOR DEVELOPING COUNTRIES.—In the case of subject merchandise imported from a Subsidies Agreement country (other than a country to which subparagraph (C) applies) designated by the Trade Representative as a developing country in accordance with section 1677(36) of this title, a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies does not exceed 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(C) CERTAIN OTHER DEVELOPING COUNTRIES.—In the case of subject merchandise imported from a Subsidies Agreement country that is—

- (i) a least developed country, as determined by the Trade Representative in accordance with section 1677(36) of this title, or
- (ii) a developing country with respect to which the Trade Representative has notified the administering authority that the country has eliminated its export subsidies on an expedited basis within the meaning of Article 27.11 of the Subsidies Agreement,

subparagraph (B) shall be applied by substituting “3 percent” for “2 percent”.

(D) LIMITATIONS ON APPLICATION OF SUBPARAGRAPH (C).—

(i) IN GENERAL.—In the case of a country described in subparagraph (C)(i), the provisions of subparagraph (C) shall not apply after the date that is 8 years after the date the WTO Agreement enters into force.

(ii) SPECIAL RULE FOR SUBPARAGRAPH (C)(ii) COUNTRIES.—In the case of a country described in subparagraph (C)(ii), the provisions of subparagraph (C) shall not apply after the earlier of—

- (I) the date that is 8 years after the date the WTO Agreement enters into force, or
- (II) the date on which the Trade Representative notifies the administering authority that such country is providing an export subsidy.

(5) NOTIFICATION OF ARTICLE 8 VIOLATION.—If the only subsidy under investigation is a subsidy with respect to which the administering authority received notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement, paragraph (1) shall be applied by substituting “60 days” for “65 days”.

(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) 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 alleged countervailable subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) 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) of this section until not later than the 130th day after the date on which the administering authority initiates an investigation under section 1671a(c) of this title, or an investigation is initiated under section 1671a(a) of this title.

(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) 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. 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 individual countervailable subsidy rate for each exporter and producer individually investigated, and, in accordance with section 1671d(c)(5) of this title, an estimated all-others rate for all exporters and producers not individually investigated and for new exporters and producers within the meaning of section 1675(a)(2)(B) of this title, or

(ii) if section 1677f-1(e)(2)(B) of this title applies, determine a single estimated country-wide subsidy rate, applicable to all exporters and producers, 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 individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy 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 its 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.

(e) Critical circumstances determinations

(1) In general

If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this part) determine, on the basis of the information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and

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

(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.

(g) Time period where upstream subsidization is involved

(1) In general

Whenever the administering authority concludes prior to a preliminary determination under subsection (b) of this section, that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed, the time period within which a preliminary determination must be made shall be extended to 250 days after the filing of a petition under section 1671a(b) of this title or initiation of an investigation under section 1671a(a) of this title (310 days in cases declared extraordinarily complicated under subsection (c) of this section), if the administering authority concludes that such additional time is necessary to make the required determination concerning upstream subsidization.

(2) Exceptions

Whenever the administering authority concludes, after a preliminary determination under subsection (b) of this section, that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed—

(A) in cases in which the preliminary determination was negative, the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 1671d(a)(1) of this title; or

(B) in cases in which the preliminary determination is affirmative, the determination concerning upstream subsidization—

(i) need not be made until the conclusion of the first annual review under section 1675 of this title of any eventual Countervailing Duty Order, or, at the option of the petitioner, or

(ii) will be made in the investigation and the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 1671d(a)(1) of this title, as appropriate,¹ except that the suspension of liquidation ordered in the preliminary determination shall terminate at the end of 120 days from the date of publication of that determination and not be resumed unless and until the publication of a Countervailing Duty Order under section 1671e(a) of this title.

There may be an extension of time for the making of a final determination under this subsection only if the administering authority determines that such additional time is necessary to make the required determination concerning upstream subsidization.

(June 17, 1930, ch. 497, title VII, §703, as added Pub. L. 96-39, title I, §101, July 26, 1979, 93 Stat. 152; amended Pub. L. 98-181, title VI, §650(b), Nov. 30, 1983, 97 Stat. 1266; Pub. L. 98-573, title VI, §§603, 613(c), Oct. 30, 1984, 98 Stat. 3024, 3036; Pub. L. 99-514, title XVIII, §1886(a)(3), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100-418, title I, §§1324(a)(2), 1326(d)(1), Aug. 23, 1988, 102 Stat.

¹ So in original. The words "as appropriate," probably should not appear.

1200, 1204; Pub. L. 103-465, title II, §§ 212(b)(1)(A), (C), (D), (F), 214(a)(1), 215(a), 233(a)(5)(C), (6)(A)(iii), (iv), (B), 263(a), 264(a), (c)(1), (2), 270(a)(1)(B)-(D), (b)(1)(B), 283(a), Dec. 8, 1994, 108 Stat. 4847, 4848, 4850, 4852, 4899, 4901, 4911, 4912, 4914, 4917, 4930; Pub. L. 104-295, § 20(b)(5), Oct. 11, 1996, 110 Stat. 3527.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-295 amended Pub. L. 103-465, § 212(b)(1)(C)(i)(I). See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103-465, § 212(b)(1)(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 1671a(c)(3) of this title, the Commission, within 45 days after the date on which a petition is filed under section 1671a(b) of this title or on which it receives notice from the administering authority of an investigation commenced under section 1671a(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). Pub. L. 103-465, § 270(a)(1)(B), substituted “countervailable subsidy” for “subsidy”.

Pub. L. 103-465, § 233(a)(5)(B), (6)(A)(iii), substituted “initiated” for “commenced” and “subject merchandise” for “merchandise which is the subject of the investigation”.

Pub. L. 103-465, § 212(b)(1)(C)(i)(II), (III), substituted “based upon the information” for “based upon the best information” and struck out at end “If the determination of the administering authority under this subsection is affirmative, the determination shall include an estimate of the net subsidy.”

Pub. L. 103-465, § 212(b)(1)(C)(i)(I), as amended by Pub. L. 104-295, substituted “65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title” for “85 days after the date on which a petition is filed under section 1671a(b) of this title”.

Subsec. (b)(2). Pub. L. 103-465, § 270(a)(1)(C), substituted “countervailable subsidy” for “subsidy”.

Pub. L. 103-465, § 264(c)(1), substituted “paragraph (1)” for “subsection (b)(1) of this section” in two places and made technical amendments to references to section 1671a(b)(3) of this title and subsection (c) of this section to correct references to corresponding provisions of original act.

Pub. L. 103-465, § 212(b)(1)(C)(ii), substituted “65 days after the date on which the administering authority initiates an investigation under section 1671a(c) of this title” for “85 days after the date on which the petition is filed under section 1671a(b) of this title”.

Subsec. (b)(4). Pub. L. 103-465, § 263(a), added par. (4).

Subsec. (b)(5). Pub. L. 103-465, § 283(a), added par. (5).

Subsec. (c)(1). Pub. L. 103-465, §§ 212(b)(1)(D), 233(a)(6)(A)(iv), in concluding provisions, substituted “130th day after the date on which the administering authority initiates an investigation under section 1671a(c) of this title” for “150th day after the date on which a petition is filed under section 1671a(b) of this title” and “initiated” for “commenced”.

Subsec. (c)(1)(B)(i). Pub. L. 103-465, § 270(a)(1)(D), (b)(1)(B), substituted “countervailable subsidy” for “subsidy” in subcl. (I) and “countervailable subsidies” for “subsidies” in subcl. (III).

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

Subsec. (d)(1). Pub. L. 103-465, § 264(a)(4), added par. (1). Former par. (1) redesignated (2).

Pub. L. 103-465, § 215(a)(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, § 264(a)(1)-(3), 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 amount of the net subsidy, and”.

Subsec. (e)(1). Pub. L. 103-465, § 214(a)(1), in introductory provisions, struck out “best” before “information” and amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

“(A) the alleged subsidy is inconsistent with the Agreement, 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(a)(2), 264(c)(2), 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)(1)(F), 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.”

Subsec. (g)(1). Pub. L. 103-465, § 233(a)(6)(B), substituted “initiation” for “commencement”.

1988—Subsec. (b)(3). Pub. L. 100-418, § 1326(d)(1), substituted “(F), or (G)” for “or (F)” in two places.

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

1986—Subsecs. (g), (h). Pub. L. 99-514 redesignated subsec. (h) as (g) and substituted “or 225 days, as appropriate, under section 1671d(a)(1) of this title” for “days under section 1671d(a)(1) of this title or 225 days under section 1671d(a)(2) of this title, as appropriate” in par. (2)(A), and “or 225 days, as appropriate, under section 1671d(a)(1) of this title” for “days under section 1671d(a)(2) of this title” in par. (2)(B)(ii).

1984—Subsec. (b)(3). Pub. L. 98-573, § 603, added par. (3).

Subsec. (h). Pub. L. 98-573, § 613(c), added subsec. (h).

1983—Subsec. (b). Pub. L. 98-181 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(a)(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(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 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as a note under section 1671 of this title.

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 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.

§ 1671c. 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 1671a(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, with the government of the country in which the countervailable subsidy practice is alleged to occur, 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 countervailing 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 1671b(b) of this title.

(b) Agreements to eliminate or offset completely a countervailable subsidy or to cease exports of subject merchandise

The administering authority may suspend an investigation if the government of the country in which the countervailable subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the subject merchandise agree—

(1) to eliminate the countervailable subsidy completely or to offset completely the amount of the net countervailable subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

(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 from a government described in subsection (b) of this section, or from exporters described in subsection (b) of this section, if the agreement will eliminate completely the injurious effect

of exports to the United States of the subject merchandise.

(2) Certain additional requirements

Except in the case of an agreement by a foreign government to restrict the volume of imports of the subject merchandise into the United States, the administering authority may not accept an agreement under this subsection unless—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) at least 85 percent of the net countervailable subsidy will be offset.

(3) Quantitative restrictions agreements

The administering authority may accept an agreement with a foreign government under this subsection to restrict the volume of imports of subject merchandise into the United States, but it may not accept such an agreement with exporters.

(4) Definition of extraordinary circumstances

(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

For purposes of this paragraph, the term “complex” means—

(i) there are a large number of alleged countervailable subsidy practices and the practices are complicated,

(ii) the issues raised are novel, or

(iii) the number of exporters involved is large.

(d) Additional rules and conditions

(1) Public interest; monitoring

The administering authority shall not accept an agreement under subsection (b) or (c) of this section unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) 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. In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c) of this section, the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B)(i), (ii), and (iii) of this section as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C)(i) and (ii) of this section.

(2) Exports of merchandise to United States not to increase during interim period

The administering authority may not accept an agreement under subsection (b) of this section unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the countervailable subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(3) Regulations governing entry or withdrawals

In order to carry out an agreement concluded under subsection (b) or (c) of this section, the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of subject merchandise.

(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 (including any action required of foreign governments), 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 1671b(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 net countervailable subsidy**

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 1671b(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 1671b(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, then the liquidation of entries of the subject merchandise shall be suspended under section 1671b(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 1671b(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 1671d 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 a countervailing 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) the government of the country in which the countervailable subsidy practice is alleged to occur, 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 1671b(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 the 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 1671b(d)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1671b(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 1671b(d)(2) of this title of unliquidated entries of the merchandise made on or after 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 under section 1671b(b) of this title were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g) of this section, issue a countervailing duty order under section 1671e(a) of this title effective with respect to entries of merchandise the 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 procedure, 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 1671d 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 investigations initiated by administering authority

The administering authority may terminate any investigation initiated by the administering authority under section 1671a(a) of this title after providing notice of such termination to all parties to the investigation.

(l) 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) or (c) 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) or (c) of this section, except that if the Commission makes a regional industry determination described in paragraph (1) in the final affirmative determination under section 1671d(b) of this title but not in the preliminary affirmative determination under section 1671b(a) of this title, any agreement described in paragraph (1) may be accepted within 60 days after the countervailing duty order is published under section 1671e of this title.

(3) Effect of suspension agreement on countervailing duty order

If an agreement described in paragraph (1) is accepted after the countervailing 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 1671b(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 countervailing duties.

(June 17, 1930, ch. 497, title VII, §704, as added Pub. L. 96-39, title I, §101, July 26, 1979, 93 Stat. 154; amended Pub. L. 98-573, title VI, §§604(a), 612(b)(2), Oct. 30, 1984, 98 Stat. 3025, 3034; Pub. L. 99-514, title XVIII, §1886(a)(4), Oct. 22, 1986, 100 Stat. 2921; Pub. L. 100-418, title I, §1326(d)(2), Aug. 23, 1988, 102 Stat. 1204; Pub. L. 103-465, title II, §§216(a), 217(a), 218(a)(1), 233(a)(5)(D)-(M), 264(c)(3)-(6), 270(a)(1)(E), (2)(A), (c)(1), Dec. 8, 1994, 108 Stat. 4853, 4854, 4899, 4914, 4917.)

AMENDMENTS

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

Subsec. (a)(2)(A). Pub. L. 103-465, §233(a)(5)(D), 270(a)(1)(E), substituted “countervailable subsidy” for “subsidy” and “subject merchandise” for “merchandise that is subject to the investigation”.

Subsec. (b). Pub. L. 103-465, §270(a)(2)(A), (c)(1), in heading, substituted “countervailable subsidy” for “subsidy” and “subject merchandise” for “subsidized merchandise”.

Pub. L. 103-465, §§233(a)(5)(E), 270(a)(1)(E), in introductory provisions, substituted “countervailable subsidy” for “subsidy” and “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (b)(1). Pub. L. 103-465, §270(a)(1)(E), substituted “countervailable subsidy” for “subsidy” in two places.

Subsec. (c)(1), (2). Pub. L. 103-465, §233(a)(5)(F), (G), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (c)(2)(B). Pub. L. 103-465, §270(a)(1)(E), substituted “countervailable subsidy” for “subsidy”.

Subsec. (c)(3). Pub. L. 103-465, §233(a)(5)(H), substituted “subject merchandise” for “merchandise which is the subject of an investigation”.

Subsec. (c)(4)(B)(i). Pub. L. 103-465, §270(a)(1)(E), substituted “countervailable subsidy” for “subsidy”.

Subsec. (d)(1). Pub. L. 103-465, §216(a), in concluding provisions, substituted “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. In applying” for “In applying”.

Subsec. (d)(2). Pub. L. 103-465, §270(a)(1)(E), substituted “countervailable subsidy” for “subsidy”.

Subsec. (d)(3). Pub. L. 103-465, §233(a)(5)(I), substituted “subject merchandise” for “merchandise covered by such agreement”.

Subsec. (f)(1)(A). Pub. L. 103-465, §233(a)(5)(J), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (f)(2)(A). Pub. L. 103-465, §270(a)(1)(E), substituted “countervailable subsidy” for “subsidy” in heading.

Subsec. (f)(2)(A)(i), (iii). Pub. L. 103-465, §§233(a)(5)(K), 264(c)(3), in cl. (i), substituted “subject merchandise” for “merchandise which is the subject of the investigation” and “1671b(d)(2)” for “1671b(d)(1)”, and in cl. (iii), substituted “1671b(d)(1)(B)” for “1671b(d)(1)”.

Subsec. (f)(2)(B). Pub. L. 103-465, §§233(a)(5)(K), 264(c)(4), substituted “subject merchandise” for “merchandise which is the subject of the investigation”, “1671b(d)(2)” for “1671b(d)(1)”, and “1671b(d)(1)(B)” for “1671b(d)(2)”.

Subsec. (g)(1). Pub. L. 103-465, §270(a)(1)(E), substituted “countervailable subsidy” for “subsidy”.

Subsec. (h)(2). Pub. L. 103-465, §233(a)(5)(L), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (h)(3). Pub. L. 103-465, §§233(a)(5)(L), 264(c)(5), in introductory provisions, substituted “subject merchandise” for “merchandise which is the subject of the investigation”, in subpar. (A), substituted “1671b(d)(2)” for “1671b(d)(1)”, and in subpar. (B), substituted “1671b(d)(1)(B)” for “1671b(d)(2)”.

Subsec. (i)(1)(A). Pub. L. 103-465, §264(c)(6), substituted “1671b(d)(2)” for “1671b(d)(1)” in introductory provisions.

Subsec. (j). Pub. L. 103-465, §233(a)(5)(M), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (l). Pub. L. 103-465, §218(a)(1), added subsec. (l).

1988—Subsecs. (g)(2), (h)(1). Pub. L. 100-418 substituted “subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title” for “subparagraph (C), (D), (E), and (F) of section 1677(9) of this title”.

1986—Subsec. (d)(2), (3). Pub. L. 99-514, §1886(a)(4)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (i)(1)(D). Pub. L. 99-514, §1886(a)(4)(B), substituted “international” for “international”.

1984—Subsec. (a). Pub. L. 98-573, §604(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) 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 1671b(b) of this title.”

Subsec. (d)(1). Pub. L. 98-573, §604(a)(2)(A), inserted provision, following subpar. (B), that in applying subpar. (A) with respect to any quantitative restriction agreement under subsec. (c) of this section, the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsec. (a)(2)(B)(i), (ii), and (iii) of this section as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsec. (a)(2)(C)(i) and (ii) of this section.

Subsec. (d)(2), (3). Pub. L. 98-573, §604(a)(2)(B), (C), redesignated par. (3) as (2) and struck out former par. (2) which 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(a)(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(a)(4)(A)–(C), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (k). Pub. L. 98-573, §604(a)(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(a) 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.

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.

§ 1671d. Final determinations

(a) Final determination by administering authority

(1) In general

Within 75 days after the date of the preliminary determination under section 1671b(b) of this title, the administering authority shall make a final determination of whether or not a countervailable subsidy is being provided

with respect to the subject merchandise; except that when an investigation under this part is initiated simultaneously with an investigation under part II of this subtitle, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under part II of this subtitle.

(2) 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 1671b(e) of this title, shall also contain a finding as to whether—

(A) the countervailable subsidy is inconsistent with the Subsidies Agreement, and

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

Such findings may be affirmative even though the preliminary determination under section 1671b(e)(1) of this title was negative.

(3) De minimis countervailable subsidy

In making a determination under this subsection, the administering authority shall disregard any countervailable subsidy that is de minimis as defined in section 1671b(b)(4) of this title.

(b) Final determination by Commission

(1) In general

The Commission shall make a final determination of whether—

(A) an industry in the United States—

- (i) is materially injured, or
- (ii) is threatened with material injury, or

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

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section. If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.

(2) Period for injury determination following affirmative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1671b(b) of this title is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 1671b(b) of this title, or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a) of this section.

(3) Period for injury determination following negative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1671b(b) of this title is negative, and its final determination under subsection (a) of this section is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) Certain additional findings

(A) COMMISSION STANDARD FOR RETROACTIVE APPLICATION.—

(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(2) of this section is affirmative, then the final determination of the Commission shall include a finding as to whether the imports subject to the affirmative determination under subsection (a)(2) of this section are likely to undermine seriously the remedial effect of the countervailing duty order to be issued under section 1671e of this title.

(ii) FACTORS TO CONSIDER.—In making the evaluation under clause (i), the Commission shall consider, among other factors it considers relevant—

(I) the timing and the volume of the imports,

(II) any rapid increase in inventories of the imports, and

(III) any other circumstances indicating that the remedial effect of the countervailing duty order will be seriously undermined.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section would have been found but for any suspension of liquidation of entries of that merchandise.

(c) Effect of final determinations

(1) Effect of affirmative determination by the administering authority

If the determination of the administering authority under subsection (a) of this section is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority,

(B)(i) the administering authority shall—

(I) determine an estimated individual countervailable subsidy rate for each exporter and producer individually inves-

tigated, and, in accordance with paragraph (5), an estimated all-others rate for all exporters and producers not individually investigated and for new exporters and producers within the meaning of section 1675(a)(2)(B) of this title, or

(II) if section 1677f-1(e)(2)(B) of this title applies, determine a single estimated country-wide subsidy rate, applicable to all exporters and producers,

(ii) 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 individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy rate, whichever is applicable, and

(C) in cases where the preliminary determination by the administering authority under section 1671b(b) of this title was negative, the administering authority shall order the suspension of liquidation under paragraph (2) of section 1671b(d) of this title.

(2) Issuance of order; effect of negative determination

If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) of this section are affirmative, then the administering authority shall issue a countervailing duty order under section 1671e(a) of this title. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 1671b(d)(2) of this title, and

(B) release any bond or other security and refund any cash deposit required under section 1671b(d)(1)(B) of this title.

(3) Effect of negative determinations under subsections (a)(2) and (b)(4)(A) of this section

If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A) of this section, respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 1671b(e)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit required, under section 1671b(d)(1)(B) of this title with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 1671b(e)(2) of this title.

(4) Effect of affirmative determination under subsection (a)(2) of this section

If the determination of the administering authority under subsection (a)(2) of this section is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 1671b(b) and 1671b(e)(1) of this

title were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 1671b(e)(2) of this title;

(B) in cases where the preliminary determination by the administering authority under section 1671b(b) of this title was affirmative, but the preliminary determination under section 1671b(e)(1) of this title was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 1671b(d) of this title to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 1671b(b) of this title was negative, shall apply any suspension of liquidation and security requirement ordered under subsection (c)(1)(B) of this section to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(5) Method for determining the all-others rate and the country-wide subsidy rate

(A) All-others rate

(i) General rule

For purposes of this subsection and section 1671b(d) of this title, the all-others rate shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely under section 1677e of this title.

(ii) Exception

If the countervailable subsidy rates established for all exporters and producers individually investigated are zero or de minimis rates, or are determined entirely under section 1677e of this title, the administering authority may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated.

(B) Country-wide subsidy rate

The administering authority may calculate a single country-wide subsidy rate, applicable to all exporters and producers, if the administering authority limits its examination pursuant to section 1677f-1(e)(2)(B) of this title. The estimated country-wide rate determined under section 1671b(d)(1)(A)(ii) of this title or paragraph (1)(B)(i)(II) of this subsection shall be based on industry-wide data regarding the use of subsidies determined to be countervailable.

(d) Publication of notice of determinations

Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) Correction of ministerial errors

The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term “ministerial error” includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

(June 17, 1930, ch. 497, title VII, § 705, as added Pub. L. 96-39, title I, § 101, July 26, 1979, 93 Stat. 159; amended Pub. L. 98-573, title VI, §§ 602(a)(2), 605(a), 606, Oct. 30, 1984, 98 Stat. 3024, 3028, 3029; Pub. L. 100-418, title I, §§ 1324(a)(3), 1333(a), Aug. 23, 1988, 102 Stat. 1200, 1209; Pub. L. 103-465, title II, §§ 212(b)(1)(B), 214(a)(2), 233(a)(5)(N), 263(b), 264(b), (c)(7), (8), 270(a)(1)(F), (G), Dec. 8, 1994, 108 Stat. 4848, 4850, 4899, 4912-4914, 4917; Pub. L. 104-295, § 20(b)(15), Oct. 11, 1996, 110 Stat. 3527.)

AMENDMENTS

1996—Subsec. (c)(1)(B)(i)(II). Pub. L. 104-295 inserted “section” after “if”.

1994—Subsec. (a)(1). Pub. L. 103-465, §§ 233(a)(5)(N), 270(a)(1)(F), substituted “countervailable subsidy” for “subsidy” and “the subject merchandise” for “the merchandise”.

Subsec. (a)(2)(A). Pub. L. 103-465, §§ 214(a)(2)(A)(i), 270(a)(1)(G), substituted “countervailable subsidy” for “subsidy” and “Subsidies Agreement” for “Agreement”.

Subsec. (a)(2)(B). Pub. L. 103-465, § 214(a)(2)(A)(ii), substituted “subject merchandise” for “class or kind of merchandise involved”.

Subsec. (a)(3). Pub. L. 103-465, § 263(b), added par. (3).

Subsec. (b)(1). Pub. L. 103-465, § 212(b)(1)(B), inserted at end of concluding provisions “If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.”

Subsec. (b)(4)(A). Pub. L. 103-465, § 214(a)(2)(B), amended subpar. (A) generally, substituting present provisions for provisions requiring, in the case of an affirmative critical circumstances determination, an additional finding as to whether retroactive imposition of a countervailing duty would be necessary to prevent recurrence of material injury caused by massive imports of subject merchandise over a relatively short period of time.

Subsec. (c)(1). Pub. L. 103-465, § 264(b)(1), struck out “and” at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C) and substituted “the suspension of liquidation under paragraph (2) of section 1671b(d) of this title” for “under paragraphs (1) and (2) of section 1671b(d) of this title the suspension of liquidation and the posting of a cash deposit, bond, or other security”.

Subsec. (c)(2). Pub. L. 103-465, § 264(c)(7), in subpar. (A), substituted “1671b(d)(2)” for “1671b(d)(1)” and in subpar. (B), substituted “1671b(d)(1)(B)” for “1671b(d)(2)”.

Subsec. (c)(3)(B). Pub. L. 103-465, § 264(c)(8), substituted “1671b(d)(1)(B)” for “1671b(d)(2)”.

Subsec. (c)(5). Pub. L. 103-465, § 264(b)(2), added par. (5).

1988—Subsec. (b)(4)(A). Pub. L. 100-418, § 1324(a)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “If the finding of the administering authority under subsection (a)(2) of this section is affirmative, then the final determination of the Commission shall include findings as to whether—

“(i) there is material injury which will be difficult to repair, and

“(ii) the material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.”

Subsec. (e). Pub. L. 100-418, § 1333(a), added subsec. (e). 1984—Subsec. (a)(1). Pub. L. 98-573, § 606, inserted provision that when an investigation under this part is initiated simultaneously with an investigation under part II of this subtitle, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under part II of this subtitle.

Subsec. (a)(2). Pub. L. 98-573, § 605(a)(1), inserted provision after subpar. (B) that such findings may be affirmative even though the preliminary determination under section 1671b(e)(1) of this title was negative.

Subsec. (b)(1). Pub. L. 98-573, § 602(a)(2), inserted “, or sales (or the likelihood of sales for importation,” in provision after subpar. (B).

Subsec. (c)(3)(A). Pub. L. 98-573, § 605(a)(3), inserted reference to par. (4).

Subsec. (c)(4). Pub. L. 98-573, § 605(a)(2), added par. (4).

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 1333(a) of Pub. L. 100-418 effective Aug. 23, 1988, and amendment by section 1324(a)(3) of Pub. L. 100-418 applicable with respect to investigations initiated after Aug. 23, 1988, see section 1337(a), (c) of Pub. L. 100-418, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 602(a)(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, and amendment by sections 605(a) and 606 of Pub. L. 98-573 effective 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.

§ 1671e. Assessment of duty**(a) Publication of countervailing duty order**

Within 7 days after being notified by the Commission of an affirmative determination under section 1671d(b) of this title, the administering authority shall publish a countervailing duty order which—

(1) directs customs officers to assess a countervailing duty equal to the amount of the net countervailable subsidy determined or estimated to exist, within 6 months after the date

on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption,

(2) includes a description of the subject merchandise, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated countervailing duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) Imposition of duties

(1) General rule

If the Commission, in its final determination under section 1671d(b) of this title, finds material injury or threat of material injury which, but for the suspension of liquidation under section 1671b(d)(2) of this title, would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 1671b(d)(2) of this title, shall be subject to the imposition of countervailing duties under section 1671(a) of this title.

(2) Special rule

If the Commission, in its final determination under section 1671d(b) of this title, finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to a countervailing duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 1671d(b) of this title shall be subject to the imposition of countervailing duties under section 1671(a) of this title, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) Special rule for regional industries

(1) In general

In an investigation under this part in which the Commission makes a regional industry determination under section 1677(4)(C) of this title, the administering authority shall, to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region concerned during the period of investigation.

(2) Exception for new exporters and producers

After publication of the countervailing duty order, if the administering authority finds that a new exporter or producer is exporting the subject merchandise for sale in the region

concerned, the administering authority shall direct that duties be assessed on the subject merchandise of the new exporter or producer consistent with the provisions of section 1675(a)(2)(B) of this title.

(June 17, 1930, ch. 497, title VII, § 706, as added Pub. L. 96-39, title I, § 101, July 26, 1979, 93 Stat. 160; amended Pub. L. 98-573, title VI, § 607, Oct. 30, 1984, 98 Stat. 3029; Pub. L. 99-514, title XVIII, § 1886(a)(5), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 103-465, title II, §§ 218(b)(1), 233(a)(5)(O), 264(c)(9), 265, 270(a)(1)(H), Dec. 8, 1994, 108 Stat. 4855, 4899, 4914, 4917.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-465, § 270(a)(1)(H), substituted “countervailable subsidy” for “subsidy”.

Subsec. (a)(2) to (4). Pub. L. 103-465, §§ 233(a)(5)(O), 265, redesignated par. (3) as (2) and substituted “subject merchandise” for “class or kind of merchandise to which it applies”, redesignated par. (4) as (3), and struck out former par. (2) which read as follows:

“(2) shall presumptively apply to all merchandise of such class or kind exported from the country investigated, except that if—

“(A) the administering authority determines there is a significant differential between companies receiving subsidy benefits, or

“(B) a State-owned enterprise is involved, the order may provide for differing countervailing duties.”

Subsec. (b)(1). Pub. L. 103-465, § 264(c)(9), substituted “1671b(d)(2)” for “1671b(d)(1)” in two places.

Subsec. (c). Pub. L. 103-465, § 218(b)(1), added subsec. (c).

1986—Subsec. (a)(2). Pub. L. 99-514 realigned the margins in provisions following subpar. (B), which realignment had been editorially supplied, thereby requiring no change in text.

1984—Subsec. (a)(2) to (4). Pub. L. 98-573 added par. (2) and redesignated pars. (2) and (3) as (3) and (4), respectively.

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 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, 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.

§ 1671f. Treatment of difference between deposit of estimated countervailing duty and final assessed duty under countervailing duty orders

(a) Deposit of estimated countervailing duty under section 1671b(d)(1)(B) of this title

If the amount of a cash deposit, or the amount of any bond or other security, required as secu-

urity for an estimated countervailing duty under section 1671b(d)(1)(B) of this title is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 1671e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 1671d(b) of this title is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) Deposit of estimated countervailing duty under section 1671e(a)(3) of this title

If the amount of an estimated countervailing duty deposited under section 1671e(a)(3) of this title is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 1671e of this title, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 1671d(b) of this title is published shall be—

(1) collected, to the extent that the deposit under section 1671e(a)(3) of this title is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 1671e(a)(3) of this title is higher than the duty determined under the order,

together with interest as provided by section 1677g of this title.

(June 17, 1930, ch. 497, title VII, § 707, as added Pub. L. 96-39, title I, § 101, July 26, 1979, 93 Stat. 161; amended Pub. L. 103-465, title II, § 264(c)(10), Dec. 8, 1994, 108 Stat. 4914.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-465 substituted “1671b(d)(1)(B)” for “1671b(d)(2)” in heading and text.

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.

§ 1671g. Effect of derogation of Export-Import Bank financing

Nothing in this subtitle shall be interpreted as superseding the provisions of section 635a-3 of title 12, except that in the event of an assessment of duty based on a derogation under section 1671e of this title or action under section 1671b(d)(1)(B) of this title, the Secretary of the Treasury shall not authorize the Bank to provide guarantees, insurance and credits to competing United States sellers pursuant to section 635a-3 of title 12.

(June 17, 1930, ch. 497, title VII, § 708, as added Pub. L. 98-181, title VI, § 650(c), Nov. 30, 1983, 97 Stat. 1266; amended Pub. L. 99-514, title XVIII,

§ 1886(a)(6)(A), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 103-465, title II, § 264(c)(11), Dec. 8, 1994, 108 Stat. 4914.)

AMENDMENTS

1994—Pub. L. 103-465 substituted “1671b(d)(1)(B)” for “1671b(d)(2)”.

1986—Pub. L. 99-514 added section catchline.

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.

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.

§ 1671h. Conditional payment of countervailing duties

(a) In general

For all entries, or withdrawals from warehouse, for consumption of merchandise subject to a countervailing duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirement of subsection (b) of this section and deposits with the appropriate customs officer an estimated countervailing duty in an amount determined by the administering authority.

(b) Importer requirements

In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for ascertaining any countervailing duty to be imposed under this part,

(2) maintain and furnish to the customs officer such records concerning such merchandise as the administering authority, by regulation, requires, and

(3) pay, or agree to pay on demand, to the customs officer the amount of countervailing duty imposed under this part on that merchandise.

(June 17, 1930, ch. 497, title VII, § 709, as added Pub. L. 98-573, title VI, § 608, Oct. 30, 1984, 98 Stat. 3029.)

EFFECTIVE DATE

Section effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

PART II—IMPOSITION OF ANTIDUMPING DUTIES

CODIFICATION

The designation “PART II” was in the original “Sub-title B” and was editorially changed in order to conform the numbering format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.

§ 1673. Imposition of antidumping duties

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

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

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,

then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise. For purposes of this section and section 1673d(b)(1) of this title, a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(June 17, 1930, ch. 497, title VII, §731, as added Pub. L. 96-39, title I, §101, July 26, 1979, 93 Stat. 162; amended Pub. L. 98-573, title VI, §602(b), Oct. 30, 1984, 98 Stat. 3024; Pub. L. 103-465, title II, §233(a)(1)(A), (2)(A)(i), Dec. 8, 1994, 108 Stat. 4898.)

AMENDMENTS

1994—Pub. L. 103-465 substituted “normal value exceeds the export price (or the constructed export price)” for “foreign market value exceeds the United States price” in concluding provisions.

1984—Pub. L. 98-573 inserted “or by reason of sales (or the likelihood of sales) of that merchandise for importation” after “by reason of imports of that merchandise” 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 sec-