

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format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.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-

tion 1677(9) of this title files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 1673 of this title, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) Simultaneous filing with Commission

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

(3) Action with respect to petitions

(A) Notification of governments

Upon receipt of a petition filed under paragraph (1), the administering authority shall notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country.

(B) Acceptance of communications

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

(C) Nondisclosure of certain information

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

(c) Petition determination

(1) In general

(A) Time for initial determination

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

(i) after examining, on the basis of sources readily available to the 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 1673 of this title and contains information reasonably available to the petitioner supporting the allegations, and

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

(B) Extension of time

In any case in which the administering authority is required to poll or otherwise determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional cir-

cumstances, apply subparagraph (A) by substituting “a maximum of 40 days” for “20 days”.

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

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

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

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

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

(2) Affirmative determinations

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

(3) Negative determinations

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

(4) Determination of industry support

(A) General rule

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

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

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

(B) Certain positions disregarded

(i) Producers related to foreign producers

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

(ii) Producers who are importers

The administering authority may disregard the position of domestic producers

of a domestic like product who are importers of the subject merchandise.

(C) Special rule for regional industries

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

(D) Polling the industry

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

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

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

(E) Comments by interested parties

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

(5) “Domestic producers or workers” defined

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

(d) Notification to Commission of determination

The administering authority shall—

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

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) Information regarding critical circumstances

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

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

(2) the person by whom, or for whose account, the merchandise was imported knew, or

should have known, that the exporter was selling the subject merchandise at less than its fair value,

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (e)(1). Pub. L. 103–465, § 233(a)(5)(P), substituted “the subject merchandise” for “class or kind

of the merchandise which is the subject of the investigation”.

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

TRANSFER OF FUNCTIONS

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

§ 1673b. Preliminary determinations

(a) Determination by Commission of reasonable indication of injury

(1) General rule

Except in the case of a petition dismissed by the administering authority under section 1673a(c)(3) of this title, the Commission, within the time specified in paragraph (2), shall determine, based on the information available to

it at the time of the determination, whether there is a reasonable indication that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

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

by reason of imports of the subject merchandise and that imports of the subject merchandise are not negligible. If the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated.

(2) Time for Commission determination

The Commission shall make the determination described in paragraph (1)—

(A) in the case of a petition filed under section 1673a(b) of this title—

(i) within 45 days after the date on which the petition is filed, or

(ii) if the time has been extended pursuant to section 1673a(c)(1)(B) of this title, within 25 days after the date on which the Commission receives notice from the administering authority of initiation of the investigation, and

(B) in the case of an investigation initiated under section 1673a(a) of this title, within 45 days after the date on which the Commission receives notice from the administering authority that an investigation has been initiated under such section.

(b) Preliminary determination by administering authority

(1) Period of antidumping duty investigation

(A) In general

Except as provided in subparagraph (B), within 140 days after the date on which the administering authority initiates an investigation under section 1673a(c) of this title, or an investigation is initiated under section 1673a(a) of this title, but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold, at less than fair value.

(B) If certain short life cycle merchandise involved

If a petition filed under section 1673a(b) of this title, or an investigation initiated under section 1673a(a) of this title, concerns short life cycle merchandise that is included in a product category established under section 1673h(a) of this title, subparagraph (A) shall be applied—

(i) by substituting “100 days” for “140 days” if manufacturers that are second offenders account for a significant proportion of the merchandise under investigation, and

(ii) by substituting “80 days” for “140 days” if manufacturers that are multiple offenders account for a significant proportion of the merchandise under investigation.

(C) Definitions of offenders

For purposes of subparagraph (B)—

(i) The term “second offender” means a manufacturer that is specified in 2 affirmative dumping determinations (within the meaning of section 1673h of this title) as the manufacturer of short life cycle merchandise that is—

(I) specified in both such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(ii) The term “multiple offender” means a manufacturer that is specified in 3 or more affirmative dumping determinations (within the meaning of section 1673h of this title) as the manufacturer of short life cycle merchandise that is—

(I) specified in each of such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(2) Preliminary determination under waiver of verification

Within 75 days after the initiation of an investigation, the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 1677f of this title. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a preliminary determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made within 90 days after the initiation of the investigation on the basis of the record established during the first 60 days after the investigation was initiated.

(3) De minimis dumping margin

In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis. For purposes of the preceding sentence, a weighted average dumping margin is de minimis if the administering authority determines that it is less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(c) Extension of period in extraordinarily complicated cases

(1) In general

If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1) of this section, or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented,

or

(III) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b)(1) of this section until not later than the 190th day after the date on which the administering authority initiates an investigation under section 1673a(c) of this title, or an investigation is initiated under section 1673a(a) of this title. No extension of a determination date may be made under this paragraph for any investigation in which a determination date provided for in subsection (b)(1)(B) of this section applies unless the petitioner submits written notice to the administering authority of its consent to the extension.

(2) Notice of postponement

The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1) of this section, if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

(d) Effect of determination by the administering authority

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

(1)(A) shall—

(i) determine an estimated weighted average dumping margin for each exporter and producer individually investigated, and

(ii) determine, in accordance with section 1673d(c)(5) of this title, an estimated all-others rate for all exporters and producers not individually investigated, and

(B) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable,

(2) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date on which notice of the determination is published in the Federal Register, or

(B) the date that is 60 days after the date on which notice of the determination to initiate the investigation is published in the Federal Register, and

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

The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months, except that the administering authority may, at the request of exporters representing a significant proportion of exports of the subject merchandise, extend that 4-month period to not more than 6 months.

(e) Critical circumstances determinations

(1) In general

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

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

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

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

The administering authority shall be treated as having made an affirmative determination

under subparagraph (A) in any investigation to which subsection (b)(1)(B) of this section is applied.

(2) Suspension of liquidation

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

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

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

(f) Notice of determination

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

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

AMENDMENTS

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

“(1) an industry in the United States—

“(A) is materially injured, or

“(B) is threatened with material injury, or

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

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

Subsec. (b)(1)(A). Pub. L. 103-465, §219(a)(2), struck out at end “If the determination of the administering

authority under this subsection is affirmative, the determination shall include the estimated average amount by which the foreign market value exceeds the United States price.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1988—Subsec. (b)(1). Pub. L. 100-418, § 1323(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Within 160 days after the date on

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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

§ 1673c. Termination or suspension of investigation

(a) Termination of investigation upon withdrawal of petition

(1) In general

(A) Withdrawal of petition

Except as provided in paragraphs (2) and (3), an investigation under this part may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or

by the administering authority if the investigation was initiated under section 1673a(a) of this title.

(B) Refiling of petition

If, within 3 months after the withdrawal of a petition under subparagraph (A), a new petition is filed seeking the imposition of duties on both the subject merchandise of the withdrawn petition and the subject merchandise from another country, the administering authority and the Commission may use in the investigation initiated pursuant to the new petition any records compiled in an investigation conducted pursuant to the withdrawn petition. This subparagraph applies only with respect to the first withdrawal of a petition.

(2) Special rules for quantitative restriction agreements

(A) In general

Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) Public interest factors

In making a decision under subparagraph (A) regarding the public interest the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of antidumping duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations

Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) Limitation on termination by Commission

The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 1673b(b) of this title.

(b) Agreements to eliminate completely sales at less than fair value or to cease exports of merchandise

The administering authority may suspend an investigation if the exporters of the subject merchandise who account for substantially all of the imports of that merchandise agree—

(1) to cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended, or

(2) to revise their prices to eliminate completely any amount by which the normal value of the merchandise which is the subject of the agreement exceeds the export price (or the constructed export price) of that merchandise.

(c) Agreements eliminating injurious effect

(1) General rule

If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the subject merchandise who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious effect of exports to the United States of that merchandise and if—

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

(B) for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(2) “Extraordinary circumstances” defined

(A) Extraordinary circumstances

For purposes of this subsection, the term “extraordinary circumstances” means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) “Complex” defined

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

(i) there are a large number of transactions to be investigated or adjustments to be considered,

(ii) the issues raised are novel, or

(iii) the number of firms involved is large.

(d) Additional rules and conditions

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

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

(2) effective monitoring of the agreement by the United States is practicable.

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon.

(e) Suspension of investigation procedure

Before an investigation may be suspended under subsection (b) or (c) of this section the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced, and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d) of this section, and

(3) permit all interested parties described in section 1677(9) of this title to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A) of this section.

(f) Effects of suspension of investigation

(1) In general

If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c) of this section, then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 1673b(b) of this title with respect to the subject merchandise, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) Liquidation of entries

(A) Cessation of exports; complete elimination of dumping margin

If the agreement accepted by the administering authority is an agreement described in subsection (b) of this section, then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of subject merchandise shall not be suspended under section 1673b(d)(2) of this title,

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any

bond or other security deposited under section 1673b(d)(1)(B) of this title.

(B) Other agreements

If the agreement accepted by the administering authority is an agreement described in subsection (c) of this section, the liquidation of entries of the subject merchandise shall be suspended under section 1673b(d)(2) of this title, or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3) of this section, but the security required under section 1673b(d)(1)(B) of this title may be adjusted to reflect the effect of the agreement.

(3) Where investigation is continued

If, pursuant to subsection (g) of this section, the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c) of this section, then—

(A) if the final determination by the administering authority or the Commission under section 1673d of this title is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue an antidumping duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d), or (c) and (d) of this section, and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) Investigation to be continued upon request

If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the subject merchandise, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) Review of suspension

(1) In general

Within 20 days after the suspension of an investigation under subsection (c) of this section, an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) Commission investigation

Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 1673b(b) of this title had been made on that date.

(3) Suspension of liquidation to continue during review period

The suspension of liquidation of entries of the subject merchandise shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 1673b(d)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1673b(d)(1)(B) of this title.

(i) Violation of agreement**(1) In general**

If the administering authority determines that an agreement accepted under subsection (b) or (c) of this section is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1) of this section, of elimination of injury) and subsection (d) of this section, then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 1673b(d)(2) of this title of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d), or (c) and (d) of this section, was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g) of this section, issue an

antidumping duty order under section 1673e(a) of this title effective with respect to entries of merchandise liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) Intentional violation to be punished by civil penalty

Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) of this section shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures, as the penalty imposed for a fraudulent violation of section 1592(a) of this title.

(j) Determination not to take agreement into account

In making a final determination under section 1673d of this title, or in conducting a review under section 1675 of this title, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1) of this section, or continued an investigation under subsection (g) of this section, the Commission and the administering authority shall consider all of the subject merchandise without regard to the effect of any agreement under subsection (b) or (c) of this section.

(k) Termination of investigation initiated by administering authority

The administering authority may terminate any investigation initiated by the administering authority under section 1673a(a) of this title after providing notice of such termination to all parties to the investigation.

(l) Special rule for nonmarket economy countries**(1) In general**

The administering authority may suspend an investigation under this part upon acceptance of an agreement with a nonmarket economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that—

(A) such agreement satisfies the requirements of subsection (d) of this section, and

(B) will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) Failure of agreements

If the administering authority determines that an agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (i) of this section shall apply.

(m) Special rule for regional industry investigations**(1) Suspension agreements**

If the Commission makes a regional industry determination under section 1677(4)(C) of this title, the administering authority shall offer exporters of the subject merchandise who account for substantially all exports of that merchandise for sale in the region concerned the opportunity to enter into an agreement described in subsection (b), (c), or (l) of this section.

(2) Requirements for suspension agreements

Any agreement described in paragraph (1) shall be subject to all the requirements imposed under this section for other agreements under subsection (b), (c), or (l) of this section, except that if the Commission makes a regional industry determination described in paragraph (1) in the final affirmative determination under section 1673d(b) of this title but not in the preliminary affirmative determination under section 1673b(a) of this title, any agreement described in paragraph (1) may be accepted within 60 days after the antidumping order is published under section 1673e of this title.

(3) Effect of suspension agreement on anti-dumping duty order

If an agreement described in paragraph (1) is accepted after the antidumping duty order is published, the administering authority shall rescind the order, refund any cash deposit and release any bond or other security deposited under section 1673b(d)(1)(B) of this title, and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to anti-dumping duties.

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

AMENDMENTS

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

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

Subsec. (b). Pub. L. 103-465, § 233(a)(5)(T), substituted “subject merchandise” for “merchandise which is the subject of the investigation” in introductory provisions.

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

Subsec. (c)(1). Pub. L. 103-465, § 233(a)(5)(T), substituted “subject merchandise” for “merchandise which is the subject of the investigation” in introductory provisions.

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

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

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

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

Subsec. (f)(2)(A)(i). Pub. L. 103-465, §§ 219(c)(2)(A), 233(a)(5)(T), substituted “subject merchandise” for “merchandise which is the subject of the investigation” and “1673b(d)(2)” for “1673b(d)(1)”.

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

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

Subsecs. (g)(1), (h)(2). Pub. L. 103-465, § 233(a)(5)(T), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (h)(3). Pub. L. 103-465, §§ 219(c)(4), 233(a)(5)(T), in introductory provisions, substituted “subject merchandise” for “merchandise which is the subject of the investigation”, in subpar. (A), substituted “1673b(d)(2)” for “1673b(d)(1)”, and in subpar. (B), substituted “1673b(d)(1)(B)” for “1673b(d)(2)”.

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 applicable with respect to investigations initiated after Aug. 23, 1988, and

to reviews initiated under section 1673e(c) or 1675 of this title after Aug. 23, 1988, see section 1337(b) of Pub. L. 100-418, set out as a note under section 1671 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

TRANSFER OF FUNCTIONS

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

§ 1673d. Final determinations

(a) Final determination by administering authority

(1) General rule

Within 75 days after the date of its preliminary determination under section 1673b(b) of this title, the administering authority shall make a final determination of whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value.

(2) Extension of period for determination

The administering authority may postpone making the final determination under paragraph (1) until not later than the 135th day after the date on which it published notice of its preliminary determination under section 1673b(b) of this title if a request in writing for such a postponement is made by—

(A) exporters who account for a significant proportion of exports of the merchandise which is the subject of the investigation, in a proceeding in which the preliminary determination by the administering authority under section 1673b(b) of this title was affirmative, or

(B) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 1673b(b) of this title was negative.

(3) Critical circumstances determinations

If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 1673b(e) of this title, shall also contain a finding of whether—

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

(ii) the person by whom, or for whose account, the merchandise was imported knew

or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, 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 1673b(e)(1) of this title was negative.

(4) De minimis dumping margin

In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis as defined in section 1673b(b)(3) 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)(1) 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 1673b(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 1673b(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 1673b(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)(3) 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)(3) of this section are likely to undermine seriously the remedial effect of the antidumping duty order to be issued under section 1673e 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) a rapid increase in inventories of the imports, and

(III) any other circumstances indicating that the remedial effect of the antidumping 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 the 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 the 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 as to which confidential treatment has been given by the administering authority,

(B)(i) the administering authority shall—

(I) determine the estimated weighted average dumping margin for each exporter and producer individually investigated, and

(II) determine, in accordance with paragraph (5), the estimated all-others rate for all exporters and producers not individually investigated, and

(ii) the administering authority shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable, and

(C) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was negative, the administering authority shall order

the suspension of liquidation under section 1673b(d)(2) 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 an antidumping duty order under section 1673e(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 1673b(d)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1673b(d)(1)(B) of this title.

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

If the determination of the administering authority or the Commission under subsection (a)(3) or (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 1673b(e)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit required, under section 1673b(d)(1)(B) of this title with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 1673b(e)(2) of this title.

(4) Effect of affirmative determination under subsection (a)(3) of this section

If the determination of the administering authority under subsection (a)(3) of this section is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 1673b(b) and 1673b(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 1673b(e)(2) of this title;

(B) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was affirmative, but the preliminary determination under section 1673b(e)(1) of this title was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 1673b(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 1673b(b) of this title was negative, shall apply any suspension of liquida-

tion 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 estimated all-others rate

(A) General rule

For purposes of this subsection and section 1673b(d) of this title, the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 1677e of this title.

(B) Exception

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

(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, § 735, as added Pub. L. 96-39, title I, § 101, July 26, 1979, 93 Stat. 169; amended Pub. L. 98-573, title VI, §§ 602(c), 605(b), Oct. 30, 1984, 98 Stat. 3024, 3028; Pub. L. 100-418, title I, §§ 1324(b)(3), 1333(a), Aug. 23, 1988, 102 Stat. 1201, 1209; Pub. L. 103-465, title II, §§ 212(b)(2)(B), 213(b), 214(b)(2), 219(b), (c)(6)-(8), 233(a)(5)(V), Dec. 8, 1994, 108 Stat. 4849-4851, 4856, 4857, 4900; Pub. L. 104-295, § 20(b)(6), Oct. 11, 1996, 110 Stat. 3527.)

AMENDMENTS

1996—Subsec. (a)(3)(A)(i). Pub. L. 104-295 amended Pub. L. 103-465, § 214(b)(2)(A)(i). See 1994 Amendment note below.

1994—Subsec. (a)(1). Pub. L. 103-465, § 233(a)(5)(V), substituted “subject merchandise” for “merchandise which was the subject of the investigation”.

Subsec. (a)(3)(A)(i). Pub. L. 103-465, § 214(b)(2)(A)(i), as amended by Pub. L. 104-295, inserted “and material injury by reason of dumped imports” after “history of dumping” and substituted “subject merchandise” for “class or kind of merchandise which is the subject of the investigation”.

Subsec. (a)(3)(A)(ii). Pub. L. 103-465, § 214(b)(2)(A)(ii), substituted “subject merchandise at less than its fair value and that there would be material injury by reason of such sales” for “merchandise which is the subject of the investigation at less than its fair value”.

Subsec. (a)(3)(B). Pub. L. 103-465, § 214(b)(2)(A)(iii), substituted “subject merchandise” for “merchandise which is the subject of the investigation”.

Subsec. (a)(4). Pub. L. 103-465, § 213(b), added par. (4).

Subsec. (b)(1). Pub. L. 103-465, § 212(b)(2)(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(b)(2)(B), amended subpar. (A) generally, substituting present provisions for provisions requiring, in the case of an affirmative critical circumstances determination, a further finding as to whether retroactive imposition of anti-dumping duties on the subject merchandise would be necessary to prevent recurrence of material injury caused by massive imports of the merchandise over a relatively short period of time.

Subsec. (c)(1). Pub. L. 103-465, § 219(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 section 1673b(d)(2) of this title” for “under paragraphs (1) and (2) of section 1673b(d) of this title the suspension of liquidation and the posting of a cash deposit, bond, or other security”.

Subsec. (c)(2)(A). Pub. L. 103-465, § 219(c)(6), substituted “1673b(d)(2)” for “1671b(d)(1)”.

Subsec. (c)(2)(B). Pub. L. 103-465, § 219(c)(7), substituted “1673b(d)(1)(B)” for “1673b(d)(2)”.

Subsec. (c)(3)(B). Pub. L. 103-465, § 219(c)(8), substituted “1673b(d)(1)(B)” for “1673b(d)(2)”.

Subsec. (c)(5). Pub. L. 103-465, § 219(b)(2), added par. (5).

1988—Subsec. (b)(4)(A). Pub. L. 100-418, § 1324(b)(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 a finding as to whether the material injury is by reason of massive imports described in subsection (a)(3) of this section to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 1673 of this title retroactively on those imports.”

Subsec. (e). Pub. L. 100-418, § 1333(a), added subsec. (e). 1984—Subsec. (a)(3). Pub. L. 98-573, § 605(b)(1), inserted provision that such findings may be affirmative even though the preliminary determination under section 1673b(e)(1) of this title was negative.

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

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

Subsec. (c)(4). Pub. L. 98-573, § 605(b)(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(b)(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(c) 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 section 605(b) 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.

§ 1673e. Assessment of duty

(a) Publication of antidumping duty order

Within 7 days after being notified by the Commission of an affirmative determination under section 1673d(b) of this title, the administering authority shall publish an antidumping duty order which—

(1) directs customs officers to assess an antidumping duty equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise, 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—

(A) 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, or

(B) in the case of merchandise not sold prior to its importation into the United States, 12 months after the end of the annual accounting period of the manufacturer or exporter within which it is sold in the United States to a person who is not the exporter of that merchandise,

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

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

(b) Imposition of duty

(1) General rule

If the Commission, in its final determination under section 1673d(b) of this title, finds material injury or threat of material injury which, but for the suspension of liquidation under section 1673b(d)(2) of this title would have led to a finding of material injury, then entries of the subject merchandise, the liquidation of which has been suspended under section

1673b(d)(2) of this title, shall be subject to the imposition of antidumping duties under section 1673 of this title.

(2) Special rule

If the Commission, in its final determination under section 1673d(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 subject merchandise 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 1673d(b) of this title shall be subject to the assessment of antidumping duties under section 1673 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 antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) Security in lieu of estimated duty pending early determination of duty

(1) Conditions for waiver of deposit of estimated duties

The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a) of this section, the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) of this section if—

(A) the investigation has not been designated as extraordinarily complicated by reason of—

(i) the number and complexity of the transactions to be investigated or adjustments to be considered,

(ii) the novelty of the issues presented, or

(iii) the number of firms whose activities must be investigated,

(B) the final determination in the investigation has not been postponed under section 1673d(a)(2)(A) of this title;

(C) on the basis of information presented to the administering authority by any manufacturer, producer, or exporter in such form and within such time as the administering authority may require, the administering authority is satisfied that a determination will be made, within 90 days after the date of publication of an order under subsection (a) of this section, of the normal value and the export price (or the constructed export price) for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

(i) an affirmative preliminary determination by the administering authority under section 1673b(b) of this title, or

(ii) if its determination under section 1673b(b) of this title was negative, an affirmative final determination by the administering authority under section 1673d(a) of this title,

and before the date of publication of the affirmative final determination by the Commission under section 1673d(b) of this title;

(D) the party described in subparagraph (C) provides credible evidence that the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise is significantly less than the amount of such excess specified in the antidumping duty order published under subsection (a) of this section; and

(E) the data concerning the normal value and the export price (or the constructed export price) apply to sales in the usual commercial quantities and in the ordinary course of trade and the number of such sales are sufficient to form an adequate basis for comparison.

(2) Notice; hearing

If the administering authority permits the posting of a bond or other security in lieu of the deposit of estimated antidumping duties under paragraph (1), it shall—

(A) publish notice of its action in the Federal Register, and

(B) upon the request of any interested party, hold a hearing in accordance with section 1677c of this title before determining the normal value and the export price (or the constructed export price) of the merchandise.

(3) Determinations to be basis of antidumping duty

The administering authority shall publish notice in the Federal Register of the results of its determination of normal value and export price (or the constructed export price), and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this subsection applies and also shall be the basis for the deposit of estimated antidumping duties on future entries of merchandise of manufacturers, producers, or exporters described in paragraph (1) to which the order issued under subsection (a) of this section applies.

(4) Provision of business proprietary information; written comments

Before determining whether to permit the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties, the administering authority shall—

(A) make all business proprietary information supplied to the administering authority under paragraph (1) available under a protective order in accordance with section 1677f(c) of this title to all interested parties described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title, and

(B) afford all interested parties an opportunity to file written comments on whether the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties should be permitted.

(d) Special rule for regional industries

(1) In general

In an investigation 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 antidumping 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, §736, as added Pub. L. 96-39, title I, §101, July 26, 1979, 93 Stat. 172; amended Pub. L. 99-514, title XVIII, §1886(a)(7), Oct. 22, 1986, 100 Stat. 2922; Pub. L. 100-418, title I, §1325, Aug. 23, 1988, 102 Stat. 1201; Pub. L. 103-465, title II, §§218(b)(2), 219(c)(9), 233(a)(1)(C), (2)(A)(iii), (5)(W)-(Y), Dec. 8, 1994, 108 Stat. 4855, 4857, 4898, 4900.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-465, §233(a)(1)(C), (2)(A)(iii), substituted “normal value” for “foreign market value” and “export price (or the constructed export price)” for “United States price”.

Subsec. (a)(2). Pub. L. 103-465, §233(a)(5)(W), substituted “subject merchandise” for “class or kind of merchandise to which it applies”.

Subsec. (b)(1). Pub. L. 103-465, §§219(c)(9), 233(a)(5)(X), substituted “1673b(d)(2)” for “1673b(d)(1)” in two places and “subject merchandise” for “merchandise subject to the antidumping duty order”.

Subsec. (b)(2). Pub. L. 103-465, §233(a)(5)(Y), substituted “subject merchandise” for “merchandise subject to an antidumping duty order”.

Subsec. (c). Pub. L. 103-465, §233(a)(1)(C), (2)(A)(iii), substituted “normal value” for “foreign market value” and “export price (or the constructed export price)” for “United States price” in pars. (1)(C) to (E), (2)(B), and (3).

Subsec. (d). Pub. L. 103-465, §218(b)(2), added subsec. (d).

1988—Subsec. (c)(1). Pub. L. 100-418, §1325(a), amended par. (1) generally, designating existing provisions as cl. (C) and adding cls. (A), (B), (D), and (E).

Subsec. (c)(4). Pub. L. 100-418, §1325(b), added par. (4).
1986—Subsec. (c)(1). Pub. L. 99-514 inserted “, and was sold to any person that is not related to such manufacturer, producer, or exporter,” before “on or after the date”.

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.

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.

§ 1673f. Treatment of difference between deposit of estimated antidumping duty and final assessed duty under antidumping duty order

(a) Deposit of estimated antidumping duty under section 1673b(d)(1)(B) of this title

If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated antidumping duty under section 1673b(d)(1)(B) of this title is different from the amount of the antidumping duty determined under an antidumping duty order published under section 1673e 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 1673d(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 antidumping duty under section 1673e(a)(3) of this title

If the amount of an estimated antidumping duty deposited under section 1673e(a)(3) of this title is different from the amount of the antidumping duty determined under an antidumping duty order published under section 1673e 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 1673d(b) of this title is published shall be—

(1) collected, to the extent that the deposit under section 1673e(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 1673e(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, § 737, as added Pub. L. 96-39, title I, § 101, July 26, 1979, 93 Stat. 173; amended Pub. L. 103-465, title II, § 219(c)(10), Dec. 8, 1994, 108 Stat. 4857; Pub. L. 104-295, § 40, Oct. 11, 1996, 110 Stat. 3541.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-295, § 40(1), substituted “deposit, or the amount of any bond or other security, required” for “deposit collected” in introductory provisions.

Subsec. (a)(1). Pub. L. 104-295, § 40(2), substituted “that the cash deposit, bond, or other security” for “the cash deposit collected”.

Subsec. (a)(2). Pub. L. 104-295, § 40(3), substituted “refunded or released, to the extent that the cash deposit, bond, or other security” for “refunded, to the extent the cash deposit”.

1994—Subsec. (a). Pub. L. 103-465 substituted “1673b(d)(1)(B)” for “1673b(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.

§ 1673g. Conditional payment of antidumping duty

(a) General rule

For all entries, or withdrawals from warehouse, for consumption of merchandise subject to an antidumping 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 requirements of subsection (b) of this section and deposits with the appropriate customs officer an estimated antidumping 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 determining the export price (or the constructed export price) of the merchandise imported by or for the account of that person, and such other information as the administering authority deems necessary for ascertaining any antidumping duty to be imposed under this subtitle;

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

(3) state under oath before the customs officer that he is not an exporter, or if he is an exporter, declare under oath at the time of entry the constructed export price of the merchandise to the customs officer if it is then known, or, if not, so declare within 30 days after the merchandise has been sold, or has been made the subject of an agreement to be sold, in the United States; and

(4) pay, or agree to pay on demand, to the customs officer the amount of antidumping duty imposed under section 1673 of this title on that merchandise.

(June 17, 1930, ch. 497, title VII, § 738, as added Pub. L. 96-39, title I, § 101, July 26, 1979, 93 Stat. 174; amended Pub. L. 103-465, title II, § 233(a)(2)(A)(iv), (B), Dec. 8, 1994, 108 Stat. 4898.)

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103-465, § 233(a)(2)(A)(iv), substituted “export price (or the constructed export price)” for “United States price”.

Subsec. (b)(3). Pub. L. 103-465, §233(a)(2)(B), substituted “constructed export price” for “exporter’s sales price”.

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.

§ 1673h. Establishment of product categories for short life cycle merchandise

(a) Establishment of product categories

(1) Petitions

(A) In general

An eligible domestic entity may file a petition with the Commission requesting that a product category be established with respect to short life cycle merchandise at any time after the merchandise becomes the subject of 2 or more affirmative dumping determinations.

(B) Contents

A petition filed under subparagraph (A) shall—

(i) identify the short life cycle merchandise that is the subject of the affirmative dumping determinations,

(ii) specify the short life cycle merchandise that the petitioner seeks to have included in the same product category as the merchandise that is subject to the affirmative dumping determinations,

(iii) specify any short life cycle merchandise the petitioner particularly seeks to have excluded from the product category,

(iv) provide reasons for the inclusions and exclusions specified under clauses (ii) and (iii), and

(v) identify such merchandise in terms of the designations used in the Harmonized Tariff Schedule of the United States.

(2) Determinations on sufficiency of petition

Upon receiving a petition under paragraph (1), the Commission shall—

(A) request the administering authority to confirm promptly the affirmative determinations on which the petition is based, and

(B) upon receipt of such confirmation, determine whether the merchandise covered by the confirmed affirmative determinations is short life cycle merchandise and whether the petitioner is an eligible domestic entity.

(3) Notice; hearings

If the determinations under paragraph (2)(B) are affirmative, the Commission shall—

(A) publish notice in the Federal Register that the petition has been received, and

(B) provide opportunity for the presentation of views regarding the establishment of the requested product category, including a public hearing if requested by any interested person.

(4) Determinations

(A) In general

By no later than the date that is 90 days after the date on which a petition is filed under paragraph (1), the Commission shall determine the scope of the product category into which the short life cycle merchandise that is the subject of the affirmative dumping determinations identified in such petition shall be classified for purposes of this section.

(B) Modifications not requested by petition

(i) In general

The Commission may, on its own initiative, make a determination modifying the scope of any product category established under subparagraph (A) at any time.

(ii) Notice and hearing

Determinations may be made under clause (i) only after the Commission has—

(I) published in the Federal Register notice of the proposed modification, and

(II) provided interested parties an opportunity for a hearing, and a period for the submission of written comments, on the classification of merchandise into the product categories to be affected by such determination.

(C) Basis of determinations

In making determinations under subparagraph (A) or (B), the Commission shall ensure that each product category consists of similar short life cycle merchandise which is produced by similar processes under similar circumstances and has similar uses.

(b) Definitions

For purposes of this section—

(1) Eligible domestic entity

The term “eligible domestic entity” means a manufacturer or producer in the United States, or a certified union or recognized union or group of workers which is representative of an industry in the United States, that manufactures or produces short life cycle merchandise that is—

(A) like or directly competitive with other merchandise that is the subject of 2 or more affirmative dumping determinations, or

(B) is similar enough to such other merchandise as to be considered for inclusion with such merchandise in a product monitoring category established under this section.

(2) Affirmative dumping determination

The term “affirmative dumping determination” means—

(A) any affirmative final determination made by the administering authority under section 1673d(a) of this title during the 8-year period preceding the filing of the petition under this section that results in the issuance of an antidumping duty order under section 1673e of this title which requires the deposit of estimated antidumping duties at a rate of not less than 15 percent ad valorem, or

(B) any affirmative preliminary determination that—

(i) is made by the administering authority under section 1673b(b) of this title during the 8-year period preceding the filing of the petition under this section in the course of an investigation for which no final determination is made under section 1673d of this title by reason of a suspension of the investigation under section 1673c of this title, and

(ii) includes a determination that the estimated average amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise is not less than 15 percent ad valorem.

(3) Subject of affirmative dumping determination

(A) In general

Short life cycle merchandise of a manufacturer shall be treated as being the subject of an affirmative dumping determination only if the administering authority—

(i) makes a separate determination of the amount by which the normal value of such merchandise of the manufacturer exceeds the export price (or the constructed export price) of such merchandise of the manufacturer, and

(ii) specifically identifies the manufacturer by name with such amount in the affirmative dumping determination or in an antidumping duty order issued as a result of the affirmative dumping determination.

(B) Exclusion

Short life cycle merchandise of a manufacturer shall not be treated as being the subject of an affirmative dumping determination if—

(i) such merchandise of the manufacturer is part of a group of merchandise to which the administering authority assigns (in lieu of making separate determinations described in subparagraph (A)(i)(I)) an amount determined to be the amount by which the normal value of the merchandise in such group exceeds the export price (or the constructed export price) of the merchandise in such group, and

(ii) the merchandise and the manufacturer are not specified by name in the affirmative dumping determination or in any antidumping duty order issued as a result of such affirmative dumping determination.

(4) Short life cycle merchandise

The term “short life cycle merchandise” means any product that the Commission determines is likely to become outmoded within 4 years, by reason of technological advances, after the product is commercially available. For purposes of this paragraph, the term “outmoded” refers to a kind of style that is no longer state-of-the-art.

(c) Transitional rules

(1) For purposes of this section and section 1673b(b)(1)(B) and (C) of this title, all affirmative

dumping determinations described in subsection (b)(2)(A) of this section that were made after December 31, 1980, and before August 23, 1988, and all affirmative dumping determinations described in subsection (b)(2)(B) of this section that were made after December 31, 1984, and before August 23, 1988, with respect to each category of short life cycle merchandise of the same manufacturer shall be treated as one affirmative dumping determination with respect to that category for that manufacturer which was made on the date on which the latest of such determinations was made.

(2) No affirmative dumping determination that—

(A) is described in subsection (b)(2)(A) of this section and was made before January 1, 1981, or

(B) is described in subsection (b)(2)(B) of this section and was made before January 1, 1985,

may be taken into account under this section or section 1673b(b)(1)(B) and (C) of this title.

(June 17, 1930, ch. 497, title VII, § 739, as added Pub. L. 100-418, title I, § 1323(a), Aug. 23, 1988, 102 Stat. 1195; amended Pub. L. 101-382, title I, § 139(a)(2), Aug. 20, 1990, 104 Stat. 653; Pub. L. 103-465, title II, § 233(a)(1)(D), (2)(A)(v), Dec. 8, 1994, 108 Stat. 4898.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a)(1)(B)(v), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

A prior section, act June 17, 1930, ch. 497, title VII, § 739, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 174, related to duties of customs officers, prior to repeal by Pub. L. 98-573, title VI, § 610(a), Oct. 30, 1984, 98 Stat. 3031.

AMENDMENTS

1994—Subsec. (b)(2)(B)(ii), (3)(A)(i), (B)(i). Pub. L. 103-465 substituted “normal value” for “foreign market value” and “export price (or the constructed export price)” for “United States price”.

1990—Subsec. (a)(1)(B)(v). Pub. L. 101-382 substituted “Harmonized Tariff Schedule” for “Tariff Schedules”.

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.

§ 1673i. Repealed. Pub. L. 98-573, title VI, § 622(a)(1), Oct. 30, 1984, 98 Stat. 3039

Section, act June 17, 1930, ch. 497, title VII, § 740, as added July 26, 1979, Pub. L. 96-39, title I, § 101, 93 Stat. 175, provided that the antidumping duty imposed by section 1673 of this title was to be treated as a normal customs duty for drawback purposes. See section 1677h of this title.

EFFECTIVE DATE OF REPEAL

Section repealed 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 III—REVIEWS; OTHER ACTIONS REGARDING
AGREEMENTS

CODIFICATION

The designation “PART III” was in the original “Subtitle C” 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.

SUBPART A—REVIEW OF AMOUNT OF DUTY AND
AGREEMENTS OTHER THAN QUANTITATIVE RE-
STRICTION AGREEMENTS

§ 1675. Administrative review of determinations

(a) Periodic review of amount of duty

(1) In general

At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this subtitle or under section 1303¹ of this title, an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall—

(A) review and determine the amount of any net countervailable subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net countervailable subsidy or dumping margin involved in the agreement,

and shall publish in the Federal Register the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed.

(2) Determination of antidumping duties

(A) In general

For the purpose of paragraph (1)(B), the administering authority shall determine—

(i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and

(ii) the dumping margin for each such entry.

(B) Determination of antidumping or countervailing duties for new exporters and producers

(i) In general

If the administering authority receives a request from an exporter or producer of the subject merchandise establishing that—

(I) such exporter or producer did not export the merchandise that was the subject of an antidumping duty or countervailing duty order to the United States (or, in the case of a regional industry, did not export the subject mer-

chandise for sale in the region concerned) during the period of investigation, and

(II) such exporter or producer is not affiliated (within the meaning of section 1677(33) of this title) with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during that period,

the administering authority shall conduct a review under this subsection to establish an individual weighted average dumping margin or an individual countervailing duty rate (as the case may be) for such exporter or producer.

(ii) Time for review under clause (i)

The administering authority shall commence a review under clause (i) in the calendar month beginning after—

(I) the end of the 6-month period beginning on the date of the countervailing duty or antidumping duty order under review, or

(II) the end of any 6-month period occurring thereafter,

if the request for the review is made during that 6-month period.

(iii) Posting bond or security

The administering authority shall, at the time a review under this subparagraph is initiated, direct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise.

(iv) Time limits

The administering authority shall make a preliminary determination in a review conducted under this subparagraph within 180 days after the date on which the review is initiated, and a final determination within 90 days after the date the preliminary determination is issued, except that if the administering authority concludes that the case is extraordinarily complicated, it may extend the 180-day period to 300 days and may extend the 90-day period to 150 days.

(C) Results of determinations

The determination under this paragraph shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(3) Time limits

(A) Preliminary and final determinations

The administering authority shall make a preliminary determination under subparagraph (A), (B), or (C) of paragraph (1) within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under

¹ See References in Text note below.