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))”.


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

§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 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 1673a(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 1677 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—
(A) the information required by subparagraph (B); or
(B) the information required by subparagraph (C); or
(C) the information required by subparagraph (D); or
(D) the information required by subparagraph (E); or
(E) the information required by subparagraph (F); or
(F) the information required by subparagraph (G) of section 1677(9) of this title to whom such disclosure was made, and the administering authority concludes that the parties concerned are cooperating and determines that—
(I) the case is extraordinarily complicated by reason of—
(1) the number and complexity of the transactions to be investigated or adjustments to be considered, and
(2) the novelty of the issues presented, or
(II) the number and complexity of the transactions to be investigated or adjustments to be considered, and
(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(a) 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
The instructions of the administering authority administer authority may, at the request of effect for more than 4 months, except that the exporters representing a significant proportion of the 4-month period to not more than 6 months.

of exports of the subject merchandise, extend 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) 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.


Amendments

1994—Subsec. (a). Pub. L. 103–465, § 222(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 1673(a)(1) 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)(i), 233(a)(6)(A)(viii), in introductory provisions, substituted “initiated” for “commenced”, and in cl. (i), substituted “100” for “120” and “140” for “160”, and in cl. (ii), substituted “90” 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” and “initiated” for “commenced.”

Subsec. (b)(3). Pub. L. 103–465, 221(a), redesignated (3) as (2) and struck out former par. (2).

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 a petition is filed under section 1673a(b) of this title” for “initiated” for “commenced”.


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” 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. 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.


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, §1232(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 subpars. (F) of section 1677(b) 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 1673(c) or 1675 of this title after Aug. 23, 1986, 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