

the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to join permanently through emigration, a very close relative in the United State,<sup>1</sup> such as a spouse, parent, child, brother, or sister;

(2) imposes more than a nominal tax on the visas or other documents required for emigration described in paragraph (1); or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate as described in paragraph (1),

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

**(b) Report to Congress concerning emigration policies**

After January 3, 1975, (A) a nonmarket economy country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (B) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a) of this section. Such report with respect to such country shall include information as to the nature and implementation of its laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate to the United States to join close relatives. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter, so long as such credits or guarantees are extended or such agreement is in effect.

**(c) Exemption from application of section**

This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on January 3, 1975.

**(d) Additional exemption from application of section**

During any period that a waiver is in effect with respect to any nonmarket economy country under section 2432(c) of this title, the provisions of subsections (a) and (b) of this section shall not apply with respect to such country.

(Pub. L. 93-618, title IV, § 409, Jan. 3, 1975, 88 Stat. 2064.)

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in subsec. (c), to be treated as a reference to the Harmonized Tariff Schedule, pursuant to section 3012 of this title. The Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

DELEGATION OF FUNCTIONS

For delegation of congressional reporting functions of President under subsec. (b) of this section, see sec-

tion 1 of Ex. Ord. No. 13313, July 31, 2003, 68 F.R. 46073, set out as a note under section 301 of Title 3, The President.

**§ 2440. Repealed. Pub. L. 104-295, § 17, Oct. 11, 1996, 110 Stat. 3524**

Section, Pub. L. 93-618, title IV, § 410, Jan. 3, 1975, 88 Stat. 2065, related to establishment and maintenance of East-West Trade Statistics Monitoring System.

**§ 2441. Repealed. Pub. L. 105-362, title XIV, § 1401(b)(2), Nov. 10, 1998, 112 Stat. 3294; Pub. L. 106-36, title I, § 1001(a)(4), June 25, 1999, 113 Stat. 130**

Section, Pub. L. 93-618, title IV, § 411, Jan. 3, 1975, 88 Stat. 2065, related to East-West Foreign Trade Board.

PART 2—RELIEF FROM MARKET DISRUPTION TO INDUSTRIES AND DIVERSION OF TRADE TO THE UNITED STATES MARKET

TERMINATION OF PART

*For termination of this part effective 12 years after Dec. 11, 2001, see section 2451b(c) of this title.*

**§ 2451. Action to address market disruption**

**(a) Presidential action**

If a product of the People's Republic of China is being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of a like or directly competitive product, the President shall, in accordance with the provisions of this section, proclaim increased duties or other import restrictions with respect to such product, to the extent and for such period as the President considers necessary to prevent or remedy the market disruption.

**(b) Initiation of an investigation**

(1) Upon the filing of a petition by an entity described in section 2252(a) of this title, upon the request of the President or the United States Trade Representative (in this part referred to as the "Trade Representative"), upon resolution of either the Committee on Ways and Means of the House of Representatives, or the Committee on Finance of the Senate (in this part referred to as the "Committees") or on its own motion, the United States International Trade Commission (in this part referred to as the "Commission") shall promptly make an investigation to determine whether products of the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

(2) The limitations on investigations set forth in section 2252(h)(1) of this title shall apply to investigations conducted under this section.

(3) The provisions of subsections (a)(8) and (i) of section 2252 of this title, relating to treatment of confidential business information, shall apply to investigations conducted under this section.

(4) Whenever a petition is filed, or a request or resolution is received, under this subsection, the

<sup>1</sup> So in original.

Commission shall transmit a copy thereof to the President, the Trade Representative, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, except that in the case of confidential business information, the copy may include only nonconfidential summaries of such information.

(5) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties an opportunity to be present, to present evidence, to respond to the presentations of other parties, and otherwise to be heard.

**(c) Market disruption**

(1) For purposes of this section, market disruption exists whenever imports of an article like or directly competitive with an article produced by a domestic industry are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

(2) For purposes of paragraph (1), the term “significant cause” refers to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.

**(d) Factors in determination**

In determining whether market disruption exists, the Commission shall consider objective factors, including—

- (1) the volume of imports of the product which is the subject of the investigation;
- (2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and
- (3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.

The presence or absence of any factor under paragraph (1), (2), or (3) is not necessarily dispositive of whether market disruption exists.

**(e) Time for Commission determinations**

The Commission shall make and transmit to the President and the Trade Representative its determination under subsection (b)(1) of this section at the earliest practicable time, but in no case later than 60 days (or 90 days in the case of a petition requesting relief under subsection (i) of this section) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, under subsection (b) of this section. If the Commissioners voting are equally divided with respect to its determination, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

**(f) Recommendations of Commission on proposed remedies**

If the Commission makes an affirmative determination under subsection (b) of this section, or a determination which the President or the Trade Representative may consider as affirma-

tive under subsection (e) of this section, the Commission shall propose the amount of increase in, or imposition of, any duty or other import restrictions necessary to prevent or remedy the market disruption. Only those members of the Commission who agreed to the affirmative determination under subsection (b) of this section are eligible to vote on the proposed action to prevent or remedy market disruption. Members of the Commission who did not agree to the affirmative determination may submit, in the report required under subsection (g) of this section, separate views regarding what action, if any, should be taken to prevent or remedy market disruption.

**(g) Report by Commission**

(1) Not later than 20 days after a determination under subsection (b) of this section is made, the Commission shall submit a report to the President and the Trade Representative.

(2) The Commission shall include in the report required under paragraph (1) the following:

(A) The determination made under subsection (b) of this section and an explanation of the basis for the determination.

(B) If the determination under subsection (b) of this section is affirmative, or may be considered by the President or the Trade Representative as affirmative under subsection (e) of this section, the recommendations of the Commission on proposed remedies under subsection (f) of this section and an explanation of the basis for each recommendation.

(C) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in subparagraphs (A) and (B).

(D) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subsection (f) of this section is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and

(ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers, and the communities where production facilities of such industry are located, and on other domestic industries.

(3) The Commission, after submitting a report to the President under paragraph (1), shall promptly make it available to the public (but shall not include confidential business information) and cause a summary thereof to be published in the Federal Register.

**(h) Opportunity to present views and evidence on proposed measure and recommendation to the President**

(1) Within 20 days after receipt of the Commission's report under subsection (g) of this section (or 15 days in the case of an affirmative preliminary determination under subsection (i)(1)(B) of this section), the Trade Representative shall publish in the Federal Register notice of any measure proposed by the Trade Representative to be taken pursuant to subsection (a) of this section and of the opportunity, including a public hearing, if requested, for importers, export-

ers, and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest.

(2) Within 55 days after receipt of the report under subsection (g) of this section (or 35 days in the case of an affirmative preliminary determination under subsection (i)(1)(B) of this section), the Trade Representative, taking into account the views and evidence received under paragraph (1) on the measure proposed by the Trade Representative, shall make a recommendation to the President concerning what action, if any, to take to prevent or remedy the market disruption.

**(i) Critical circumstances**

(1) When a petition filed under subsection (b) of this section alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to the product identified in the petition, the Commission shall, not later than 45 days after the petition containing the request is filed—

(A) determine whether delay in taking action under this section would cause damage to the relevant domestic industry which would be difficult to repair; and

(B) if the determination under subparagraph (A) is affirmative, make a preliminary determination of whether imports of the product which is the subject of the investigation have caused or threatened to cause market disruption.

If the Commissioners voting are equally divided with respect to either of its determinations, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(2) On the date on which the Commission completes its determinations under paragraph (1), the Commission shall transmit a report on the determinations to the President and the Trade Representative, including the reasons for its determinations. If the determinations under paragraph (1) are affirmative, or may be considered by the President or the Trade Representative as affirmative under paragraph (1), the Commission shall include in its report its recommendations on proposed provisional measures to be taken to prevent or remedy the market disruption. Only those members of the Commission who agreed to the affirmative determinations under paragraph (1) are eligible to vote on the proposed provisional measures to prevent or remedy market disruption. Members of the Commission who did not agree to the affirmative determinations may submit, in the report, dissenting or separate views regarding the determination and any recommendation of provisional measures referred to in this paragraph.

(3) If the determinations under paragraph (1) are affirmative, or may be considered by the President or the Trade Representative as affirmative under paragraph (1), the Trade Representative shall, within 10 days after receipt of the Commission's report, determine the amount or extent of provisional relief that is necessary to prevent or remedy the market disruption and shall provide a recommendation to the Presi-

dent on what provisional measures, if any, to take.

(4)(A) The President shall determine whether to provide provisional relief and proclaim such relief, if any, within 10 days after receipt of the recommendation from the Trade Representative.

(B) Such relief may take the form of—

- (i) the imposition of or increase in any duty;
- (ii) any modification, or imposition of any quantitative restriction on the importation of an article into the United States; or
- (iii) any combination of actions under clauses (i) and (ii).

(C) Any provisional action proclaimed by the President pursuant to a determination of critical circumstances shall remain in effect not more than 200 days.

(D) Provisional relief shall cease to apply upon the effective date of relief proclaimed under subsection (a) of this section, upon a decision by the President not to provide such relief, or upon a negative determination by the Commission under subsection (b) of this section.

**(j) Agreements with the People's Republic of China**

(1) The Trade Representative is authorized to enter into agreements for the People's Republic of China to take such action as necessary to prevent or remedy market disruption, and should seek to conclude such agreements before the expiration of the 60-day consultation period provided for under the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the WTO, which shall commence not later than 5 days after the Trade Representative receives an affirmative determination provided for in subsection (e) of this section or a determination which the Trade Representative considers to be an affirmative determination pursuant to subsection (e) of this section.

(2) If no agreement is reached with the People's Republic of China pursuant to consultations under paragraph (1), or if the President determines that<sup>1</sup> an agreement reached pursuant to such consultations is not preventing or remedying the market disruption at issue, the President shall provide import relief in accordance with subsection (a) of this section.

**(k) Standard for Presidential action**

(1) Within 15 days after receipt of a recommendation from the Trade Representative under subsection (h) of this section on the appropriate action, if any, to take to prevent or remedy the market disruption, the President shall provide import relief for such industry pursuant to subsection (a) of this section, unless the President determines that provision of such relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action pursuant to subsection (a) of this section would cause serious harm to the national security of the United States.

(2) The President may determine under paragraph (1) that providing import relief is not in the national economic interest of the United States only if the President finds that the tak-

<sup>1</sup> So in original. Probably should be "that".

ing of such action would have an adverse impact on the United States economy clearly greater than the benefits of such action.

**(l) Publication of decision and reports**

(1) The President's decision, including the reasons therefor and the scope and duration of any action taken, shall be published in the Federal Register.

(2) The Commission shall promptly make public any report transmitted under this section, but shall not make public any information which the Commission determines to be confidential, and shall publish notice of such report in the Federal Register.

**(m) Effective date of relief**

Import relief under this section shall take effect not later than 15 days after the President's determination to provide such relief.

**(n) Modifications of relief**

(1) At any time after the end of the 6-month period beginning on the date on which relief under subsection (m) of this section first takes effect, the President may request that the Commission provide a report on the probable effect of the modification, reduction, or termination of the relief provided on the relevant industry. The Commission shall transmit such report to the President within 60 days of the request.

(2) The President may, after receiving a report from the Commission under paragraph (1), take such action to modify, reduce, or terminate relief that the President determines is necessary to continue to prevent or remedy the market disruption at issue.

(3) Upon the granting of relief under subsection (k) of this section, the Commission shall collect such data as is necessary to allow it to respond rapidly to a request by the President under paragraph (1).

**(o) Extension of action**

(1) Upon request of the President, or upon petition on behalf of the industry concerned filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any relief provided under subsection (k) of this section is to terminate, the Commission shall investigate to determine whether action under this section continues to be necessary to prevent or remedy market disruption.

(2) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(3) The Commission shall transmit to the President a report on its investigation and determination under this subsection not later than 60 days before the action under subsection (m) of this section is to terminate.

(4) The President, after receiving an affirmative determination from the Commission under paragraph (3), may extend the effective period of any action under this section if the President

determines that the action continues to be necessary to prevent or remedy the market disruption.

(Pub. L. 93-618, title IV, §421, as added Pub. L. 106-286, div. A, title I, §103(a)(3), Oct. 10, 2000, 114 Stat. 882; amended Pub. L. 108-429, title II, §2004(d)(3), Dec. 3, 2004, 118 Stat. 2592.)

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108-429 made technical amendment to references in original act which appear in text as references to "this part".

**§ 2451a. Action in response to trade diversion**

**(a) Monitoring by Customs Service**

In any case in which a WTO member other than the United States requests consultations with the People's Republic of China under the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the World Trade Organization, the Trade Representative shall inform the United States Customs Service, which shall monitor imports into the United States of those products of Chinese origin that are the subject of the consultation request. Data from such monitoring shall promptly be made available to the Commission upon request by the Commission.

**(b) Initiation of investigation**

(1) Upon the filing of a petition by an entity described in section 2252(a) of this title, upon the request of the President or the Trade Representative, upon resolution of either of the Committees, or on its own motion, the Commission shall promptly make an investigation to determine whether an action described in subsection (c) of this section has caused, or threatens to cause, a significant diversion of trade into the domestic market of the United States.

(2) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties an opportunity to be present, to present evidence, to respond to the presentations of other parties, and otherwise to be heard.

(3) The provisions of subsections (a)(8) and (i) of section 2252 of this title, relating to treatment of confidential business information, shall apply to investigations conducted under this section.

**(c) Actions described**

An action is described in this subsection if it is an action—

(1) by the People's Republic of China to prevent or remedy market disruption in a WTO member other than the United States;

(2) by a WTO member other than the United States to withdraw concessions under the WTO Agreement or otherwise to limit imports to prevent or remedy market disruption;

(3) by a WTO member other than the United States to apply a provisional safeguard within the meaning of the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the WTO; or

(4) any combination of actions described in paragraphs (1) through (3).