

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).

**(d) Basis for determination of significant diversion**

(1) In determining whether significant diversion or the threat thereof exists for purposes of this section, the Commission shall take into account, to the extent such evidence is reasonably available—

(A) the monitoring conducted under subsection (a) of this section;

(B) the actual or imminent increase in United States market share held by such imports from the People's Republic of China;

(C) the actual or imminent increase in volume of such imports into the United States;

(D) the nature and extent of the action taken or proposed by the WTO member concerned;

(E) the extent of exports from the People's Republic of China to that WTO member and to the United States;

(F) the actual or imminent changes in exports to that WTO member due to the action taken or proposed;

(G) the actual or imminent diversion of exports from the People's Republic of China to countries other than the United States;

(H) cyclical or seasonal trends in import volumes into the United States of the products at issue; and

(I) conditions of demand and supply in the United States market for the products at issue.

The presence or absence of any factor under any of subparagraphs (A) through (I) is not necessarily dispositive of whether a significant diversion of trade or the threat thereof exists.

(2) For purposes of making its determination, the Commission shall examine changes in imports into the United States from the People's Republic of China since the time that the WTO member commenced the investigation that led to a request for consultations described in subsection (a) of this section.

(3) If more than one action by a WTO member or WTO members against a particular product is identified in the petition, request, or resolution under subsection (b) of this section or during the investigation, the Commission may cumulatively assess the actual or likely effects of such actions jointly in determining whether a significant diversion of trade or threat thereof exists.

**(e) Commission determination; agreement authority**

(1) The Commission shall make and transmit to the President and the Trade Representative its determination under subsection (b) of this section at the earliest practicable time, but in no case later than 45 days 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.

(2) The Trade Representative is authorized to enter into agreements with the People's Republic of China or the other WTO members con-

cerned to take such action as necessary to prevent or remedy significant trade diversion or threat thereof into the domestic market of the United States, 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 paragraph (1) or a determination which the Trade Representative considers to be an affirmative determination pursuant to paragraph (1).

**(3) REPORT BY COMMISSION.—**

(A) Not later than 10 days after a determination under subsection (b) of this section,<sup>1</sup> is made, the Commission shall transmit a report to the President and the Trade Representative.

(B) The Commission shall include in the report required under subparagraph (A) the following:

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

(ii) 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)(1) of this section, the recommendations of the Commission on increased tariffs or other import restrictions to be imposed to prevent or remedy the trade diversion or threat thereof, and explanations of the bases for such recommendations. 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 the trade diversion or threat thereof.

(iii) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in clauses (i) and (ii).

(iv) A description of—

(I) the short- and long-term effects that implementation of the action recommended under clause (ii) 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.

(C) The Commission, after submitting a report to the President under subparagraph (A), shall promptly make it available to the public (with the exception of confidential business information) and cause a summary thereof to be published in the Federal Register.

**(f) Public comment**

If consultations fail to lead to an agreement with the People's Republic of China or the WTO

<sup>1</sup> So in original. The comma probably should not appear.

member concerned within 60 days, the Trade Representative shall promptly publish notice in the Federal Register of any proposed action to prevent or remedy the trade diversion, and provide an opportunity for interested persons to present views and evidence on whether the proposed action is in the public interest.

**(g) Recommendation to the President**

Within 20 days after the end of consultations pursuant to subsection (e) of this section, the Trade Representative shall make a recommendation to the President on what action, if any, should be taken to prevent or remedy the trade diversion or threat thereof.

**(h) Presidential action**

Within 20 days after receipt of the recommendation from the Trade Representative, the President shall determine what action to take to prevent or remedy the trade diversion or threat thereof.

**(i) Duration of action**

Action taken under subsection (h) of this section shall be terminated not later than 30 days after expiration of the action taken by the WTO member or members involved against imports from the People's Republic of China.

**(j) Review of circumstances**

The Commission shall review the continued need for action taken under subsection (h) of this section if the WTO member or members involved notify the Committee on Safeguards of the WTO of any modification in the action taken by them against the People's Republic of China pursuant to consultation referred to in subsection (a) of this section. The Commission shall, not later than 60 days after such notification, determine whether a significant diversion of trade continues to exist and report its determination to the President. The President shall determine, within 15 days after receiving the Commission's report, whether to modify, withdraw, or keep in place the action taken under subsection (h) of this section.

(Pub. L. 93-618, title IV, § 422, as added Pub. L. 106-286, div. A, title I, § 103(a)(3), Oct. 10, 2000, 114 Stat. 887; amended Pub. L. 108-429, title II, § 2004(d)(4), Dec. 3, 2004, 118 Stat. 2592.)

AMENDMENTS

2004—Subsec. (j). Pub. L. 108-429 struck out par. (1) designation before “The Commission shall review”.

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.

**§ 2451b. Regulations; termination of provision**

**(a) To carry out restrictions and monitoring**

The President shall by regulation provide for the efficient and fair administration of any restriction proclaimed pursuant to the<sup>1</sup> part and

to provide for effective monitoring of imports under section 2451a(a) of this title.

**(b) To carry out agreements**

To carry out an agreement concluded pursuant to consultations under section 2451(j) or 2451a(e)(2) of this title, the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement.

**(c) Termination date**

This part and any regulations issued under this part shall cease to be effective 12 years after the date of entry into force of the Protocol of Accession of the People's Republic of China to the WTO.

(Pub. L. 93-618, title IV, § 423, as added Pub. L. 106-286, div. A, title I, § 103(a)(3), Oct. 10, 2000, 114 Stat. 890.)

REFERENCES IN TEXT

The date of entry into force of the Protocol of Accession of the People's Republic of China to the WTO, referred to in subsec. (c), is Dec. 11, 2001.

CODIFICATION

Part, referred to in subsecs. (a) and (c), was in the original “subtitle” which was translated as reading “chapter”, meaning chapter 2 of title IV of Pub. L. 93-618, as added, which enacted this part, to reflect the probable intent of Congress, because title IV of Pub. L. 93-618 contains no subtitles.

SUBCHAPTER V—GENERALIZED SYSTEM OF PREFERENCES

**§ 2461. Authority to extend preferences**

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this subchapter. In taking any such action, the President shall have due regard for—

- (1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;
- (2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;
- (3) the anticipated impact of such action on United States producers of like or directly competitive products; and
- (4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

(Pub. L. 93-618, title V, § 501, as added Pub. L. 104-188, title I, § 1952(a), Aug. 20, 1996, 110 Stat. 1917.)

PRIOR PROVISIONS

A prior section 2461, Pub. L. 93-618, title V, § 501, Jan. 3, 1975, 88 Stat. 2066; Pub. L. 98-573, title V, § 502, Oct. 30, 1984, 98 Stat. 3018, related to authority to extend preferences, prior to the general amendment of this subchapter by Pub. L. 104-188.

EFFECTIVE DATE

Pub. L. 104-188, title I, § 1953, Aug. 20, 1996, 110 Stat. 1926, provided that:

<sup>1</sup> So in original. Probably should be “this”.