

(Pub. L. 103-182, title IV, § 406, Dec. 8, 1993, 107 Stat. 2138.)

§ 3437. Identification of industries facing subsidized imports

(a) Petitions

Any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a United States industry and has reason to believe—

(1) that—

(A) as a result of implementation of provisions of the Agreement, the industry is likely to face increased competition from subsidized imports, from a NAFTA country, with which it directly competes; or

(B) the industry is likely to face increased competition from subsidized imports with which it directly competes from any other country designated by the President, following consultations with the Congress, as benefiting from a reduction of tariffs or other trade barriers under a trade agreement that enters into force with respect to the United States after January 1, 1994; and

(2) that the industry is likely to experience a deterioration of its competitive position before more effective rules and disciplines relating to the use of government subsidies have been developed with respect to the country concerned;

may file with the Trade Representative a petition that such industry be identified under this section.

(b) Identification of industry

Within 90 days after receipt of a petition under subsection (a) of this section, the Trade Representative, in consultation with the Secretary of Commerce, shall decide whether to identify the industry on the basis that there is a reasonable likelihood that the industry may face both the subsidization described in subsection (a)(1) of this section and the deterioration described in subsection (a)(2) of this section.

(c) Action after identification

At the request of an entity that is representative of an industry identified under subsection (b) of this section, the Trade Representative shall—

(1) compile and make available to the industry information under section 2418 of this title;

(2) recommend to the President that an investigation by the International Trade Commission be requested under section 332 of the Tariff Act of 1930 [19 U.S.C. 1332]; or

(3) take actions described in both paragraphs (1) and (2).

The industry may request the Trade Representative to take appropriate action to update (as often as annually) any information obtained under paragraph (1) or (2), or both, as the case may be, until an agreement on more effective rules and disciplines relating to government subsidies is reached between the United States and the NAFTA countries.

(d) Initiation of action under other law

(1) In general

The Trade Representative and the Secretary of Commerce shall review information obtained under subsection (c) of this section and consult with the industry identified under subsection (b) of this section with a view to deciding whether any action is appropriate—

(A) under section 2411 of this title, including the initiation of an investigation under section 2412(c) of this title (in the case of the Trade Representative); or

(B) under subtitle A of title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], including the initiation of an investigation under section 702(a) of that Act [19 U.S.C. 1671a(a)] (in the case of the Secretary of Commerce).

(2) Criteria for initiation

In determining whether to initiate any investigation under section 2411 of this title or any other trade law, other than title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], the Trade Representative, after consultation with the Secretary of Commerce—

(A) shall seek the advice of the advisory committees established under section 2155 of this title;

(B) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;

(C) shall coordinate with the interagency organization established under section 1872 of this title; and

(D) may ask the President to request advice from the International Trade Commission.

(3) Title III actions

In the event an investigation is initiated under section 2412(c) of this title as a result of a review under this subsection and the Trade Representative, following such investigation (including any applicable dispute settlement proceedings under the Agreement or any other trade agreement), determines to take action under section 2411(a) of this title, the Trade Representative shall give preference to actions that most directly affect the products that benefit from governmental subsidies and were the subject of the investigation, unless there are no significant imports of such products or the Trade Representative otherwise determines that application of the action to other products would be more effective.

(e) Effect of decisions

Any decision, whether positive or negative, or any action by the Trade Representative or the Secretary of Commerce under this section shall not in any way—

(1) prejudice the right of any industry to file a petition under any trade law;

(2) prejudice, affect, or substitute for, any proceeding, investigation, determination, or action by the Secretary of Commerce, the International Trade Commission, or the Trade Representative pursuant to such a petition; or

(3) prejudice, affect, substitute for, or obviate any proceeding, investigation, or deter-

mination under section 2411 of this title, title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], or any other trade law.

(f) Standing

Nothing in this section may be construed to alter in any manner the requirements in effect before December 8, 1993, for standing under any law of the United States or to add any additional requirements for standing under any law of the United States.

(Pub. L. 103-182, title IV, §407, Dec. 8, 1993, 107 Stat. 2138; Pub. L. 104-295, §21(c)(2), Oct. 11, 1996, 110 Stat. 3530.)

REFERENCES IN TEXT

The Tariff Act of 1930, referred to in subsecs. (d)(1)(B), (2) and (e)(3), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Title VII of the Act is classified generally to subtitle IV (§1671 et seq.) of chapter 4 of this title. Subtitle A of title VII of the Act is classified generally to part I (§1671 et seq.) of subtitle IV of chapter 4 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

AMENDMENTS

1996—Subsec. (e)(2). Pub. L. 104-295 substituted semicolon for comma after “such a petition”.

§ 3438. Treatment of amendments to antidumping and countervailing duty law

Any amendment enacted after the Agreement enters into force with respect to the United States that is made to—

(1) section 303¹ or title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.], or any successor statute, or

(2) any other statute which—

(A) provides for judicial review of final determinations under such section, title, or successor statute, or

(B) indicates the standard of review to be applied,

shall apply to goods from a NAFTA country only to the extent specified in the amendment.

(Pub. L. 103-182, title IV, §408, Dec. 8, 1993, 107 Stat. 2140.)

REFERENCES IN TEXT

The Tariff Act of 1930, referred to in par. (1), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Title VII of the Act is classified generally to subtitle IV (§1671 et seq.) of chapter 4 of this title. Section 303 of the Act was classified to section 1303 of this title and was repealed, effective Jan. 1, 1995, by Pub. L. 103-465, title II, §261(a), Dec. 8, 1994, 108 Stat. 4908. For savings provisions and treatment of references to section 1303 in other laws, see section 261(b), (d)(1)(C) of Pub. L. 103-465, set out as notes under section 1303 of this title. For complete classification of this Act to the Code, see section 1654 of this title and Tables.

APPLICATION OF AMENDMENTS BY PUBLIC LAW 103-465 TO GOODS FROM CANADA AND MEXICO

Pub. L. 103-465, title II, §234, Dec. 8, 1994, 108 Stat. 4901, provided that: “Pursuant to article 1902 of the North American Free Trade Agreement and section 408 of the North American Free Trade Agreement Implementation Act [19 U.S.C. 3438], the amendments made by this title [see Tables for classification] shall apply with respect to goods from Canada and Mexico.”

¹ See References in Text note below.

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

The North American Free Trade Agreement entered into force on Jan. 1, 1994, see note set out under section 3311 of this title.

PART B—GENERAL PROVISIONS

§ 3451. Effect of termination of NAFTA country status

(a) In general

Except as provided in subsection (b) of this section, on the date on which a country ceases to be a NAFTA country, the provisions of this title¹ (other than this section) and the amendments made by this title¹ shall cease to have effect with respect to that country.

(b) Transition provisions

(1) Proceedings regarding protective orders and undertakings

If on the date on which a country ceases to be a NAFTA country an investigation or enforcement proceeding concerning the violation of a protective order issued under section 1677f(f) of this title or an undertaking of the Government of that country is pending, the investigation or proceeding shall continue, and sanctions may continue to be imposed, in accordance with the provisions of such section 1677f(f) of this title.

(2) Binational panel and extraordinary challenge committee reviews

If on the date on which a country ceases to be a NAFTA country—

(A) a binational panel review under article 1904 of the Agreement is pending, or has been requested; or

(B) an extraordinary challenge committee review under article 1904 of the Agreement is pending, or has been requested;

with respect to a determination which involves a class or kind of merchandise and to which section 1516a(g)(2) of this title applies, such determination shall be reviewable under section 1516a(a) of this title. In the case of a determination to which the provisions of this paragraph apply, the time limits for commencing an action under section 1516a(a) of this title shall not begin to run until the date on which the Agreement ceases to be in force with respect to that country.

(Pub. L. 103-182, title IV, §415, Dec. 8, 1993, 107 Stat. 2148; Pub. L. 104-295, §21(c)(4), Oct. 11, 1996, 110 Stat. 3530.)

REFERENCES IN TEXT

This title, referred to in subsec. (a), is title IV of Pub. L. 103-182, Dec. 8, 1993, 107 Stat. 2129, which enacted this subchapter, amended sections 1502, 1514, 1516a, 1677, and 1677f of this title and sections 1581, 1584, 2201, and 2643 of Title 28, Judiciary and Judicial Procedure, enacted provisions set out as a note under section 3431 of this title, and amended provisions set out as a note under section 2112 of this title.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104-295 substituted “action under section 1516a(a)” for “action under 1516a(a)”.

¹ See References in Text note below.