

UZBEKISTAN.—Determination of President of the United States, No. 97-6, Nov. 26, 1996, 61 F.R. 63693.

VIETNAM.—Proc. No. 8096, Dec. 29, 2006, 72 F.R. 451.

Determination of President of the United States, No. 2005-11, Dec. 10, 2004, 69 F.R. 76587.

Proc. No. 7449, June 8, 2001, 66 F.R. 31375.

Determination of President of the United States, No. 2001-18, June 8, 2001, 66 F.R. 34353.

### § 2435. Commercial agreements

#### (a) Presidential authority

Subject to the provisions of subsections (b) and (c) of this section, the President may authorize the entry into force of bilateral commercial agreements providing nondiscriminatory treatment to the products of countries heretofore denied such treatment whenever he determines that such agreements with such countries will promote the purposes of this chapter and are in the national interest.

#### (b) Terms of agreements

Any such bilateral commercial agreement shall—

(1) be limited to an initial period specified in the agreement which shall be no more than 3 years from the date the agreement enters into force; except that it may be renewable for additional periods, each not to exceed 3 years; if—

(A) a satisfactory balance of concessions in trade and services has been maintained during the life of such agreement, and

(B) the President determines that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by the other party to the bilateral agreement;

(2) provide that it is subject to suspension or termination at any time for national security reasons, or that the other provisions of such agreement shall not limit the rights of any party to take any action for the protection of its security interests;

(3) include safeguard arrangements (A) providing for prompt consultations whenever either actual or prospective imports cause or threaten to cause, or significantly contribute to, market disruption and (B) authorizing the imposition of such import restrictions as may be appropriate to prevent such market disruption;

(4) if the other party to the bilateral agreement is not a party to the Paris Convention for the Protection of Industrial Property, provide rights for United States nationals with respect to patents and trademarks in such country not less than the rights specified in such convention;

(5) if the other party to the bilateral agreement is not a party to the Universal Copyright Convention, provide rights for United States nationals with respect to copyrights in such country not less than the rights specified in such convention;

(6) in the case of an agreement entered into or renewed after January 3, 1975, provide arrangements for the protection of industrial rights and processes;

(7) provide arrangements for the settlement of commercial differences and disputes;

(8) in the case of an agreement entered into or renewed after January 3, 1975, provide arrangements for the promotion of trade, which may include arrangements for the establishment or expansion of trade and tourist promotion offices, for facilitation of activities of governmental commercial officers, participation in trade fairs and exhibits, and the sending of trade missions, and for facilitation of entry, establishment, and travel of commercial representatives;

(9) provide for consultations for the purpose of reviewing the operation of the agreement and relevant aspects of relations between the United States and the other party; and

(10) provide such other arrangements of a commercial nature as will promote the purposes of this chapter.

#### (c) Congressional action

An agreement referred to in subsection (a), and a proclamation referred to in section 2434(a) of this title implementing such agreement, shall take effect only if a joint resolution described in section 2191(b)(3) of this title that approves of the agreement referred to in subsection (a) is enacted into law.

(Pub. L. 93-618, title IV, §405, Jan. 3, 1975, 88 Stat. 2061; Pub. L. 96-39, title XI, §1106(f)(3), July 26, 1979, 93 Stat. 312; Pub. L. 101-382, title I, §132(b)(1), Aug. 20, 1990, 104 Stat. 645.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(10), was in the original “this Act”, meaning Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

#### AMENDMENTS

1990—Subsec. (c). Pub. L. 101-382 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “An agreement referred to in subsection (a) of this section, and a proclamation referred to in section 2434(a) of this title implementing such agreement, shall take effect only if (1) approved by the Congress by the adoption of a concurrent resolution referred to in section 2191 of this title, or (2) in the case of an agreement entered into before January 3, 1975, and a proclamation implementing such agreement, a resolution of disapproval referred to in section 2192 of this title is not adopted during the 90-day period specified by section 2437(c)(2) of this title.”

1979—Subsec. (b)(8). Pub. L. 96-39 substituted “may include arrangements” for “may include those”.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

### § 2436. Market disruption

#### (a) Investigation by International Trade Commission; report; publication

(1) Upon the filing of a petition by an entity described in section 2252(a) of this title, upon request of the President or the United States 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, or on its own motion, the International Trade Commission (hereafter in this

section referred to as the “Commission”) shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

(2) The provisions of subsections (a)(3), (b)(4),<sup>1</sup> and (c)(4) of section 2252 of this title shall apply with respect to investigations by the Commission under paragraph (1).

(3) The Commission shall report to the President its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

**(b) Affirmative determination**

With respect to any affirmative determination of the Commission under subsection (a)—

(1) such determination shall be treated as an affirmative determination made under section 2251(b) of this title (as in effect on the day before the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988); and

(2) sections 2252 and 2253 of this title (as in effect on the day before the date of the enactment of such Act of 1988), rather than the provisions of part 1 of subchapter II of this chapter as amended by section 1401 of such Act of 1988, shall apply with respect to the taking of subsequent action, if any, by the President in response to such affirmative determination;

except that—

(A) the President may take action under such sections 2252 and 2253 of this title only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made; and

(B) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.

**(c) Products of Communist countries**

If, at any time, the President finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a). If the President further finds that emergency action is necessary, he may take action under sections 2252 and 2253 of this title referred to in subsection (b) as if an affirmative determination of the Commission had been made under subsection (a). Any action taken by the President under the preceding sentence shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the Commission’s report of such determination is submitted to the President, or (2) if an affirmative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the action taken by the President pursuant to such determination becomes effective.

**(d) Petitions to initiate consultations as provided for by safeguard arrangements**

(1) A petition may be filed with the President by an entity described in section 2251(a)(1) of this title requesting the President to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 2435 of this title with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the President determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

**(e) Definitions; factors determining existence of market disruption**

For purposes of this section—

(1) The term “Communist country” means any country dominated or controlled by communism.

(2)(A) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

(B) For purposes of subparagraph (A):

(i) Imports of an article shall be considered to be increasing rapidly if there has been a significant increase in such imports (either actual or relative to domestic production) during a recent period of time.

(ii) 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.

<sup>1</sup> See References in Text note below.

(C) The Commission, in determining whether market disruption exists, shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation;

(ii) the effect of imports of the merchandise on prices in the United States for like or directly competitive articles;

(iii) the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and

(iv) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

(Pub. L. 93-618, title IV, § 406, Jan. 3, 1975, 88 Stat. 2062; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381; Pub. L. 100-418, title I, § 1411(a), (b), Aug. 23, 1988, 102 Stat. 1241, 1242; Pub. L. 106-36, title I, § 1001(a)(6), June 25, 1999, 113 Stat. 130.)

#### REFERENCES IN TEXT

Subsection (b)(4) of section 2252 of this title, referred to in subsec. (a)(2), was repealed by Pub. L. 103-465, title III, § 301(c), Dec. 8, 1994, 108 Stat. 4932. See section 2252(b)(3) of this title.

The date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, referred to in subsec. (b), is the date of enactment of Pub. L. 100-418, which was approved Aug. 23, 1988.

Section 1401 of such Act of 1988, referred to in subsec. (b)(2), is section 1401 of Pub. L. 100-418, known as the Omnibus Trade and Competitiveness Act of 1988, which enacted section 2254 of this title, amended sections 1330, 2133, 2251 to 2253, 2274, 2354, and 2703 of this title, enacted a provision set out as a note under section 2251 of this title, and amended a provision set out as a note under section 2112 of this title.

#### AMENDMENTS

1999—Subsec. (e)(2)(B), (C). Pub. L. 106-36 realigned margins.

1988—Subsec. (a)(1). Pub. L. 100-418, § 1411(b)(1), substituted “section 2252(a)” for “section 2251(a)(1)”.

Subsec. (a)(2). Pub. L. 100-418, § 1411(b)(2), substituted “subsections (a)(3), (b)(4), and (c)(4) of section 2252” for “subsections (a)(2), (b)(3), and (c) of section 2251”.

Subsec. (b). Pub. L. 100-418, § 1411(a)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “For purposes of sections 2252 and 2253 of this title, an affirmative determination of the Commission under subsection (a) of this section shall be treated as an affirmative determination under section 2251(b) of this title, except that—

“(1) the President may take action under sections 2252 and 2253 of this title only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made, and

“(2) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.”

Subsec. (c). Pub. L. 100-418, § 1411(a)(2), inserted “referred to in subsection (b)” after “sections 2252 and 2253 of this title”.

Subsec. (e)(2). Pub. L. 100-418, § 1411(a)(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

#### CHANGE OF NAME

“United States Trade Representative” substituted for “Special Representative for Trade Negotiations” in subsec. (a)(1), pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as

provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title. See, also, section 2171 of this title as amended by Pub. L. 97-456.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-418, title I, § 1411(c), Aug. 23, 1988, 102 Stat. 1242, provided that: “The amendments made by subsections (a) and (b) [amending this section] apply with respect to investigations initiated under section 406(a) of the Trade Act of 1974 [19 U.S.C. 2436(a)] on or after the date of the enactment of this Act [Aug. 23, 1988].”

### § 2437. Procedure for Congressional approval or disapproval of extension of nondiscriminatory treatment and Presidential reports

#### (a) Transmission of nondiscriminatory treatment documents to Congress

Whenever the President issues a proclamation under section 2434 of this title extending nondiscriminatory treatment to the products of any foreign country, he shall promptly transmit to the House of Representatives and to the Senate a document setting forth the proclamation and the agreement the proclamation proposes to implement, together with his reasons therefor.

#### (b) Transmission of freedom of emigration documents to Congress

The President shall transmit to the House of Representatives and the Senate a document containing the initial report submitted by him under section 2432(b) or 2439(b) of this title with respect to a nonmarket economy country. On or before December 31 of each year, the President shall transmit to the House of Representatives and the Senate, a document containing the report required by section 2432(b) or 2439(b) of this title as the case may be, to be submitted on or before such December 31.

#### (c) Effective date of proclamations and agreements; disapproval of reports

(1) In the case of a document referred to in subsection (a), the proclamation set forth in the document may become effective and the agreement set forth in the document may enter into force and effect only if a joint resolution described in section 2191(b)(3) of this title that approves of the extension of nondiscriminatory treatment to the products of the country concerned is enacted into law.

(2) In the case of a document referred to in subsection (b) which contains a report submitted by the President under section 2432(b) or 2439(b) of this title with respect to a nonmarket economy country, if, before the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, a joint resolution described in section 2192(a)(1)(B) of this title is enacted into law that disapproves of the report submitted by the President with respect to such country, then, beginning with the day after the end of the 60-day period beginning with the date of the enactment of such resolution of disapproval, (A) nondiscriminatory treatment shall not be in force with respect to the products of such country, and the products of such country shall be dutiable at the rates set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United States, (B) such coun-