

tee review. Such deposition may be taken before any person designated by the committee and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization, or other entity may be compelled to appear and be deposed and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the committee, as provided in this section.

(Pub. L. 103-182, title IV, §403, Dec. 8, 1993, 107 Stat. 2136.)

§ 3434. Requests for review of determinations by competent investigating authorities of NAFTA countries

(a) Definitions

As used in this section:

(1) Competent investigating authority

The term “competent investigating authority” means the competent investigating authority, as defined in article 1911, of a NAFTA country.

(2) United States Secretary

The term “United States Secretary” means that officer of the United States referred to in article 1908.

(b) Requests for review by United States

In the case of a final determination of a competent investigating authority, requests by the United States for binational panel review of such determination under article 1904 shall be made by the United States Secretary.

(c) Requests for review by person

In the case of a final determination of a competent investigating authority, a person, within the meaning of paragraph 5 of article 1904, may request a binational panel review of such determination by filing such a request with the United States Secretary within the time limit provided for in paragraph 4 of article 1904. The receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904. The request for such panel review shall be without prejudice to any challenge before a binational panel of the basis for a particular request for review.

(d) Service of request for review

Whenever binational panel review of a final determination made by a competent investigating authority is requested under this section, the United States Secretary shall serve a copy of the request on all persons who would otherwise be entitled under the law of the importing country to commence proceedings for judicial review of the determination.

(Pub. L. 103-182, title IV, §404, Dec. 8, 1993, 107 Stat. 2137.)

§ 3435. Rules of procedure for panels and committees

(a) Rules of procedure for binational panels

The administering authority shall prescribe rules, negotiated in accordance with paragraph 14 of article 1904, governing, with respect to binational panel reviews—

- (1) requests for such reviews, complaints, other pleadings, and other papers;
- (2) the amendment, filing, and service of such pleadings and papers;
- (3) the joinder, suspension, and termination of such reviews; and
- (4) other appropriate procedural matters.

(b) Rules of procedure for extraordinary challenge committees

The administering authority shall prescribe rules, negotiated in accordance with paragraph 2 of Annex 1904.13, governing the procedures for reviews by extraordinary challenge committees.

(c) Rules of procedure for safeguarding panel review system

The administering authority shall prescribe rules, negotiated in accordance with Annex 1905.6, governing the procedures for special committees described in such Annex.

(d) Publication of rules

The rules prescribed under subsections (a), (b), and (c) shall be published in the Federal Register.

(e) Administering authority

As used in this section, the term “administering authority” has the meaning given such term in section 1677(1) of this title.

(Pub. L. 103-182, title IV, §405, Dec. 8, 1993, 107 Stat. 2137.)

§ 3436. Subsidy negotiations

In the case of any trade agreement which may be entered into by the President with a NAFTA country, the negotiating objectives of the United States with respect to subsidies shall include—

- (1) achievement of increased discipline on domestic subsidies provided by a foreign government, including—

- (A) the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations;
- (B) the provision of goods or services at preferential rates;
- (C) the granting of funds or forgiveness of debt to cover operating losses sustained by a specific industry; and
- (D) the assumption of any costs or expenses of manufacture, production, or distribution;

- (2) achievement of increased discipline on export subsidies provided by a foreign government, particularly with respect to agricultural products; and

- (3) maintenance of effective remedies against subsidized imports, including, where appropriate, countervailing duties.

(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), 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) and the deterioration described in subsection (a)(2).

(c) Action after identification

At the request of an entity that is representative of an industry identified under subsection (b), 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) and consult with

the industry identified under subsection (b) 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 determination 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