

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective Jan. 1, 1980, see section 107 of Pub. L. 96-39, set out as an Effective Date note under section 1671 of this title.

STUDY ON TRADE ADJUSTMENT ASSISTANCE FOR FISHERMEN

Pub. L. 107-210, div. A, title I, §143, Aug. 6, 2002, 116 Stat. 953, required Secretary of Commerce, not later than 1 year after Aug. 6, 2002, to conduct a study and report to Congress on appropriateness and feasibility of a trade adjustment assistance program for fishermen.

TERM "INDUSTRY" TO INCLUDE PRODUCERS LOCATED IN UNITED STATES INSULAR POSSESSIONS

Pub. L. 98-67, title II, §214(f), Aug. 5, 1983, 97 Stat. 393, provided that: "For purposes of chapter 1 of title II of the Trade Act of 1974 [this part], the term 'industry' shall include producers located in the United States insular possessions."

EX. ORD. NO. 11913. COLLECTION OF INFORMATION FOR IMPORT RELIEF AND ADJUSTMENT ASSISTANCE

Ex. Ord. No. 11913, Apr. 26, 1976, 41 F.R. 17721, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), and as President of the United States of America, in order to reduce the reporting burden with respect to the collection of information pursuant to Title II of the Trade Act of 1974 (88 Stat. 2011, 19 U.S.C. 2251 et seq.) and consistent with Chapter 35 of Title 44 of the United States Code, it is hereby ordered as follows:

SECTION 1. Whenever the United States International Trade Commission, in connection with investigations pursuant to Section 201 of the Trade Act of 1974 (19 U.S.C. 2251), collects factual data from firms on their sales, production, employment, and financial experience, the Commission shall provide such information to the Secretaries of Commerce and Labor.

SEC. 2. The Secretaries of Commerce and Labor shall ensure that the factual data, received pursuant to Section 1, are used solely for the performance of their functions pursuant to Sections 264 and 224, respectively, of the Trade Act of 1974 (19 U.S.C. 2354 and 2274).

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§ 2252. Investigations, determinations, and recommendations by Commission

(a) Petitions and adjustment plans

(1) A petition requesting action under this part for the purpose of facilitating positive adjustment to import competition may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

(2) A petition under paragraph (1)—

(A) shall include a statement describing the specific purposes for which action is being sought, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition; and

(B) may—

(i) subject to subsection (d)(1)(C)(i), request provisional relief under subsection (d)(1); or

(ii) request provisional relief under subsection (d)(2).

(3) Whenever a petition is filed under paragraph (1), the Commission shall promptly trans-

mit copies of the petition to the Office of the United States Trade Representative and other Federal agencies directly concerned.

(4) A petitioner under paragraph (1) may submit to the Commission and the United States Trade Representative (hereafter in this part referred to as the "Trade Representative"), either with the petition, or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(5)(A) Before submitting an adjustment plan under paragraph (4), the petitioner and other entities referred to in paragraph (1) that wish to participate may consult with the Trade Representative and the officers and employees of any Federal agency that is considered appropriate by the Trade Representative, for purposes of evaluating the adequacy of the proposals being considered for inclusion in the plan in relation to specific actions that may be taken under this part.

(B) A request for any consultation under subparagraph (A) must be made to the Trade Representative. Upon receiving such a request, the Trade Representative shall confer with the petitioner and provide such assistance, including publication of appropriate notice in the Federal Register, as may be practicable in obtaining other participants in the consultation. No consultation may occur under subparagraph (A) unless the Trade Representative, or his delegate, is in attendance.

(6)(A) In the course of any investigation under subsection (b) of this section, the Commission shall seek information (on a confidential basis, to the extent appropriate) on actions being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(B) Regardless whether an adjustment plan is submitted under paragraph (4) by the petitioner, if the Commission makes an affirmative determination under subsection (b), any—

- (i) firm in the domestic industry;
- (ii) certified or recognized union or group of workers in the domestic industry;
- (iii) State or local community;
- (iv) trade association representing the domestic industry; or
- (v) any other person or group of persons,

may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

(7) Nothing in paragraphs (5) and (6) may be construed to provide immunity under the anti-trust laws.

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 [19 U.S.C. 1332(g)] shall apply with respect to information received by the Commission in the course of investigations conducted under this part, part 1 of title III of the North American Free Trade Agreement Implementation Act [19 U.S.C. 3351 et seq.], title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, title III of the United States-Singapore Free Trade Agreement Imple-

mentation Act, title III of the United States-Australia Free Trade Agreement Implementation Act, title III of the United States-Morocco Free Trade Agreement Implementation Act, title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act [19 U.S.C. 4051 et seq.], title III of the United States-Bahrain Free Trade Agreement Implementation Act, title III of the United States-Oman Free Trade Agreement Implementation Act, title III of the United States-Peru Trade Promotion Agreement Implementation Act, title III of the United States-Korea Free Trade Agreement Implementation Act, title III of the United States-Colombia Trade Promotion Agreement Implementation Act, and title III of the United States-Panama Trade Promotion Agreement Implementation Act. The Commission may request that parties providing confidential business information furnish non-confidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

(b) Investigations and determinations by Commission

(1)(A) Upon the filing of a petition under subsection (a), the request of the President or the Trade Representative, the 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 Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

(B) For purposes of this section, the term "substantial cause" means a cause which is important and not less than any other cause.

(2)(A) Except as provided in subparagraph (B), the Commission shall make the determination under paragraph (1) within 120 days (180 days if the petition alleges that critical circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(B) If before the 100th day after a petition is filed under subsection (a)(1) the Commission determines that the investigation is extraordinarily complicated, the Commission shall make the determination under paragraph (1) within 150 days (210 days if the petition alleges that critical circumstances exist) after the date referred to in subparagraph (A).

(3) 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 and consumers an opportunity to be present, to present evidence, to comment

on the adjustment plan, if any, submitted under subsection (a), to respond to the presentations of other parties and consumers, and otherwise to be heard.

(c) Factors applied in making determinations

(1) In making determinations under subsection (b), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(A) with respect to serious injury—

(i) the significant idling of productive facilities in the domestic industry,

(ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

(iii) significant unemployment or underemployment within the domestic industry;

(B) with respect to threat of serious injury—

(i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,

(ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,

(iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

(2) In making determinations under subsection (b), the Commission shall—

(A) consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury; and

(B) examine factors other than imports which may be a cause of serious injury, or threat of serious injury, to the domestic industry.

The Commission shall include the results of its examination under subparagraph (B) in the report submitted by the Commission to the President under subsection (e).

(3) The presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) of paragraph (1) is not necessarily dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry.

(4) For purposes of subsection (b), in determining the domestic industry producing an article

like or directly competitive with an imported article, the Commission—

(A) to the extent information is available, shall, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

(B) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article; and

(C) may, in the case of one or more domestic producers which produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(5) In the course of any proceeding under this subsection, the Commission shall investigate any factor which in its judgment may be contributing to increased imports of the article under investigation. Whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII [19 U.S.C. 1671 et seq., 1673 et seq.] or section 337 [19 U.S.C. 1337] of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

(6) For purposes of this section:

(A)(i) The term “domestic industry” means, with respect to an article, the producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article.

(ii) The term “domestic industry” includes producers located in the United States insular possessions.

(B) The term “significant idling of productive facilities” includes the closing of plants or the underutilization of production capacity.

(C) The term “serious injury” means a significant overall impairment in the position of a domestic industry.

(D) The term “threat of serious injury” means serious injury that is clearly imminent.

(d) Provisional relief

(1)(A) An entity representing a domestic industry that produces a perishable agricultural product or citrus product that is like or directly competitive with an imported perishable agricultural product or citrus product may file a request with the Trade Representative for the monitoring of imports of that product under subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if—

(i) the imported product is a perishable agricultural product or citrus product; and

(ii) there is a reasonable indication that such product is being imported into the United States in such increased quantities as to be, or likely to be, a substantial cause of serious injury, or the threat thereof, to such domestic industry.

(B) If the determinations under subparagraph (A)(i) and (ii) are affirmative, the Trade Representative shall request, under section 332(g) of the Tariff Act of 1930 [19 U.S.C. 1332(g)], the Commission to monitor and investigate the imports concerned for a period not to exceed 2 years. The monitoring and investigation may include the collection and analysis of information that would expedite an investigation under subsection (b).

(C) If a petition filed under subsection (a)—

(i) alleges injury from imports of a perishable agricultural product or citrus product that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under subparagraph (B) for not less than 90 days; and

(ii) requests that provisional relief be provided under this subsection with respect to such imports;

the Commission shall, not later than the 21st day after the day on which the request was filed, make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the perishable agricultural product or citrus product are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable product or citrus product, and whether either—

(I) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or

(II) the serious injury cannot be timely prevented through investigation under subsection (b) and action under section 2253 of this title.

(D) At the request of the Commission, the Secretary of Agriculture shall promptly provide to the Commission any relevant information that the Department of Agriculture may have for purposes of making determinations and findings under this subsection.

(E) Whenever the Commission makes an affirmative preliminary determination under subparagraph (C), the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(F) The Commission shall immediately report to the President its determination under subparagraph (C) and, if the determination is affirmative, the finding under subparagraph (E).

(G) Within 7 days after receiving a report from the Commission under subparagraph (F) containing an affirmative determination, the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (E), shall proclaim such provisional relief that the Presi-

dent considers necessary to prevent or remedy the serious injury.

(2)(A) When a petition filed under subsection (a) alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to imports of the article identified in the petition, the Commission shall, not later than 60 days after the petition containing the request was filed, determine, on the basis of available information, whether—

(i) there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article; and

(ii) delay in taking action under this part would cause damage to that industry that would be difficult to repair.

(B) If the determinations under subparagraph (A)(i) and (ii) are affirmative, the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(C) The Commission shall immediately report to the President its determinations under subparagraph (A)(i) and (ii) and, if the determinations are affirmative, the finding under subparagraph (B).

(D) Within 30 days after receiving a report from the Commission under subparagraph (C) containing an affirmative determination under subparagraph (A)(i) and (ii), the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (B), shall proclaim, for a period not to exceed 200 days, such provisional relief that the President considers necessary to prevent or remedy the serious injury. Such relief shall take the form of an increase in, or the imposition of, a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(3) If provisional relief is proclaimed under paragraph (1)(G) or (2)(D) in the form of an increase, or the imposition of, a duty, the President shall order the suspension of liquidation of all imported articles subject to the affirmative determination under paragraph (1)(C) or paragraph (2)(A), as the case may be, that are entered, or withdrawn from warehouse for consumption, on or after the date of the determination.

(4)(A) Any provisional relief implemented under this subsection with respect to an imported article shall terminate on the day on which—

(i) if such relief was proclaimed under paragraph (1)(G) or (2)(D), the Commission makes a negative determination under subsection (b) regarding injury or the threat thereof by imports of such article;

(ii) action described in section 2253(a)(3)(A) or (C) of this title takes effect under section 2253 of this title with respect to such article;

(iii) a decision by the President not to take any action under section 2253(a) of this title with respect to such article becomes final; or

(iv) whenever the President determines that, because of changed circumstances, such relief is no longer warranted.

(B) Any suspension of liquidation ordered under paragraph (3) with respect to an imported article shall terminate on the day on which provisional relief is terminated under subparagraph (A) with respect to the article.

(C) If an increase in, or the imposition of, a duty that is proclaimed under section 2253 of this title on an imported article is different from a duty increase or imposition that was proclaimed for such an article under this section, then the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at whichever of such rates of duty is lower.

(D) If provisional relief in the form of an increase in, or the imposition of, a duty is proclaimed under this section with respect to an imported article and neither a duty increase nor a duty imposition is proclaimed under section 2253 of this title regarding such article, the entry of any such article for which liquidation was suspended under paragraph (3) may be liquidated at the rate of duty that applied before provisional relief was provided.

(5) For purposes of this subsection:

(A) The term “citrus product” means any processed oranges or grapefruit, or any orange or grapefruit juice, including concentrate.

(B) A perishable agricultural product is any agricultural article, including livestock, regarding which the Trade Representative considers action under this section to be appropriate after taking into account—

- (i) whether the article has—
 - (I) a short shelf life,
 - (II) a short growing season, or
 - (III) a short marketing period,

(ii) whether the article is treated as a perishable product under any other Federal law or regulation; and

(iii) any other factor considered appropriate by the Trade Representative.

The presence or absence of any factor which the Trade Representative is required to take into account under clause (i), (ii), or (iii) is not necessarily dispositive of whether an article is a perishable agricultural product.

(C) The term “provisional relief” means—

- (i) any increase in, or imposition of, 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).

(e) Commission recommendations

(1) If the Commission makes an affirmative determination under subsection (b)(1), the Commission shall also recommend the action that would address the serious injury, or threat thereof, to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

(2) The Commission is authorized to recommend under paragraph (1)—

(A) an increase in, or the imposition of, any duty on the imported article;

(B) a tariff-rate quota on the article;

(C) a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) one or more appropriate adjustment measures, including the provision of trade adjustment assistance under part 2 of this subchapter; or

(E) any combination of the actions described in subparagraphs (A) through (D).

(3) The Commission shall specify the type, amount, and duration of the action recommended by it under paragraph (1). The limitations set forth in section 2253(e) of this title are applicable to the action recommended by the Commission.

(4) In addition to the recommendation made under paragraph (1), the Commission may also recommend that the President—

(A) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat; or

(B) implement any other action authorized under law that is likely to facilitate positive adjustment to import competition.

(5) For purposes of making its recommendation under this subsection, the Commission shall—

(A) after reasonable notice, hold a public hearing at which all interested parties shall be provided an opportunity to present testimony and evidence; and

(B) take into account—

(i) the form and amount of action described in paragraph (2)(A), (B), and (C) that would prevent or remedy the injury or threat thereof,

(ii) the objectives and actions specified in the adjustment plan, if any, submitted under subsection (a)(4),

(iii) any individual commitment that was submitted to the Commission under subsection (a)(6),

(iv) any information available to the Commission concerning the conditions of competition in domestic and world markets, and likely developments affecting such conditions during the period for which action is being requested, and

(v) whether international negotiations may be constructive to address the injury or threat thereof or to facilitate adjustment.

(6) Only those members of the Commission who agreed to the affirmative determination under subsection (b) are eligible to vote on the recommendation required to be made under paragraph (1) or that may be made under paragraph (3). Members of the Commission who did not agree to the affirmative determination may submit, in the report required under subsection (f), separate views regarding what action, if any, should be taken under section 2253 of this title.

(f) Report by Commission

(1) The Commission shall submit to the President a report on each investigation undertaken

under subsection (b). The report shall be submitted at the earliest practicable time, but not later than 180 days (240 days if the petition alleges that critical circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

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

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

(B) If the determination under subsection (b) is affirmative, the recommendations for action made under subsection (e) 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) The findings required to be included in the report under subsection (c)(2).

(E) A copy of the adjustment plan, if any, submitted under section 2251(b)(4) of this title.

(F) Commitments submitted, and information obtained, by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition.

(G) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subsection¹ (e) 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 (with the exception of the confidential information obtained under subsection (a)(6)(B) and any other information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

(g) Expedited consideration of adjustment assistance petitions

If the Commission makes an affirmative determination under subsection (b)(1), the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce of the determination. After receiving such notification—

(1) the Secretary of Labor shall give expedited consideration to petitions by workers in the domestic industry for certification for eligibility to apply for adjustment assistance under part 2 of this subchapter; and

(2) the Secretary of Commerce shall give expedited consideration to petitions by firms in the domestic industry for certification of eligibility to apply for adjustment assistance under part 3 of this subchapter.

¹ So in original. Probably should be "subsection".

(h) Limitations on investigations

(1) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this part, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) No new investigation shall be conducted with respect to an article that is or has been the subject of an action under section 2253(a)(3)(A), (B), (C), or (E) of this title if the last day on which the President could take action under section 2253 of this title in the new investigation is a date earlier than that permitted under section 2253(e)(7) of this title.

(3)(A) Not later than the date on which the Textiles Agreement enters into force with respect to the United States, the Secretary of Commerce shall publish in the Federal Register a list of all articles that are subject to the Textiles Agreement. An investigation may be conducted under this section concerning imports of any article that is subject to the Textiles Agreement only if the United States has integrated that article into GATT 1994 pursuant to the Textiles Agreement, as set forth in notices published in the Federal Register by the Secretary of Commerce, including the notice published under section 3591 of this title.

(B) For purposes of this paragraph:

(i) The term “Textiles Agreement” means the Agreement on Textiles and Clothing referred to in section 3511(d)(4) of this title.

(ii) The term “GATT 1994” has the meaning given that term in section 3501(1)(B) of this title.

(i) Limited disclosure of confidential business information under protective order

The Commission shall promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties who are parties to an investigation under this section.

(Pub. L. 93–618, title II, § 202, Jan. 3, 1975, 88 Stat. 2014; Pub. L. 100–418, title I, § 1401(a), Aug. 23, 1988, 102 Stat. 1225; Pub. L. 103–182, title III, §§ 315, 317(b), Dec. 8, 1993, 107 Stat. 2107, 2108; Pub. L. 103–465, title III, §§ 301(a)–(d)(2), (4), (e), (f), 302(b)(4)(B), 303(1)–(6), Dec. 8, 1994, 108 Stat. 4932–4934, 4936, 4937; Pub. L. 104–295, § 20(c)(5), Oct. 11, 1996, 110 Stat. 3528; Pub. L. 107–43, title II, § 222, Sept. 28, 2001, 115 Stat. 250; Pub. L. 108–77, title III, § 316, Sept. 3, 2003, 117 Stat. 937; Pub. L. 108–78, title III, § 316, Sept. 3, 2003, 117 Stat. 967; Pub. L. 108–286, title III, § 316, Aug. 3, 2004, 118 Stat. 945; Pub. L. 108–302, title III, § 316, Aug. 17, 2004, 118 Stat. 1120; Pub. L. 109–53, title III, § 316, Aug. 2, 2005, 119 Stat. 492; Pub. L. 109–169, title III, § 316, Jan. 11, 2006, 119 Stat. 3597; Pub. L. 109–283, title III, § 316, Sept. 26, 2006, 120 Stat. 1207; Pub. L. 110–138, title III, § 316, Dec. 14, 2007, 121 Stat. 1483; Pub. L. 112–41, title III, § 316, Oct. 21, 2011, 125 Stat. 456; Pub. L. 112–42, title III, § 316, Oct. 21, 2011, 125 Stat. 491; Pub. L. 112–43, title III, § 316, Oct. 21, 2011, 125 Stat. 527.)

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 112–43, see Effective and Termination Dates of 2011 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 112–42, see Effective and Termination Dates of 2011 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 112–41, see Effective and Termination Dates of 2011 Amendment note below.

For termination by section 107(c) of Pub. L. 110–138, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 109–283, see Effective and Termination Dates of 2006 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 109–169, see Effective and Termination Dates of 2006 Amendment note below.

For termination of amendment by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 108–302, see Effective and Termination Dates of 2004 Amendments note below.

For termination of amendment by section 106(c) of Pub. L. 108–286, see Effective and Termination Dates of 2004 Amendments note below.

For termination of amendment by section 107(c) of Pub. L. 108–78, see Effective and Termination Dates of 2003 Amendments note below.

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendments note below.

For termination of amendment by section 404(c) of Pub. L. 107–43, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The North American Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is Pub. L. 103–182, Dec. 8, 1993, 107 Stat. 2057, as amended. Part 1 of title III of the Act probably means part 1 of subtitle A of title III of the Act, which is classified generally to subpart 1 (§ 3351 et seq.) of part A of subchapter III of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

Title II of the United States-Jordan Free Trade Area Implementation Act, referred to in subsec. (a)(8), is title II of Pub. L. 107–43, Sept. 28, 2001, 115 Stat. 243, which is set out in a note under section 2112 of this title.

Title III of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 108–77, Sept. 3, 2003, 117 Stat. 909, which is set out in a note under section 3805 of this title.

Title III of the United States-Singapore Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 108–78, Sept. 3, 2003, 117 Stat. 948, which is set out in a note under section 3805 of this title.

Title III of the United States-Australia Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 108–286, Aug. 3, 2004, 118 Stat. 941, which is set out in a note under section 3805 of this title.

Title III of the United States-Morocco Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 108–302, Aug. 17, 2004, 118 Stat. 1116, which is set out in a note under section 3805 of this title.

The Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, re-

ferred to in subsec. (a)(8), is Pub. L. 109-53, Aug. 2, 2005, 119 Stat. 462, as amended. Title III of the Act is classified generally to subchapter III (§4051 et seq.) of chapter 26 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

Title III of the United States-Bahrain Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 109-169, Jan. 11, 2006, 119 Stat. 3593, which is set out in a note under section 3805 of this title.

Title III of the United States-Oman Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 109-283, Sept. 26, 2006, 120 Stat. 1203, which is set out in a note under section 3805 of this title.

Title III of the United States-Peru Trade Promotion Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 110-138, Dec. 14, 2007, 121 Stat. 1455, which is set out in a note under section 3805 of this title.

Title III of the United States-Korea Free Trade Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 112-41, Oct. 21, 2011, 125 Stat. 451, which is set out in a note under section 3805 of this title.

Title III of the United States-Colombia Trade Promotion Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 112-42, Oct. 21, 2011, 125 Stat. 487, which is set out in a note under section 3805 of this title.

Title III of the United States-Panama Trade Promotion Agreement Implementation Act, referred to in subsec. (a)(8), is title III of Pub. L. 112-43, Oct. 21, 2011, 125 Stat. 523, which is set out in a note under section 3805 of this title.

The Tariff Act of 1930, referred to in subsec. (c)(5), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Subtitles A and B of title VII of the Tariff Act of 1930 are classified generally to parts I and II (§1671 et seq. and 1673 et seq., respectively) 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

2011—Subsec. (a)(8). Pub. L. 112-43, §§107(c), 316, in first sentence, temporarily struck out “and” before “title III of the United States-Colombia Trade Promotion Agreement Implementation Act” and inserted before period at end “, and title III of the United States-Panama Trade Promotion Agreement Implementation Act”. See Effective and Termination Dates of 2011 Amendment note below.

Pub. L. 112-42, §§107(c), 316, in first sentence, temporarily struck out “and” before “title III of the United States-Korea Free Trade Agreement Implementation Act” and inserted before period at end “, and title III of the United States-Colombia Trade Promotion Agreement Implementation Act”. See Effective and Termination Dates of 2011 Amendment note below.

Pub. L. 112-41, §§107(c), 316, in first sentence, temporarily struck out “and” before “title III of the United States-Peru Trade Promotion Agreement Implementation Act” and inserted before period at end “, and title III of the United States-Korea Free Trade Agreement Implementation Act”. See Effective and Termination Dates of 2011 Amendment note below.

2007—Subsec. (a)(8). Pub. L. 110-138, §§107(c), 316, in first sentence, temporarily struck out “and” before “title III of the United States-Oman Free Trade Agreement Implementation Act” and inserted before period at end “, and title III of the United States-Peru Trade Promotion Agreement Implementation Act”. See Effective and Termination Dates of 2007 Amendment note below.

2006—Subsec. (a)(8). Pub. L. 109-283, §§107(c), 316, in first sentence, temporarily struck out “and” before “title III of the United States-Bahrain Free Trade Agreement Implementation Act” and inserted before period at end “, and title III of the United States-Oman

Free Trade Agreement Implementation Act”. See Effective and Termination Dates of 2006 Amendment note below.

Pub. L. 109-169, §§106(c), 316, in first sentence, temporarily struck out “and” before “title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act” and inserted before period at end “, and title III of the United States-Bahrain Free Trade Agreement Implementation Act”. See Effective and Termination Dates of 2006 Amendment note below.

2005—Subsec. (a)(8). Pub. L. 109-53, §§107(d), 316, in first sentence, temporarily struck out “and” before “title III of the United States-Morocco Free Trade Agreement Implementation Act” and inserted before period at end “, and title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act”. See Effective and Termination Dates of 2005 Amendment note below.

2004—Subsec. (a)(8). Pub. L. 108-302, §§107(c), 316, in first sentence, temporarily struck out “and” before “title III of the United States-Australia” and inserted before period at end “, and title III of the United States-Morocco Free Trade Agreement Implementation Act”. See Effective and Termination Dates of 2004 Amendments note below.

Pub. L. 108-286, §§106(c), 316, in first sentence, temporarily struck out “and” before “title III of the United States-Singapore” and inserted before period at end “, and title III of the United States-Australia Free Trade Agreement Implementation Act”. See Effective and Termination Dates of 2004 Amendments note below.

2003—Subsec. (a)(8). Pub. L. 108-78, §§107(c), 316, in first sentence, temporarily struck out “and” before “title III of the United States-Chile” and inserted before period at end “, and title III of the United States-Singapore Free Trade Agreement Implementation Act”. See Effective and Termination Dates of 2003 Amendments note below.

Pub. L. 108-77, §§107(c), 316, in first sentence, temporarily struck out “and” before “title II” and inserted before period at end “, and title III of the United States-Chile Free Trade Agreement Implementation Act”. See Effective and Termination Dates of 2003 Amendments note below.

2001—Subsec. (a)(8). Pub. L. 107-43, in first sentence, temporarily substituted “, part 1” for “and part 1” and inserted before period at end “, and title II of the United States-Jordan Free Trade Area Implementation Act”. See Effective and Termination Dates of 2001 Amendment note below.

1996—Subsec. (d)(4)(A)(i). Pub. L. 104-295 made technical amendment to reference in original act which appears in text as reference to subsection (b).

1994—Subsec. (a)(2)(B)(ii). Pub. L. 103-465, §303(1), struck out “, or at any time before the 150th day after the date of filing be amended to request,” after “request”.

Subsec. (a)(8). Pub. L. 103-465, §301(a), inserted at end “The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.”

Subsec. (b)(1)(A). Pub. L. 103-465, §303(2), substituted “subsection (a)” for “subsection (b)”.

Subsec. (b)(2)(A). Pub. L. 103-465, §301(d)(2)(A)(i), inserted “(180 days if the petition alleges that critical circumstances exist)” after “120 days”.

Subsec. (b)(2)(B). Pub. L. 103-465, §301(d)(2)(A)(ii), inserted “(210 days if the petition alleges that critical circumstances exist)” after “150 days”.

Subsec. (b)(3), (4). Pub. L. 103-465, §301(c), added par. (3), struck out former par. (3) which provided time limits on Commission determinations where petitioner al-

leged existence of critical circumstances, and struck out former par. (4) which provided for notice and hearings on any adjustment plan submitted under subsec. (a) of this section.

Subsec. (c)(1)(B)(i). Pub. L. 103-465, § 301(e)(1), inserted “productivity,” after “wages.”

Subsec. (c)(6). Pub. L. 103-465, § 303(5), substituted “section” for “subsection” in introductory provisions.

Subsec. (c)(6)(A). Pub. L. 103-465, § 301(e)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “The term ‘domestic industry’ includes producers located in the United States insular possession.”

Subsec. (c)(6)(C), (D). Pub. L. 103-465, § 301(e)(2)(B), added subpars. (C) and (D).

Subsec. (d)(1)(C)(i). Pub. L. 103-465, § 303(3)(A), substituted “subparagraph (B)” for “paragraph (2)”.

Subsec. (d)(1)(E), (G). Pub. L. 103-465, § 303(3)(B), struck out “or threat thereof” after “the serious injury” wherever appearing.

Subsec. (d)(2). Pub. L. 103-465, § 301(d)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(2)(A) The Commission shall, at the same time it makes an affirmative determination under subsection (b)(3)(A) of this section regarding the existence of critical circumstances, find the amount or extent of provisional relief that is appropriate to address such critical circumstances. The Commission shall immediately report to the President each such affirmative determination and finding.

“(B) After receiving a report from the Commission under subparagraph (A), the President shall, within 7 days after the day on which the report is received and after taking into account the finding of the Commission under subparagraph (A), proclaim such provisional relief, if any, that the President considers appropriate to address the critical circumstances.”

Subsec. (d)(3). Pub. L. 103-465, § 301(d)(4)(A), substituted “(2)(D)” for “(2)(B)” and “paragraph (2)(A)” for “subsection (b)(1) of this section”.

Subsec. (d)(4)(A)(i). Pub. L. 103-465, §§ 301(d)(4)(B), 303(4), inserted “or (2)(D)” after “(1)(G)” and substituted “subsection (b)” for “section 2253(a) of this title”.

Subsec. (f)(1). Pub. L. 103-465, § 301(d)(2)(B), inserted “(240 days if the petition alleges that critical circumstances exist)” after “180 days”.

Subsec. (f)(2)(G)(ii). Pub. L. 103-465, § 303(6), substituted “industry are located” for “industry is located”.

Subsec. (h)(2). Pub. L. 103-465, § 302(b)(4)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “If an article was the subject of an investigation under this section that resulted in any action described in section 2253(a)(3)(A), (B), (C), or (E) of this title being taken under section 2253 of this title, no other investigation under this part may be initiated with respect to such article while such action is in effect or during the period beginning on the date on which such action terminates that is equal in duration to the period during which such action was in effect.”

Subsec. (h)(3). Pub. L. 103-465, § 301(f), added par. (3).

Subsec. (i). Pub. L. 103-465, § 301(b), added subsec. (i). 1993—Subsec. (a)(8). Pub. L. 103-182, § 317(b), added par. (8).

Subsec. (d)(1)(A). Pub. L. 103-182, § 315(1), inserted “or citrus product” after “agricultural product” wherever appearing.

Subsec. (d)(1)(C). Pub. L. 103-182, § 315(2), in cl. (i) and provisions before subcl. (I), inserted “or citrus product” after “agricultural product” wherever appearing and in provisions before subcl. (I), inserted “or citrus product” after “competitive perishable product”.

Subsec. (d)(5). Pub. L. 103-182, § 315(3), (4), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

1988—Pub. L. 100-418, in amending section generally, substituted provisions relating to investigations, determinations and recommendations by Commission for

provisions relating to Presidential action after investigations. See section 2253 of this title.

EFFECTIVE AND TERMINATION DATES OF 2011 AMENDMENT

Amendment by Pub. L. 112-43 effective on the date the United States-Panama Trade Promotion Agreement enters into force (Oct. 31, 2012) and to cease to be effective on the date the Agreement terminates, see section 107(a), (c) of Pub. L. 112-43, set out in a note under section 3805 of this title.

Amendment by Pub. L. 112-42 effective on the date the United States-Colombia Trade Promotion Agreement enters into force (May 15, 2012) and to cease to be effective on the date the Agreement terminates, see section 107(a), (c) of Pub. L. 112-42, set out in a note under section 3805 of this title.

Amendment by Pub. L. 112-41 effective on the date the United States-Korea Free Trade Agreement enters into force (Mar. 15, 2012) and to cease to be effective on the date the Agreement terminates, see section 107(a), (c) of Pub. L. 112-41, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Amendment by Pub. L. 110-138 effective on the date the United States-Peru Trade Promotion Agreement enters into force (Feb. 1, 2009) and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 110-138, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2006 AMENDMENT

Amendment by Pub. L. 109-283 effective on the date on which the United States-Oman Free Trade Agreement enters into force (Jan. 1, 2009) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 109-283, set out in a note under section 3805 of this title.

Amendment by Pub. L. 109-169 effective on the date on which the United States-Bahrain Free Trade Agreement enters into force (Aug. 1, 2006) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 109-169, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by Pub. L. 109-53 effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109-53, set out as an Effective and Termination Dates note under section 4001 of this title.

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENTS

Amendment by Pub. L. 108-302 effective on the date on which the United States-Morocco Free Trade Agreement enters into force (Jan. 1, 2006) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 108-302, set out in a note under section 3805 of this title.

Amendment by Pub. L. 108-286 effective on the date on which the United States-Australia Free Trade Agreement enters into force (Jan. 1, 2005) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 108-286, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENTS

Amendment by Pub. L. 108-78 effective on the date the United States-Singapore Free Trade Agreement en-

ters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108-78, set out in a note under section 3805 of this title.

Amendment by Pub. L. 108-77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108-77, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001
AMENDMENT

Amendment by Pub. L. 107-43 effective on the date the Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area enters into force (Dec. 17, 2001), and ceases to be effective on the date the Agreement ceases to be in force, see section 404(a), (c), of Pub. L. 107-43, set out in a note under section 2112 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title III, §304, Dec. 8, 1994, 108 Stat. 4938, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), this subtitle [subtitle A (§§301-304) of title III of Pub. L. 103-465, amending this section and sections 2253 and 2254 of this title] and the amendments made by this subtitle take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995].

“(b) SECTION 301(b).—The amendment made by section 301(b) [amending this section] takes effect on the date of the enactment of this Act [Dec. 8, 1994].”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 318 of Pub. L. 103-182, set out as an Effective Date note under section 3351 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 effective Aug. 23, 1988, and applicable with respect to investigations initiated under this part on or after that date, see section 1401(c) of Pub. L. 100-418, set out as a note under section 2251 of this title.

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

§ 2253. Action by President after determination of import injury

(a) In general

(1)(A) After receiving a report under section 2252(f) of this title containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry, the President shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(B) The action taken by the President under subparagraph (A) shall be to such extent, and for such duration, subject to subsection (e)(1), that the President determines to be appropriate and feasible under such subparagraph.

(C) The interagency trade organization established under section 1872(a) of this title shall, with respect to each affirmative determination reported under section 2252(f) of this title, make a recommendation to the President as to what action the President should take under subparagraph (A).

(2) In determining what action to take under paragraph (1), the President shall take into account—

(A) the recommendation and report of the Commission;

(B) the extent to which workers and firms in the domestic industry are—

- (i) benefitting from adjustment assistance and other manpower programs, and
- (ii) engaged in worker retraining efforts;

(C) the efforts being made, or to be implemented, by the domestic industry (including the efforts included in any adjustment plan or commitment submitted to the Commission under section 2252(a) of this title) to make a positive adjustment to import competition;

(D) the probable effectiveness of the actions authorized under paragraph (3) to facilitate positive adjustment to import competition;

(E) the short- and long-term economic and social costs of the actions authorized under paragraph (3) relative to their short- and long-term economic and social benefits and other considerations relative to the position of the domestic industry in the United States economy;

(F) other factors related to the national economic interest of the United States, including, but not limited to—

(i) the economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were not provided under this part,

(ii) the effect of the implementation of actions under this section on consumers and on competition in domestic markets for articles, and

(iii) the impact on United States industries and firms as a result of international obligations regarding compensation;

(G) the extent to which there is diversion of foreign exports to the United States market by reason of foreign restraints;

(H) the potential for circumvention of any action taken under this section;

(I) the national security interests of the United States; and

(J) the factors required to be considered by the Commission under section 2252(e)(5) of this title.

(3) The President may, for purposes of taking action under paragraph (1)—

(A) proclaim an increase in, or the imposition of, any duty on the imported article;

(B) proclaim a tariff-rate quota on the article;

(C) proclaim a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) implement one or more appropriate adjustment measures, including the provision of trade adjustment assistance under part 2 of this subchapter;