

drawal from warehouse for consumption. Interest on underpayments of amounts required to be deposited as countervailing duties shall be paid in accordance with section 1677g of this title.

(Pub. L. 103-465, title I, §137, Dec. 8, 1994, 108 Stat. 4842.)

SUBCHAPTER II—ENFORCEMENT OF UNITED STATES RIGHTS UNDER SUBSIDIES AGREEMENT

§ 3571. Subsidies enforcement

(a) Assistance regarding multilateral subsidy remedies

The administering authority shall provide information to the public upon request, and, to the extent feasible, assistance and advice to interested parties concerning—

- (1) remedies and benefits available under relevant provisions of the Subsidies Agreement, and
- (2) the procedures relating to such remedies and benefits.

(b) Prohibited subsidies

(1) Notification of Trade Representative

If the administering authority determines pursuant to title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.] that a class or kind of merchandise is benefiting from a subsidy which is prohibited under Article 3 of the Subsidies Agreement, the administering authority shall notify the Trade Representative and shall provide the Trade Representative with the information upon which the administering authority based its determination.

(2) Request by interested party regarding prohibited subsidy

An interested party may request that the administering authority determine if there is reason to believe that merchandise produced in a WTO member country is benefiting from a subsidy which is prohibited under Article 3 of the Subsidies Agreement. The request shall contain such information as the administering authority may require to support the allegations contained in the request. If the administering authority, after analyzing the request and other information reasonably available to the administering authority, determines that there is reason to believe that such merchandise is benefiting from a subsidy which is prohibited under Article 3 of the Subsidies Agreement, the administering authority shall so notify the Trade Representative, and shall include supporting information with the notification.

(c) Subsidies actionable under Agreement

(1) In general

If the administering authority determines pursuant to title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq.] that a class or kind of merchandise is benefiting from a subsidy described in Article 6.1 of the Subsidies Agreement, the administering authority shall notify the Trade Representative, and shall provide the Trade Representative with the information upon which the administering authority based its determination.

(2) Request by interested party regarding adverse effects

An interested party may request the administering authority to determine if there is reason to believe that a subsidy which is actionable under the Subsidies Agreement is causing adverse effects. The request shall contain such information as the administering authority may require to support the allegations contained in the request. At the request of the administering authority, the Commission shall assist the administering authority in analyzing the information pertaining to the existence of such adverse effects. If the administering authority, after analyzing the request and other information reasonably available to the administering authority, determines that there is reason to believe that a subsidy which is actionable under the Subsidies Agreement is causing adverse effects, the administering authority shall so notify the Trade Representative, and shall include supporting information with the notification.

(d) Initiation of section 2411 investigation

On the basis of the notification and information provided by the administering authority pursuant to subsection (b) or (c), such other information as the Trade Representative may have or obtain, and where applicable, after consultation with an interested party referred to in subsection (b)(2) or (c)(2), the Trade Representative shall, unless such interested party objects, determine as expeditiously as possible, in accordance with the procedures in section 302(b)(1) of the Trade Act of 1974 (19 U.S.C. 2412(b)(1)), whether to initiate an investigation pursuant to title III of that Act (19 U.S.C. 2411 et seq.). At the request of the Trade Representative, the administering authority and the Commission shall assist the Trade Representative in an investigation initiated pursuant to this subsection.

(e) Nonactionable subsidies

(1) Compliance with Article 8 of the Subsidies Agreement

(A) Monitoring

In order to monitor whether a subsidy meets the conditions and criteria described in Article 8.2 of the Subsidies Agreement and is nonactionable, the Trade Representative shall provide the administering authority on a timely basis with any information submitted or report made pursuant to Article 8.3 or 8.4 of the Subsidies Agreement regarding a notified subsidy program. The administering authority shall review such information and reports, and where appropriate, shall recommend to the Trade Representative that the Trade Representative seek pursuant to Article 8.3 or 8.4 of the Subsidies Agreement additional information regarding the notified subsidy program or a subsidy granted pursuant to the notified subsidy program. If the administering authority has reason to believe that a violation of Article 8 of the Subsidies Agreement exists, the administering authority shall so notify the Trade Representative, and shall include supporting information with the notification.

(B) Request by interested party regarding violation of Article 8

An interested party may request the administering authority to determine if there is reason to believe that a violation of Article 8 of the Subsidies Agreement exists. The request shall contain such information as the administering authority may require to support the allegations contained in the request. If the administering authority, after analyzing the request and other information reasonably available to the administering authority, determines that additional information is needed, the administering authority shall recommend to the Trade Representative that the Trade Representative seek, pursuant to Article 8.3 or 8.4 of the Subsidies Agreement, additional information regarding the particular notified subsidy program or a subsidy granted pursuant to the notified subsidy program. If the administering authority determines that there is reason to believe that a violation of Article 8 of the Subsidies Agreement exists, the administering authority shall so notify the Trade Representative, and shall include supporting information with the notification.

(C) Action by Trade Representative

(i) If the Trade Representative, on the basis of the notification and information provided by the administering authority pursuant to subparagraph (A) or (B), and such other information as the Trade Representative may have or obtain, and after consulting with the interested party referred to in subparagraph (B) and appropriate domestic industries, determines that there is reason to believe that a violation of Article 8 of the Subsidies Agreement exists, the Trade Representative shall invoke the procedures of Article 8.4 or 8.5 of the Subsidies Agreement.

(ii) For purposes of clause (i), the Trade Representative shall determine that there is reason to believe that a violation of Article 8 exists in any case in which the Trade Representative determines that a notified subsidy program or a subsidy granted pursuant to a notified subsidy program does not satisfy the conditions and criteria required for a nonactionable subsidy program under this Act, the Subsidies Agreement, and the statement of administrative action approved under section 3511(a) of this title.

(D) Notification of administering authority

The Trade Representative shall notify the administering authority whenever a violation of Article 8 of the Subsidies Agreement has been found to exist pursuant to Article 8.4 or 8.5 of that Agreement.

(2) Serious adverse effects

(A) Request by interested party

An interested party may request the administering authority to determine if there is reason to believe that serious adverse effects resulting from a program referred to in Article 8.2 of the Subsidies Agreement exist. The request shall contain such information

as the administering authority may require to support the allegations contained in the request.

(B) Action by administering authority

Within 90 days after receipt of the request described in subparagraph (A), the administering authority, after analyzing the request and other information reasonably available to the administering authority, shall determine if there is reason to believe that serious adverse effects resulting from a program referred to in Article 8.2 of the Subsidies Agreement exist. If the determination of the administering authority is affirmative, it shall so notify the Trade Representative and shall include supporting information with the notification. The Commission shall assist the administering authority in analyzing the information pertaining to the existence of such serious adverse effects if the administering authority requests the Commission's assistance. If the subsidy program that is alleged to result in serious adverse effects has been the subject of a countervailing duty investigation or review under subtitle A or C of title VII of the Tariff Act of 1930 [19 U.S.C. 1671 et seq., 1675 et seq.], the administering authority shall take into account the determinations made by the administering authority and the Commission in such investigation or review and the administering authority shall complete its analysis as expeditiously as possible.

(C) Action by Trade Representative

The Trade Representative, on the basis of the notification and information provided by the administering authority pursuant to subparagraph (B), and such other information as the Trade Representative may have or obtain, shall determine as expeditiously as possible, but not later than 30 days after receipt of the notification provided by the administering authority, if there is reason to believe that serious adverse effects exist resulting from the subsidy program which is the subject of the administering authority's notification. The Trade Representative shall make an affirmative determination regarding the existence of such serious adverse effects unless the Trade Representative finds that the notification of the administering authority is not supported by the facts.

(D) Consultations

If the Trade Representative determines that there is reason to believe that serious adverse effects resulting from the subsidy program exist, the Trade Representative, unless the interested party referred to in subparagraph (A) objects, shall invoke the procedures of Article 9 of the Subsidies Agreement, and shall request consultations pursuant to Article 9.2 of the Subsidies Agreement with respect to such serious adverse effects. If such consultations have not resulted in a mutually acceptable solution within 60 days after the request is made for such consultations, the Trade Representative shall refer the matter to the Subsidies Committee pursuant to Article 9.3 of the Subsidies Agreement.

(E) Determination by Subsidies Committee

If the Trade Representative determines that—

(i) the Subsidies Committee has been prevented from making an affirmative determination regarding the existence of serious adverse effects under Article 9 of the Subsidies Agreement by reason of the refusal of the WTO member country with respect to which the consultations have been invoked to join in an affirmative consensus—

(I) that such serious adverse effects exist, or

(II) regarding a recommendation to such WTO member country to modify the subsidy program in such a way as to remove the serious adverse effects, or

(ii) the Subsidies Committee has not presented its conclusions regarding the existence of such serious adverse effects within 120 days after the date the matter was referred to it, as required by Article 9.4 of the Subsidies Agreement,

the Trade Representative shall, within 30 days after such determination, make a determination under section 304(a)(1) of the Trade Act of 1974 (19 U.S.C. 2414(a)(1)) regarding what action to take under section 301(a)(1)(A) of that Act [19 U.S.C. 2411(a)(1)(A)].

(F) Noncompliance with Committee recommendation

In the event that the Subsidies Committee makes a recommendation under Article 9.4 of the Subsidies Agreement and the WTO member country with respect to which such recommendation is made does not comply with such recommendation within 6 months after the date of the recommendation, the Trade Representative shall make a determination under section 304(a)(1) of the Trade Act of 1974 (19 U.S.C. 2414(a)(1)) regarding what action to take under section 301(a) of that Act [19 U.S.C. 2411(a)].

(f) Notification, consultation, and publication**(1) Notification of Congress**

The Trade Representative shall submit promptly to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and other appropriate committees of the Congress any information submitted or report made pursuant to Article 8.3 or 8.4 of the Subsidies Agreement regarding a notified subsidy program.

(2) Publication in the Federal Register

The administering authority shall publish regularly in the Federal Register a summary notice of any information submitted or report made pursuant to Article 8.3 or 8.4 of the Subsidies Agreement regarding notified subsidy programs.

(3) Consultations with Congress and private sector

The Trade Representative and the administering authority promptly shall consult with

the committees referred to in paragraph (1), and with interested representatives of the private sector, regarding all information submitted or reports made pursuant to Article 8.3 or 8.4 of the Subsidies Agreement regarding a notified subsidy program.

(4) Annual report

Not later than February 1 of each year beginning in 1996, the Trade Representative and the administering authority shall issue a joint report to the Congress detailing—

(A) the subsidies practices of major trading partners of the United States, including subsidies that are prohibited, are causing serious prejudice, or are nonactionable, under the Subsidies Agreement, and

(B) the monitoring and enforcement activities of the Trade Representative and the administering authority during the preceding calendar year which relate to subsidies practices.

(g) Cooperation of other agencies

All agencies, departments, and independent agencies of the Federal Government shall cooperate fully with one another in carrying out the provisions of this section, and, upon the request of the administering authority, shall furnish to the administering authority all records, papers, and information in their possession which relate to the requirements of this section.

(h) Definitions

For purposes of this section:

(1) Adverse effects

The term “adverse effects” has the meaning given that term in Articles 5(a) and 5(c) of the Subsidies Agreement.

(2) Administering authority

The term “administering authority” has the meaning given that term in section 771(1) of the Tariff Act of 1930 (19 U.S.C. 1677(1)).

(3) Commission

The term “Commission” means the United States International Trade Commission.

(4) Interested party

The term “interested party” means a party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) of the Tariff Act of 1930 (19 U.S.C. 1677(9)(C), (D), (E), (F), or (G)).

(5) Nonactionable subsidy

The term “nonactionable subsidy” means a subsidy described in Article 8.1(b) of the Subsidies Agreement.

(6) Notified subsidy program

The term “notified subsidy program” means a subsidy program which has been notified pursuant to Article 8.3 of the Subsidies Agreement.

(7) Serious adverse effects

The term “serious adverse effects” has the meaning given that term in Article 9.1 of the Subsidies Agreement.

(8) Subsidies Agreement

The term “Subsidies Agreement” means the Agreement on Subsidies and Countervailing

Measures described in section 771(8) of the Tariff Act of 1930 (19 U.S.C. 1677(8)).

(9) Subsidies Committee

The term “Subsidies Committee” means the committee established pursuant to Article 24 of the Subsidies Agreement.

(10) Subsidy

The term “subsidy” has the meaning given that term in Article 1 of the Subsidies Agreement.

(11) Trade Representative

The term “Trade Representative” means the United States Trade Representative.

(12) Violation of Article 8

The term “violation of Article 8” means the failure of a notified subsidy program or an individual subsidy granted pursuant to a notified subsidy program to meet the applicable conditions and criteria described in Article 8.2 of the Subsidies Agreement.

(i) Treatment of proprietary information

Notwithstanding any other provision of law, the administering authority may provide the Trade Representative with a copy of proprietary information submitted to, or obtained by, the administering authority that the Trade Representative considers relevant in carrying out its responsibilities under this subchapter. The Trade Representative shall protect from public disclosure proprietary information obtained from the administering authority under this subchapter.

(Pub. L. 103-465, title II, § 281, Dec. 8, 1994, 108 Stat. 4922; Pub. L. 104-295, § 20(b)(13), Oct. 11, 1996, 110 Stat. 3527.)

Editorial Notes

REFERENCES IN TEXT

The Tariff Act of 1930, referred to in subsecs. (b)(1), (c)(1), and (e)(2)(B), is act June 17, 1930, ch. 497, 46 Stat. 590. Title VII of the Act is classified generally to subtitle IV (§1671 et seq.) of chapter 4 of this title. Subtitles A and C of title VII of the Act are classified generally to parts I (§1671 et seq.) and III (§1675 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.

The Trade Act of 1974, referred to in subsec. (d), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978. Title III of the Act is classified principally to subchapter III (§2411 et seq.) of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

This Act, referred to in subsec. (e)(1)(C)(ii), is Pub. L. 103-465, Dec. 8, 1994, 108 Stat. 4809, known as the Uruguay Round Agreements Act. For complete classification of this Act to the Code, see Short Title note set out under section 3501 of this title and Tables.

This subchapter, referred to in subsec. (i), was in the original “this part”, meaning part 4 (§§281 to 283) of subtitle B of title II of Pub. L. 103-465, which enacted this subchapter and amended sections 1671b, 1675, 1677d, and 2191 of this title. For complete classification of this part to the Code, see Tables.

AMENDMENTS

1996—Subsec. (h)(4). Pub. L. 104-295 struck out “(A),” after “1677(9)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Subchapter effective, except as otherwise provided, on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), and applicable with respect to investigations, reviews, and inquiries initiated and petitions filed under specified provisions of subtitle IV (§1671 et seq.) of chapter 4 of this title after such date, see section 291 of Pub. L. 103-465, set out as an Effective Date of 1994 Amendment note under section 1671 of this title.

§ 3572. Review of Subsidies Agreement

(a) General objectives

The general objectives of the United States under this subchapter are—

(1) to ensure that parts II and III of the Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of this title (hereafter in this section referred to as the “Subsidies Agreement”) are effective in disciplining the use of subsidies and in remedying the adverse effects of subsidies, and

(2) to ensure that part IV of the Subsidies Agreement does not undermine the benefits derived from any other part of that Agreement.

(b) Specific objective

The specific objective of the United States under this subchapter shall be to create a mechanism which will provide for an ongoing review of the operation of part IV of the Subsidies Agreement.

(c) Sunset of noncountervailable subsidies provisions

(1) In general

Subparagraphs (B), (C), (D), and (E) of section 1677(5B) of this title shall cease to apply as provided in subparagraph (G)(i) of such section, unless, before the date referred to in such subparagraph (G)(i)—

(A) the Subsidies Committee determines to extend Articles 6.1, 8, and 9 of the Subsidies Agreement as in effect on the date on which the Subsidies Agreement enters into force or in a modified form, in accordance with Article 31 of such Agreement,

(B) the President consults with the Congress in accordance with paragraph (2), and

(C) an implementing bill is submitted and enacted into law in accordance with paragraphs (3) and (4).¹

(2) Consultation with Congress before Subsidies Committee agrees to extend

Before a determination is made by the Subsidies Committee to extend Articles 6.1, 8, and 9 of the Subsidies Agreement, the President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding such extension.

(3) Implementation of extension

(A) Notification and submission

Any extension of subparagraphs (B), (C), (D), and (E) of section 1677(5B) of this title shall take effect if (and only if)—

¹ See Codification note below.