

§ 2905. Accession of state trading regimes to General Agreement on Tariffs and Trade or WTO

(a) In general

Before any major foreign country accedes, after August 23, 1988, to the GATT 1947, or to the WTO Agreement, the President shall determine—

(1) whether state trading enterprises account for a significant share of—

(A) the exports of such major foreign country, or

(B) the goods of such major foreign country that are subject to competition from goods imported into such foreign country; and

(2) whether such state trading enterprises—

(A) unduly burden and restrict, or adversely affect, the foreign trade of the United States or the United States economy, or

(B) are likely to result in such a burden, restriction, or effect.

(b) Effects of affirmative determination

If both of the determinations made under paragraphs (1) and (2) of subsection (a) of this section with respect to a major foreign country are affirmative—

(1) the President shall reserve the right of the United States to withhold extension of the application of the GATT 1947 or the WTO Agreement, between the United States and such major foreign country, and

(2) the GATT 1947 or the WTO Agreement shall not apply between the United States and such major foreign country until—

(A) such foreign country enters into an agreement with the United States providing that the state trading enterprises of such foreign country—

(i) will—

(I) make purchases which are not for the use of such foreign country, and

(II) make sales in international trade,

in accordance with commercial considerations (including price, quality, availability, marketability, and transportation), and

(ii) will afford United States business firms adequate opportunity, in accordance with customary practice, to compete for participation in such purchases or sales; or

(B) a bill submitted under subsection (c) of this section which approves of the extension of the application of the GATT 1947 or the WTO Agreement between the United States and such major foreign country is enacted into law.

(c) Expedited consideration of bill to approve extension

(1) The President may submit to the Congress any draft of a bill which approves of the extension of the application of the GATT 1947 or the WTO Agreement between the United States and a major foreign country.

(2) Any draft of a bill described in paragraph (1) that is submitted by the President to the Congress shall—

(A) be introduced by the majority leader of each House of the Congress (by request) on the first day on which such House is in session after the date such draft is submitted to the Congress; and

(B) shall be treated as an implementing bill for purposes of subsections (d), (e), (f), and (g) of section 2191 of this title.

(d) Publication

The President shall publish in the Federal Register each determination made under subsection (a) of this section.

(e) Definitions

For purposes of this section:

(1) The term “GATT 1947” has the meaning given that term in section 3501(1)(A) of this title.

(2) The term “WTO Agreement” means the Agreement Establishing the World Trade Organization entered into on April 15, 1994 and the multilateral trade agreements (as such term is defined in section 3501(4) of this title).

(Pub. L. 100-418, title I, § 1106, Aug. 23, 1988, 102 Stat. 1133; Pub. L. 103-465, title VI, § 621(a)(4), Dec. 8, 1994, 108 Stat. 4993; Pub. L. 104-295, § 20(f)(3), Oct. 11, 1996, 110 Stat. 3529.)

AMENDMENTS

1996—Pub. L. 104-295 substituted “or WTO” for “for WTO” in section catchline.

1994—Pub. L. 103-465, § 621(a)(4)(D), inserted “for WTO” after “Trade” in section catchline.

Subsec. (a). Pub. L. 103-465, § 621(a)(4)(A), substituted “the GATT 1947, or to the WTO Agreement,” for “the GATT” in introductory provisions.

Subsecs. (b), (c). Pub. L. 103-465, § 621(a)(4)(B), inserted “1947 or the WTO Agreement” after “the GATT” wherever appearing.

Subsec. (e). Pub. L. 103-465, § 621(a)(4)(C), added subsec. (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995]; see section 621(b) of Pub. L. 103-465, set out as a note under section 1677k of this title.

DELEGATION OF FUNCTIONS

For delegation of certain functions of President under this section to United States Trade Representative, see section 1-101 of Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of this title.

PRESIDENTIAL DOCUMENTS REGARDING STATE TRADING ENTERPRISES

The following presidential documents related to determinations under subsec. (a) of this section:

CHINA.—Memorandum of President of the United States, Nov. 9, 2001, 66 F.R. 57357.

RUSSIA.—Memorandum of President of the United States, Dec. 15, 2011, 76 F.R. 79023.

SAUDI ARABIA.—Memorandum of President of the United States, Nov. 10, 2005, 70 F.R. 69419.

TAIWAN, PENGHU, KINMEN, AND MATSU.—Memorandum of President of the United States, Nov. 9, 2001, 66 F.R. 57359.

UKRAINE.—Determination of President of the United States, No. 2008-17, Mar. 28, 2008, 73 F.R. 17879.

VIETNAM.—Memorandum of President of the United States, Nov. 6, 2006, 71 F.R. 66223.

§ 2906. Definitions

For purposes of this chapter:

(1) The term “distortion” includes, but is not limited to, a subsidy.

(2) The term “foreign country” includes any foreign instrumentality. Any territory or possession of a foreign country that is administered separately for customs purposes, shall be treated as a separate foreign country.

(3) The term “GATT” means the GATT 1947 (as defined in section 3501(1)(A) of this title).

(4) The term “implementing bill” has the meaning given such term in section 2191(b)(1) of this title.

(5) The term “international trade” includes, but is not limited to—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

(6) The term “state trading enterprise” means—

(A) any agency, instrumentality, or administrative unit of a foreign country which—

(i) purchases goods or services in international trade for any purpose other than the use of such goods or services by such agency, instrumentality, administrative unit, or foreign country, or

(ii) sells goods or services in international trade; or

(B) any business firm which—

(i) is substantially owned or controlled by a foreign country or any agency, instrumentality, or administrative unit thereof,

(ii) is granted (formally or informally) any special or exclusive privilege by such foreign country, agency, instrumentality, or administrative unit, and

(iii) purchases goods or services in international trade for any purpose other than the use of such goods or services by such foreign country, agency, instrumentality, or administrative unit, or which sells goods or services in international trade.

(Pub. L. 100-418, title I, §1107, Aug. 23, 1988, 102 Stat. 1134; Pub. L. 103-465, title VI, §621(a)(5), Dec. 8, 1994, 108 Stat. 4993.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this part”, meaning part 1 (§§1101 to 1107) of subtitle A of title I of Pub. L. 100-418, which enacted this chapter and amended sections 2131, 2133, and 2191 of this title. For complete classification of part 1 to the Code, see Tables.

CODIFICATION

Section is comprised of subsec. (a) of section 1107 of Pub. L. 100-418. Subsec. (b) of section 1107 of Pub. L. 100-418 amended sections 2131 and 2191 of this title.

AMENDMENTS

1994—Par. (3). Pub. L. 103-465 substituted “the GATT 1947 (as defined in section 3501(1)(A) of this title)” for “the General Agreement on Tariffs and Trade”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section

621(b) of Pub. L. 103-465, set out as a note under section 1677k of this title.

CHAPTER 18—IMPLEMENTATION OF HARMONIZED TARIFF SCHEDULE

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§ 3001. Purposes

The purposes of this chapter are—

(1) to approve the International Convention on the Harmonized Commodity Description and Coding System;

(2) to implement in United States law the nomenclature established internationally by the Convention; and

(3) to provide that the Convention shall be treated as a trade agreement obligation of the United States.

(Pub. L. 100-418, title I, §1201, Aug. 23, 1988, 102 Stat. 1147.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this subtitle”, meaning subtitle B (§§1201 to 1217) of title I of Pub. L. 100-418, which enacted this chapter, amended sections 58c, 1312, 1315, 1321, 1337, 1466, 1498, 2011, 2138, 2253, 2434, 2437, 2481, 2483, 2581, 2702, and 2703 of this title, sections 511r, 1444, 1783, and 1784 of Title 7, Agriculture, section 374 of Title 10, Armed Forces, section 301 of Title 13, Census, sections 1274, 2064, 2066, 2602, and 2612 of Title 15, Commerce and Trade, sections 1606a and 3912 of Title 16, Conservation, sections 41 and 951 of Title 21, Food and Drugs, section 5059 of Title 22, Foreign Relations and Intercourse, sections 7652 and 9504 of Title 26, Internal Revenue Code, section 1295 of Title 28, Judiciary and Judicial Procedure, and section 98h-4 of Title 50, War and National Defense, and enacted provisions set out as notes under sections 1202, 3001, and 3005 of this title, and amended provisions set out as notes preceding section 1202 and under section 2112 of this title. For complete classification of subtitle B to the Code, see Tables.

EFFECTIVE DATE

Section 1217 of Pub. L. 100-418 provided that:

“(a) ACCESSION TO CONVENTION AND PROVISIONS OTHER THAN THE IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE.—Except as provided in subsection (b), the provisions of this subtitle [subtitle B (§§1201-1217) of title I of Pub. L. 100-418, see References in Text note above] take effect on the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988 [Aug. 23, 1988].

“(b) IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE.—The effective date of the Harmonized Tariff Schedule is January 1, 1989. On such date—

“(1) the amendments made by sections 1204(a), 1213, 1214, and 1215 [amending sections 58c, 1312, 1315, 1321, 1337, 1466, 1498, 2011, 2138, 2253, 2434, 2437, 2481, 2483, 2581, 2702, and 2703 of this title, sections 511r, 1444,