

1921 (31 U.S.C. 1 et seq.)” and “such Act”, respectively, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PART 8—IDENTIFICATION OF MARKET BARRIERS  
AND CERTAIN UNFAIR TRADE ACTIONS

§ 2241. Estimates of barriers to market access

(a) National trade estimates

(1) In general

For calendar year 1988, and for each succeeding calendar year, the United States Trade Representative, through the interagency trade organization established pursuant to section 1872(a) of this title and with the assistance of the interagency advisory committee established under section 2171(d)(2) of this title, shall—

(A) identify and analyze acts, policies, or practices of each foreign country which constitute significant barriers to, or distortions of—

(i) United States exports of goods or services (including agricultural commodities; and property protected by trademarks, patents, and copyrights exported or licensed by United States persons),

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services;<sup>1</sup> and

(iii) United States electronic commerce,<sup>2</sup>

(B) make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph (A); and

(C) make an estimate, if feasible, of—

(i) the value of additional goods and services of the United States,

(ii) the value of additional foreign direct investment by United States persons, and

(iii) the value of additional United States electronic commerce,

that would have been exported to, or invested in or transacted with,<sup>3</sup> each foreign country during such calendar year if each of such acts, policies, and practices of such country did not exist.

(2) Certain factors taken into account in making analysis and estimate

In making any analysis or estimate under paragraph (1), the Trade Representative shall take into account—

(A) the relative impact of the act, policy, or practice on United States commerce;

(B) the availability of information to document prices, market shares, and other matters necessary to demonstrate the effects of the act, policy, or practice;

(C) the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party;

(D) any advice given through appropriate committees established pursuant to section 2155 of this title; and

(E) the actual increase in—

(i) the value of goods and services of the United States exported to,

(ii) the value of foreign direct investment made in, and

(iii) the value of electronic commerce transacted with,

the foreign country during the calendar year for which the estimate under paragraph (1)(C) is made.

(3) Inclusion of certain discriminatory laws, policies, and practices of the Russian Federation

For calendar<sup>4</sup> year 2012 and each succeeding calendar year, the Trade Representative shall include in the analyses and estimates under paragraph (1) an identification and analysis of any laws, policies, or practices of the Russian Federation that deny fair and equitable market access to United States digital trade.

(4) Annual revisions and updates

The Trade Representative shall annually revise and update the analysis and estimate under paragraph (1).

(b) Reports

(1) In general

On or before April 30, 1989, and on or before March 31 of each succeeding calendar year, the Trade Representative shall submit a report on the analysis and estimates made under subsection (a) for the calendar year preceding such calendar year (which shall be known as the “National Trade Estimate”) to the President, the Committee on Finance of the Senate, and appropriate committees of the House of Representatives.

(2) Reports to include information with respect to action being taken

The Trade Representative shall include in each report submitted under paragraph (1) information with respect to any action taken (or the reasons for no action taken) to eliminate any act, policy, or practice identified under subsection (a), including, but not limited to—

(A) any action under section 2411 of this title,

(B) negotiations or consultations with foreign governments, or

(C) a section on foreign anticompetitive practices, the toleration of which by foreign governments is adversely affecting exports of United States goods or services.

(3) Consultation with Congress on trade policy priorities

The Trade Representative shall keep the committees described in paragraph (1) currently informed with respect to trade policy priorities for the purposes of expanding market opportunities. After the submission of the report required by paragraph (1), the Trade Representative shall also consult periodically with, and take into account the views of, the committees described in that paragraph regarding means to address the foreign trade barriers identified in the report, including the

<sup>1</sup> So in original. The semicolon probably should be a comma.

<sup>2</sup> So in original. The comma probably should be a semicolon.

<sup>3</sup> So in original.

<sup>4</sup> So in original. Probably should be “calendar”.

possible initiation of investigations under section 2412 of this title or other trade actions.

**(c) Assistance of other agencies**

**(1) Furnishing of information**

The head of each department or agency of the executive branch of the Government, including any independent agency, is authorized and directed to furnish to the Trade Representative or to the appropriate agency, upon request, such data, reports, and other information as is necessary for the Trade Representative to carry out his functions under this section. In preparing the section of the report required by subsection (b)(2)(C), the Trade Representative shall consult in particular with the Attorney General.

**(2) Restrictions on release or use of information**

Nothing in this subsection shall authorize the release of information to, or the use of information by, the Trade Representative in a manner inconsistent with law or any procedure established pursuant thereto.

**(3) Personnel and services**

The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Trade Representative may request to assist in carrying out his functions.

**(d) Electronic commerce**

For purposes of this section, the term “electronic commerce” has the meaning given that term in section 1104(3)<sup>5</sup> of the Internet Tax Freedom Act.

(Pub. L. 93-618, title I, §181, as added Pub. L. 98-573, title III, §303(a), Oct. 30, 1984, 98 Stat. 3001; amended Pub. L. 100-418, title I, §1304, Aug. 23, 1988, 102 Stat. 1181; Pub. L. 103-465, title III, §§311(a), 312, Dec. 8, 1994, 108 Stat. 4938; Pub. L. 105-277, div. C, title XII, §1202, Oct. 21, 1998, 112 Stat. 2681-726; Pub. L. 112-208, title II, §203, Dec. 14, 2012, 126 Stat. 1501.)

REFERENCES IN TEXT

Section 1104(3) of the Internet Tax Freedom Act, referred to in subsec. (d), was redesignated section 1105(3) of the Act by Pub. L. 108-435, §3(1), Dec. 3, 2004, 118 Stat. 2616, and is set out in a note under section 151 of Title 47, Telecommunications.

AMENDMENTS

2012—Subsec. (a)(3), (4). Pub. L. 112-208 added par. (3) and redesignated former par. (3) as (4).

1998—Subsec. (a)(1)(A)(iii). Pub. L. 105-277, §1202(1)(A), added cl. (iii).

Subsec. (a)(1)(C). Pub. L. 105-277, §1202(1)(B), added cl. (iii) and inserted “or transacted with,” after “or invested in” in concluding provisions.

Subsec. (a)(2)(E)(iii). Pub. L. 105-277, §1202(2), added cl. (iii).

Subsec. (d). Pub. L. 105-277, §1202(3), added subsec. (d). 1994—Subsec. (b)(2)(C). Pub. L. 103-465, §311(a)(1), added subpar. (C).

Subsec. (b)(3). Pub. L. 103-465, §312, inserted at end “After the submission of the report required by paragraph (1), the Trade Representative shall also consult periodically with, and take into account the views of,

the committees described in that paragraph regarding means to address the foreign trade barriers identified in the report, including the possible initiation of investigations under section 2412 of this title or other trade actions.”

Subsec. (c)(1). Pub. L. 103-465, §311(a)(2), inserted at end “In preparing the section of the report required by subsection (b)(2)(C), the Trade Representative shall consult in particular with the Attorney General.”

1988—Pub. L. 100-418, §1304(a)(10), substituted “Estimates of” for “Actions concerning” in section catchline.

Subsec. (a)(1). Pub. L. 100-418, §1304(a)(1), substituted “For calendar year 1988, and for each succeeding calendar year,” for “Not later than the date on which the initial report is required under subsection (b)(1) of this section.”

Pub. L. 100-418, §1304(a)(9), which directed the insertion of “and with the assistance of the interagency advisory committee established under section 2171(d)(2) of this title,” after “section 1872(a) of this title,” was executed by making the insertion after “section 1872(a) of this title” to reflect the probable intent of Congress.

Subsec. (a)(1)(A). Pub. L. 100-418, §1304(a)(2), inserted “of each foreign country” after “or practices”.

Subsec. (a)(1)(C). Pub. L. 100-418, §1304(a)(3)-(5), added subpar. (C).

Subsec. (a)(2)(E). Pub. L. 100-418, §1304(a)(6)-(8), added subpar. (E).

Subsec. (b)(1). Pub. L. 100-418, §1304(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “On or before the date which is one year after October 30, 1984, and each year thereafter, the Trade Representative shall submit the analysis and estimate under subsection (a) of this section to the Committee on Finance of the Senate and to the Committee on Ways and Means of the House of Representatives.”

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 316 of Pub. L. 103-465, set out as an Effective Date note under section 3581 of this title.

SEVERABILITY

Pub. L. 105-277, div. C, title XII, §1206, Oct. 21, 1998, 112 Stat. 2681-728, provided that: “If any provision of this title [amending this section and enacting provisions set out under this section], or any amendment made by this title, or the application of that provision to any person or circumstance, is held by a court of competent jurisdiction to violate any provision of the Constitution of the United States, then the other provisions of that title, and the application of that provision to other persons and circumstances, shall not be affected.”

CONSTRUCTION OF 1998 AMENDMENTS

Pub. L. 105-277, div. C, title XII, §1204, Oct. 21, 1998, 112 Stat. 2681-728, provided that: “Nothing in this title [amending this section and enacting provisions set out under this section] shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed immediately before the date of the enactment of this Act [Oct. 21, 1998].”

Pub. L. 105-277, div. C, title XII, §1205, Oct. 21, 1998, 112 Stat. 2681-728, provided that: “Nothing in this title [amending this section and enacting provisions set out under this section] shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 (Public Law 104-104) [see Short Title of 1996 Amendment note set out under section 609 of Title 47, Telecommunications] or the amendments made by such Act.”

DECLARATION THAT THE INTERNET SHOULD BE FREE OF FOREIGN TARIFFS, TRADE BARRIERS, AND OTHER RESTRICTIONS

Pub. L. 105-277, div. C, title XII, §1203, Oct. 21, 1998, 112 Stat. 2681-727, provided that:

<sup>5</sup> So in original. See References in Text note below.

“(a) IN GENERAL.—It is the sense of Congress that the President should seek bilateral, regional, and multilateral agreements to remove barriers to global electronic commerce through the World Trade Organization, the Organization for Economic Cooperation and Development, the Trans-Atlantic Economic Partnership, the Asia Pacific Economic Cooperation forum, the Free Trade Area of the America, the North American Free Trade Agreement, and other appropriate venues.

“(b) NEGOTIATING OBJECTIVES.—The negotiating objectives of the United States shall be—

“(1) to assure that electronic commerce is free from—

“(A) tariff and nontariff barriers;

“(B) burdensome and discriminatory regulation and standards; and

“(C) discriminatory taxation; and

“(2) to accelerate the growth of electronic commerce by expanding market access opportunities for—

“(A) the development of telecommunications infrastructure;

“(B) the procurement of telecommunications equipment;

“(C) the provision of Internet access and telecommunications services; and

“(D) the exchange of goods, services, and digitalized information.

“(c) ELECTRONIC COMMERCE.—For purposes of this section, the term ‘electronic commerce’ has the meaning given that term in section 1104(3) [probably means Pub. L. 105-277, div. C, title XI, §1105(3), set out in a note under section 151 of Title 47, Telecommunications].”

**§ 2242. Identification of countries that deny adequate protection, or market access, for intellectual property rights**

**(a) In general**

By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 2241(b) of this title, the United States Trade Representative (hereafter in this section referred to as the “Trade Representative”) shall identify—

(1) those foreign countries that—

(A) deny adequate and effective protection of intellectual property rights, or

(B) deny fair and equitable market access to United States persons that rely upon intellectual property protection, and

(2) those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.

**(b) Special rules for identifications**

(1) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall only identify those foreign countries—

(A) that have the most onerous or egregious acts, policies, or practices that—

(i) deny adequate and effective intellectual property rights, or

(ii) deny fair and equitable market access to United States persons that rely upon intellectual property protection,

(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

(C) that are not—

(i) entering into good faith negotiations, or

(ii) making significant progress in bilateral or multilateral negotiations,

to provide adequate and effective protection of intellectual property rights.

(2) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall—

(A) consult with the Register of Copyrights, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, other appropriate officers of the Federal Government, and

(B) take into account information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 2241(b) of this title and petitions submitted under section 2412 of this title.

(3) The Trade Representative may identify a foreign country under subsection (a)(1)(B) only if the Trade Representative finds that there is a factual basis for the denial of fair and equitable market access as a result of the violation of international law or agreement, or the existence of barriers, referred to in subsection (d)(3).

(4) In identifying foreign countries under paragraphs (1) and (2) of subsection (a), the Trade Representative shall take into account—

(A) the history of intellectual property laws and practices of the foreign country, including any previous identification under subsection (a)(2), and

(B) the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights.

**(c) Revocations and additional identifications**

(1) The Trade Representative may at any time—

(A) revoke the identification of any foreign country as a priority foreign country under this section, or

(B) identify any foreign country as a priority foreign country under this section,

if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semiannual report submitted to the Congress under section 2419(3) of this title a detailed explanation of the reasons for the revocation under paragraph (1) of the identification of any foreign country as a priority foreign country under this section.

**(d) Definitions**

For purposes of this section—

(1) The term “persons that rely upon intellectual property protection” means persons involved in—

(A) the creation, production or licensing of works of authorship (within the meaning of sections 102 and 103 of title 17) that are copyrighted, or

(B) the manufacture of products that are patented or for which there are process patents.