

the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and other appropriate officers of the Federal Government, during any investigation initiated under this subchapter by reason of subparagraph (A).

**(c) Discretion**

In determining whether to initiate an investigation under subsection (a) or (b) of any act, policy, or practice that is enumerated in any provision of section 2411(d) of this title, the Trade Representative shall have discretion to determine whether action under section 2411 of this title would be effective in addressing such act, policy, or practice.

(Pub. L. 93-618, title III, §302, as added Pub. L. 96-39, title IX, §901, July 26, 1979, 93 Stat. 296; amended Pub. L. 98-573, title III, §304(d)(1), Oct. 30, 1984, 98 Stat. 3003; Pub. L. 100-418, title I, §1301(a), Aug. 23, 1988, 102 Stat. 1168; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(9)], Nov. 29, 1999, 113 Stat. 1536, 1501A-584.)

PRIOR PROVISIONS

A prior section 302 of Pub. L. 93-618, title III, Jan. 3, 1975, 88 Stat. 2043, which related to the procedure for Congressional disapproval of certain actions taken by the President to eliminate foreign import restrictions and export subsidies and which was classified to this section, was omitted in the general revision of chapter 1 of title III of Pub. L. 93-618 by Pub. L. 96-39, title IX, §901, July 26, 1979, 93 Stat. 295.

AMENDMENTS

1999—Subsec. (b)(2)(D). Pub. L. 106-113 substituted “Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office” for “Commissioner of Patents and Trademarks”.

1988—Pub. L. 100-418 amended section generally, substituting provisions relating to initiating investigations with or without petitions and discretion of Trade Representative for provisions relating to filing and determinations on petitions for investigations and investigations initiated by Trade Representative.

1984—Pub. L. 98-573 amended section generally, substituting “United States Trade Representative” and “Trade Representative” for “Special Representative for Trade Negotiations” and “Special Representative”, respectively, substituting “the reasons” for “his reasons” in subsec. (b)(1), substituting “a summary” for “the text” in subsec. (b)(2), striking out the comma after “petitioner” in subsec. (b)(2)(A), and inserting “or by any interested person” after “petitioner” in subsec. (b)(2)(B).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 applicable to petitions filed, and investigations initiated, under this section on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100-418, set out as a note under section 2411 of this title.

**§ 2413. Consultation upon initiation of investigation**

**(a) In general**

(1) On the date on which an investigation is initiated under section 2412 of this title, the Trade Representative, on behalf of the United States, shall request consultations with the foreign country concerned regarding the issues involved in such investigation.

(2) If the investigation initiated under section 2412 of this title involves a trade agreement and a mutually acceptable resolution is not reached before the earlier of—

(A) the close of the consultation period, if any, specified in the trade agreement, or

(B) the 150th day after the day on which consultation was commenced,

the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement.

(3) The Trade Representative shall seek information and advice from the petitioner (if any) and the appropriate committees established pursuant to section 2155 of this title in preparing United States presentations for consultations and dispute settlement proceedings.

**(b) Delay of request for consultations**

(1) Notwithstanding the provisions of subsection (a)—

(A) the United States Trade Representative may, after consulting with the petitioner (if any), delay for up to 90 days any request for consultations under subsection (a) for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

(B) if such consultations are delayed by reason of subparagraph (A), each time limitation under section 2414 of this title shall be extended for the period of such delay.

(2) The Trade Representative shall—

(A) publish notice of any delay under paragraph (1) in the Federal Register, and

(B) report to Congress on the reasons for such delay in the report required under section 2419(a)(3) of this title.

(Pub. L. 93-618, title III, §303, as added Pub. L. 96-39, title IX, §901, July 26, 1979, 93 Stat. 297; amended Pub. L. 98-573, title III, §§304(d)(2)(B), (e), 306(c)(2)(C)(ii), Oct. 30, 1984, 98 Stat. 3004, 3005, 3012; Pub. L. 100-418, title I, §1301(a), Aug. 23, 1988, 102 Stat. 1170.)

AMENDMENTS

1988—Pub. L. 100-418 amended section generally, revising and restating substantially similar provisions.

1984—Subsec. (a). Pub. L. 98-573, §§304(d)(2)(B), (e)(1), 306(c)(2)(C)(ii), designated existing provisions as subsec. (a), struck out “with respect to a petition” after “section 2412(b) of this title”, inserted “or the determination of the Trade Representative under section 2412(c)(1) of this title” after “in the petition”, and “(if any)” after “petitioner”, and struck out “private sector” after “appropriate”.

Subsec. (b). Pub. L. 98-573, §304(e)(2), added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 applicable to petitions filed, and investigations initiated, under section 2412 of

this title on or after Aug. 23, 1988, and petitions filed, and investigations initiated, before Aug. 23, 1988, if by such date no decision had been made under section 2414 of this title regarding the petition or investigation, see section 1301(c) of Pub. L. 100-418, set out as a note under section 2411 of this title.

#### § 2414. Determinations by Trade Representative

##### (a) In general

(1) On the basis of the investigation initiated under section 2412 of this title and the consultations (and the proceedings, if applicable) under section 2413 of this title, the Trade Representative shall—

(A) determine whether—

(i) the rights to which the United States is entitled under any trade agreement are being denied, or

(ii) any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 2411 of this title exists, and

(B) if the determination made under subparagraph (A) is affirmative, determine what action, if any, the Trade Representative should take under subsection (a) or (b) of section 2411 of this title.

(2) The Trade Representative shall make the determinations required under paragraph (1) on or before—

(A) in the case of an investigation involving a trade agreement, except an investigation initiated pursuant to section 2412(b)(2)(A) of this title involving rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 3511(d)(15) of this title) or the GATT 1994 (as defined in section 3501(1)(B) of this title) relating to products subject to intellectual property protection, the earlier of—

(i) the date that is 30 days after the date on which the dispute settlement procedure is concluded, or

(ii) the date that is 18 months after the date on which the investigation is initiated, or

(B) in all cases not described in subparagraph (A) or paragraph (3), the date that is 12 months after the date on which the investigation is initiated.

(3)(A) If an investigation is initiated under this subchapter by reason of section 2412(b)(2) of this title and—

(i) the Trade Representative considers that rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights or the GATT 1994 relating to products subject to intellectual property protection are involved, the Trade Representative shall make the determination required under paragraph (1) not later than 30 days after the date on which the dispute settlement procedure is concluded; or

(ii) the Trade Representative does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, is involved or does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1)

with respect to such investigation not later than the date that is 6 months after the date on which such investigation is initiated.

(B) If the Trade Representative determines with respect to an investigation initiated by reason of section 2412(b)(2) of this title (other than an investigation involving a trade agreement) that—

(i) complex or complicated issues are involved in the investigation that require additional time,

(ii) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights, or

(iii) such foreign country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights,

the Trade Representative shall publish in the Federal Register notice of such determination and shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 9 months after the date on which such investigation is initiated.

(4) In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement, the Trade Representative, within 15 days after the close of such dispute settlement period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum dispute settlement period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement at any stage.

##### (b) Consultation before determinations

(1) Before making the determinations required under subsection (a)(1), the Trade Representative, unless expeditious action is required—

(A) shall provide an opportunity (after giving not less than 30 days notice thereof) for the presentation of views by interested persons, including a public hearing if requested by any interested person,

(B) shall obtain advice from the appropriate committees established pursuant to section 2155 of this title, and

(C) may request the views of the United States International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to any goods or service.

(2) If the Trade Representative does not comply with the requirements of subparagraphs (A) and (B) of paragraph (1) because expeditious action is required, the Trade Representative shall, after making the determinations under subsection (a)(1), comply with such subparagraphs.