

Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CONGRESSIONAL FINDINGS AND PURPOSES RESPECTING
PART 3 OF PUB. L. 100-418

Pub. L. 100-418, title I, §1341, Aug. 23, 1988, 102 Stat. 1211, provided that:

“(a) FINDINGS.—The Congress finds that—

“(1) United States persons that rely on protection of intellectual property rights are among the most advanced and competitive in the world; and

“(2) the existing protection under section 337 of the Tariff Act of 1930 [this section] against unfair trade practices is cumbersome and costly and has not provided United States owners of intellectual property rights with adequate protection against foreign companies violating such rights.

“(b) PURPOSE.—The purpose of this part [part 3 (§§ 1341, 1342) of subtitle C of title I of Pub. L. 100-418, amending this section, repealing section 1337a of this title, and enacting provisions set out as a note above] is to amend section 337 of the Tariff Act of 1930 to make it a more effective remedy for the protection of United States intellectual property rights.”

ASSIGNMENT OF CERTAIN FUNCTIONS

Memorandum of President of the United States, July 21, 2005, 70 F.R. 43251, provided:

Memorandum for the United States Trade Representative

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby assign to you the functions of the President under section 337(j)(1)(B), section 337(j)(2), and section 337(j)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1337(j)(1), (j)(2), and (j)(4)).

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 1337a. Repealed. Pub. L. 100-418, title I, § 1342(c), Aug. 23, 1988, 102 Stat. 1215

Section, act July 2, 1940, ch. 515, 54 Stat. 724, related to importation of products produced under process covered by claims of unexpired patent.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 23, 1988, see section 1342(d) of Pub. L. 100-418, set out as an Effective Date of 1988 Amendment note under section 1337 of this title.

§ 1338. Discrimination by foreign countries

(a) Additional duties

The President when he finds that the public interest will be served shall by proclamation specify and declare new or additional duties as hereinafter provided upon articles wholly or in part the growth or product of, or imported in a vessel of, any foreign country whenever he shall find as a fact that such country—

(1) Imposes, directly or indirectly, upon the disposition in or transportation in transit through or reexportation from such country of any article wholly or in part the growth or product of the United States any unreasonable charge, exaction, regulation, or limitation which is not equally enforced upon the like articles of every foreign country; or

(2) Discriminates in fact against the commerce of the United States, directly or indirectly, by law or administrative regulation or practice, by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction, or prohibition, in such manner as to place the commerce of the United States at a disadvantage compared with the commerce of any foreign country.

(b) Exclusion from importation

If at any time the President shall find it to be a fact that any foreign country has not only discriminated against the commerce of the United States, as aforesaid, but has, after the issuance of a proclamation as authorized in subdivision (a) of this section, maintained or increased its said discriminations against the commerce of the United States, the President is authorized, if he deems it consistent with the interests of the United States, to issue a further proclamation directing that such products of said country or such articles imported in its vessels as he shall deem consistent with the public interests shall be excluded from importation into the United States.

(c) Application of proclamation

Any proclamation issued by the President under the authority of this section shall, if he deems it consistent with the interests of the United States, extend to the whole of any foreign country or may be confined to any subdivision or subdivisions thereof; and the President shall, whenever he deems the public interests require, suspend, revoke, supplement, or amend any such proclamation.

(d) Duties to offset commercial disadvantages

Whenever the President shall find as a fact that any foreign country places any burden or disadvantage upon the commerce of the United States by any of the unequal impositions or discriminations aforesaid, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty as he shall determine will offset such burden or disadvantage, not to exceed 50 per centum ad valorem or its equivalent, on any products of, or on articles imported in a vessel of, such foreign country; and thirty days after the date of such proclamation there shall be levied, collected, and paid upon the articles enumerated in such proclamation when imported into the United States from such foreign country such new or additional rate or rates of duty; or, in case of articles declared subject to exclusion from importation into the United States under the provisions of subdivision (b) of this section, such articles shall be excluded from importation.

(e) Duties to offset benefits to third country

Whenever the President shall find as a fact that any foreign country imposes any unequal imposition or discrimination as aforesaid upon the commerce of the United States, or that any benefits accrue or are likely to accrue to any industry in any foreign country by reason of any such imposition or discrimination imposed by any foreign country other than the foreign coun-

try in which such industry is located, and whenever the President shall determine that any new or additional rate or rates of duty or any prohibition hereinbefore provided for do not effectively remove such imposition or discrimination and that any benefits from any such imposition or discrimination accrue or are likely to accrue to any industry in any foreign country, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty upon the articles wholly or in part the growth or product of any such industry as he shall determine will offset such benefits, not to exceed 50 per centum ad valorem or its equivalent, upon importation from any foreign country into the United States of such articles; and on and after thirty days after the date of any such proclamation such new or additional rate or rates of duty so specified and declared in such proclamation shall be levied, collected, and paid upon such articles.

(f) Forfeiture of articles

All articles imported contrary to the provisions of this section shall be forfeited to the United States and shall be liable to be seized, prosecuted, and condemned in like manner and under the same regulations, restrictions, and provisions as may from time to time be established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws. Whenever the provisions of this chapter shall be applicable to importations into the United States of articles wholly or in part the growth or product of any foreign country, they shall be applicable thereto whether such articles are imported directly or indirectly.

(g) Ascertainment by Commission of discriminations

It shall be the duty of the commission to ascertain and at all times to be informed whether any of the discriminations against the commerce of the United States enumerated in subdivisions (a), (b), and (e) of this section are practiced by any country; and if and when such discriminatory acts are disclosed, it shall be the duty of the commission to bring the matter to the attention of the President, together with recommendations.

(h) Rules and regulations of Secretary of the Treasury

The Secretary of the Treasury with the approval of the President shall make such rules and regulations as are necessary for the execution of such proclamations as the President may issue in accordance with the provisions of this section.

(i) "Foreign country" defined

When used in this section the term "foreign country" means any empire, country, dominion, colony or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions), within which separate tariff rates or separate regulations of commerce are enforced.

(June 17, 1930, ch. 497, title III, § 338, 46 Stat. 704.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title III, § 317, 42 Stat. 944. That section was superseded by section 338 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 Act.

§ 1339. Trade Remedy Assistance Office

(a) Establishment; public information

There is established in the Commission a separate office to be known as the Trade Remedy Assistance Office which shall provide full information to the public upon request and shall, to the extent feasible, provide assistance and advice to interested parties concerning—

(1) remedies and benefits available under the trade laws, and

(2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits.

(b) Procedural assistance by Office and other agencies

The Trade Remedy Assistance Office, in coordination with each agency responsible for administering a trade law, shall provide technical and legal assistance and advice to eligible small businesses to enable them—

(1) to prepare and file petitions and applications (other than those which, in the opinion of the Office, are frivolous); and

(2) to seek to obtain the remedies and benefits available under the trade laws, including any administrative review or administrative appeal thereunder.

(c) Definitions

For purposes of this section—

(1) The term "eligible small business" means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. In determining whether a business concern is an "eligible small business", the agency may consult with the Small Business Administration, and shall consult with any other agency that has provided assistance under subsection (b) to that business concern. An agency decision regarding whether a business concern is an eligible small business for purposes of this section is not reviewable by any other agency or by any court.

(2) The term "trade laws" means—

(A) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to injury caused by import competition);

(B) chapters 2 and 3 of such title II [19 U.S.C. 2271 et seq., 2341 et seq.] (relating to adjustment assistance for workers and firms);

(C) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

(D) subtitle IV of this chapter (relating to the imposition of countervailing duties and antidumping duties);

(E) section 1862 of this title (relating to the safeguarding of national security); and