

108-429, title II, § 2201(c), Dec. 3, 2004, 118 Stat. 2599.)

AMENDMENTS

2004—Subsec. (a)(2)(B). Pub. L. 108-429 substituted “section 2414(a)(3)(A)(ii)” for “section 2414(a)(3)(A)”.

1988—Pub. L. 100-418 amended section generally, substituting provisions relating to implementation of actions for provisions relating to requests for information. See section 2418 of this title.

1984—Subsec. (c). Pub. L. 98-573 added subsec. (c).

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.

§ 2416. Monitoring of foreign compliance

(a) In general

The Trade Representative shall monitor the implementation of each measure undertaken, or agreement that is entered into, by a foreign country to provide a satisfactory resolution of a matter subject to investigation under this subchapter or subject to dispute settlement proceedings to enforce the rights of the United States under a trade agreement providing for such proceedings.

(b) Action on the basis of monitoring

(1) In general

If, on the basis of the monitoring carried out under subsection (a), the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a), the Trade Representative shall determine what further action the Trade Representative shall take under section 2411(a) of this title. For purposes of section 2411 of this title, any such determination shall be treated as a determination made under section 2414(a)(1) of this title.

(2) WTO dispute settlement recommendations

(A) Failure to implement recommendation

If the measure or agreement referred to in subsection (a) concerns the implementation of a recommendation made pursuant to dispute settlement proceedings under the World Trade Organization, and the Trade Representative considers that the foreign country has failed to implement it, the Trade Representative shall make the determination in paragraph (1) no later than 30 days after the expiration of the reasonable period of time provided for such implementation under paragraph 21 of the Understanding on Rules and Procedures Governing the Settlement of Disputes that is referred to in section 3511(d)(16) of this title.

(B) Revision of retaliation list and action

(i) In general

Except as provided in clause (ii), in the event that the United States initiates a retaliation list or takes any other action described in section 2411(c)(1)(A) or (B) of

this title against the goods of a foreign country or countries because of the failure of such country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, the Trade Representative shall periodically revise the list or action to affect other goods of the country or countries that have failed to implement the recommendation.

(ii) Exception

The Trade Representative is not required to revise the retaliation list or the action described in clause (i) with respect to a country, if—

(I) the Trade Representative determines that implementation of a recommendation made pursuant to a dispute settlement proceeding described in clause (i) by the country is imminent; or

(II) the Trade Representative together with the petitioner involved in the initial investigation under this subchapter (or if no petition was filed, the affected United States industry) agree that it is unnecessary to revise the retaliation list.

(C) Schedule for revising list or action

The Trade Representative shall, 120 days after the date the retaliation list or other section 2411(a) action is first taken, and every 180 days thereafter, review the list or action taken and revise, in whole or in part, the list or action to affect other goods of the subject country or countries.

(D) Standards for revising list or action

In revising any list or action against a country or countries under this subsection, the Trade Representative shall act in a manner that is most likely to result in the country or countries implementing the recommendations adopted in the dispute settlement proceeding or in achieving a mutually satisfactory solution to the issue that gave rise to the dispute settlement proceeding. The Trade Representative shall consult with the petitioner, if any, involved in the initial investigation under this subchapter.

(E) Retaliation list

The term “retaliation list” means the list of products of a foreign country or countries that have failed to comply with the report of the panel or Appellate Body of the WTO and with respect to which the Trade Representative is imposing duties above the level that would otherwise be imposed under the Harmonized Tariff Schedule of the United States.

(F) Requirement to include reciprocal goods on retaliation list

The Trade Representative shall include on the retaliation list, and on any revised lists, reciprocal goods of the industries affected by the failure of the foreign country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, except in cases where existing retaliation

and its corresponding preliminary retaliation list do not already meet this requirement.

(c) Exercise of WTO authorization to suspend concessions or other obligations

If—

(1) action has terminated pursuant to section 2417(c) of this title,

(2) the petitioner or any representative of the domestic industry that would benefit from reinstatement of action has submitted to the Trade Representative a written request for reinstatement of action, and

(3) the Trade Representatives¹ has completed the requirements of subsection (d) and section 2417(c)(3) of this title,

the Trade Representative may at any time determine to take action under section 2411(c) of this title to exercise an authorization to suspend concessions or other obligations under Article 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (referred to in section 3511(d)(16) of this title).

(d) Consultations

Before making any determination under subsection (b) or (c), the Trade Representative shall—

(1) consult with the petitioner, if any, involved in the initial investigation under this subchapter and with representatives of the domestic industry concerned; and

(2) provide an opportunity for the presentation of views by interested persons.

(Pub. L. 93-618, title III, § 306, as added Pub. L. 96-39, title IX, § 901, July 26, 1979, 93 Stat. 299; amended Pub. L. 100-418, title I, § 1301(a), Aug. 23, 1988, 102 Stat. 1173; Pub. L. 103-465, title III, § 314(e), Dec. 8, 1994, 108 Stat. 4941; Pub. L. 104-295, § 20(c)(1), Oct. 11, 1996, 110 Stat. 3528; Pub. L. 106-200, title IV, § 407, May 18, 2000, 114 Stat. 293; Pub. L. 114-125, title VI, § 602(a), (b)(2), (3), Feb. 24, 2016, 130 Stat. 184.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b)(2)(E), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AMENDMENTS

2016—Subsec. (b). Pub. L. 114-125, § 602(b)(2), substituted “Action on the basis of monitoring” for “Further action” in heading.

Subsec. (c). Pub. L. 114-125, § 602(a)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 114-125, § 602(a)(1), (b)(3), redesignated subsec. (c) as (d) and inserted “or (c)” after “subsection (b)” in introductory provisions.

2000—Subsec. (b)(2). Pub. L. 106-200 designated existing provisions as subpar. (A), inserted heading, and added subpars. (B) to (F).

1996—Subsec. (b)(1). Pub. L. 104-295 made technical amendment to Pub. L. 103-465. See 1994 Amendment note below.

1994—Subsecs. (a), (b). Pub. L. 103-465, as amended by Pub. L. 104-295, amended subsecs. (a) and (b) generally. Prior to amendment, subsecs. (a) and (b) read as follows:

“(a) IN GENERAL.—The Trade Representative shall monitor the implementation of each measure under-

taken, or agreement of a kind described in clause (i), (ii), or (iii) of section 2411(a)(2)(B) of this title that is entered into under subsection (a) or (b) of section 2411 of this title, by a foreign country—

“(1) to enforce the rights of the United States under any trade agreement, or

“(2) to eliminate any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 2411 of this title.

“(b) FURTHER ACTION.—If, on the basis of the monitoring carried out under subsection (a) of this section, the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a) of this section, the Trade Representative shall determine what further action the Trade Representative shall take under section 2411(a) of this title. For purposes of section 2411 of this title, any such determination shall be treated as a determination made under section 2414(a)(1) of this title.”

1988—Pub. L. 100-418 amended section generally, substituting provisions relating to monitoring of foreign compliance for provisions relating to administration. See section 2419 of this title.

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

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.

§ 2417. Modification and termination of actions

(a) In general

(1) The Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under section 2411 of this title if—

(A) any of the conditions described in section 2411(a)(2) of this title exist,

(B) the burden or restriction on United States commerce of the denial rights, or of the acts, policies, and practices, that are the subject of such action has increased or decreased, or

(C) such action is being taken under section 2411(b) of this title and is no longer appropriate.

(2) Before taking any action under paragraph (1) to modify or terminate any action taken under section 2411 of this title, the Trade Representative shall consult with the petitioner, if any, and with representatives of the domestic industry concerned, and shall provide opportunity for the presentation of views by other interested persons affected by the proposed modification or termination concerning the effects of the modification or termination and whether any modification or termination of the action is appropriate.

(b) Notice; report to Congress

The Trade Representative shall promptly publish in the Federal Register notice of, and report

¹ So in original. Probably should be “Representative”.