

conditions set forth in section 1(a) of this order. Moreover, this order does not prohibit the United States Government from invoking the dispute settlement procedures of the World Trade Organization to examine whether any such law or policy is consistent with the Uruguay Round Agreements, referred to in section 101(d) of the Uruguay Round Agreements Act [19 U.S.C. 3511(d)].

(b) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not create, any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

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§ 2412. Initiation of investigations

(a) Petitions

(1) Any interested person may file a petition with the Trade Representative requesting that action be taken under section 2411 of this title and setting forth the allegations in support of the request.

(2) The Trade Representative shall review the allegations in any petition filed under paragraph (1) and, not later than 45 days after the date on which the Trade Representative received the petition, shall determine whether to initiate an investigation.

(3) If the Trade Representative determines not to initiate an investigation with respect to a petition, the Trade Representative shall inform the petitioner of the reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(4) If the Trade Representative makes an affirmative determination under paragraph (2) with respect to a petition, the Trade Representative shall initiate an investigation regarding the issues raised in the petition. The Trade Representative shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the 30-day period beginning on the date of the affirmative determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition, or

(B) at such other time if a timely request therefor is made by the petitioner or by any interested person.

(b) Initiation of investigation by means other than petition

(1)(A) If the Trade Representative determines that an investigation should be initiated under this subchapter with respect to any matter in order to determine whether the matter is actionable under section 2411 of this title, the Trade Representative shall publish such determination in the Federal Register and shall initiate such investigation.

(B) The Trade Representative shall, before making any determination under subparagraph (A), consult with appropriate committees established pursuant to section 2155 of this title.

(2)(A) By no later than the date that is 30 days after the date on which a country is identified

under section 2242(a)(2) of this title, the Trade Representative shall initiate an investigation under this subchapter with respect to any act, policy, or practice of that country that—

(i) was the basis for such identification, and

(ii) is not at that time the subject of any other investigation or action under this subchapter.

(B) The Trade Representative is not required under subparagraph (A) to initiate an investigation under this subchapter with respect to any act, policy, or practice of a foreign country if the Trade Representative determines that the initiation of the investigation would be detrimental to United States economic interests.

(C) If the Trade Representative makes a determination under subparagraph (B) not to initiate an investigation, the Trade Representative shall submit to the Congress a written report setting forth, in detail—

(i) the reasons for the determination, and

(ii) the United States economic interests that would be adversely affected by the investigation.

(D) The Trade Representative shall, from time to time, consult with the Register of Copyrights, 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