

§ 2419. Administration

The Trade Representative shall—

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this subchapter,

(2) keep the petitioner regularly informed of all determinations and developments regarding the investigation conducted with respect to the petition under this subchapter, including the reasons for any undue delays, and

(3) submit a report to the House of Representatives and the Senate semiannually describing—

(A) the petitions filed and the determinations made (and reasons therefor) under section 2412 of this title,

(B) developments in, and the current status of, each investigation or proceeding under this subchapter,

(C) the actions taken, or the reasons for no action, by the Trade Representative under section 2411 of this title with respect to investigations conducted under this subchapter, and

(D) the commercial effects of actions taken under section 2411 of this title.

(Pub. L. 93-618, title III, §309, as added Pub. L. 100-418, title I, §1301(a), Aug. 23, 1988, 102 Stat. 1175.)

EFFECTIVE DATE

Section 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 an Effective Date of 1988 Amendment note under section 2411 of this title.

§ 2420. Trade enforcement priorities**(a) Trade enforcement priorities, consultations, and report****(1) Trade enforcement priorities consultations**

Not later than May 31 of each calendar year that begins after February 24, 2016, the United States Trade Representative (in this section referred to as the “Trade Representative”) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the prioritization of acts, policies, or practices of foreign governments that raise concerns with respect to obligations under the WTO Agreements or any other trade agreement to which the United States is a party, or otherwise create or maintain barriers to United States goods, services, or investment.

(2) Identification of trade enforcement priorities

In identifying acts, policies, or practices of foreign governments as trade enforcement priorities under this subsection, the Trade Representative shall focus on those acts, policies, and practices the elimination of which is likely to have the most significant potential to increase United States economic growth, and take into account all relevant factors, including—

(A) the economic significance of any potential inconsistency between an obligation assumed by a foreign government pursuant to a trade agreement to which both the foreign government and the United States are parties and the acts, policies, or practices of that government;

(B) the impact of the acts, policies, or practices of a foreign government on maintaining and creating United States jobs and productive capacity;

(C) the major barriers and trade distorting practices described in the most recent National Trade Estimate required under section 2241(b) of this title;

(D) the major barriers and trade distorting practices described in other relevant reports addressing international trade and investment barriers prepared by a Federal agency or congressional commission during the 12 months preceding the date of the most recent report under paragraph (3);

(E) a foreign government’s compliance with its obligations under any trade agreements to which both the foreign government and the United States are parties;

(F) the implications of a foreign government’s procurement plans and policies; and

(G) the international competitive position and export potential of United States products and services.

(3) Report on trade enforcement priorities and actions taken to address**(A) In general**

Not later than July 31 of each calendar year that begins after February 24, 2016, the Trade Representative shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on acts, policies, or practices of foreign governments identified as trade enforcement priorities based on the consultations under paragraph (1) and the criteria set forth in paragraph (2).

(B) Report in subsequent years

The Trade Representative shall include, when reporting under subparagraph (A) in any calendar year after the calendar year that begins after February 24, 2016, a description of actions taken to address any acts, policies, or practices of foreign governments identified as trade enforcement priorities under this subsection in the calendar year preceding that report and, as relevant, any calendar year before that calendar year.

(b) Semiannual enforcement consultations**(1) In general**

At the same time as the reporting under subsection (a)(3), and not later than January 31 of each following year, the Trade Representative shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the identification, prioritization, investigation, and resolution of acts, policies, or practices of foreign governments of concern with respect to obligations under the WTO Agreements or any other trade agreement to

which the United States is a party, or that otherwise create or maintain trade barriers.

(2) Acts, policies, or practices of concern

The semiannual enforcement consultations required by paragraph (1) shall address acts, policies, or practices of foreign governments that raise concerns with respect to obligations under the WTO Agreements or any other trade agreement to which the United States is a party, or otherwise create or maintain trade barriers, including—

(A) engagement with relevant trading partners;

(B) strategies for addressing such concerns;

(C) availability and deployment of resources to be used in the investigation or resolution of such concerns;

(D) the merits of any potential dispute resolution proceeding under the WTO Agreements or any other trade agreement to which the United States is a party relating to such concerns; and

(E) any other aspects of such concerns.

(3) Active investigations

The semiannual enforcement consultations required by paragraph (1) shall address acts, policies, or practices that the Trade Representative is actively investigating with respect to obligations under the WTO Agreements or any other trade agreement to which the United States is a party, including—

(A) strategies for addressing concerns raised by such acts, policies, or practices;

(B) any relevant timeline with respect to investigation of such acts, policies, or practices;

(C) the merits of any potential dispute resolution proceeding under the WTO Agreements or any other trade agreement to which the United States is a party with respect to such acts, policies, or practices;

(D) barriers to the advancement of the investigation of such acts, policies, or practices; and

(E) any other matters relating to the investigation of such acts, policies, or practices.

(4) Ongoing enforcement actions

The semiannual enforcement consultations required by paragraph (1) shall address all ongoing enforcement actions taken by or against the United States with respect to obligations under the WTO Agreements or any other trade agreement to which the United States is a party, including—

(A) any relevant timeline with respect to such actions;

(B) the merits of such actions;

(C) any prospective implementation actions;

(D) potential implications for any law or regulation of the United States;

(E) potential implications for United States stakeholders, domestic competitors, and exporters; and

(F) other issues relating to such actions.

(5) Enforcement resources

The semiannual enforcement consultations required by paragraph (1) shall address the

availability and deployment of enforcement resources, resource constraints on monitoring and enforcement activities, and strategies to address those constraints, including the use of available resources of other Federal agencies to enhance monitoring and enforcement capabilities.

(c) Investigation and resolution

In the case of any acts, policies, or practices of a foreign government identified as a trade enforcement priority under subsection (a), the Trade Representative shall, not later than the date of the first semiannual enforcement consultations held under subsection (b) after the identification of the priority, take appropriate action to address that priority, including—

(1) engagement with the foreign government to resolve concerns raised by such acts, policies, or practices;

(2) initiation of an investigation under section 2412(b)(1) of this title with respect to such acts, policies, or practices;

(3) initiation of negotiations for a bilateral agreement that provides for resolution of concerns raised by such acts, policies, or practices; or

(4) initiation of dispute settlement proceedings under the WTO Agreements or any other trade agreement to which the United States is a party with respect to such acts, policies, or practices.

(d) Enforcement notifications and consultation

(1) Initiation of enforcement action

The Trade Representative shall notify and consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives in advance of the initiation of any formal trade dispute by or against the United States taken in regard to an obligation under the WTO Agreements or any other trade agreement to which the United States is a party. With respect to a formal trade dispute against the United States, if advance notification and consultation are not possible, the Trade Representative shall notify and consult at the earliest practicable opportunity after initiation of the dispute.

(2) Circulation of reports

The Trade Representative shall notify and consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives in advance of the announced or anticipated circulation of any report of a dispute settlement panel or the Appellate Body of the World Trade Organization or of a dispute settlement panel under any other trade agreement to which the United States is a party with respect to a formal trade dispute by or against the United States.

(e) Definitions

In this section:

(1) WTO

The term “WTO” means the World Trade Organization.

(2) WTO agreement

The term “WTO Agreement” has the meaning given that term in section 3501(9) of this title.

(3) WTO agreements

The term “WTO Agreements” means the WTO Agreement and agreements annexed to that Agreement.

(Pub. L. 93–618, title III, §310, as added Pub. L. 100–418, title I, §1302(a), Aug. 23, 1988, 102 Stat. 1176; amended Pub. L. 103–465, title III, §314(f), Dec. 8, 1994, 108 Stat. 4941; Pub. L. 114–125, title VI, §601(a), Feb. 24, 2016, 130 Stat. 180.)

AMENDMENTS

2016—Pub. L. 114–125 amended section generally. Prior to amendment, section related to identification of trade expansion priorities.

1994—Pub. L. 103–465 amended section generally, changing dates and criteria for submission of certain reports and revising and restructuring provisions relating to identification of trade liberalization priorities, initiation of investigations, and agreements for elimination of barriers.

EX. ORD. NO. 12901. IDENTIFICATION OF TRADE EXPANSION PRIORITIES

Ex. Ord. No. 12901, Mar. 3, 1994, 59 F.R. 10727, as amended by Ex. Ord. No. 12973, Sept. 27, 1995, 60 F.R. 51665, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 141 and 301–310 of the Trade Act of 1974, as amended (the “Act”) (19 U.S.C. 2171, 2411–2420), and section 301 of title 3, United States Code, and to ensure that the trade policies of the United States advance, to the greatest extent possible, the export of the products and services of the United States and that trade policy resources are used efficiently, it is hereby ordered as follows:

SECTION 1. *Identification.* (a) Within 6 months of the submission of the National Trade Estimate Report (required by section 181(b) of the Act (19 U.S.C. 2241)) for 1996 and 1997, the United States Trade Representative (“Trade Representative”) shall review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. The Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and shall publish in the Federal Register, a report on the priority foreign country practices identified.

(b) In identifying priority foreign country practices under paragraph (a) of this section, the Trade Representative shall take into account all relevant factors, including:

- (1) the major barriers and trade distorting practices described in the National Trade Estimate Report;
- (2) the trade agreements to which a foreign country is a party and its compliance with those agreements;
- (3) the medium-term and long-term implications of foreign government procurement plans; and
- (4) the international competitive position and export potential of United States products and services.

(c) The Trade Representative may include in the report, if appropriate, a description of the foreign country practices that may in the future warrant identification as priority foreign country practices. The Trade Representative also may include a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination.

SEC. 2. *Initiation of Investigation.* Within 21 days of the submission of the report required by paragraph (a) of section 1, the Trade Representative shall initiate under

section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations under title III, chapter 1, of the Act [19 U.S.C. 2411 et seq.] with respect to all of the priority foreign country practices identified.

SEC. 3. *Agreements for the Elimination of Barriers.* In the consultations with a foreign country that the Trade Representative is required to request under section 303(a) of the Act (19 U.S.C. 2413(a)) with respect to an investigation initiated by reason of section 2 of this order, the Trade Representative shall seek to negotiate an agreement that provides for the elimination of the practices that are the subject of the investigation as quickly as possible or, if that is not feasible, provides for compensatory trade benefits. The Trade Representative shall monitor any agreement entered into under this section pursuant to the provisions of section 306 of the Act (19 U.S.C. 2416).

SEC. 4. *Reports.* The Trade Representative shall include in the semiannual report required by section 309 of the Act (19 U.S.C. 2419) a report on the status of any investigation initiated pursuant to section 2 of this order and, where appropriate, the extent to which such investigations have led to increased opportunities for the export of products and services of the United States.

SEC. 5. *Presidential Direction.* The authorities delegated pursuant to this order shall be exercised subject to any subsequent direction by the President in a particular matter.

WILLIAM J. CLINTON.

EX. ORD. NO. 13116. IDENTIFICATION OF TRADE EXPANSION PRIORITIES AND DISCRIMINATORY PROCUREMENT PRACTICES

Ex. Ord. No. 13116, Mar. 31, 1999, 64 F.R. 16333, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including title III of the Act of March 3, 1993 [1993], as amended ([former] 41 U.S.C. 10d) [see 41 U.S.C. 8301 et seq.], sections 141 and 301–310 of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2171, 2411–2420), title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518), and section 301 of title 3, United States Code, and to ensure that the trade policies of the United States advance, to the greatest extent possible, the export of the products and services of the United States and that trade policy resources are used efficiently, it is hereby ordered as follows:

PART I: IDENTIFICATION OF TRADE EXPANSION PRIORITIES

SECTION 1. *Identification and Annual Report.* (a) Within 30 days of the submission of the National Trade Estimate Report required by section 181(b) of the Act (19 U.S.C. 2241(b)) for 1999, 2000, and 2001, the United States Trade Representative (Trade Representative) shall review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. The Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and shall publish in the Federal Register, a report on the priority foreign country practices identified.

(b) In identifying priority foreign country practices under paragraph (a) of this section, the Trade Representative shall take into account all relevant factors, including:

- (1) the major barriers and trade distorting practices described in the National Trade Estimate Report;
- (2) the trade agreements to which a foreign country is a party and its compliance with those agreements;
- (3) the medium-term and long-term implications of foreign government procurement plans; and
- (4) the international competitive position and export potential of United States products and services.

(c) The Trade Representative may include in the report, if appropriate, a description of the foreign coun-

try practices that may in the future warrant identification as priority foreign country practices. The Trade Representative also may include a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination.

SEC. 2. *Resolution.* Upon submission of the report required by paragraph (a) of section 1 of this part, the Trade Representative shall, with respect to any priority foreign country practice identified therein, engage the country concerned for the purpose of seeking a satisfactory resolution, for example, by obtaining compliance with a trade agreement or the elimination of the practice as quickly as possible, or, if this is not feasible, by providing for compensatory trade benefits.

SEC. 3. *Initiation of Investigations.* Within 90 days of the submission of the report required by paragraph (a) of section 1 of this part, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations with respect to all of the priority foreign country practices identified, unless during the 90-day period the Trade Representative determines that a satisfactory resolution of the matter to be investigated has been achieved.

PART II: IDENTIFICATION OF DISCRIMINATORY GOVERNMENT PROCUREMENT PRACTICES

SECTION 1. *Identification and Annual Report.* (a) Within 30 days of the submission of the National Trade Estimate Report for 1999, 2000, and 2001, the Trade Representative shall submit to the Committees on Finance and on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committees on Ways and Means and Government Reform and Oversight [now Committee on Oversight and Government Reform] of the House of Representatives, and shall publish in the Federal Register, a report on the extent to which foreign countries discriminate against U.S. products or services in making government procurements.

(b) In the report, the Trade Representative shall identify countries that:

(1) are not in compliance with their obligations under the World Trade Organization Agreement on Government Procurement (the GPA), Chapter 10 of the North American Free Trade Agreement (NAFTA), or other agreements relating to government procurement (procurement agreements) to which that country and the United States are parties; or

(2) maintain, in government procurement, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses and whose products or services are acquired in significant amounts by the United States Government.

SEC. 2. *Considerations in Making Identifications.* In making the identifications required by section 1 of this part, the Trade Representative shall: (a) consider the requirements of the GPA, NAFTA, or other procurement agreements, government procurement practices, and the effects of such practices on U.S. businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for U.S. products or services;

(b) take into account, among other factors, whether and to what extent countries that are parties to the GPA, NAFTA, or other procurement agreements, and other countries described in section 1 of this part:

(1) use sole-sourcing or otherwise noncompetitive procedures for procurement that could have been conducted using competitive procedures;

(2) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the value threshold of the GPA, NAFTA, or other procurement agreements, or to make the procurement less attractive to U.S. businesses;

(3) announce procurement opportunities with inadequate time intervals for U.S. businesses to submit bids; and

(4) use specifications in such a way as to limit the ability of U.S. suppliers to participate in procurements; and

(c) consider information included in the National Trade Estimate Report, and any other additional criteria deemed appropriate, including, to the extent such information is available, the failure to apply transparent and competitive procedures or maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement.

SEC. 3. *Impact of Noncompliance and Denial of Comparable Treatment.* The Trade Representative shall take into account, in identifying countries in the annual report and in any action required by this part, the relative impact of any noncompliance with the GPA, NAFTA, or other procurement agreements, or of other discrimination on U.S. commerce, and the extent to which such noncompliance or discrimination has impeded the ability of U.S. suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government.

SEC. 4. *Resolution.* Upon submission of the report required by section 1 of this part, the Trade Representative shall engage any country identified therein for the purpose of seeking a satisfactory resolution, for example, by obtaining compliance with the GPA, NAFTA, or other procurement agreements or the elimination of the discriminatory procurement practices as quickly as possible, or, if this is not feasible, by providing for compensatory trade benefits.

SEC. 5. *Initiation of Investigations.* (a) Within 90 days of the submission of the report required by section 1 of this part, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations with respect to any practice that:

(1) was the basis for the identification of a country under section 1; and

(2) is not at that time the subject of any other investigation or action under title III, chapter 1, of the Act [19 U.S.C. 2411 et seq.],

unless during the 90-day period the Trade Representative determines that a satisfactory resolution of the matter to be investigated has been achieved.

(b) For investigations initiated under paragraph (a) of this section (other than an investigation involving the GPA or NAFTA), the Trade Representative shall apply the time limits and procedures in section 304(a)(3) of the Act (19 U.S.C. 2414(a)(3)). The time limits in subsection 304(a)(3)(B) of the Act (19 U.S.C. 2414(a)(3)(B)) shall apply if the Trade Representative determines that:

(1) complex or complicated issues are involved in the investigation that require additional time;

(2) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will end the discriminatory procurement practice; or

(3) such foreign country is undertaking enforcement measures to end the discriminatory procurement practice.

PART III: DIRECTION

SECTION 1. *Presidential Direction.* The authorities delegated pursuant to this order shall be exercised subject to any subsequent direction by the President in a particular matter.

SEC. 2. *Consultations and Advice.* In developing the annual reports required by part I and part II of this order, the Trade Representative shall consult with executive agencies and seek information and advice from U.S. businesses in the United States and in the countries involved in the practices under consideration.

WILLIAM J. CLINTON.

SUBCHAPTER IV—TRADE RELATIONS WITH COUNTRIES NOT RECEIVING NON-DISCRIMINATORY TREATMENT

PART 1—TRADE RELATIONS WITH CERTAIN COUNTRIES

§ 2431. Exception of products of certain countries or areas

Except as otherwise provided in this subchapter, the President shall continue to deny nondiscriminatory treatment to the products of any country, the products of which were not eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on January 3, 1975.

(Pub. L. 93-618, title IV, §401, Jan. 3, 1975, 88 Stat. 2056.)

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in text, to be treated as a reference to the Harmonized Tariff Schedule pursuant to section 3012 of this title. The Harmonized Tariff Schedule is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

REPORT ON EFFECT OF SUBCHAPTER; RECOMMENDATIONS

Pub. L. 95-501, title VI, §604, Oct. 21, 1978, 92 Stat. 1692, which provided that within six months after Oct. 21, 1978, the Secretary of Agriculture submit to Congress a report detailing the effect on United States agriculture of this subchapter, including a recommendation as to whether the provisions of this subchapter should be repealed or amended, was omitted in the general revision of Pub. L. 95-501 by Pub. L. 101-624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3668. See chapter 87 (§5601 et seq.) of Title 7, Agriculture.

§ 2432. Freedom of emigration in East-West trade

(a) Actions of nonmarket economy countries making them ineligible for normal trade relations, programs of credits, credit guarantees, or investment guarantees, or commercial agreements

To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of law, on or after January 3, 1975, products from any non-market economy country shall not be eligible to receive nondiscriminatory treatment (normal trade relations), such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to emigrate;

(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice,

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) Presidential determination and report to Congress that nation is not violating freedom of emigration

After January 3, 1975, (A) products of a non-market economy country may be eligible to receive nondiscriminatory treatment (normal trade relations), (B) such country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (C) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country shall include information as to the nature and implementation of emigration laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter so long as such treatment is received, such credits or guarantees are extended, or such agreement is in effect.

(c) Waiver authority of President

(1) During the 18-month period beginning on January 3, 1975, the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(2) During any period subsequent to the 18-month period referred to in paragraph (1), the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if the waiver authority granted by this subsection continues to apply to such country pursuant to subsection (d), and if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(3) A waiver with respect to any country shall terminate on the day after the waiver authority granted by this subsection ceases to be effective with respect to such country pursuant to subsection (d). The President may, at any time, terminate by Executive order any waiver granted under this subsection.

(d) Extension of waiver authority

(1) If the President determines that the further extension of the waiver authority granted under subsection (c) will substantially promote the objectives of this section, he may recommend further extensions of such authority for successive 12-month periods. Any such recommendations shall—