

Amendment notes, Effective and Termination Dates of 2011 Revival notes, and Effective and Termination Dates of 2015 Revival notes below.

Section 1893 of Pub. L. 111-5, which provided for Feb. 13, 2011, termination of amendment by Pub. L. 111-5, was repealed by Pub. L. 112-40, title II, §201(a), Oct. 21, 2011, 125 Stat. 403, and the provisions of this section, as amended by Pub. L. 111-5 and Pub. L. 111-344 and as in effect on Feb. 12, 2011, were temporarily revived, effective Oct. 21, 2011, until Jan. 1, 2014, by Pub. L. 112-40, §§201(b), (c), 233. See 2009, 2010, and 2011 Amendment notes, Effective and Termination Dates of 2009 Amendment notes, Effective Date of 2010 Amendment note, and Effective and Termination Dates of 2011 Revival notes below.

#### AMENDMENTS

2015—Pub. L. 114-27, §§402(b), (c), 406, temporarily revived the provisions of this section, as in effect on Dec. 31, 2013. See Codification note above and 2011 Amendment and Effective and Termination Dates of 2015 Revival notes below.

Subsec. (a). Pub. L. 114-27, §§403(d)(3), 406, temporarily substituted “fiscal years 2015 through 2021” for “fiscal years 2012 and 2013, and \$22,500,000 for the 3-month period beginning on October 1, 2013, and ending on December 31, 2013”. See Codification note above and Effective and Termination Dates of 2015 Revival note below.

2011—Pub. L. 112-40, §§201(b), (c), 233, temporarily revived the provisions of this section, as in effect on Feb. 12, 2011. See Codification note above and 2009 and 2010 Amendment and Effective and Termination Dates of 2011 Revival notes below.

Subsec. (a). Pub. L. 112-40, §§223(b), 233, temporarily struck out “and there are appropriated” after “to be appropriated” and temporarily substituted “not to exceed \$90,000,000 for each of the fiscal years 2012 and 2013, and \$22,500,000 for the 3-month period beginning on October 1, 2013, and ending on December 31, 2013” for “not to exceed \$10,400,000 for the 6-week period beginning January 1, 2011, and ending February 12, 2011”. See Codification note above and Effective and Termination Dates of 2011 Revival note below.

2010—Subsec. (a). Pub. L. 111-344 substituted “\$10,400,000 for the 6-week period beginning January 1, 2011, and ending February 12, 2011” for “\$90,000,000 for each of the fiscal years 2009 and 2010, and \$22,500,000 for the period beginning October 1, 2010, and ending December 31, 2010”. See Codification note above.

2009—Subsec. (a). Pub. L. 111-5, §§1887, 1893, temporarily substituted “fiscal years 2009 and 2010, and \$22,500,000 for the period beginning October 1, 2010, and ending December 31, 2010, to carry out the purposes of this part, including administrative costs, and salaries and expenses of employees of the Department of Agriculture.” for “fiscal years 2003 through 2007 to carry out the purposes of this part, and there are authorized to be appropriated and there are appropriated to the Department of Agriculture to carry out this part \$9,000,000 for the 3-month period beginning on October 1, 2007.” See Codification note above and Effective and Termination Dates of 2009 Amendment note below.

2007—Subsec. (a). Pub. L. 110-89 inserted before period at end “, and there are authorized to be appropriated and there are appropriated to the Department of Agriculture to carry out this part \$9,000,000 for the 3-month period beginning on October 1, 2007”.

#### EFFECTIVE AND TERMINATION DATES OF 2015 REVIVAL

For revival and applicability, beginning on June 29, 2015, of the provisions of this section as in effect on Dec. 31, 2013, see section 402(b), (c) of Pub. L. 114-27, set out as a note preceding section 2271 of this title.

For reversion, beginning on July 1, 2021, to the provisions of this section as in effect on Jan. 1, 2014, with certain exceptions and subject to section 406(b) of Pub. L. 114-27, see section 406 of Pub. L. 114-27, set out as a note preceding section 2271 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2011 REVIVAL

For revival and applicability, beginning on Oct. 21, 2011, of the provisions of this section as in effect on Feb. 12, 2011, see section 201(b), (c) of Pub. L. 112-40, set out as a note preceding section 2271 of this title.

Section 233 of Pub. L. 112-40, formerly set out as a note preceding section 2271 of this title, which provided for the reversion, beginning on Jan. 1, 2014, of the provisions of this section to those in effect on Feb. 13, 2011, subject to certain exceptions, was repealed by Pub. L. 114-27, title IV, §402(a), June 29, 2015, 129 Stat. 374, effective June 29, 2015. See Codification note above.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-344 effective Jan. 1, 2011, see section 101(d) of Pub. L. 111-344, set out as a note preceding section 2271 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111-5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111-5, set out as a note under section 2271 of this title.

Section 1893 of Pub. L. 111-5, formerly set out as a Termination Date of 2009 Amendment note preceding section 2271 of this title, which provided that, except as otherwise provided, amendment by Pub. L. 111-5 not applicable on or after Feb. 13, 2011, and that this section be applied and administered beginning Feb. 13, 2011, as if amendment by Pub. L. 111-5 had never been enacted, was repealed by Pub. L. 112-40, title II, §201(a), Oct. 21, 2011, 125 Stat. 403, effective Oct. 21, 2011. See Codification note above.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-89 effective Oct. 1, 2007, see section 1(e) of Pub. L. 110-89, set out as a note under section 2317 of this title.

#### TERMINATION DATE

Except as otherwise provided, assistance may not be provided under this section after June 30, 2021, see section 285 of Pub. L. 93-618, set out as a note preceding section 2271 of this title.

### SUBCHAPTER III—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

#### §2411. Actions by United States Trade Representative

##### (a) Mandatory action

(1) If the United States Trade Representative determines under section 2414(a)(1) of this title that—

(A) the rights of the United States under any trade agreement are being denied; or

(B) an act, policy, or practice of a foreign country—

(i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable and burdens or restricts United States commerce;

the Trade Representative shall take action authorized in subsection (c), subject to the specific direction, if any, of the President regarding any such action, and shall take all other appropriate and feasible action within the power of the President that the President may direct the

Trade Representative to take under this subsection, to enforce such rights or to obtain the elimination of such act, policy, or practice. Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.

(2) The Trade Representative is not required to take action under paragraph (1) in any case in which—

(A) the Dispute Settlement Body (as defined in section 3531(5) of this title) has adopted a report, or a ruling issued under the formal dispute settlement proceeding provided under any other trade agreement finds, that—

(i) the rights of the United States under a trade agreement are not being denied, or

(ii) the act, policy, or practice—

(I) is not a violation of, or inconsistent with, the rights of the United States, or

(II) does not deny, nullify, or impair benefits to the United States under any trade agreement; or

(B) the Trade Representative finds that—

(i) the foreign country is taking satisfactory measures to grant the rights of the United States under a trade agreement,

(ii) the foreign country has—

(I) agreed to eliminate or phase out the act, policy, or practice, or

(II) agreed to an imminent solution to the burden or restriction on United States commerce that is satisfactory to the Trade Representative,

(iii) it is impossible for the foreign country to achieve the results described in clause (i) or (ii), as appropriate, but the foreign country agrees to provide to the United States compensatory trade benefits that are satisfactory to the Trade Representative,

(iv) in extraordinary cases, where the taking of action under this subsection would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, taking into account the impact of not taking such action on the credibility of the provisions of this subchapter, or

(v) the taking of action under this subsection would cause serious harm to the national security of the United States.

(3) Any action taken under paragraph (1) to eliminate an act, policy, or practice shall be devised so as to affect goods or services of the foreign country in an amount that is equivalent in value to the burden or restriction being imposed by that country on United States commerce.

**(b) Discretionary action**

If the Trade Representative determines under section 2414(a)(1) of this title that—

(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and

(2) action by the United States is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under subsection (c), subject to the specific direction, if any, of the President regarding any

such action, and all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to obtain the elimination of that act, policy, or practice. Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.

**(c) Scope of authority**

(1) For purposes of carrying out the provisions of subsection (a) or (b) or section 2416(c) of this title, the Trade Representative is authorized to—

(A) suspend, withdraw, or prevent the application of, benefits of trade agreement concessions to carry out a trade agreement with the foreign country referred to in such subsection;

(B) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country for such time as the Trade Representative determines appropriate;

(C) in a case in which the act, policy, or practice also fails to meet the eligibility criteria for receiving duty-free treatment under subsections (b) and (c) of section 2462 of this title, subsections (b) and (c) of section 2702 of this title, or subsections (c) and (d) of section 3202 of this title, withdraw, limit, or suspend such treatment under such provisions, notwithstanding the provisions of subsection (a)(3) of this section; or

(D) enter into binding agreements with such foreign country that commit such foreign country to—

(i) eliminate, or phase out, the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b),

(ii) eliminate any burden or restriction on United States commerce resulting from such act, policy, or practice, or

(iii) provide the United States with compensatory trade benefits that—

(I) are satisfactory to the Trade Representative, and

(II) meet the requirements of paragraph (4).

(2)(A) Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in paragraph (1), the Trade Representative may, for purposes of carrying out the provisions of subsection (a) or (b)—

(i) restrict, in the manner and to the extent the Trade Representative determines appropriate, the terms and conditions of any such authorization, or

(ii) deny the issuance of any such authorization.

(B) Actions described in subparagraph (A) may only be taken under this section with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which—

(i) a petition is filed under section 2412(a) of this title, or

(ii) a determination to initiate an investigation is made by the Trade Representative under section 2412(b) of this title.

(C) Before the Trade Representative takes any action under this section involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult, as appropriate, with the head of the agency concerned.

(3) The actions the Trade Representative is authorized to take under subsection (a) or (b) may be taken against any goods or economic sector—

(A) on a nondiscriminatory basis or solely against the foreign country described in such subsection, and

(B) without regard to whether or not such goods or economic sector were involved in the act, policy, or practice that is the subject of such action.

(4) Any trade agreement described in paragraph (1)(D)(iii) shall provide compensatory trade benefits that benefit the economic sector which includes the domestic industry that would benefit from the elimination of the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b), or benefit the economic sector as closely related as possible to such economic sector, unless—

(A) the provision of such trade benefits is not feasible, or

(B) trade benefits that benefit any other economic sector would be more satisfactory than such trade benefits.

(5) If the Trade Representative determines that actions to be taken under subsection (a) or (b) are to be in the form of import restrictions, the Trade Representative shall—

(A) give preference to the imposition of duties over the imposition of other import restrictions, and

(B) if an import restriction other than a duty is imposed, consider substituting, on an incremental basis, an equivalent duty for such other import restriction.

(6) Any action taken by the Trade Representative under this section with respect to export targeting shall, to the extent possible, reflect the full benefit level of the export targeting to the beneficiary over the period during which the action taken has an effect.

**(d) Definitions and special rules**

For purposes of this subchapter—

(1) The term “commerce” includes, but is not limited to—

(A) services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) An act, policy, or practice of a foreign country that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country of subsidies for the construction of vessels

used in the commercial transportation by water of goods between foreign countries and the United States.

(3)(A) An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

(B) Acts, policies, and practices that are unreasonable include, but are not limited to, any act, policy, or practice, or any combination of acts, policies, or practices, which—

(i) denies fair and equitable—

(I) opportunities for the establishment of an enterprise,

(II) provision of adequate and effective protection of intellectual property rights notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 3511(d)(15) of this title,

(III) nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection, or

(IV) market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by enterprises or among enterprises in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods or services to a foreign market,

(ii) constitutes export targeting,

(iii) constitutes a persistent pattern of conduct that—

(I) denies workers the right of association,

(II) denies workers the right to organize and bargain collectively,

(III) permits any form of forced or compulsory labor,

(IV) fails to provide a minimum age for the employment of children, or

(V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers, or

(iv) constitutes a persistent pattern of conduct by the government of a foreign country under which that government fails to effectively enforce commitments under agreements to which the foreign country and the United States are parties, including with respect to trade in goods, trade in services, trade in agriculture, foreign investment, intellectual property, digital trade in goods and services and cross-border data flows, regulatory practices, state-owned and state-controlled enterprises, localization barriers to trade, labor and the environment, anticorruption, trade remedy laws, textiles, and commercial partnerships.

(C)(i) Acts, policies, and practices of a foreign country described in subparagraph (B)(iii) shall not be treated as being unreasonable if the Trade Representative determines that—

(I) the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing throughout the foreign country (including any designated zone within the foreign country) the rights and other standards described in the subclauses of subparagraph (B)(iii), or

(II) such acts, policies, and practices are not inconsistent with the level of economic development of the foreign country.

(ii) The Trade Representative shall publish in the Federal Register any determination made under clause (i), together with a description of the facts on which such determination is based.

(D) For purposes of determining whether any act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms shall be taken into account, to the extent appropriate.

(E) The term “export targeting” means any government plan or scheme consisting of a combination of coordinated actions (whether carried out severally or jointly) that are bestowed on a specific enterprise, industry, or group thereof, the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise.

(F)(i) For the purposes of subparagraph (B)(i)(II), adequate and effective protection of intellectual property rights includes adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such country to secure, exercise, and enforce rights and enjoy commercial benefits relating to patents, trademarks, copyrights and related rights, mask works, trade secrets, and plant breeder’s rights.

(ii) For purposes of subparagraph (B)(i)(IV), the denial of fair and equitable nondiscriminatory market access opportunities includes restrictions on market access related to the use, exploitation, or enjoyment of commercial benefits derived from exercising intellectual property rights in protected works or fixations or products embodying protected works.

(4)(A) An act, policy, or practice is unjustifiable if the act, policy, or practice is in violation of, or inconsistent with, the international legal rights of the United States.

(B) Acts, policies, and practices that are unjustifiable include, but are not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment or the right of establishment or protection of intellectual property rights.

(5) Acts, policies, and practices that are discriminatory include, when appropriate, any act, policy, and practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

(6) The term “service sector access authorization” means any license, permit, order, or other authorization, issued under the authority of Federal law, that permits a foreign supplier of services access to the United States market in a service sector concerned.

(7) The term “foreign country” includes any foreign instrumentality. Any possession or

territory of a foreign country that is administered separately for customs purposes shall be treated as a separate foreign country.

(8) The term “Trade Representative” means the United States Trade Representative.

(9) The term “interested persons”, only for purposes of sections 2412(a)(4)(B), 2414(b)(1)(A), 2416(c)(2),<sup>1</sup> and 2417(a)(2) of this title, includes, but is not limited to, domestic firms and workers, representatives of consumer interests, United States product exporters, and any industrial user of any goods or services that may be affected by actions taken under subsection (a) or (b).

(Pub. L. 93-618, title III, §301, as added Pub. L. 96-39, title IX, §901, July 26, 1979, 93 Stat. 295; amended Pub. L. 98-573, title III, §304(a)-(c), (f), Oct. 30, 1984, 98 Stat. 3002, 3005; Pub. L. 100-418, title I, §1301(a), Aug. 23, 1988, 102 Stat. 1164; Pub. L. 103-465, title III, §314(a)-(c), title VI, §621(a)(9), Dec. 8, 1994, 108 Stat. 4939, 4940, 4993; Pub. L. 104-295, §20(c)(4), Oct. 11, 1996, 110 Stat. 3528; Pub. L. 114-125, title VI, §§602(b)(1), 607, Feb. 24, 2016, 130 Stat. 184, 189.)

#### REFERENCES IN TEXT

Section 2416(c)(2) of this title, referred to in subsec. (d)(9), was redesignated section 2416(d)(2) of this title by Pub. L. 114-125, title VI, §602(a)(1), Feb. 24, 2016, 130 Stat. 184.

#### PRIOR PROVISIONS

A prior section 301 of Pub. L. 93-618, title III, Jan. 3, 1975, 88 Stat. 2041, which related to Presidential responses to 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

2016—Subsec. (c)(1). Pub. L. 114-125, §602(b)(1), inserted “or section 2416(c) of this title” after “subsection (a) or (b)” in introductory provisions.

Subsec. (d)(3)(B)(iv). Pub. L. 114-125, §607, added cl. (iv).

1996—Subsec. (c)(4). Pub. L. 104-295 substituted “paragraph (1)(D)(iii)” for “paragraph (1)(C)(iii)”.

1994—Subsec. (a)(1). Pub. L. 103-465, §314(a)(1), inserted at end of concluding provisions “Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.”

Subsec. (a)(2)(A). Pub. L. 103-465, §621(a)(9), substituted “the Dispute Settlement Body (as defined in section 3531(5) of this title) has adopted a report,” for “the Contracting Parties to the General Agreement on Tariffs and Trade have determined, a panel of experts has reported to the Contracting Parties.”

Subsec. (b)(2). Pub. L. 103-465, §314(a)(1), inserted at end “Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.”

Subsec. (c)(1)(B) to (D). Pub. L. 103-465, §314(b)(1), struck out “or” at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (c)(5). Pub. L. 103-465, §314(a)(2), added introductory provisions, reenacted subpar. (A) without change, and struck out former introductory provisions which read as follows: “In taking actions under subsection (a) or (b) of this section, the Trade Representative shall—”.

<sup>1</sup> See References in Text note below.

Subsec. (d)(3)(B)(i)(II) to (IV). Pub. L. 103-465, §314(c)(1), added subcls. (II) to (IV) and struck out former subcls. (II) and (III) which read as follows:

“(II) provision of adequate and effective protection of intellectual property rights, or

“(III) market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by private firms or among private firms in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods to purchasing by such firms.”.

Subsec. (d)(3)(F). Pub. L. 103-465, §314(c)(2), added subpar. (F).

1988—Pub. L. 100-418 amended section generally, substituting provisions relating to actions by United States Trade Representative for provisions relating to determinations and action by President.

1984—Subsec. (a). Pub. L. 98-573, §304(a), amended subsec. (a) generally, which prior to amendment provided that if the President determines that action by the United States is appropriate (1) to enforce the rights of the United States under any trade agreement; or (2) to respond to any act, policy, or practice of a foreign country or instrumentality that (A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or (B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce; the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice and that action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved.

Subsec. (b)(1). Pub. L. 98-573, §304(b)(1), struck out “and” at end.

Subsec. (b)(2). Pub. L. 98-573, §304(b)(2), (3), inserted “, notwithstanding any other provision of law,” and substituted “goods” for “products”.

Subsecs. (c), (d). Pub. L. 98-573, §304(c), added subsec. (c) and redesignated existing subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (e). Pub. L. 98-573, §304(c), (f), redesignated subsec. (d) as (e), inserted “For purposes of this section—” before par. (1), in par. (1) substituted provisions defining “commerce” as including, but not limited to services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and foreign direct investment by United States persons with implications for trade in goods or services for provision defining “commerce” as including, but not limited to, services associated with international trade, whether or not such services are related to specific products, and added pars. (3) to (6).

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 314(a)-(c) of 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.

Amendment by section 621(a)(9) of 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 621(b) of Pub. L. 103-465, set out as a note under section 1677k of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-418, title I, §1301(c), Aug. 23, 1988, 102 Stat. 1176, provided that: “The amendments made by this section [enacting sections 2417 to 2419 of this title and amending this section and sections 2412 to 2416 of this title] shall apply to—

“(1) petitions filed, and investigations initiated, under section 302 of the Trade Act of 1974 [19 U.S.C. 2412] on or after the date of the enactment of this Act [Aug. 23, 1988]; and

“(2) petitions filed, and investigations initiated, before the date of enactment of this Act, if by that date no decision had been made under section 304 [19 U.S.C. 2414] regarding the petition or investigation.”

#### EFFECTIVE DATE

Pub. L. 96-39, title IX, §903, July 26, 1979, 93 Stat. 300, provided that: “The amendments made by sections 901 and 902 [enacting this subchapter and amending sections 1872, 2192, and 2194 of this title] shall take effect on the date of the enactment of this Act [July 26, 1979]. Any petition for review filed with the Special Representative for Trade Negotiations under section 301 of the Trade Act of 1974 (as in effect on the day before such date of enactment) [former section 2411 of this title] and pending on such date of enactment shall be treated as an investigation initiated on such date of enactment under section 302(b)(2) of the Trade Act of 1974 (as added by section 901 of this Act) [section 2412(b)(2) of this title] and any information developed by, or submitted to, the Special Representative before such date of enactment under the review shall be treated as part of the information developed during such investigation.”

#### EX. ORD. NO. 13155. ACCESS TO HIV/AIDS PHARMACEUTICALS AND MEDICAL TECHNOLOGIES

Ex. Ord. No. 13155, May 10, 2000, 65 F.R. 30521, 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 chapter 1 of title III of the Trade Act of 1974, as amended (19 U.S.C. 2171, 2411-2420), section 307 of the Public Health Service Act (42 U.S.C. 242l), and section 104 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151b), and in accordance with executive branch policy on health-related intellectual property matters to promote access to essential medicines, it is hereby ordered as follows:

SECTION 1. *Policy.* (a) In administering sections 301-310 of the Trade Act of 1974 [19 U.S.C. 2411-2420], the United States shall not seek, through negotiation or otherwise, the revocation or revision of any intellectual property law or policy of a beneficiary sub-Saharan African country, as determined by the President, that regulates HIV/AIDS pharmaceuticals or medical technologies if the law or policy of the country:

(1) promotes access to HIV/AIDS pharmaceuticals or medical technologies for affected populations in that country; and

(2) provides adequate and effective intellectual property protection consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)).

(b) The United States shall encourage all beneficiary sub-Saharan African countries to implement policies designed to address the underlying causes of the HIV/AIDS crisis by, among other things, making efforts to encourage practices that will prevent further transmission and infection and to stimulate development of the infrastructure necessary to deliver adequate health services, and by encouraging policies that provide an incentive for public and private research on, and development of, vaccines and other medical innovations that will combat the HIV/AIDS epidemic in Africa.

SEC. 2. *Rationale:* (a) This order finds that:

(1) since the onset of the worldwide HIV/AIDS epidemic, approximately 34 million people living in sub-Saharan Africa have been infected with the disease;

(2) of those infected, approximately 11.5 million have died;

(3) the deaths represent 83 percent of the total HIV/AIDS-related deaths worldwide; and

(4) access to effective therapeutics for HIV/AIDS is determined by issues of price, health system infrastructure for delivery, and sustainable financing.

(b) In light of these findings, this order recognizes that:

(1) it is in the interest of the United States to take all reasonable steps to prevent further spread of infectious disease, particularly HIV/AIDS;

(2) there is critical need for effective incentives to develop new pharmaceuticals, vaccines, and therapies to combat the HIV/AIDS crisis, including effective global intellectual property standards designed to foster pharmaceutical and medical innovation;

(3) the overriding priority for responding to the crisis of HIV/AIDS in sub-Saharan Africa should be to improve public education and to encourage practices that will prevent further transmission and infection, and to stimulate development of the infrastructure necessary to deliver adequate health care services;

(4) the United States should work with individual countries in sub-Saharan Africa to assist them in development of effective public education campaigns aimed at the prevention of HIV/AIDS transmission and infection, and to improve their health care infrastructure to promote improved access to quality health care for their citizens in general, and particularly with respect to the HIV/AIDS epidemic;

(5) an effective United States response to the crisis in sub-Saharan Africa must focus in the short term on preventive programs designed to reduce the frequency of new infections and remove the stigma of the disease, and should place a priority on basic health services that can be used to treat opportunistic infections, sexually transmitted infections, and complications associated with HIV/AIDS so as to prolong the duration and improve the quality of life of those with the disease;

(6) an effective United States response to the crisis must also focus on the development of HIV/AIDS vaccines to prevent the spread of the disease;

(7) the innovative capacity of the United States in the commercial and public pharmaceutical research sectors is unmatched in the world, and the participation of both these sectors will be a critical element in any successful program to respond to the HIV/AIDS crisis in sub-Saharan Africa;

(8) the TRIPS Agreement recognizes the importance of promoting effective and adequate protection of intellectual property rights and the right of countries to adopt measures necessary to protect public health;

(9) individual countries should have the ability to take measures to address the HIV/AIDS epidemic, provided that such measures are consistent with their international obligations; and

(10) successful initiatives will require effective partnerships and cooperation among governments, international organizations, nongovernmental organizations, and the private sector, and greater consideration should be given to financial, legal, and other incentives that will promote improved prevention and treatment actions.

SEC. 3. *Scope.* (a) This order prohibits the United States Government from taking action pursuant to section 301(b) of the Trade Act of 1974 [19 U.S.C. 2411(b)] with respect to any law or policy in beneficiary sub-Saharan African countries that promotes access to HIV/AIDS pharmaceuticals or medical technologies and that provides adequate and effective intellectual property protection consistent with the TRIPS Agreement. However, this order does not prohibit United States Government officials from evaluating, determining, or expressing concern about whether such a law or policy promotes access to HIV/AIDS pharmaceuticals or medical technologies or provides adequate and effective intellectual property protection consistent with the TRIPS Agreement. In addition, this order does not prohibit United States Government officials from consulting with or otherwise discussing with sub-Saharan African governments whether such law or policy meets the 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.

WILLIAM J. CLINTON.

## § 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.