

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 months after the date on which the investigation is initiated.

(3)(A) If an investigation is initiated under this subchapter by reason of section 2412(b)(2) of this title and—

(i) the Trade Representative considers that rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights or the GATT 1994 relating to products subject to intellectual property protection are involved,

the Trade Representative shall make the determination required under paragraph (1) not later than 30 days after the date on which the dispute settlement procedure is concluded; or

(ii) the Trade Representative does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, is involved or does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation not later than the date that is 6 months after the date on which such investigation is initiated.

(B) If the Trade Representative determines with respect to an investigation initiated by reason of section 2412(b)(2) of this title (other than an investigation involving a trade agreement) that—

(i) complex or complicated issues are involved in the investigation that require additional time,

(ii) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights, or

(iii) such foreign country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights,

the Trade Representative shall publish in the Federal Register notice of such determination and shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 9 months after the date on which such investigation is initiated.

(4) In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement, the Trade Representative, within 15 days after the close of such dispute settlement period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum dispute settlement period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement at any stage.

(b) Consultation before determinations

(1) Before making the determinations required under subsection (a)(1), the Trade Representative, unless expeditious action is required—

(A) shall provide an opportunity (after giving not less than 30 days notice thereof) for the presentation of views by interested persons, including a public hearing if requested by any interested person,

(B) shall obtain advice from the appropriate committees established pursuant to section 2155 of this title, and

(C) may request the views of the United States International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to any goods or service.

(2) If the Trade Representative does not comply with the requirements of subparagraphs (A) and (B) of paragraph (1) because expeditious action is required, the Trade Representative shall, after making the determinations under subsection (a)(1), comply with such subparagraphs.

(c) Publication

The Trade Representative shall publish in the Federal Register any determination made under subsection (a)(1), together with a description of the facts on which such determination is based.

(Pub. L. 93-618, title III, § 304, 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)(C), 306(c)(2)(C)(ii), Oct. 30, 1984, 98 Stat. 3005, 3012; Pub. L. 100-418, title I, § 1301(a), Aug. 23, 1988, 102 Stat. 1170; Pub. L. 103-465, title III, § 314(d), Dec. 8, 1994, 108 Stat. 4940; Pub. L. 104-295, § 20(c)(6), Oct. 11, 1996, 110 Stat. 3528; Pub. L. 108-429, title II, § 2201(a), (b), Dec. 3, 2004, 118 Stat. 2598, 2599.)

AMENDMENTS

2004—Subsec. (a)(2)(A). Pub. L. 108-429, § 2201(a), in introductory provisions, inserted “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,” after “agreement.”

Subsec. (a)(3)(A). Pub. L. 108-429, § 2201(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “If an investigation is initiated under this subchapter by reason of section 2412(b)(2) of this title and the Trade Representative does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 3511(d)(15) of this title), is involved or does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 6 months after the date on which such investigation is initiated.”

1996—Subsec. (a)(3)(A). Pub. L. 104-295 inserted “Rights” after “Intellectual Property”.

1994—Subsec. (a)(2)(A). Pub. L. 103-465, § 314(d)(1), struck out “(other than the agreement on subsidies and countervailing measures described in section 2503(c)(5) of this title)” after “trade agreement”.

Subsec. (a)(3)(A). Pub. L. 103-465, § 314(d)(2)(A), inserted “does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property (referred to in section 3511(d)(15) of this title), is involved or” after “Trade Representative” the first place appearing.

Subsec. (a)(3)(B). Pub. L. 103-465, § 314(d)(2)(B), in introductory provisions, substituted “an investigation initiated by reason of section 2412(b)(2) of this title (other than an investigation involving a trade agreement)” for “any investigation initiated by reason of section 2412(b)(2) of this title”.

Subsec. (a)(4). Pub. L. 103-465, § 314(d)(3), struck out “(other than the agreement on subsidies and countervailing measures described in section 2503(c)(5) of this title)” after “in a trade agreement”.

1988—Pub. L. 100-418 amended section generally, substituting provisions relating to determinations by

Trade Representative for provisions relating to recommendations by Trade Representative.

1984—Subsec. (a)(1). Pub. L. 98-573, § 304(d)(2)(C), substituted “matters under investigation” for “issues raised in the petition” in first sentence.

Subsec. (b)(2). Pub. L. 98-573, § 306(c)(2)(C)(ii), struck out “private sector” after “appropriate”.

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 this section 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.

§ 2415. Implementation of actions

(a) Actions to be taken under section 2411

(1) Except as provided in paragraph (2), the Trade Representative shall implement the action the Trade Representative determines under section 2414(a)(1)(B) of this title to take under section 2411 of this title, subject to the specific direction, if any, of the President regarding any such action, by no later than the date that is 30 days after the date on which such determination is made.

(2)(A) Except as otherwise provided in this paragraph, the Trade Representative may delay, by not more than 180 days, the implementation of any action that is to be taken under section 2411 of this title—

(i) if—

(I) in the case of an investigation initiated under section 2412(a) of this title, the petitioner requests a delay, or

(II) in the case of an investigation initiated under section 2412(b)(1) of this title or to which section 2414(a)(3)(B) of this title applies, a delay is requested by a majority of the representatives of the domestic industry that would benefit from the action, or

(ii) if the Trade Representative determines that substantial progress is being made, or that a delay is necessary or desirable, to obtain United States rights or a satisfactory solution with respect to the acts, policies, or practices that are the subject of the action.

(B) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 2411 of this title with respect to any investigation to which section 2414(a)(3)(A)(ii) of this title applies.

(C) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 2411 of this title with respect to any investigation to which section 2414(a)(3)(B) of this title applies by more than 90 days.

(b) Alternative actions in certain cases of export targeting

(1) If the Trade Representative makes an affirmative determination under section