

ments of developed countries which are the principal purchasers of goods and equipment in appropriate product sectors, he shall so report to the congressional committees referred to in section 2512(c)(1) of this title. Taking into account the objectives set forth in subsections (a) and (b) of this section and the factors required to be analyzed under section 2512(c) of this title, the President shall further report to such committees appropriate actions to seek reciprocity in such product sectors with such countries in the area of government procurement.

(2) Legislative recommendations

Taking into account the factors required to be analyzed under section 2512(c) of this title, the President may recommend to the Congress legislation (with respect to entities of the Government which are not covered by the Agreement) which may prohibit such entities from purchasing products of such countries.

(3) Annual reports

Each annual report of the President under section 163(a) of the Trade Act of 1974 [19 U.S.C. 2213(a)] made after July 26, 1979 shall report the actions, if any, the President deemed appropriate to establish reciprocity in appropriate product sectors with major industrial countries in the area of government procurement.

(e) Extension of nondiscrimination and national treatment

Before exercising the waiver authority in section 2511 of this title for procurement not covered by the Agreement on the date it enters into force with respect to the United States, the President shall follow the consultation provisions of section 135 [19 U.S.C. 2155] and chapter 6 of title I of the Trade Act of 1974 [19 U.S.C. 2211 et seq.] for private sector and congressional consultations.

(Pub. L. 96-39, title III, §304, July 26, 1979, 93 Stat. 238; Pub. L. 103-465, title III, §342(b), Dec. 8, 1994, 108 Stat. 4953; Pub. L. 104-295, §20(c)(11), Oct. 11, 1996, 110 Stat. 3528.)

REFERENCES IN TEXT

Section 2516 of this title, referred to in subsec. (a), was repealed by Pub. L. 103-355, title VII, §7206(c), Oct. 13, 1994, 108 Stat. 3382, and Pub. L. 103-465, title III, §342(d), Dec. 8, 1994, 108 Stat. 4953.

The Trade Act of 1974, referred to in subsec. (e), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 6 of title I of the Trade Act of 1974 is classified generally to part 6 of subchapter I (§2211 et seq.) of chapter 12 of this title. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-295, §20(c)(11)(A), struck out comma after “XXIV(7)”.

Subsec. (c). Pub. L. 104-295, §20(c)(11)(B), struck out comma after “XXIV(7)” and “XIX(5)”.

1994—Subsec. (a). Pub. L. 103-465, §342(b)(1), substituted “article XXIV(7)” for “part IX, paragraph 6”.

Subsec. (c). Pub. L. 103-465, §342(b)(1), (2), substituted “article XXIV(7)” for “part IX, paragraph 6” and “article XIX(5)” for “part VI, paragraph 9”.

Subsec. (e). Pub. L. 103-465, §342(b)(3), substituted “the date it enters into force with respect to the United States” for “July 26, 1979”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States (Jan. 1, 1995), see section 344(a) of Pub. L. 103-465, set out as a note under section 2512 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to United States Trade Representative, see section 1-201 of Ex. Ord. No. 12260, Dec. 31, 1980, 46 F.R. 1653, set out as a note under section 2511 of this title.

AGREEMENT ON GOVERNMENT PROCUREMENT: ENTRY INTO FORCE

The Agreement on Government Procurement, as referred to in section 3511(d)(17) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

§ 2515. Monitoring and enforcement

(a) Monitoring and enforcement structure recommendations

In the preparation of the recommendations for the reorganization of trade functions, the President shall ensure that careful consideration is given to monitoring and enforcing the requirements of the Agreement and this subchapter, with particular regard to the tendering procedures required by the Agreement or otherwise agreed to by a country or instrumentality likely to be designated pursuant to section 2511(b) of this title.

(b) Rules of origin

(1) Advisory rulings and final determinations

For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.

(2) Penalties for fraudulent conduct

In addition to any other provisions of law which may be applicable, section 1001 of title 18 shall apply to fraudulent conduct with respect to the origin of products for purposes of qualifying for a waiver under section 2511 of this title or avoiding a prohibition under section 2512 of this title.

(c) Report to Congress on rules of origin

(1) Domestic administrative practices

As soon as practicable after the close of the two-year period beginning on the date on which any waiver under section 2511(a) of this title first takes effect, the President shall prepare and transmit to Congress a report containing an evaluation of administrative practices under any provision of law which requires determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce. Such evaluation shall be accompanied by the President's recommendations for legislative and executive measures required to improve and simplify and to make more uniform and consistent such practices. Such evaluation and rec-

ommendations shall take into account the special problems affecting insular possessions of the United States with respect to such practices.

(2) Foreign administrative practices

The report required under paragraph (1) shall contain an evaluation of the administrative practices under the laws of each major industrial country which require determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce, including an assessment of such practices on the exports of the United States.

(Pub. L. 96-39, title III, §305, July 26, 1979, 93 Stat. 239; Pub. L. 100-418, title VII, §7003, Aug. 23, 1988, 102 Stat. 1548; Pub. L. 103-465, title III, §§341, 342(c), 343(c), Dec. 8, 1994, 108 Stat. 4951, 4953, 4955; Pub. L. 104-295, §20(c)(10), (13), Oct. 11, 1996, 110 Stat. 3528.)

AMENDMENTS

1996—Subsec. (d)(2)(B), (C). Pub. L. 104-295, §20(c)(10), struck out “or” at end of subpar. (B) and substituted semicolon for period at end of subpar. (C).

Subsec. (g)(1). Pub. L. 104-295, §20(c)(13)(A), in introductory provisions, substituted “of subsection (d)(2) of this section” for “of such subsection” and inserted “of subsection (d)(2) of this section” after “(as the case may be)”.

Subsec. (g)(3). Pub. L. 104-295, §20(c)(13)(B), substituted “eliminated the practices” for “eliminated the the practices” and inserted “of subsection (d)(2) of this section” after “(as the case may be)”.

1994—Subsec. (d)(1). Pub. L. 103-465, §342(c), substituted “April 30 of each year,” for “April 30, 1990, and annually on April 30 thereafter.”.

Subsec. (d)(2)(D), (E). Pub. L. 103-465, §341(c)(1), added subpars. (D) and (E) which read as follows:

“(D)(i) are not signatories to the Agreement;

“(ii) fail to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement; and

“(iii) whose products or services are acquired in significant amounts by the United States Government; or
“(E)(i) are not signatories to the Agreement;

“(ii) fail to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement; and

“(iii) whose products or services are acquired in significant amounts by the United States Government.”

Subsec. (d)(3)(C). Pub. L. 103-465, §341(c)(2), inserted before period at end “, including the failure to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement”.

Subsec. (f)(2). Pub. L. 103-465, §341(a)(1), substituted “the 18 months” for “a year” in introductory provisions.

Subsec. (f)(2)(B) to (D). Pub. L. 103-465, §341(a)(2)-(4), struck out “or” at end of subpar. (B), redesignated subpar. (C) as (D), and added a new subpar. (C) which read as follows: “the procedures result in a determination providing a specific period of time for the other participant to bring its practices into compliance with the Agreement, or”.

Subsec. (f)(3). Pub. L. 103-465, §341(b)(1), amended heading and text of par. (3) to read as follows:

“(3) SANCTIONS AFTER DISPUTE RESOLUTION FAILS.—

“(A) FAILURES RESULTING IN SANCTIONS.—If—

“(i) within 18 months from the date dispute settlement procedures are initiated with a signatory country pursuant to this section—

“(I) such procedures are not concluded, or

“(II) the country has not met the requirements of subparagraph (A) or (B) of paragraph (2), or

“(ii) the period of time provided for pursuant to paragraph (2)(C) has expired and procedures for sus-

pending concessions under the Agreement have been completed,

then the sanctions described in subparagraph (B) shall be imposed.

“(B) SANCTIONS.—

“(i) IN GENERAL.—If subparagraph (A) applies to any signatory country—

“(I) the signatory country shall be considered as a signatory not in good standing of the Agreement and the prohibition on procurement contained in section 10b-1 of title 41 shall apply to such country, and

“(II) the President shall revoke the waiver of discriminatory purchasing requirements granted to the signatory country pursuant to section 2511(a) of this title.

“(ii) TIME SANCTIONS ARE IMPOSED.—Any sanction—

“(I) described in clause (i)(I) shall apply from the date that is the last day of the 18-month period described in subparagraph (A)(i) or, in the case of paragraph (2)(C), from the date procedures for suspending concessions under the Agreement have been completed, and

“(II) described in clause (i)(II) shall apply beginning on the day after the date described in subclause (I).”

Subsec. (f)(4). Pub. L. 103-465, §341(b)(2), substituted “subclause (I) or (II) of paragraph (3)(B)(i)” for “subparagraph (A) or (B) of paragraph (3)” in introductory provisions.

Subsec. (g)(1). Pub. L. 103-465, §343(c)(1), in introductory provisions, substituted “(B), (C), (D), or (E)” for “(B) or (C)” and “the practices regarding government procurement identified under subparagraph (B)(ii), (C)(ii), (D)(ii), or (E)(ii) (as the case may be)” for “their discriminatory procurement practices”.

Subsec. (g)(3). Pub. L. 103-465, §343(c)(2), substituted “the practices regarding government procurement identified under subparagraph (B)(ii), (C)(ii), (D)(ii), or (E)(ii) (as the case may be)” for “discrimination identified pursuant to subsection (d)(2)(B) or (C) of this section”.

1988—Subsecs. (d) to (k). Pub. L. 100-418, §§7003, 7004, temporarily added subsecs. (d) to (k) which read as follows:

“(d) ANNUAL REPORT ON FOREIGN DISCRIMINATION.—

“(1) ANNUAL REPORT REQUIRED.—The President shall, no later than April 30 1990, and annually on April 30 thereafter, submit to the appropriate committees of the House of Representatives and the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, a report on the extent to which foreign countries discriminate against United States products or services in making government procurements.

“(2) IDENTIFICATIONS REQUIRED.—In the annual report, the President shall identify (and continue to identify subject to subsections (f)(5) and (g)(3) of this section) any countries, other than least developed countries, that—

“(A) are signatories to the Agreement and not in compliance with the requirements of the Agreement;

“(B)(i) are signatories to the Agreement; (ii) are in compliance with the Agreement but, in the government procurement of products or services not covered by the Agreement, maintain a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government; or

“(C)(i) are not signatories to the Agreement; (ii) maintain, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and (iii) whose products or services are

acquired in significant amounts by the United States Government.

“(3) CONSIDERATIONS IN MAKING IDENTIFICATIONS.—In making the identifications required by paragraph (1), the President shall—

“(A) use the requirements of the Agreement, government procurement practices, and the effects of such practices on United States businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for United States products or services;

“(B) take into account, among other factors, whether and to what extent countries that are signatories to the Agreement, and other countries described in paragraph (1) of this subsection—

“(i) use sole-sourcing or otherwise noncompetitive procedures for procurements that could have been conducted using competitive procedures;

“(ii) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the Agreement’s value threshold or to make the procurements less attractive to United States businesses;

“(iii) announce procurement opportunities with inadequate time intervals for United States businesses to submit bids; and

“(iv) use specifications in such a way as to limit the ability of United States suppliers to participate in procurements; and

“(C) use any other additional criteria deemed appropriate.

“(4) CONTENTS OF REPORTS.—The reports required by this subsection shall include, with respect to each country identified under subparagraph (A), (B), or (C) of paragraph (1), the following:

“(A) a description of the specific nature of the discrimination, including (for signatory countries) any provision of the Agreement with which the country is not in compliance;

“(B) an identification of the United States products or services that are affected by the noncompliance or discrimination;

“(C) an analysis of the impact of the noncompliance or discrimination on the commerce of the United States and the ability of United States companies to compete in foreign government procurement markets; and

“(D) a description of the status, action taken, and disposition of cases of noncompliance or discrimination identified in the preceding annual report with respect to such country.

“(5) INFORMATION AND ADVICE FROM GOVERNMENT AGENCIES AND UNITED STATES BUSINESSES.—In developing the annual reports required by this subsection, the President shall seek information and advice from executive agencies through the interagency trade organization established under section 1872(a) of this title, and from United States businesses in the United States and in countries that are signatories to the Agreement and in other foreign countries whose products or services are acquired in significant amounts by the United States Government.

“(6) IMPACT OF NONCOMPLIANCE.—The President shall take into account, in identifying countries in the annual report and in any action required by this section, the relative impact of any noncompliance with the Agreement or of other discrimination on United States commerce and the extent to which such noncompliance or discrimination has impeded the ability of United States 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.

“(7) IMPACT ON PROCUREMENT COSTS.—Such report shall also include an analysis of the impact on United States Government procurement costs that may occur as a consequence of any sanctions that may be required by subsection (f) or (g) of this section.

“(e) CONSULTATION.—No later than the date the annual report is submitted under subsection (d)(1) of this section, the United States Trade Representative, on behalf of the United States, shall request consultations with any countries identified in the report to obtain their compliance with the Agreement or the elimination of their discriminatory procurement practices unless the country is identified as discriminatory pursuant to subsection (d)(1) of this section in the preceding annual report.

“(f) PROCEDURES WITH RESPECT TO VIOLATIONS OF AGREEMENT.—

“(1) INITIATION OF DISPUTE SETTLEMENT PROCEDURES.—If, within 60 days after the annual report is submitted under subsection (d)(1) of this section, a signatory country identified pursuant to subsection (d)(1)(A) of this section has not complied with the Agreement, then the United States Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under the Agreement unless such proceedings are already underway pursuant to the identification of the signatory country under subsection (d)(1) of this section as not in compliance in a preceding annual report.

“(2) SETTLEMENT OF DISPUTES.—If, before the end of a year following the initiation of dispute settlement procedures—

“(A) the other participant to the dispute settlement procedures has complied with the Agreement,

“(B) the other participant to the procedures takes the action recommended as a result of the procedures to the satisfaction of the President, or

“(C) the procedures result in a determination requiring no action by the other participant, the President shall take no action to limit Government procurement from that participant.

“(3) SANCTIONS AFTER FAILURE OF DISPUTE RESOLUTION.—If the dispute settlement procedures initiated pursuant to this subsection with any signatory country to the Agreement are not concluded within one year from their initiation or the country has not met the requirements of paragraph (2)(A) or (2)(B), then—

“(A) from the end of such one year period, such signatory country shall be considered as a signatory not in good standing of the Agreement and the prohibition on procurement contained in section 10b-1 of title 41 shall apply to such country; and

“(B) on the day after the end of such one year period, the President shall revoke the waiver of discriminatory purchasing requirements granted to that signatory country pursuant to section 2511(a) of this title.

“(4) WITHHOLDING AND MODIFICATION OF SANCTIONS.—If the President determines that imposing or continuing the sanctions required by subparagraph (A) or (B) of paragraph (3) would harm the public interest of the United States, the President may, to the extent necessary to apply appropriate limitations that are equivalent, in their effect, to the noncompliance with the Agreement by that signatory country—

“(A) withhold the imposition of either (but not both) of such sanctions;

“(B) modify or restrict the application of either or both such sanctions, subject to such terms and conditions as the President considers appropriate; or

“(C) take any combination of the actions permitted by subparagraph (A) or (B) of this paragraph.

“(5) TERMINATION OF SANCTIONS AND REINSTATEMENT OF WAIVERS.—The President may terminate the sanctions imposed under paragraph (3) or (4), reinstate the waiver of discriminatory purchasing requirements granted to that signatory country pursuant to section 2511(a) of this title, and remove that country from the report under subsection (d)(1) of this section at such time as the President determines that—

“(A) the signatory country has complied with the Agreement;

“(B) the signatory country has taken corrective action as a result of the dispute settlement procedures to the satisfaction of the President; or

“(C) the dispute settlement procedures result in a determination requiring no action by the other signatory country.

“(g) PROCEDURES WITH RESPECT TO OTHER DISCRIMINATION.—

“(1) IMPOSITION OF SANCTIONS.—If, within 60 days after the annual report is submitted under subsection (d)(1) of this section, a country that is identified pursuant to subparagraph (B) or (C) of such subsection has not eliminated their discriminatory procurement practices, then, on the day after the end of such 60-day period—

“(A) the President shall identify such country as a country that maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and

“(B) the prohibition on procurement contained in section 10b-1 of title 41 shall apply to such country.

“(2) WITHHOLDING AND MODIFICATION OF SANCTIONS.—If the President determines that imposing or continuing the sanction required by paragraph (1) would harm the public interest of the United States, the President may, to the extent necessary to impose appropriate limitations that are equivalent, in their effect, to the discrimination against United States products or services in government procurement by that country, modify or restrict the application of such sanction, subject to such terms and conditions as the President considers appropriate.

“(3) TERMINATION OF SANCTIONS.—The President may terminate the sanctions imposed under paragraph (1) or (2) and remove a country from the report under subsection (d)(1) of this section at such time as the President determines that the country has eliminated the discrimination identified pursuant to subsection (d)(2)(B) or (C) of this section.

“(h) LIMITATIONS ON IMPOSING SANCTIONS.—

“(1) AVOIDING ADVERSE IMPACT ON COMPETITION.—The President shall not take any action under subsection (f) or (g) of this section if the President determines that such action—

“(A) would limit the procurement or class of procurements to, or would establish a preference for, the products or services of a single manufacturer or supplier; or

“(B) would, with respect to any procurement or class of procurements, result in an insufficient number of potential or actual bidders to assure procurement of services, articles, materials, or supplies of requisite quality at competitive prices.

“(2) ADVICE FROM U.S. AGENCIES AND BUSINESSES.—The President, in taking any action under this subsection to limit government procurements from foreign countries, shall seek the advice of executive agencies through the interagency trade organization established under section 1872(a) of this title and the advice of United States businesses and other interested parties.

“(i) RENEGOTIATION TO SECURE FULL AND OPEN COMPETITION.—The President shall instruct the United States Trade Representative, in conducting renegotiations of the Agreement, to seek improvements in the Agreement that will secure full and open competition consistent with the requirements imposed by the amendments made by the Competition in Contracting Act (Public Law 98-369; 98 Stat. 1175).

“(j) FEDERAL REGISTER NOTICES OF ACTIONS.—

“(1) NOTICES REQUIRED.—A notice shall be published in the Federal Register on the date of any action under this section, describing—

“(A) the results of dispute settlement proceedings under subsection (f)(2) of this section;

“(B) any sanction imposed under subsection (f)(3) or (g)(1) of this section;

“(C) any withholding, modification, or restriction of any sanction under subsection (f)(4) or (g)(2) of this section; and

“(D) the termination of any sanction under subsection (f)(5) or (g)(3) of this section.

“(2) PUBLICATION OF DETERMINATIONS LIFTING SANCTIONS.—A notice describing the termination of any sanction under subsection (f)(5) or (g)(3) of this section shall include a copy of the President's determination under such subsection.

“(k) GENERAL REPORT ON ACTIONS UNDER THIS SECTION.—

“(1) ADVICE TO CONGRESS.—The President shall, as necessary, advise the Congress and, by no later than April 30, 1994, submit to the the [sic] appropriate committees of the House of Representatives, and to the Committee on Governmental Affairs and other appropriate committees of the Senate, a general report on actions taken pursuant to this section.

“(2) CONTENTS OF REPORT.—The general report required by this subsection shall include an evaluation of the adequacy and effectiveness of actions taken pursuant to subsections (e), (f), and (g) of this section as a means toward eliminating discriminatory government procurement practices against United States businesses.

“(3) LEGISLATIVE RECOMMENDATIONS.—The general report may also include, if appropriate, legislative recommendations for enhancing the usefulness of this section or for other measures to be used as means for eliminating or responding to discriminatory foreign government procurement practices.”

See Termination Date of 1988 Amendment note below.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States (Jan. 1, 1995), see section 344(a) of Pub. L. 103-465, set out as a note under section 2512 of this title.

TERMINATION DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by former subsec. (k) of this section, extends such date, see section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 2511 of this title.

TRANSFER OF FUNCTIONS

Pub. L. 96-609, title II, §205, Dec. 28, 1980, 94 Stat. 3562, provided that: “Notwithstanding subparagraph (1)(A) of subsection 5(a) of Reorganization Plan No. 3 of 1979 (44 F.R. 69272, 93 Stat. 1381) [set out as a note under section 2171 of this title], the Secretary of the Treasury or his delegate shall issue such advisory rulings and make such determinations as are authorized by subsection 305(b)(1) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(b)(1)).”

DELEGATION AND TRANSFER OF FUNCTIONS

Functions of President under subsec. (c) delegated to United States Trade Representative, see section 1-201 of Ex. Ord. No. 12260, Dec. 31, 1980, 46 F.R. 1653, set out as a note under section 2511 of this title.

Functions of Secretary of the Treasury under subsec. (b) transferred to Secretary of Commerce, to exercise in consultation with Secretary of the Treasury, by section 5(a)(1)(A) of Reorg. Plan No. 3 of 1979, 44 F.R. 69274, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

§ 2516. Repealed. Pub. L. 103-355, title VII, § 7206(c), Oct. 13, 1994, 108 Stat. 3382; Pub. L. 103-465, title III, § 342(d), Dec. 8, 1994, 108 Stat. 4953

Section, Pub. L. 96-39, title III, §306, July 26, 1979, 93 Stat. 240, related to labor surplus area studies.