

of February 17, 1981 [formerly 5 U.S.C. 601 note], the Director of the Office of Management and Budget shall, with regard to regulations, rules, or agency statements of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency relative to the administration of the Export Administration Act, determine whether such regulations, rules, or agency statements are exempted from review under that Order, pursuant to the provisions of section 8(b) thereof [former 50 U.S.C. 4607(b)].

SEC. 5-201. *Offsets.* The negotiating functions under section 825(c) of the Defense Authorization Act [10 U.S.C. 2532 note], as may be ordered by the President, are hereby jointly delegated to the Secretary of Defense and the United States Trade Representative. These functions shall be coordinated with the Secretary of State and conducted in consultation with the Secretaries of Commerce, Labor and the Treasury.

SEC. 5-202. *Reporting Functions.* The reporting functions of the President under section 825(d) of the Defense Authorization Act [10 U.S.C. 2532 note] are delegated to the Director of the Office of Management and Budget. The Director may further delegate to the heads of Executive departments and agencies responsibility for preparing particular sections of such reports. The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Director with such information as may be necessary for the effective performance of these functions.

SEC. 5-301. *International Trade Commission Report.* The functions vested in the President by section 332(g) of the Tariff Act [19 U.S.C. 1332(g)], regarding reports by the United States International Trade Commission to the President, are delegated to the United States Trade Representative.

SEC. 5-401. *Strengthening International Institutions.* To the extent possible, actions undertaken under this Order shall be conducted in a manner that strengthens international institutions that further United States objectives, such as opening foreign markets and preventing the export of strategic goods and technologies to proscribed destinations.

SEC. 5-501. *Effective Date.* This Order shall take effect at 12:01 a.m. on Wednesday, December 28, 1988.

§ 2902. Trade agreement negotiating authority

(a) Agreements regarding tariff barriers

(1) Whenever the President determines that one or more existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes, policies, and objectives of this title will be promoted thereby, the President—

(A) before June 1, 1993, may enter into trade agreements with foreign countries; and

(B) may, subject to paragraphs (2) through (5), proclaim—

(i) such modification or continuance of any existing duty,

(ii) such continuance of existing duty-free or excise treatment, or

(iii) such additional duties;

as he determines to be required or appropriate to carry out any such trade agreement.

(2) No proclamation may be made under subsection (a) that—

(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent ad valorem on August 23, 1988) to a rate which is less than 50 percent of the rate of such duty that applies on August 23, 1988; or

(B) increases any rate of duty above the rate that applies on August 23, 1988.

(3)(A) Except as provided in subparagraph (B), the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement entered into under paragraph (1) shall not exceed the aggregate reduction which would have been in effect on such day if a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed in paragraph (1) to carry out such agreement with respect to such article.

(B) No staging under subparagraph (A) is required with respect to a rate reduction that is proclaimed under paragraph (1) for an article of a kind that is not produced in the United States. The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this subparagraph.

(4) If the President determines that such action will simplify the computation of reductions under paragraph (3), the President may round an annual reduction by the lesser of—

(A) the difference between the reduction without regard to this paragraph and the next lower whole number; or

(B) one-half of 1 percent ad valorem.

(5) No reduction in a rate of duty under a trade agreement entered into under subsection (a) on any article may take effect more than 10 years after the effective date of the first reduction under paragraph (1) that is proclaimed to carry out the trade agreement with respect to such article.

(6) A rate of duty reduction or increase that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction or increase is included within an implementing bill provided for under section 2903 of this title and that bill is enacted into law.

(b) Agreements regarding nontariff barriers

(1) Whenever the President determines that any barrier to, or other distortion of, international trade—

(A) unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy; or

(B) the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect;

and that the purposes, policies, and objectives of this title will be promoted thereby, the President may, before June 1, 1993, enter into a trade agreement with foreign countries providing for—

(i) the reduction or elimination of such barrier or other distortion; or

(ii) the prohibition of, or limitations on the imposition of, such barrier or other distortion.

(2) A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 2901 of this title.

(c) Bilateral agreements regarding tariff and nontariff barriers

(1) Before June 1, 1993, the President may enter into bilateral trade agreements with for-

eign countries that provide for the elimination or reduction of any duty imposed by the United States. A trade agreement entered into under this paragraph may also provide for the reduction or elimination of barriers to, or other distortions of, the international trade of the foreign country or the United States.

(2) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country.

(3) A trade agreement may be entered into under paragraph (1) with any foreign country only if—

(A) the agreement makes progress in meeting the applicable objectives described in section 2901 of this title;

(B) such foreign country requests the negotiation of such an agreement; and

(C) the President, at least 60 days before the date notice is provided under section 2903(a)(1)(A) of this title—

(i) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

(ii) consults with such committees regarding the negotiation of such agreement.

(4) The 60-day period of time described in paragraph (3)(C) shall be computed in accordance with section 2903(e) of this title.

(5) In any case in which there is an inconsistency between any provision of this Act and any bilateral free trade area agreement that entered into force and effect with respect to the United States before January 1, 1987, the provision shall not apply with respect to the foreign country that is party to that agreement.

(d) Consultation with Congress before agreements entered into

(1) Before the President enters into any trade agreement under subsection (b) or (c), the President shall consult with—

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and

(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement.

(2) The consultation under paragraph (1) shall include—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, and objectives of this title; and

(C) all matters relating to the implementation of the agreement under section 2903 of this title.

(3) If it is proposed to implement two or more trade agreements in a single implementing bill under section 2903 of this title, the consultation under paragraph (1) shall include the desirability and feasibility of such proposed implementation.

(e) Special provisions regarding Uruguay Round trade negotiations

(1) In general

Notwithstanding the time limitations in subsections (a) and (b), if the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade has not resulted in trade agreements by May 31, 1993, the President may, during the period after May 31, 1993, and before April 16, 1994, enter into, under subsections (a) and (b) of this section, trade agreements resulting from such negotiations.

(2) Application of tariff proclamation authority

No proclamation under subsection (a) to carry out the provisions regarding tariff barriers of a trade agreement that is entered into pursuant to paragraph (1) may take effect before the effective date of a bill that implements the provisions regarding nontariff barriers of a trade agreement that is entered into under such paragraph.

(3) Application of implementing and “fast track” procedures

Section 2903 of this title applies to any trade agreement negotiated under subsection (b) pursuant to paragraph (1), except that—

(A) in applying subsection (a)(1)(A) of section 2903 of this title to any such agreement, the phrase “at least 120 calendar days before the day on which he enters into the trade agreement (but not later than December 15, 1993),” shall be substituted for the phrase “at least 90 calendar days before the day on which he enters into the trade agreement;” and

(B) no provision of subsection (b) of section 2903 of this title other than paragraph (1)(A) applies to any such agreement and in applying such paragraph, “April 16, 1994;” shall be substituted for “June 1, 1991;”.

(4) Advisory committee reports

The report required under section 2155(e)(1) of this title regarding any trade agreement provided for under paragraph (1) shall be provided to the President, the Congress, and the United States Trade Representative not later than 30 days after the date on which the President notifies the Congress under section 2903(a)(1)(A) of this title of his intention to enter into the agreement (but before January 15, 1994).

(Pub. L. 100-418, title I, § 1102, Aug. 23, 1988, 102 Stat. 1126; Pub. L. 101-382, title I, § 139(b), Aug. 20, 1990, 104 Stat. 653; Pub. L. 103-49, § 1, July 2, 1993, 107 Stat. 239.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(1), (b)(1), and (d)(2)(B), is title I (§1001 et seq.) of Pub. L. 100-418, see note below. For complete classification of this title to the Code, see Tables.

This Act, referred to in subsec. (c)(5), is Pub. L. 100-418, Aug. 23, 1988, 102 Stat. 1107, known as the Omnibus Trade and Competitiveness Act of 1988. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1993—Subsec. (e). Pub. L. 103-49 added subsec. (e).

1990—Subsec. (c)(4). Pub. L. 101-382 substituted “paragraph (3)(C)” for “paragraph (3)(B)” and “2903(e)” for “2903(f)”.

§ 2903. Implementation of trade agreements

(a) In general

(1) Any agreement entered into under section 2902(b) or (c) of this title shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 90 calendar days before the day on which he enters into the trade agreement, notifies the House of Representatives and the Senate of his intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) after entering into the agreement, the President submits a document to the House of Representatives and to the Senate containing a copy of the final legal text of the agreement, together with—

- (i) a draft of an implementing bill,
- (ii) a statement of any administrative action proposed to implement the trade agreement, and
- (iii) the supporting information described in paragraph (2); and

(C) the implementing bill is enacted into law.

(2) The supporting information required under paragraph (1)(B)(iii) consists of—

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(B) a statement—

- (i) asserting that the agreement makes progress in achieving the applicable purposes, policies, and objectives of this title,
- (ii) setting forth the reasons of the President regarding—

(I) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in clause (i), and why and to what extent the agreement does not achieve other applicable purposes, policies, and objectives,

(II) how the agreement serves the interests of United States commerce, and

(III) why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement;

(iii) describing the efforts made by the President to obtain international exchange rate equilibrium and any effect the agreement may have regarding increased international monetary stability; and

(iv) describing the extent, if any, to which—

(I) each foreign country that is a party to the agreement maintains non-commercial state trading enterprises that may adversely affect, nullify, or impair the benefits to the United States under the agreement, and

(II) the agreement applies to or affects purchases and sales by such enterprises.

(3) To ensure that a foreign country which receives benefits under a trade agreement entered

into under section 2902(b) or (c) of this title is subject to the obligations imposed by such agreement, the President shall recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(b) Application of Congressional “fast track” procedures to implementing bills

(1) Except as provided in subsection (c)—

(A) the provisions of section 2191 of this title (hereinafter in this section referred to as “fast track procedures”) apply to implementing bills submitted with respect to trade agreements entered into under section 2902(b) or (c) of this title before June 1, 1991; and

(B) such fast track procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under section 2902(b) or (c) of this title after May 31, 1991, and before June 1, 1993, if (and only if)—

(i) the President requests such extension under paragraph (2); and

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before June 1, 1991.

(2) If the President is of the opinion that the fast track procedures should be extended to implementing bills described in paragraph (1)(B), the President must submit to the Congress, no later than March 1, 1991, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under section 2902(b) or (c) of this title and the anticipated schedule for submitting such agreements to the Congress for approval;

(B) a description of the progress that has been made in multilateral and bilateral negotiations to achieve the purposes, policies, and objectives of this title, and a statement that such progress justifies the continuation of negotiations; and

(C) a statement of the reasons why the extension is needed to complete the negotiations.

(3) The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 2155 of this title of his decision to submit a report to Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but no later than March 1, 1991, a written report that contains—

(A) its views regarding the progress that has been made in multilateral and bilateral negotiations to achieve the purposes, policies, and objectives of this title; and

(B) a statement of its views, and the reasons therefor, regarding whether the extension re-