

**Editorial Notes**

## REFERENCES IN TEXT

Chapter 17 of this title, referred to in subsec. (a), was in the original “part 1 of subtitle A”, meaning part 1 (§§1101–1117) of subtitle A of title I of Pub. L. 100–418, Aug. 23, 1988, 102 Stat. 1121, which enacted chapter 17 (§2901 et seq.) of this title and amended sections 2131, 2133, and 2191 of this title. For complete classification of part 1 to the Code, see Tables.

**Executive Documents**

## DELEGATION OF FUNCTIONS

Functions of President under this section relating to certain telecommunications negotiations delegated to United States Trade Representative, see section 1–401 of Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of this title.

**§ 3105. Actions to be taken if no agreement obtained****(a) In general**

(1) If the President is unable, before the close of the negotiating period, to enter into an agreement under subtitle A with any priority foreign country identified under section 3103 of this title which achieves the general negotiating objectives described in section 3104(b) of this title as defined by the specific objectives established by the President for that country, the President shall take whatever actions authorized under subsection (b) that are appropriate and most likely to achieve such general negotiating objectives.

(2) In taking actions under paragraph (1), the President shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the President determines that actions against other economic sectors would be more effective in achieving the general negotiating objectives referred to in paragraph (1).

**(b) Actions authorized**

(1) The President is authorized to take any of the following actions under subsection (a) with respect to any priority foreign country:

(A) termination, withdrawal, or suspension of any portion of any trade agreement entered into with such country under—

- (i) the Trade Act of 1974 [19 U.S.C. 2101 et seq.],
- (ii) section 1821 of this title, or
- (iii) section 1351 of this title,

with respect to any duty or import restriction imposed by the United States on any telecommunications product;

(B) actions described in section 301 of the Trade Act of 1974 [19 U.S.C. 2411];

(C) prohibition of purchases by the Federal Government of telecommunications products of such country;

(D) increases in domestic preferences under chapter 83 of title 41 for purchases by the Federal Government of telecommunications products of such country;

(E) suspension of any waiver of domestic preferences under chapter 83 of title 41 which may have been extended to such country pursuant to the Trade Agreements Act of 1979

with respect to telecommunications products or any other products;

(F) issuance of orders to appropriate officers and employees of the Federal Government to deny Federal funds or Federal credits for purchases of the telecommunications products of such country; and

(G) suspension, in whole or in part, of benefits accorded articles of such country under title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.).

(2) Notwithstanding section 125 of the Trade Act of 1974 [19 U.S.C. 2135] and any other provision of law, if any portion of a trade agreement described in paragraph (1)(A) is terminated, withdrawn, or suspended under paragraph (1) with respect to any duty imposed by the United States on the products of a foreign country, the rate of such duty that shall apply to such products entered, or withdrawn from warehouse for consumption, after the date on which such termination, withdrawal, or suspension takes effect shall be a rate determined by the President.

**(c) Negotiating period**

(1) For purposes of this section, the term “negotiating period” means—

(A) with respect to a priority foreign country identified in the investigation conducted under section 3103(a) of this title, the 18-month period beginning on August 23, 1988, and

(B) with respect to any foreign country identified as a priority foreign country after the conclusion of such investigation, the 1-year period beginning on the date on which such identification is made.

(2)(A) The negotiating period with respect to a priority foreign country may be extended for not more than two 1-year periods.

(B) By no later than the date that is 15 days after the date on which the President extends the negotiating period with respect to any priority foreign country, the President shall submit to appropriate committees of the Congress a report on the status of negotiations with such country that includes—

- (i) a finding by the President that substantial progress is being made in negotiations with such country, and
- (ii) a statement detailing the reasons why an extension of such negotiating period is necessary.

**(d) Modification and termination authority**

The President may modify or terminate any action taken under subsection (a) if, after taking into consideration the factors described in section 3103(b) of this title, the President determines that changed circumstances warrant such modification or termination.

**(e) Report**

The President shall promptly inform the appropriate committees of the Congress of any action taken under subsection (a) or of the modification or termination of any such action under subsection (d).

(Pub. L. 100–418, title I, §1376, Aug. 23, 1988, 102 Stat. 1220.)

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## REFERENCES IN TEXT

Subtitle A, referred to in subsec. (a)(1), is subtitle A (§§1101–1125) of title I of Pub. L. 100–418, Aug. 23, 1988, 102 Stat. 1121. For complete classification of subtitle A to the Code, see Tables.

The Trade Act of 1974, referred to in subsec. (b)(1)(A)(i), (G), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, which is classified principally to chapter 12 (§2101 et seq.) of this title. Title V of the Trade Act of 1974 is classified generally to subchapter V (§2461 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.

The Trade Agreements Act of 1979, referred to in subsec. (b)(1)(E), is Pub. L. 96–39, July 26, 1979, 93 Stat. 144. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of this title and Tables.

## CODIFICATION

In subsec. (b)(1)(D), (E), “chapter 83 of title 41” substituted for “title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.)” on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

**Executive Documents**

## DELEGATION OF FUNCTIONS

Functions of President under subsec. (e) relating to reports to Congressional committees delegated to United States Trade Representative, see section 1–401 of Ex. Ord. No. 21661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of this title.

**§ 3106. Review of trade agreement implementation by Trade Representative****(a) In general**

(1) In conducting the annual analysis under section 181(a) of the Trade Act of 1974 (19 U.S.C. 2241), the Trade Representative shall review the operation and effectiveness of—

(A) each trade agreement negotiated by reason of this chapter that is in force with respect to the United States; and

(B) every other trade agreement regarding telecommunications products or services that is in force with respect to the United States.

(2) In each review conducted under paragraph (1), the Trade Representative shall determine whether any act, policy, or practice of the foreign country that has entered into the agreement described in paragraph (1)—

(A) is not in compliance with the terms of such agreement, or

(B) otherwise denies, within the context of the terms of such agreement, to telecommunications products and services of United States firms mutually advantageous market opportunities in that foreign country.

**(b) Review factors**

(1) In conducting reviews under subsection (a), the Trade Representative shall consider any evidence of actual patterns of trade (including United States exports to a foreign country of telecommunications products and services, including sales and services related to those products) that do not reflect patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such coun-

try based on the international competitive position and export potential of such products and services.

(2) The Trade Representative shall consult with the United States International Trade Commission with regard to the actual patterns of trade described in paragraph (1).

**(c) Action in response to affirmative determination**

(1) Any affirmative determination made by the Trade Representative under subsection (a)(2) with respect to any act, policy, or practice of a foreign country shall, for purposes of chapter 1 of title III of the Trade Act of 1974 [19 U.S.C. 2411 et seq.], be treated as an affirmative determination under section 304(a)(1)(A) of such Act [19 U.S.C. 2414(a)(1)(A)] that such act, policy, or practice violates a trade agreement.

(2) In taking actions under section 301 [19 U.S.C. 2411] by reason of paragraph (1), the Trade Representative shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the Trade Representative determines that actions against other economic sectors would be more effective in achieving compliance by the foreign country with the trade agreement that is the subject of the affirmative determination made under subsection (a)(2).

(Pub. L. 100–418, title I, §1377, Aug. 23, 1988, 102 Stat. 1222.)

**Editorial Notes**

## REFERENCES IN TEXT

The Trade Act of 1974, referred to in subsec. (c)(1), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 1 of title III of the Trade Act of 1974 is classified generally to subchapter III (§2411 et seq.) of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

**§ 3107. Compensation authority**

If—

(1) the President has taken action under section 3105(a) of this title with respect to any foreign country, and

(2) such action is found to be inconsistent with the international obligations of the United States, including the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 3501 of this title),

the President may enter into trade agreements with such foreign country for the purpose of granting new concessions as compensation for such action in order to maintain the general level of reciprocal and mutually advantageous concessions.

(Pub. L. 100–418, title I, §1378, Aug. 23, 1988, 102 Stat. 1222; Pub. L. 103–465, title VI, §621(a)(6), Dec. 8, 1994, 108 Stat. 4993.)

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## AMENDMENTS

1994—Par. (2). Pub. L. 103–465 substituted “the WTO Agreement and the multilateral trade agreements (as