

United States under trade agreements entered into under this chapter, for the commerce of such country in the United States.

(c) Major industrial countries

For purposes of this section, “major industrial country” means Canada, the European Economic Community, the individual member countries of such Community, Japan, and any other foreign country designated by the President for purposes of this subsection.

(Pub. L. 93-618, title I, § 126, Jan. 3, 1975, 88 Stat. 1992; Pub. L. 105-362, title XIV, § 1401(b)(1), Nov. 10, 1998, 112 Stat. 3294.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original “this Act”, meaning Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. 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

1998—Subsecs. (c), (d), Pub. L. 105-362 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to recommendations to Congress for legislation following a Presidential determination that a major industrial country failed to grant equivalent concessions.

§ 2137. Reservation of articles for national security or other reasons

(a) National security considerations

No proclamation shall be made pursuant to the provisions of this chapter reducing or eliminating the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) Action taken under other laws

While there is in effect with respect to any article any action taken under section 2253 of this title, or section 1862 or 1981 of this title, the President shall reserve such article from negotiations under this subchapter (and from any action under section 2132(c) of this title) contemplating reduction or elimination of—

(A) any duty on such article,

(B) any import restriction imposed under such section, or

(C) any other import restriction, the removal of which will be likely to undermine the effect of the import restrictions referred to in subparagraph (B).

In addition, the President shall also so reserve any other article which he determines to be appropriate, taking into consideration information and advice available pursuant to and with respect to the matters covered by sections 2151, 2152, and 2153 of this title, where applicable.

(Pub. L. 93-618, title I, § 127(a), (b), Jan. 3, 1975, 88 Stat. 1993.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 127 of act Jan. 3, 1975. Subsec. (c) of such section was classified to section 1863 of this title, prior to its repeal by Pub. L. 100-418, title I, § 1501(b)(2), Aug. 23, 1988, 102 Stat. 1259, and subsec. (d) amended section 1862 of this title.

§ 2138. Omitted

CODIFICATION

Section, Pub. L. 93-618, title I, § 128, as added Pub. L. 98-573, title III, § 308(b)(1), Oct. 30, 1984, 98 Stat. 3013; amended Pub. L. 99-514, title XVIII, § 1887(b)(1), Oct. 22, 1986, 100 Stat. 2924; Pub. L. 100-418, title I, §§ 1214(j)(1), 1215, Aug. 23, 1988, 102 Stat. 1158, 1163; Pub. L. 100-647, title IX, § 9001(a)(3), Nov. 10, 1988, 102 Stat. 3806, related to modification and continuance of treatment with respect to duties on high technology products, was omitted pursuant to subsec. (c) which provided that the President could exercise authority under this section only during the 5-year period beginning on Oct. 30, 1984.

PART 3—HEARINGS AND ADVICE CONCERNING
NEGOTIATIONS

§ 2151. Advice from International Trade Commission

(a) Lists of articles which may be considered for action

(1) In connection with any proposed trade agreement under section 2133 of this title or section 3803(a) or (b) of this title, the President shall from time to time publish and furnish the International Trade Commission (hereafter in this section referred to as the “Commission”) with lists of articles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate of duty, the list shall specify the provision of this subchapter under which such consideration may be given.

(2) In connection with any proposed trade agreement under section 3803(b) of this title, the President may from time to time publish and furnish the Commission with lists of nontariff matters which may be considered for modification.

(b) Advice to President by Commission

Within 6 months after receipt of a list under subsection (a) of this section or, in the case of a list submitted in connection with a trade agreement, within 90 days after receipt of such list, the Commission shall advise the President, with respect to each article or nontariff matter, of its judgment as to the probable economic effect of modification of the tariff or nontariff measure on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States interests, such as sectors involved in manufacturing, agriculture, mining, fishing, services, intellectual property, investment, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period of time than the mini-

imum period provided for in section 3803(a)(3)(A) of this title.

(c) Additional investigations and reports requested by President or Trade Representative

In addition, in order to assist the President in his determination whether to enter into any agreement under section 2133 of this title or section 3803 of this title, or how to develop trade policy, priorities or other matters (such as priorities for actions to improve opportunities in foreign markets), the Commission shall make such investigations and reports as may be requested by the President or the United States Trade Representative on matters such as effects of modification of any barrier to (or other distortion of) international trade on domestic workers, industries or sectors, purchasers, prices and quantities of articles in the United States.

(d) Commission steps in preparing its advice to President

In preparing its advice to the President under this section, the Commission shall to the extent practicable—

(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles or services in question and the domestic industries producing the like or directly competitive articles or services;

(2) analyze the production, trade, and consumption of each like or directly competitive article or service, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production;

(3) describe the probable nature and extent of any significant change in employment, profit levels, and use of productive facilities; the overall impact of such or other possible changes on the competitiveness of relevant domestic industries or sectors; and such other conditions as it deems relevant in the domestic industries or sectors concerned which it believes such modifications would cause; and

(4) make special studies (including studies of real wages paid in foreign supplying countries), whenever deemed to be warranted, of particular proposed modifications affecting United States manufacturing, agriculture, mining, fishing, labor, consumers, services, intellectual property and investment, using to the fullest extent practicable United States Government facilities abroad and appropriate personnel of the United States.

(e) Public hearings

In preparing its advice to the President under this section, the Commission shall, after reasonable notice, hold public hearings.

(Pub. L. 93-618, title I, §131, Jan. 3, 1975, 88 Stat. 1994; Pub. L. 100-418, title I, §1111(a), Aug. 23, 1988, 102 Stat. 1135; Pub. L. 107-210, div. B, title XXI, §2110(a)(2), Aug. 6, 2002, 116 Stat. 1019.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107-210, §2110(a)(2)(A)(i), substituted “section 2133 of this title or section 3803(a) or (b) of this title,” for “section 2133 of this title or section 2902(a) or (c) of this title.”

Subsec. (a)(2). Pub. L. 107-210, §2110(a)(2)(A)(ii), substituted “section 3803(b) of this title” for “section 2902(b) or (c) of this title”.

Subsec. (b). Pub. L. 107-210, §2110(a)(2)(B), substituted “section 3803(a)(3)(A) of this title” for “section 2902(a)(3)(A) of this title”.

Subsec. (c). Pub. L. 107-210, §2110(a)(2)(C), substituted “section 3803 of this title,” for “section 2902 of this title.”

1988—Pub. L. 100-418 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), lists of articles which could be considered for modification or continuance of duties, duty-free or excise treatment, or additional duties; in subsec. (b), advice to President following receipt of list by Commission; in subsec. (c), additional investigations and reports requested by President; in subsec. (d), Commission steps in preparing its advice to President; and in subsec. (e), public hearings.

DELEGATION OF AUTHORITY

For delegation of functions of President under div. B of Pub. L. 107-210, amending this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§2152. Advice from executive departments and other sources

Before any trade agreement is entered into under section 2133 of this title or section 3803 of this title, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate. Such advice shall be prepared and presented consistent with the provisions of Reorganization Plan Number 3 of 1979, Executive Order Number 12188 and section 2171(c) of this title.

(Pub. L. 93-618, title I, §132, Jan. 3, 1975, 88 Stat. 1995; Pub. L. 100-418, title I, §1111(a), Aug. 23, 1988, 102 Stat. 1137; Pub. L. 107-210, div. B, title XXI, §2110(a)(3), Aug. 6, 2002, 116 Stat. 1020.)

REFERENCES IN TEXT

Reorganization Plan Number 3 of 1979, referred to in text, is set out as a note under section 2171 of this title.

Executive Order Number 12188, referred to in text, is set out as a note under section 2171 of this title.

AMENDMENTS

2002—Pub. L. 107-210 substituted “section 3803 of this title,” for “section 2902 of this title.”

1988—Pub. L. 100-418 amended section generally. Prior to amendment, section read as follows: “Before any trade agreement is entered into under part 1 of this subchapter or section 2133 or 2134 of this title, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate.”

DELEGATION OF AUTHORITY

For delegation of functions of President under div. B of Pub. L. 107-210, amending this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§ 2153. Public hearings**(a) Opportunity for presentation of views**

In connection with any proposed trade agreement under section 2133 of this title or section 3803 of this title, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published under section 2151 of this title, any matter or article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings. When appropriate, such procedures shall apply to the development of trade policy and priorities.

(b) Summary of hearings

The organization holding such hearing shall furnish the President with a summary thereof.

(Pub. L. 93-618, title I, § 133, Jan. 3, 1975, 88 Stat. 1995; Pub. L. 100-418, title I, § 1111(a), Aug. 23, 1988, 102 Stat. 1137; Pub. L. 107-210, div. B, title XXI, § 2110(a)(3), Aug. 6, 2002, 116 Stat. 1020.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-210 substituted “section 3803 of this title,” for “section 2902 of this title.”

1988—Pub. L. 100-418 amended section generally. Prior to amendment, section read as follows:

“(a) In connection with any proposed trade agreement under part 1 of this subchapter or section 2133 or 2134 of this title, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published pursuant to section 2151 of this title, any article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings.

“(b) The organization holding such hearings shall furnish the President with a summary thereof.”

DELEGATION OF AUTHORITY

For delegation of functions of President under div. B of Pub. L. 107-210, amending this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§ 2154. Prerequisites for offers

(a) In any negotiation seeking an agreement under section 2133 of this title or section 3803 of this title, the President may make a formal offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restrictions, or other barrier to (or other distortion of) international trade including trade in services, foreign direct investment and intellectual property as covered by this subchapter, with respect to any article or matter only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been af-

forded under section 2153 of this title. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 2151(a) of this title, only after he has received advice concerning such article from the Commission under section 2151(b) of this title, or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

(b) In determining whether to make offers described in subsection (a) of this section in the course of negotiating any trade agreement under section 3803 of this title, and in determining the nature and scope of such offers, the President shall take into account any advice or information provided, or reports submitted, by—

(1) the Commission;

(2) any advisory committee established under section 2155 of this title; or

(3) any organization that holds public hearings under section 2153 of this title;

with respect to any article, or domestic industry, that is sensitive, or potentially sensitive, to imports.

(Pub. L. 93-618, title I, § 134, Jan. 3, 1975, 88 Stat. 1995; Pub. L. 100-418, title I, § 1111(a), Aug. 23, 1988, 102 Stat. 1137; Pub. L. 107-210, div. B, title XXI, § 2110(a)(3), (4), Aug. 6, 2002, 116 Stat. 1020.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-210, § 2110(a)(3), substituted “section 3803 of this title,” for “section 2902 of this title.”

Subsec. (b). Pub. L. 107-210, § 2110(a)(4), substituted “section 3803 of this title” for “section 2902 of this title” in introductory provisions.

1988—Pub. L. 100-418 amended section generally. Prior to amendment, section read as follows: “In any negotiations seeking an agreement under part 1 of this subchapter or section 2133 or 2134 of this title, the President may make an offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restriction, or other barrier to (or other distortion of) international trade, with respect to any article only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 2153 of this title. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 2151(a) of this title, only after he has received advice concerning such article from the International Trade Commission under section 2151(b) of this title, or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.”

DELEGATION OF AUTHORITY

For delegation of functions of President under div. B of Pub. L. 107-210, amending this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

§ 2155. Information and advice from private and public sectors

(a) In general

(1) The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) negotiating objectives and bargaining positions before entering into a trade agreement under this subchapter or section 3803 of this title;

(B) the operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order Numbered 12188, and the priorities for actions thereunder.

To the maximum extent feasible, such information and advice on negotiating objectives shall be sought and considered before the commencement of negotiations.

(2) The President shall consult with representative elements of the private sector and the non-Federal governmental sector on the overall current trade policy of the United States. The consultations shall include, but are not limited to, the following elements of such policy:

(A) The principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement.

(B) The implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(C) The actions taken under the trade laws of the United States and the effectiveness of such actions in achieving trade policy objectives.

(D) Important developments in other areas of trade for which there must be developed a proper policy response.

(3) The President shall take the advice received through consultation under paragraph (2) into account in determining the importance which should be placed on each major objective and negotiating position that should be adopted in order to achieve the overall trade policy of the United States.

(b) Advisory Committee for Trade Policy and Negotiations

(1) The President shall establish an Advisory Committee for Trade Policy and Negotiations to provide overall policy advice on matters referred to in subsection (a) of this section. The committee shall be composed of not more than 45 individuals and shall include representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations, and consumer interests. The committee shall be broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade. Mem-

bers of the committee shall be recommended by the United States Trade Representative and appointed by the President for a term of 4 years or until the committee is scheduled to expire. An individual may be reappointed to committee for any number of terms. Appointments to the Committee¹ shall be made without regard to political affiliation.

(2) The committee shall meet as needed at the call of the United States Trade Representative or at the call of two-thirds of the members of the committee. The chairman of the committee shall be elected by the committee from among its members.

(3) The United States Trade Representative shall make available to the committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

(c) General policy, sectoral, or functional advisory committees

(1) The President may establish individual general policy advisory committees for industry, labor, agriculture, services, investment, defense, and other interests, as appropriate, to provide general policy advice on matters referred to in subsection (a) of this section. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, service, investment, defense, and other interests, respectively, including small business interests, and shall be organized by the United States Trade Representative and the Secretaries of Commerce, Defense, Labor, Agriculture, the Treasury, or other executive departments, as appropriate. The members of such committees shall be appointed by the United States Trade Representative in consultation with such Secretaries.

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) consult with interested private organizations; and

(B) take into account such factors as—

(i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) the character of the nontariff barriers and other distortions affecting such competition,

(iii) the necessity for reasonable limits on the number of such advisory committees,

(iv) the necessity that each committee be reasonably limited in size, and

(v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

(3) The President—

¹ So in original. Probably should not be capitalized.

(A) may, if necessary, establish policy advisory committees representing non-Federal governmental interests to provide policy advice—

- (i) on matters referred to in subsection (a) of this section, and
- (ii) with respect to implementation of trade agreements, and

(B) shall include as members of committees established under subparagraph (A) representatives of non-Federal governmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representative with such representatives.

(4) Appointments to each committee established under paragraph (1), (2), or (3) shall be made without regard to political affiliation.

(d) Policy, technical, and other advice and information

Committees established under subsection (c) of this section shall meet at the call of the United States Trade Representative and the Secretaries of Agriculture, Commerce, Labor, Defense, or other executive departments, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a) of this section.

(e) Meeting of advisory committees at conclusion of negotiations

(1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under section 3803 of this title, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. Each report that applies to a trade agreement entered into under section 3803 of this title shall be provided under the preceding sentence not later than the date on which the President notifies the Congress under section 3805(a)(1)(A) of this title of his intention to enter into that agreement.

(2) The report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in section 3802 of this title, as appropriate.

(3) The report of the appropriate sectoral or functional committee under paragraph (1) shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

(f) Application of Federal Advisory Committee Act

The provisions of the Federal Advisory Committee Act apply—

- (1) to the Advisory Committee for Trade Policy and Negotiations established under subsection (b) of this section; and
- (2) to all other advisory committees which may be established under subsection (c) of this section, except that—

(A) the meetings of advisory committees established under subsections (b) and (c) of this section shall be exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or the President's designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives, or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section; and

(B) notwithstanding subsection (a)(2) of section 14 of the Federal Advisory Committee Act, any committee established under subsection (b) or (c) of this section may, in the discretion of the President or the President's designee, terminate not later than the expiration of the 4-year period beginning on the date of its establishment.

(g) Trade secrets and confidential information

(1) Trade secrets and commercial or financial information which is privileged or confidential, and which is submitted in confidence by the private sector or non-Federal government to officers or employees of the United States in connection with trade negotiations, may be disclosed upon request to—

(A) officers and employees of the United States designated by the United States Trade Representative;

(B) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are designated as official advisers under section 2211(a)(1) of this title or are designated by the chairmen of either such committee under section 2211(b)(3)(A) of this title and staff members of either such committee designated by the chairmen under section 2211(b)(3)(A) of this title; and

(C) members of any committee of the House or Senate or any joint committee of Congress who are designated as advisers under section 2211(a)(2) of this title or designated by the chairman of such committee under section 2211(b)(3)(B) of this title and staff members of such committee designated under section 2211(b)(3)(B) of this title, but disclosure may be made under this subparagraph only with respect to trade secrets or commercial or financial information that is relevant to trade policy matters or negotiations that are within the legislative jurisdiction of such committee;

for use in connection with matters referred to in subsection (a) of this section.

(2) Information other than that described in paragraph (1), and advice submitted in confidence by the private sector or non-Federal government to officers or employees of the United

States, to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c) of this section, in connection with matters referred to in subsection (a) of this section, may be disclosed upon request to—

(A) the individuals described in paragraph (1); and

(B) the appropriate advisory committee established under this section.

(3) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c) of this section, may be disclosed in accordance with rules issued by the United States Trade Representative and the Secretaries of Commerce, Labor, Defense, Agriculture, or other executive departments, as appropriate, after consultation with the relevant advisory committees established under subsection (c) of this section. Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice the development of trade policy, priorities, or United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a) of this section.

(h) Advisory committee support

The United States Trade Representative, and the Secretaries of Commerce, Labor, Defense, Agriculture, the Treasury, or other executive departments, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established under subsection (c) of this section as such committees may reasonably require to carry out their activities.

(i) Consultation with advisory committees; procedures; nonacceptance of committee advice or recommendations

It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established under subsection (c) of this section on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to—

(1) significant issues and developments; and

(2) overall negotiating objectives and positions of the United States and other parties;

with respect to matters referred to in subsection (a) of this section. The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees, but shall inform the advisory committees of significant departures from such advice or recommendations made. In addition, in the course of consultations with the Congress under this subchapter, information on the advice and informa-

tion provided by advisory committees shall be made available to congressional advisers.

(j) Private organizations or groups

In addition to any advisory committee established under this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal basis (and, if such information is submitted under the provisions of subsection (g) of this section, on a confidential basis) by private organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data and other trade information, as well as policy recommendations, pertinent to any matter referred to in subsection (a) of this section.

(k) Scope of participation by members of advisory committees

Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a) of this section. To the maximum extent practicable, the members of the committees established under subsections (b) and (c) of this section, and other appropriate parties, shall be informed and consulted before and during any such negotiations. They may be designated as advisors to a negotiating delegation, and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate. However, they may not speak or negotiate for the United States.

(l) Advisory committees established by Department of Agriculture

The provisions of title XVIII of the Food and Agriculture Act of 1977 (7 U.S.C. 2281 et seq.) shall not apply to any advisory committee established under subsection (c) of this section.

(m) “Non-Federal government” defined

As used in this section, the term “non-Federal government” means—

(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof; or

(2) any agency or instrumentality of any entity described in paragraph (1).

(Pub. L. 93-618, title I, § 135, Jan. 3, 1975, 88 Stat. 1996; Pub. L. 96-39, title XI, § 1103, July 26, 1979, 93 Stat. 308; Pub. L. 98-573, title III, § 306(c)(2)(B), Oct. 30, 1984, 98 Stat. 3011; Pub. L. 99-514, title XVIII, § 1887(a)(2), Oct. 22, 1986, 100 Stat. 2923; Pub. L. 100-418, title I, § 1631, Aug. 23, 1988, 102 Stat. 1264; Pub. L. 103-465, title I, §§ 127(f), 128, Dec. 8, 1994, 108 Stat. 4836; Pub. L. 107-210, div. B, title XXI, § 2110(a)(5), Aug. 6, 2002, 116 Stat. 1020; Pub. L. 108-429, title II, § 2004(i)(1), (2), Dec. 3, 2004, 118 Stat. 2594, 2595; Pub. L. 109-280, title XIV, § 1635(f)(2), Aug. 17, 2006, 120 Stat. 1171.)

REFERENCES IN TEXT

Reorganization Plan Number 3 of 1979, referred to in subsec. (a)(1)(C), is set out as a note under section 2171 of this title.

Executive Order Numbered 12188, referred to in subsec. (a)(1)(C), is set out as a note under section 2171 of this title.

The Federal Advisory Committee Act, referred to in subsec. (f), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as

amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Food and Agriculture Act of 1977, referred to in subsec. (l), is Pub. L. 95-113, Sept. 29, 1977, 91 Stat. 913, as amended. Title XVIII of the Act is classified generally to chapter 55A (§2281 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 1281 of Title 7 and Tables.

AMENDMENTS

2006—Subsec. (f)(2)(B). Pub. L. 109-280 substituted “its establishment” for “their establishment”.

2004—Subsec. (b)(1). Pub. L. 108-429, §2004(i)(2), substituted “4 years or until the committee is scheduled to expire” for “2 years”.

Subsec. (f)(2). Pub. L. 108-429, §2004(i)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “to all other advisory committees which may be established under subsection (c) of this section; except that the meetings of advisory committees established under subsections (b) and (c) of this section shall be exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section.”

2002—Subsec. (a)(1)(A). Pub. L. 107-210, §2110(a)(5)(A), substituted “section 3803 of this title” for “section 2902 of this title”.

Subsec. (e)(1). Pub. L. 107-210, §2110(a)(5)(B), substituted “section 3803 of this title” for “section 2902 of this title” in two places and “section 3805(a)(1)(A) of this title” for “section 2903(a)(1)(A) of this title”.

Subsec. (e)(2). Pub. L. 107-210, §2110(a)(5)(C), substituted “section 3802 of this title” for “section 2901 of this title”.

1994—Subsec. (a)(1)(B). Pub. L. 103-465, §127(f), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the operation of any trade agreement once entered into; and”.

Subsec. (b)(1). Pub. L. 103-465, §128, inserted “non-governmental environmental and conservation organizations,” after “retailers.”

1988—Pub. L. 100-418 amended section generally, substituting present provisions for provisions which, in the following subsections, had related to: subsec. (a), information and advice on trade agreements and other matters; subsec. (b), Advisory Committee for Trade Negotiations; subsec. (c), general policy, sectoral, functional, or policy advisory committees; subsec. (d), policy advice, technical advice and information, and other advice; subsec. (e), meeting of advisory committees at conclusion of negotiations for trade agreements; subsec. (f), Federal Advisory Committee Act; subsec. (g), trade secrets and confidential commercial, financial, or other information; subsec. (h), staff, information, personnel, and administrative services and assistance to advisory committees; subsec. (i), consultation with advisory committees; adoption of procedures; nonacceptance of committee advice or recommendations; subsec. (j), private or non-Federal government organizations or groups; subsec. (k), direct participation in negotiations by private individuals not authorized; information, consultation, participation of committee members and appropriate parties in international meetings; restrictions; subsec. (l), advisory committees established by Department of Agriculture; and subsec. (m), definition of “non-Federal government”.

1986—Subsecs. (m), (n). Pub. L. 99-514 redesignated subsec. (n) as (m).

1984—Subsec. (a). Pub. L. 98-573, §306(c)(2)(B)(i), inserted “and the non-Federal governmental sector” after “private sector”.

Subsec. (c)(3). Pub. L. 98-573, §306(c)(2)(B)(ii), added par. (3).

Subsec. (g)(1)(A), (B). Pub. L. 98-573, §306(c)(2)(B)(iii), inserted “or non-Federal government” after “private”.

Subsec. (j). Pub. L. 98-573, §306(c)(2)(B)(iii), (iv), inserted “or non-Federal government” after “private” and “government,” before “labor, industry”.

Subsec. (n). Pub. L. 98-573, §306(c)(2)(B)(v), added subsec. (n).

1979—Subsec. (a). Pub. L. 96-39, §1103(1), (2), struck out “, in accordance with the provisions of this section,” after “President” and required the seeking of information and advice respecting operation of a trade agreement once entered into and respecting other matters arising in connection with the administration of trade policy of the United States.

Subsec. (b)(1). Pub. L. 96-39, §1103(3), substituted “matters referred to in subsection (a) of this section” for “any trade agreement referred to in section 2111 or 2112 of this title”.

Subsec. (b)(2). Pub. L. 96-39, §1103(4), substituted requirement that the members elect the Chairman of the Committee from among its membership for provision designating the Special Representative as Chairman and struck out provision for termination of the Committee upon submission of its report to Congress as soon as practical after the end of the period which ends 5 years after Jan. 3, 1975.

Subsec. (c)(1). Pub. L. 96-39, §1103(5), inserted a comma after “initiative”, included references to “services”, and substituted “general policy advice on matters referred to in subsection (a) of this section” for “general policy advice on any trade agreement referred to in section 2111 or 2112 of this title”, “Special Representative for Trade Negotiations” for “President acting through the Special Representative for Trade Negotiations” and “or Agriculture” for “and Agriculture”.

Subsec. (c)(2). Pub. L. 96-39, §1103(6)–(9), substituted “The President shall establish such sectoral or functional advisory committees as may be appropriate” for “The President shall, on his own initiative or at the request of organizations in a particular sector, establish such industry, labor, or agricultural sector advisory committees as he determines to be necessary for any trade negotiations referred to in section 2111 or 2112 of this title” and “Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned” for “Such committees shall, so far as practicable, be representative of all industry, labor, or agricultural interests including small business interests in the sector concerned” and “the Special Representative for Trade Negotiations” for “the President, acting through the Special Representative for Trade Negotiations”, struck out “product sector” before “advisory committees”, and inserted “, in the case of each sectoral committee,” before “the product lines”.

Subsec. (d). Pub. L. 96-39, §1103(10), required committee meetings to be also summoned at joint instance of Secretary of Agriculture, Commerce, or Labor, as appropriate, previously required to be called before and during trade negotiations, struck out item (1) through (3) designation for “policy advice”, “technical advice” and “advice on other factors”, struck out “on negotiations” and “on negotiations on particular products both domestic and foreign” after “policy advice” and “technical advice and information” and substituted “factors relevant to the matters referred to in subsection (a) of this section” for “factors relevant to positions of the United States in trade negotiations.”

Subsec. (e). Pub. L. 96-39, §1103(11)–(14), redesignated par. (1) as entire provision, and in provision as so redesignated, substituted “each sector or functional advisory committee, if the sector or area” for “each sector advisory committee, if the sector”, “appropriate sector or functional area” for “appropriate sector”, and

“within the sector or within the functional area” for “within the sector”, and struck out par. (2) which required a report to Congress by the Advisory Committee for Trade Negotiations by each policy advisory committee, and, each sector advisory committee as soon as practicable at end of the period ending 5 years after Jan. 3, 1975, including advisory opinions of the respective committees as to how the trade agreements serve the economic interests of United States and how provision is made for equity and reciprocity within the sector.

Subsec. (f)(2). Pub. L. 96-39, §1103(15)(A), (B), substituted “committees” for “groups” and “with respect to matters referred to in subsection (a) of this section” for “on the negotiation of any trade agreement”.

Subsec. (g). Pub. L. 96-39, §1103(16), (17)(A), (B), substituted in par. (1)(A) “matters referred to in subsection (a) of this section” for “a trade agreement referred to in section 2111 or 2112 of this title”, in par. (1)(B) “matters referred to in subsection (a) of this section” for “trade negotiations”, and in par. (2) “matters referred to in subsection (a) of this title” for “proposed trade agreements”.

Subsec. (i). Pub. L. 96-39, §1103(18)(A)–(C), struck out in provision before cl. (1) “, both during preparation for negotiations and actual negotiations” after “basis” and in cl. (1) “arising in preparation for or in the course of such negotiations” after “developments” and substituted in cl. (2) “with respect to matters referred to in subsection (a) of this section” for “to the negotiations”.

Subsec. (j). Pub. L. 96-39, §1103(19), substituted “matters referred to in subsection (a) of this section” for “trade agreement referred to in section 2111 or 2112 of this title”.

Subsec. (k). Pub. L. 96-39, §1103(19), (20), substituted “matters referred to in subsection (a) of this section” for “trade agreement referred to in section 2111 or 2112 of this title” and provided for information to and consultations with committee members and appropriate parties and participation in international meetings without becoming spokesmen or negotiators for the United States.

Subsec. (l). Pub. L. 96-39, §1103(21), added subsec. (l).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Aug. 17, 2006, see section 1641 of Pub. L. 109-280, set out as a note under section 58c of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-429, title II, §2004(i)(3), Dec. 3, 2004, 118 Stat. 2595, provided that: “The amendments made by this subsection [amending this section] shall take effect on February 1, 2006.”

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 130 of Pub. L. 103-465, set out as an Effective Date note under section 3531 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective July 26, 1979, see section 1114 of Pub. L. 96-39, set out as an Effective Date note under section 2581 of this title.

DELEGATION OF AUTHORITY

For delegation of functions of President under div. B of Pub. L. 107-210, amending this section, see section 1 of Ex. Ord. No. 13277, Nov. 19, 2002, 67 F.R. 70305, set out as a note under section 3801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147

and 1171-1177] or title XVIII [§§1801-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

EX. ORD. NO. 12905. TRADE AND ENVIRONMENT POLICY ADVISORY COMMITTEE

Ex. Ord. No. 12905, Mar. 25, 1994, 59 F.R. 14733, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and section 135(c)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2155(c)(1)) (“Act”), it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established in the Office of the United States Trade Representative (“Trade Representative”) the “Trade and Environment Policy Advisory Committee” (“Committee”).

SEC. 2. *Membership.* (a) The Committee shall consist of not more than 35 members, including, but not limited to, representatives from environmental interest groups, industry (including the environmental technology and environmental services industries), agriculture, services, non-Federal government, and consumer interests. The Committee should be broadly representative of the key sectors and groups of the economy with an interest in trade and environmental policy issues.

(b) The Chairman of the Committee shall be elected by the Committee from among its members. Members of the Committee shall be appointed by the Trade Representative, in consultation with the Cabinet secretaries described in section 2155(c)(1) of title 19, United States Code, for a term of 2 years and may be reappointed for any number of terms. Appointments to the Committee shall be made without regard to political affiliation. Any member may be removed at the discretion of the Trade Representative.

SEC. 3. *Functions.* (a) The Committee shall provide the Trade Representative with policy advice on issues involving trade and the environment.

(b) The Committee shall submit a report to the President, to the Congress, and to the Trade Representative at the conclusion of negotiations for each trade agreement referred to in section 102 of the Act [19 U.S.C. 2112]. The report shall include an advisory opinion on whether and to what extent the agreement promotes the interests of the United States.

(c) The Committee may establish such subcommittees of its members as it deems necessary, subject to the provisions of the Federal Advisory Committee Act and the approval of the Trade Representative, or his designee.

(d) The Committee shall report its activities to the Trade Representative, or his designee.

SEC. 4. *Administration.* (a) The Trade Representative, or his designee, with the advice of the Chairman, shall be responsible for prior approval of the agendas for all Committee meetings.

(b) The Trade Representative, or his designee, shall be responsible for determinations, filings, and other administrative requirements of the Federal Advisory Committee Act.

(c)(1) The Trade Representative shall provide funding and administrative and staff support for the Committee.

(2) The Committee shall have an Executive Director who shall be a Federal officer or employee designated by the Trade Representative.

(d) Members of the Committee shall serve without either compensation or reimbursement of expenses.

(e) The Committee shall meet as needed at the call of the Trade Representative or his designee, depending on various factors such as the level of activity of trade negotiations and the needs of the Trade Representative, or at the call of two-thirds of the members of the Committee.

SEC. 5. *General.* The Committee shall function for such period as may be necessary. In accordance with the Federal Advisory Committee Act [5 U.S.C. App.], the Committee shall terminate after 2 years from the date of this order unless otherwise extended.

WILLIAM J. CLINTON.

EXTENSION OF TERM OF TRADE AND ENVIRONMENT POLICY ADVISORY COMMITTEE

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 1999, by Ex. Ord. No. 13062, §1(o), Sept. 29, 1997, 62 F.R. 51755, formerly set out under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of Trade and Environment Policy Advisory Committee extended until Sept. 30, 2009, by Ex. Ord. No. 13446, Sept. 28, 2007, 72 F.R. 56175, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

PART 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

AMENDMENTS

1983—Pub. L. 97-456, §3(d)(3), Jan. 12, 1983, 96 Stat. 2505, substituted “United States Trade Representative” for “Special Representative for Trade Negotiations” in part 4 heading.

§ 2171. Structure, functions, powers, and personnel

(a) Establishment within Executive Office of the President

There is established within the Executive Office of the President the Office of the United States Trade Representative (hereinafter in this section referred to as the “Office”).

(b) United States Trade Representative; Deputy United States Trade Representatives

(1) The Office shall be headed by the United States Trade Representative who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative shall hold office at the pleasure

of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(2) There shall be in the Office three Deputy United States Trade Representatives and one Chief Agricultural Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy United States Trade Representative or the Chief Agricultural Negotiator submitted to the Senate for its advice and consent, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative and the Chief Agricultural Negotiator shall hold office at the pleasure of the President and shall have the rank of Ambassador.

(3) A person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of title 18) in any trade negotiation, or trade dispute, with the United States may not be appointed as United States Trade Representative or as a Deputy United States Trade Representative.

(c) Duties of United States Trade Representative and Deputy United States Trade Representatives

(1) The United States Trade Representative shall—

(A) have primary responsibility for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters, and, to the extent they are related to international trade policy, direct investment matters;

(B) serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade;

(C) have lead responsibility for the conduct of, and shall be the chief representative of the United States for, international trade negotiations, including all negotiations on any matter considered under the auspices of the World Trade Organization, commodity and direct investment negotiations, in which the United States participates;

(D) issue and coordinate policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of international trade functions, including any matter considered under the auspices of the World Trade Organization, to the extent necessary to assure the coordination of international trade policy and consistent with any other law;

(E) act as the principal spokesman of the President on international trade;

(F) report directly to the President and the Congress regarding, and be responsible to the President and the Congress for the administration of, trade agreements programs;

(G) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs;