sible, the laundering in that country of drug-related profits or drug-related monies, as evidence by—

"(i) the enactment and enforcement of laws prohibiting such conduct,

"(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts; and

"(C) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, corruption by government officials, with particular emphasis on the elimination of bribery."

Subsec. (b)(3), (4). Pub. L. 100–690, § 4408(b), substituted "45 days" for "30 days" wherever appearing.

Subsec. (e). Pub. L. 100–690, § 4408(c), added subsec. (e).

1987—Subsec. (a)(4) to (6). Pub. L. 100–204, § 806(a)(1), added pars. (4) and (5) and redesignated former par. (4) as (6) and amended it generally. Prior to amendment, par. (6) read as follows: "take any combination of the actions described in paragraphs (1), (2), and (3)."

Subsec. (b). Pub. L. 100–204, § 806(a)(2), inserted "corruption by government officials and" after "preventing and punishing" in par. (1) and added par. (2)(C).

Subsec. (c). Pub. L. 100–204, § 806(a)(3), inserted "paragraph (1), (2), or (3) of" after "under".

Subsec. (d). Pub. L. 100–204, § 806(a)(4), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2493, 2494 of this title.

§ 2493. Sugar quota

Notwithstanding any other provision of law, the President may not allocate any limitation imposed on the quantity of sugar to any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities as defined in section 2492(b) of this title as determined by the President.

(Pub. L. 93–618, title VIII, § 803, as added Pub. L. 99–570, title IX, § 9001, Oct. 27, 1986, 100 Stat. 3207–165.)

§ 2494. Progress reports

The President shall include as a part of the annual report required under section 2291(e)(1)[1] of title 22 an evaluation of progress that each major drug producing country and each major drug-transit country has made during the reporting period in achieving the objectives set forth in section 2492(b) of this title.

(Pub. L. 93–618, title VIII, § 804, as added Pub. L. 99–570, title IX, § 9001, Oct. 27, 1986, 100 Stat. 3207–166.)

REFERENCES IN TEXT

Subsec. (e) of section 2291 of title 22, referred to in text, was repealed and subsec. (i) was redesignated (e) by Pub. L. 102–583, § 6(b)(2), (3), Nov. 2, 1992, 106 Stat. 4932. For successor provisions to former subsec. (e), see sections 2291h(a) and 2291i(a) of Title 22, Foreign Relations and Intercourse.

§ 2495. Definitions

For purposes of this subchapter—

(1) continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated;

(2) the term "major drug producing country" means a country that illicitly produces during a fiscal year 5 metric tons or more of opium or opium derivative, 500 metric tons or more of coca, or 500 metric tons or more of marijuana; and

(3) the term "major drug-transit country" means a country—

(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

(B) through which are transported such drugs or substances; or

(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government; and

(4) the term "narcotic and psychotropic drugs and other controlled substances" has the same meaning as is given by any applicable international narcotics control agreement or domestic law of the country or countries concerned.

(Pub. L. 93–618, title VIII, § 805, as added Pub. L. 99–570, title IX, § 9001, Oct. 27, 1986, 100 Stat. 3207–166; amended Pub. L. 101–231, § 17(h)(5), Dec. 13, 1989, 103 Stat. 1965.)

AMENDMENTS

1989—Par. (2). Pub. L. 101–231 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the term 'major drug producing country' means a country producing five metric tons or more of opium or opium derivative during a fiscal year or producing five hundred metric tons or more of coca or marijuana (as the case may be) during a fiscal year; and".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2492 of this title.

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§ 2501. Short title

This Act may be cited as the ''Trade Agreements Act of 1979''.

(Pub. L. 96–39, § 1(a), July 26, 1979, 93 Stat. 144.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96–39, July 26, 1979, 93 Stat. 144, which enacted this chapter and sections 1516a, 1671 to 1671f, 1673 to 1673i, 1675, 1677 to 1677g, and 2413 to 2416 of this title, amended the Tariff Schedules, and sections 1303, 1311, 1315, 1332, 1336, 1337, 1351, 1401a, 1466, 1500, 1514 to 1516, 1872, 2033, 2112, 2119, 2131, 2155, 2192, 2194, 2211, 2251, 2253, 2411, 2412, 2432, 2434, 2435, 2462 to 2464, 2481, and 2486 of this title, section 5315 of Title 5, Government Organization and Employees, section 301 of Title 13, Census, sections 993, 5001 to 5008, 5043, 5061, 5064, 5066, 5116, 5171 to 5173, 5175 to 5178, 5180, 5181, 5201 to 5205, 5207, 5211 to 5215, 5221 to 5223, 5231, 5232, 5235, 5241, 5273, 5291, 5301, 5352, 5361 to 5363, 5365, 5381, 5391, 5551, 5601, 5604, 5610, 5612, 5615, 5663, 5681, 5682, and 5691 of Title 26, Internal Revenue Code, and sections 1541, 1582, 2632, and 2633, and 2637 of Title 28, Judiciary and Judicial Procedure, repealed sections 160 to 171 and 1402 of this title and sections 5009, 5021 to 5026, 5081 to 5084, 5174, 5233, 5234, 5251, 5252, 5364, and 5521 to 5523 of Title 26, enacted provisions set out as notes under sections 160, 1202, 1303, 1311, 1401a, 1516a, 1671, 2111, 2112, 2119, 2135, 2464, 2511, 2531, and 2581 of this title, section 301 of Title 13, and sections 1, 5001, 5061, 5171, and 5173 of Title 26, and amended provisions set out as notes in the Tariff Schedules and under section 2101 of this title. For complete classification of this Act to the Code, see Tables.

§ 2502. Congressional statement of purposes

The purposes of this Act are—

(1) to approve and implement the trade agreements negotiated under the Trade Act of 1974 [19 U.S.C. 2101 et seq.];

(2) to foster the growth and maintenance of an open world trading system;

(3) to expand opportunities for the commerce of the United States in international trade; and

(4) to improve the rules of international trade and to provide for the enforcement of such rules, and for other purposes.

(Pub. L. 96–39, § 1(c), July 26, 1979, 93 Stat. 146.)

REFERENCES IN TEXT

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

The Trade Act of 1974, referred to in par. (1), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to chapter 12 (§ 2101 et seq.) 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.

§ 2503. Approval of trade agreements

(a) Approval of agreements and statements of administrative action

In accordance with the provisions of sections 2112 and 2191 of this title, the Congress approves the trade agreements described in subsection (c) of this section submitted to the Congress on June 19, 1979, and the statements of administrative action proposed to implement such trade agreements submitted to the Congress on that date.

(b) Acceptance of agreements by the President

(1) In general

The President may accept for the United States the final legal instruments or texts embodying each of the trade agreements approved by the Congress under subsection (a) of this section. The President shall submit a copy of each final instrument or text to the Congress on the date such text or instrument is available, together with a notification of any changes in the instruments or texts, including their annexes, if any, as accepted and the texts of such agreements as submitted to the Congress under subsection (a) of this section. Such final legal instruments or texts shall be deemed to be the agreements submitted to and approved by the Congress under subsection (a) of this section if such changes are—

(A) only rectifications of a formal character or minor technical or clerical changes which do not affect the substance or meaning of the texts as submitted to the Congress on June 19, 1979, or

(B) changes in annexes to such agreements, and the President determines that the balance of United States rights and obligations under such agreements is maintained.

(2) Application of agreement between the United States and other countries

No agreement accepted by the President under paragraph (1) shall apply between the United States and any other country unless the President determines that such country—

(A) has accepted the obligations of the agreement with respect to the United States, and

(B) should not otherwise be denied the benefits of the agreement with respect to the United States because such country has not accorded adequate benefits, including substantially equal competitive opportunities for the commerce of the United States to the extent required under section 2136(c) of this title, to the United States.

(3) Limitation on acceptance concerning major industrial countries

The President may not accept an agreement described in paragraph (1), (2), (3), (4), (5), (6), (7), (9), (10), or (11) of subsection (c) of this section, unless he determines that each major industrial country (as defined in section 2136(d) of this title) is also accepting the agreement. Notwithstanding the preceding sentence, the President may accept such an agreement, if he determines that only one major industrial country is not accepting that agreement and the acceptance of that agreement by that country is not essential to the effective operation of the agreement, and if—

(A) that country is not a major factor in trade in the products covered by that agreement,

(B) the President has authority to deny the benefits of the agreement to that country and has taken steps to deny the benefits of the agreement to that country, or

(C) a significant portion of United States trade would benefit from the agreement, notwithstanding such nonacceptance, and the President determines and reports to the Congress that it is in the national interest of the United States to accept the agreement.

For purposes of this paragraph, the acceptance of an agreement by the European Communities on behalf of its member countries shall also be treated as acceptance of that agreement by each member country, and acceptance of an agreement by all the member countries of the European Communities shall also be treated as acceptance of that agreement by the European Communities.

(c) Trade agreements to which this Act applies

The trade agreements to which subsection (a) of this section applies are the following:

(1) The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (relating to customs valuation).

(2) The Agreement on Government Procurement.

(3) The Agreement on Import Licensing Procedures.

(4) The Agreement on Technical Barriers to Trade (relating to product standards).

(5) The Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures).

(6) The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).

(7) The International Dairy Arrangement.

(8) Certain bilateral agreements on cheese, other dairy products, and meat.

(9) The Arrangement Regarding Bovine Meat.

(10) The Agreement on Trade in Civil Aircraft.

(11) Texts Concerning a Framework for the Conduct of World Trade.

(12) Certain Bilateral Agreements to Eliminate the Wine-Gallon Method of Tax and Duty Assessment.

(13) Certain other agreements to be reflected in Schedule XX of the United States to the General Agreement on Tariffs and Trade, including Agreements—

(A) to Modify United States Watch Marking Requirements, and to Modify United States Tariff Nomenclature and Rates of Duty for Watches,

(B) to Provide Duty-Free Treatment for Agricultural and Horticultural Machinery, Equipment, Implements, and Parts Thereof, and

(C) to Modify United States Tariff Nomenclature and Rates of Duty for Ceramic Tableware.

(14) The Agreement with the Hungarian People's Republic.

(Pub. L. 96–39, § 2, July 26, 1979, 93 Stat. 147.)

REFERENCES IN TEXT

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

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (b) of this section delegated to the United States Trade Representative, see section 1–103(b) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2171 of this title.

APPROVAL AND IMPLEMENTATION OF PROTOCOL TO THE TRADE AGREEMENT RELATING TO CUSTOMS VALUATION

Pub. L. 96–490, § 1, Dec. 2, 1980, 94 Stat. 2556, provided that:

''(a) APPROVAL OF PROTOCOL.—In accordance with the provisions of sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the Congress approves—

''(1) the trade agreement entitled 'Protocol to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade' (hereinafter in this Act [amending section 1401a of this title and enacting provision set out as a note under section 1401a of this title] referred to as the 'Protocol') submitted to the Congress on August 1, 1980; and

''(2) the statement of administrative action proposed to implement such trade agreement submitted to the Congress on that date.

''(b) ACCEPTANCE OF PROTOCOL BY THE PRESIDENT.—

''(1) IN GENERAL.—Subject to paragraph (2), the President may accept the Protocol for the United States.

''(2) LIMITATION ON ACCEPTANCE OF PROTOCOL.—Paragraph (3) of section 2(b) of the Trade Agreements Act of 1979 (19 U.S.C. 2503(b)(3)) (relating to the limitation on acceptance of trade agreements concerning major industrial countries) applies to the Protocol and for such purpose the Protocol shall be treated as a trade agreement that is referred to in such paragraph (3).

''(c) APPLICATION OF PROTOCOL.—Paragraph (2) of section 2(b) of such Act of 1979 (19 U.S.C. 2503(b)(2)) (relating to the application of agreements between the United States and other countries) applies to the Protocol and for such purpose the Protocol shall be treated as a trade agreement that is accepted by the President under paragraph (1) of such section 2(b).

''(d) RELATIONSHIP OF PROTOCOL TO UNITED STATES LAW.—Subsections (a), (b), (c), and (f) of section 3 of such Act of 1979 (19 U.S.C. 2504(a), (b), (c), and (f) [19 U.S.C. 2504(a), (b), (c), and (d)]) (relating to the priority of domestic law in case of conflict, implementing regulations, statutory changes to implement agreement amendments, and disclaimer regarding the creation of any private right of action or remedy) apply to the Protocol and for such purpose the Protocol shall be treated as a trade agreement approved by the Congress under section 2(a) of such Act of 1979, 19 U.S.C. 2503(a).''

[The Protocol was accepted for the United States on Dec. 30, 1980.]

DETERMINATION REGARDING ACCEPTANCE AND APPLICATION OF CERTAIN INTERNATIONAL TRADE AGREEMENTS

1. Pursuant to section 102 of the Trade Act of 1974 (19 U.S.C. 2112(b)), I, through my duly empowered representative, on April 12, 1979, entered into the international agreements negotiated in the Tokyo Round of Multilateral Trade Negotiations. These agreements were:

(i) Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade;

(ii) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade;

(iii) Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade;

(iv) Agreement on Government Procurement;

(v) Agreement on Technical Barriers to Trade;

(vi) Agreement on Import Licensing Procedures;

(vii) Agreement on Trade in Civil Aircraft;

(viii) International Dairy Arrangement; and

(ix) Arrangement Regarding Bovine Meat.

These agreements are collectively referred to herein as the ''MTN agreements''.

2. In accordance with sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the MTN agreements were submitted to Congress for its approval. Sec-

tion 2 of the Trade Agreements Act of 1979 (93 Stat. 147) [this section] approves the MTN agreements and authorizes the President to accept each of the MTN agreements provided that the President determines that all, or all but one, of the major industrial countries (as defined in section 126(d) of the Trade Act of 1974 (19 U.S.C. 2136(d)) is also accepting the agreement. If the President determines that only one major industrial country is not accepting an agreement, the President may nevertheless accept such an agreement if he determines that the acceptance of that agreement by that country is not essential to the effective operation of the agreement, and if:

(A) that country is not a major factor in trade in the products covered by that agreement;

(B) the President has authority to deny the benefits of the agreement to that country and has taken steps to deny the benefits of the agreement to that country; or

(C) a significant portion of United States trade would benefit from the agreement, notwithstanding such nonacceptance, and the President determines and reports to the Congress that it is in the national interest of the United States to accept the agreement.

3. Section 2 of the Trade Agreements Act of 1979 [this section] also provides that no agreement accepted by the President shall apply between the United States and any other country unless the President determines that such country:

(A) has accepted the obligations of the agreement with respect to the United States, and

(B) should not otherwise be denied the benefits of the agreement with respect to the United States because such country has not accorded adequate benefits, including substantially equal competitive opportunities for the commerce of the United States to the extent required under section 126(c) of the Trade Act of 1974 (19 U.S.C. 2136(c)), to the United States.

4. Section 701 of the Tariff Act of 1930, as amended effective January 1, 1980 (93 Stat. 151) [19 U.S.C. 1671], provides that the President must determine that certain conditions must be met before a country can be considered a ''country under the Agreement'' and, therefore, entitled to the injury determination provided for in section 703(a) and 705(b) of the Tariff Act of 1930 (93 Stat. 152 and 159) [19 U.S.C. 1671b(a) and 1671d(b)].

5. Section 601(a) of the Trade Agreements Act of 1979 (93 Stat. 267) authorizes the President to proclaim certain modifications in the Tariff Schedules of the United States if the President determines that the conditions under section 2(b) of the Trade Agreements Act of 1979 (93 Stat. 147) [subsec. (b) of this section] on acceptance of the Agreement on Trade in Civil Aircraft have been fulfilled.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under and by virtue of the authority vested in me as President, and in conformity with the provisions of sections 2 [this section] and 601(a) of the Trade Agreements Act of 1979 (93 Stat. 147 and 267), herein referred to as ''the Act'', section 701 of the Tariff Act of 1930, as amended effective January 1, 1980 (93 Stat. 151) [19 U.S.C. 1671], and section 301 of title 3 of the United States Code do hereby

1. Determine that:

a. With respect to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, the Agreement on Technical Barriers to Trade, the Agreement on Import Licensing Procedures, and the Agreement on Trade in Civil Aircraft,

(i) in accordance with section 2(b)(1) and (3) of the Act (93 Stat. 147) [subsec. (b)(1) and (3) of this section], each major industrial country (as defined in section 126(d) of the Trade Act of 1974 (19 U.S.C. 2136(d)) is also accepting the agreement with the exception of Japan;

(ii) in accordance with section 2(b)(3) of the Act (93 Stat. 147) [subsec. (b)(3) of this section], the acceptance of these agreements by Japan is not essential to the effective operation of the agreements for that period of time during which Japan is completing its Constitutional procedures to accept the agreements and in light of the stated intention of the Government of Japan to act in the interim in line with the agreements within its existing powers; and

(iii) in accordance with section 2(b)(3)(C) of the Act (93 Stat. 148) [subsec. (b)(3)(C) of this section], a significant portion of United States trade will benefit from these agreements, notwithstanding the anticipated short delay in acceptance by Japan, and it is in the national interest of the United States to accept these agreements.

b. The conditions in section 701(b)(3)(A), (B) and (C) of the Tariff Act of 1930, as amended effective January 1, 1980 (93 Stat. 151) [19 U.S.C. 1671(b)(3)(A), (B) and (C)] will have been met with respect to Venezuela, Honduras, Nepal, North Yemen, El Salvador, Paraguay and Liberia.

c. With respect to the International Dairy Arrangement,

(i) in accordance with section 2(b)(1) and (3) of the Act (93 Stat. 147) [subsec. (b)(1) and (3) of this section], each major industrial country (as defined in section 126(d)) [19 U.S.C. 2136(d)] is also accepting the agreement with the exception of Canada;

(ii) in accordance with section 2(b)(3) of the Act (93 Stat. 147) [subsec. (b)(3) of this section], the acceptance of this agreement by Canada is not essential to the effective operation of the agreement; and

(iii) in accordance with section 2(b)(3)(A) of the Act [subsec. (b)(3)(A) of this section], Canada is not a major factor in trade in the products covered by the agreement.

d. With respect to the Arrangement Regarding Bovine Meat, in accordance with section 2(b)(1) and (3) of the Act (93 Stat. 147) [subsec. (b)(1) and (3) of this section], each major industrial country (as defined in section 126(d) of the Trade Act of 1974 (19 U.S.C. 2136(d) is also accepting the agreement.

e. In accordance with section 601(a) of the Trade Agreements Act of 1979 (93 Stat. 267),

(i) the conditions under section 2(b) of that Act (93 Stat. 147) [subsec. (b) of this section] on acceptance of the Agreement on Trade in Civil Aircraft have been fulfilled;

(ii) the modifications provided for in section A of Annex II to Proclamation No. 4707 of December 11, 1979 [see note set out under section 2111 of this title], which were authorized by section 601(a) of the Trade Agreements Act of 1979 (93 Stat. 267), shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on and after January 1, 1980; and

(iii) the amendment to section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) provided for in section 601(a)(3) of the Trade Agreements Act of 1979 (93 Stat. 268) shall be effective with respect to entries made under section 466 on and after January 1, 1980.

2. Authorize the United States Special Representative for Trade Negotiations [now United States Trade Representative], or his designee, on behalf of the United States of America,

(a) to sign and accept the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, the Agreement on Technical Barriers to Trade, the Agreement on Import Licensing Procedures, the Agreement on Trade in Civil Aircraft, the International Dairy Arrangement and the Arrangement Regarding Bovine Meat;

(b) to sign the Agreement on Government Procurement subject to satisfactory completion of negotiations on entity coverage under the Agreement; and

(c) to sign the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade subject to acceptance.

3. [Revoked by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989.]

JIMMY CARTER.

CHANGE OF NAME

United States Special Representative for Trade Negotiations redesignated the United States Trade Representative by Reorg. Plan No. 3 of 1979, §1(b)(1), 44 F.R. 69273, 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. See, also, section 2171 of this title as amended by Pub. L. 97–456.

DETERMINATION REGARDING MULTILATERAL TRADE NEGOTIATIONS

Memorandum of the President of the United States, dated Dec. 14, 1979, provided:

I have signed the enclosed document concerning certain international trade agreements pursuant to the authority vested in me under the Constitution and laws of the United States, including the Trade Agreements Act of 1979 (Public Law 96–39, 93 Stat. 144) and section 301 of title 3 of the United States Code.

On my behalf, please transmit copies of this document to the Speaker of the House of Representatives and the President of the Senate.

This document shall be published in the Federal Register.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2504, 2513, 3555 of this title.

§ 2504. Relationship of trade agreements to United States law

(a) United States statutes to prevail in conflict

No provision of any trade agreement approved by the Congress under section 2503(a) of this title, nor the application of any such provision to any person or circumstance, which is in conflict with any statute of the United States shall be given effect under the laws of the United States.

(b) Implementing regulations

Regulations necessary or appropriate to carry out actions proposed in any statement of proposed administrative action submitted to the Congress under section 2112 of this title to implement each agreement approved under section 2503(a) of this title shall be issued within 1 year after the date of the entry into force of such agreement with respect to the United States.

(c) Changes in statutes to implement a requirement, amendment, or recommendation

(1) Presidential determination

Whenever the President determines that it is necessary or appropriate to amend, repeal, or enact a statute of the United States in order to implement any requirement of, amendment to, or recommendation under such an agreement, he shall submit to the Congress a draft of a bill to accomplish the amendment, repeal, or enactment and a statement of any administrative action proposed to implement the requirement, amendment, or recommendation. Not less than 30 days before submitting such a bill, the President shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and each committee of the House or Senate which has jurisdiction over legislation involving subject matters which would be affected by such amendment, repeal, or enactment. The consultation shall treat all matters relating to the implementation of such requirement, amendment, or recommendation, as provided in paragraphs (2) and (3).

(2) Conditions for taking effect under United States law

No such amendment shall enter into force with respect to the United States, and no such requirement, amendment, or recommendation shall be implemented under United States law, unless—

(A) the President, after consultation with the Congress under paragraph (1), notifies the House of Representatives and the Senate of his determination and publishes notice of that determination in the Federal Register,

(B) the President transmits a document to the House of Representatives and to the Senate containing a copy of the text of such requirement, amendment, or recommendation, together with—

(i) a draft of a bill to amend or repeal provisions of existing statutes or to create statutory authority and an explanation as to how the bill and any proposed administrative action affect existing law, and

(ii) a statement of how the requirement, amendment, or recommendation serves the interests of United States commerce and why the legislative and administrative action is necessary or appropriate to carry out the requirement, amendment, or recommendation, and

(C) the bill submitted by the President is enacted into law.

(3) Recommendations as to application

The President may make the same type of recommendations, in the same manner and subject to the same conditions, to the Congress with respect to the application of any such requirement, amendment, or recommendation as he may make, under section 2112(f) of this title, with respect to a trade agreement.

(4) Congressional procedures applicable

The bill submitted by the President shall be introduced in accordance with the provisions of subsection (c)(1) of section 2191 of this title, and the provisions of subsections (d), (e), (f), and (g) of such section shall apply to the consideration of the bill. For the purpose of applying section 2191 of this title to such bill—

(A) the term ''trade agreement'' shall be treated as a reference to the requirement, amendment, or recommendation, and

(B) the term ''implementing bill'' or ''implementing revenue bill'', whichever is appropriate, shall be treated as a reference to the bill submitted by the President.

(d) Unspecified private remedies not created

Neither the entry into force with respect to the United States of any agreement approved under section 2503(a) of this title, nor the enact-

ment of this Act, shall be construed as creating any private right of action or remedy for which provision is not explicitly made under this Act or under the laws of the United States.

(Pub. L. 96–39, § 3(a)–(c), (f), July 26, 1979, 93 Stat. 148–150.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d), is Pub. L. 96–39, July 26, 1979, 93 Stat. 144, known as the Trade Agreements Act of 1979. 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

As originally enacted section 3 of Pub. L. 96–39 consisted of subsecs. (a) to (c), (e) and (f), without a provision designated as (d). Subsec. (e) amended section 2111(b)(1) of this title and subsec. (f) has been redesignated as (d) for the purposes of codification of this section.

UNITED STATES-CANADA FREE-TRADE AGREEMENT

Subsec. (c) of this section applicable as if United States-Canada Free-Trade Agreement, which entered into force on Jan. 1, 1989, were an agreement approved under section 2503(a) of this title, see section 102(e) of Pub. L. 100–449, set out in a note under section 2112 of this title.

SUBCHAPTER I—GOVERNMENT PROCUREMENT

§ 2511. General authority to modify discriminatory purchasing requirements

(a) Presidential waiver of discriminatory purchasing requirements

Subject to subsection (f) of this section, the President may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b) of this section, and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(1) to United States products and suppliers of such products; or

(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.

(b) Designation of eligible countries and instrumentalities

The President may designate a foreign country or instrumentality for purposes of subsection (a) of this section only if he determines that such country or instrumentality—

(1) is a country or instrumentality which (A) has become a party to the Agreement or the North American Free Trade Agreement, and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

(2) is a country or instrumentality, other than a major industrial country, which (A) will otherwise assume the obligations of the Agreement, and (B) will provide such opportunities to such products and suppliers;

(3) is a country or instrumentality, other than a major industrial country, which will provide such opportunities to such products and suppliers; or

(4) is a least developed country.

(c) Modification or withdrawal of waivers and designations

The President may modify or withdraw any waiver granted pursuant to subsection (a) of this section or designation made pursuant to subsection (b) of this section.

(d) Omitted

(e) Procurement procedures by certain Federal agencies

Notwithstanding any other provision of law, the President may direct any agency of the United States listed in Annex 1001.1a–2 of the North American Free Trade Agreement to procure eligible products in compliance with the procedural provisions of chapter 10 of such Agreement.

(f) Small business and minority preferences

The authority of the President under subsection (a) of this section to waive any law, regulation, procedure, or practice regarding Government procurement does not authorize the waiver of any small business or minority preference.

(Pub. L. 96–39, title III, § 301, July 26, 1979, 93 Stat. 236; Pub. L. 100–418, title VII, § 7005(e), Aug. 23, 1988, 102 Stat. 1553; Pub. L. 103–182, title III, § 381(a), Dec. 8, 1993, 107 Stat. 2128.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182, § 381(a)(1), substituted ''Subject to subsection (f) of this section, the President'' for ''The President''.

Subsec. (b)(1). Pub. L. 103–182, § 381(a)(2), inserted ''or the North American Free Trade Agreement'' after ''the Agreement''.

Subsecs. (e), (f). Pub. L. 103–182, § 381(a)(3), added subsecs. (e) and (f).

1988—Subsec. (d). Pub. L. 100–418, §§ 7004, 7005(e), temporarily added subsec. (d) which read as follows: ''The authority of the President under subsection (a) of this section to waive any laws, regulation, procedure, or practice shall be effective notwithstanding any other provision of law hereafter enacted (excluding the provisions of and amendments made by the Buy American Act of 1988) unless such other provision specifically refers to and amends this section.'' See Termination Date of 1988 Amendment note below.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 381(e) of title III of Pub. L. 103–182 provided that: ''The provisions of this subtitle [subtitle G (§ 381) of title III of Pub. L. 103–182, amending this section, sections 2512 and 2518 of this title, and provisions set out as a note under section 903 of Title 7, Agriculture] take effect on the date the Agreement [North American Free Trade Agreement] enters into force with respect to the United States [Jan. 1, 1994].''

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 section 2515(k) of this title, extends such date, see section 7004 of Pub. L. 100–418, set out as an Effective and Termination Dates of 1988 Amendments note under section 10a of Title 41, Public Contracts.

EFFECTIVE DATE

Section 309 of title III of Pub. L. 96–39 provided that: ''The provisions of this title [this subchapter] shall be

effective on the date of enactment of this Act [July 26, 1979], except that—

''(1) the authority of the President to grant waivers under section 303 [section 2513 of this title] shall be effective on January 1, 1980; and

''(2) the authority of the President to grant waivers under section 301 [this section] shall be effective on January 1, 1981.''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to United States Trade Representative, see section 1–201 of Ex. Ord. No. 12260, set out as a note below.

EX. ORD. NO. 12260. AGREEMENT ON GOVERNMENT PROCUREMENT

Ex. Ord. No. 12260, Dec. 31, 1980, 46 F.R. 1653, as amended by Ex. Ord. No. 12347, Feb. 23, 1982, 47 F.R. 8149; Ex. Ord. No. 12388, Oct. 14, 1982, 47 F.R. 46245; Ex. Ord. No. 12474, Apr. 17, 1984, 49 F.R. 15539, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511–2518), and Section 301 of Title 3 of the United States Code, and in order to implement the Agreement on Government Procurement, as defined in 19 U.S.C. 2518(1), it is hereby ordered as follows:

1–1. RESPONSIBILITIES

1–101. The obligations of the Agreement on Government Procurement (Agreement on Government Procurement, General Agreement on Tariffs and Trade, 12 April 1979, Geneva (GATT 1979)) apply to any procurement of eligible products by the Executive agencies listed in the Annex to this Order (eligible products are defined in Section 308 of the Trade Agreements Act of 1979; 19 U.S.C. 2518(4)). Such procurement shall be in accord with the policies and procedures of the Office of Federal Procurement Policy (41 U.S.C. 401 et seq.).

1–102. The United States Trade Representative, hereinafter referred to as the Trade Representative, shall be responsible for interpretation of the Agreement. The Trade Representative shall seek the advice of the interagency organization established under Section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) and consult with affected Executive agencies, including the Office of Federal Procurement Policy.

1–103. The interpretation of Article VIII:1 of the Agreement shall be subject to the concurrence of the Secretary of Defense

1–104. The Trade Representative shall determine, from time to time, the dollar equivalent of 150,000 Special Drawing Right units and shall publish that determination in the Federal Register. Procurement of less than 150,000 Special Drawing Right units is not subject to the Agreement or this Order (Article I:1(b) of the Agreement).

1–105. In order to ensure coordination of international trade policy with regard to the implementation of the Agreement, agencies shall consult in advance with the Trade Representative about negotiations with foreign governments or instrumentalities which concern government procurement.

1–2. DELEGATIONS AND AUTHORIZATION

1–201. The functions vested in the President by Sections 301, 302, 304, 305(c) and 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2511, 2512, 2514, 2515(c) and 2516) are delegated to the Trade Representative.

1–202. Notwithstanding the delegation in Section 1–201, the Secretary of Defense is authorized, in accord with Section 302(b)(3) of the Trade Agreements Act of 1979 (19 U.S.C. 2512(b)(3)), to waive the prohibitions specified therein.

ANNEX

1. ACTION
2. Administrative Conference of the United States
3. American Battle Monuments Commission
4. Board for International Broadcasting
5. Civil Aeronautics Board
6. Commission on Civil Rights
7. Commodity Futures Trading Commission
8. Consumer Product Safety Commission
9. Department of Agriculture (The Agreement on Government Procurement does not apply to procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs)
10. Department of Commerce
11. Department of Defense (Excludes Corps of Engineers)
12. Department of Education
13. Department of Health and Human Services
14. Department of Housing and Urban Development
15. Department of the Interior (Excludes the Bureau of Reclamation)
16. Department of Justice
17. Department of Labor
18. Department of State
19. Department of the Treasury
20. Environmental Protection Agency
21. Equal Employment Opportunity Commission
22. Executive Office of the President
23. Export-Import Bank of the United States
24. Farm Credit Administration
25. Federal Communications Commission
26. Federal Deposit Insurance Corporation
27. Federal Home Loan Bank Board
28. Federal Maritime Commission
29. Federal Mediation and Conciliation Service
30. Federal Trade Commission
31. General Services Administration (Purchases by the Tools Commodity Center, and the Region 9 Office in San Francisco, California are not included)
32. Interstate Commerce Commission
33. Merit Systems Protection Board
34. National Aeronautics and Space Administration
35. National Credit Union Administration
36. National Labor Relations Board
37. National Mediation Board
38. National Science Foundation
39. National Transportation Safety Board
40. Nuclear Regulatory Commission
41. Office of Personnel Management
42. Overseas Private Investment Corporation
43. Panama Canal Commission
44. Railroad Retirement Board
45. Securities and Exchange Commission
46. Selective Service System
47. Smithsonian Institution
48. United States Arms Control and Disarmament Agency
49. United States Information Agency
50. United States International Development Cooperation Agency
51. United States International Trade Commission
52. Veterans Administration
53. Maritime Administration of the Department of Transportation
54. The Peace Corps

EX. ORD. NO. 12849. IMPLEMENTATION OF AGREEMENT WITH EUROPEAN COMMUNITY ON GOVERNMENT PROCUREMENT

Ex. Ord. No. 12849, May 25, 1993, 58 F.R. 30931, provided:

WHEREAS, the United States and the European Community (EC) have entered into a Memorandum of Understanding on Government Procurement (Agreement) that provides appropriate reciprocal competitive government procurement opportunities;

WHEREAS, the commitments made in the Agreement are intended to become part of an expanded General Agreement on Tariffs and Trade Agreement on Government Procurement (GATT Code) and are an important step toward an expanded GATT Code;

WHEREAS, as a result of these commitments, U.S. businesses will obtain increased access to EC member state procurement for U.S. goods and services;

WHEREAS, I have determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act, as amended (41 U.S.C. 10a–10d) [41 U.S.C. 10a, 10b, 10c], to procurement covered by the Agreement;

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518), and in order to implement the Agreement, it is hereby ordered as follows:

SECTION 1. In applying the provisions of the Buy American Act, the heads of the agencies listed in Annex 1, Parts A and B, of this order are requested, as of the date of this order, to apply no price differential between articles, materials, or supplies of U.S. origin and those originating in the member states of the EC.

SEC. 2. For purposes of this order, the rule of origin specified in section 308 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2518), shall apply in determining whether goods originate in the member states of the EC.

SEC. 3. This order shall apply only to solicitations, issued by agencies listed in Annex 1, Parts A and B, of this order, above the threshold amounts set forth in Annex 2.

SEC. 4. This order shall apply to solicitations outstanding on the date of this order, except for those for which the initial deadline for receipt of bids or proposals has passed, and to all solicitations issued after the date of this order.

SEC. 5. Except for procurements by the Department of Defense, the United States Trade Representative (USTR) shall be responsible for interpretation of the Agreement. The USTR shall seek the advice of the interagency organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) and consult with affected agencies, including the Office of Federal Procurement Policy.

SEC. 6. This Executive order is effective immediately. Although regulatory implementation of this order must await revisions to the Federal Acquisition Regulation (FAR), it is expected that agencies listed in Annex 1, Parts A and B, of this order will take all appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.

SEC. 7. Pursuant to section 25 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 421(a)), the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 30 days from the date this order is issued.

WILLIAM J. CLINTON.

ANNEX 1A

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy (Not including national security procurement made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act [42 U.S.C. 2011 et seq.]; and oil purchases related to the Strategic Petroleum Reserve)
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation (The national security consideration currently applicable to the Department of Defense under the GATT Government Procurement Code is equally applicable under this Agreement to the Coast Guard)
Department of the Treasury
United States Agency for International Development
General Services Administration (other than Federal Supply Groups 51 and 52 and Federal Supply Class 7340)
National Aeronautics and Space Administration
Department of Veterans Affairs
Environmental Protection Agency
United States Information Agency
National Science Foundation
Panama Canal Commission
Executive Office of the President
Farm Credit Administration
National Credit Union Administration
Merit Systems Protection Board
ACTION Agency
United States Arms Control and Disarmament Agency
Office of Thrift Supervision
Federal Housing Finance Board
National Labor Relations Board
National Mediation Board
Railroad Retirement Board
American Battle Monuments Commission
Federal Communications Commission
Federal Trade Commission
Interstate Commerce Commission
Securities and Exchange Commission
Office of Personnel Management
United States International Trade Commission
Export-Import Bank of the United States
Federal Mediation and Conciliation Service
Selective Service System
Smithsonian Institution
Federal Deposit Insurance Corporation
Consumer Product Safety Commission
Equal Employment Opportunity Commission
Federal Maritime Commission
National Transportation Safety Board
Nuclear Regulatory Commission
Overseas Private Investment Corporation
Administrative Conference of the United States
Board for International Broadcasting
Commission on Civil Rights
Commodity Futures Trading Commission
The Peace Corps
National Archives and Records Administration

ANNEX 1B

The Power Marketing Administrations of the Department of Energy
Tennessee Valley Authority

ANNEX 2

Thresholds Applicable to Agencies listed in Annex 1A
Goods contracts—130,000 SDRs (currently $176,000)
Construction contracts—$6,500,000

Thresholds Applicable to Agencies listed in Annex 1B
Goods contracts—$450,000
Construction contracts—$6,500,000

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2512, 2514, 2515 of this title.

§ 2512. Authority to encourage reciprocal competitive procurement practices

(a) Authority to bar procurement from non-designated countries

(1) In general

Subject to paragraph (2), the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

(A) shall, with respect to procurement covered by the Agreement, prohibit the procure-

ment, after the date on which any waiver under section 2511(a) of this title first takes effect, of products—

(i) which are products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, and

(ii) which would otherwise be eligible products; and

(B) may, with respect to procurement covered by the Agreement, take such other actions within the President's authority as the President deems necessary.

(2) Exception

Paragraph (1) shall not apply in the case of procurements for which—

(A) there are no offers of products or services of the United States or of eligible products; or

(B) the offers of products or services of the United States or of eligible products are insufficient to fulfill the requirements of the United States Government.

(b) Deferrals and waivers

Notwithstanding subsection (a) of this section, but in furtherance of the objective of encouraging countries to become parties to the Agreement and provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products, the President may—

(1) waive the prohibition required by subsection (a)(1) of this section on procurement of products of a foreign country or instrumentality which has not yet become a party to the Agreement but—

(A) has agreed to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement, and

(B) maintains and enforces effective prohibitions on bribery and other corrupt practices in connection with its government procurement;

(2) authorize agency heads to waive, subject to interagency review and general policy guidance by the organization established under section 1872(a) of this title, such prohibition on a case-by-case basis when in the national interest; and

(3) authorize the Secretary of Defense to waive, subject to interagency review and policy guidance by the organization established under section 1872(a) of this title, such prohibition for products of any country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense.

Before exercising the waiver authority under paragraph (1), the President shall consult with the appropriate private sector advisory committees established under section 2155 of this title and with the appropriate committees of the Congress.

(c) Report on impact of restrictions

(1) Impact on the economy

On or before July 1, 1981, the President shall report to the Committee on Ways and Means and the Committee on Government Operations of the House of Representatives and to the Committee on Finance and the Committee on Governmental Affairs of the Senate on the effects on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget) of the refusal of developed countries to allow the Agreement to cover the entities of the governments of such countries which are the principal purchasers of goods and equipment in appropriate product sectors.

(2) Recommendations for attaining reciprocity

The report required by paragraph (1) shall include an evaluation of alternative means to obtain equity and reciprocity in such product sectors, including (A) prohibiting the procurement of products of such countries by United States entities not covered by the Agreement, and (B) modifying the application of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act. The report shall include an analysis of the effect of such alternative means on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget), and on successful negotiations on the expansion of the coverage of the Agreement pursuant to section 2514(a) and (b) of this title, other trade negotiating objectives, the relationship of the Federal Government to State and local governments, and such other factors as the President deems appropriate.

(3) Consultation

In the preparation of the report required by paragraph (1) and the evaluation and analysis required by paragraph (2), the President shall consult with representatives of the public, industry, and labor, and make available pertinent, nonconfidential information obtained in the course of such preparation to the advisory committees established pursuant to section 2155 of this title.

(d) Proposed action

(1) Presidential report

On or before October 1, 1981, the President shall prepare and transmit to the congressional committees referred to in subsection (c)(1) of this section a report which describes the actions he deems appropriate to establish reciprocity with major industrialized countries in the area of Government procurement.

(2) Procedure

(A) Presidential determination

If the President determines that any changes in existing law or new statutory authority are required to authorize or to implement any action proposed in the report submitted under paragraph (1), he shall, on or after January 1, 1982, submit to the Congress a bill to accomplish such changes or provide such new statutory authority. Prior to submitting such a bill, the President shall

consult with the appropriate committees of the Congress having jurisdiction over legislation involving subject matters which would be affected by such action, and shall submit to such committees a proposed draft of such bill.

(B) Congressional consideration

The appropriate committee of each House of the Congress shall give a bill submitted pursuant to subparagraph (A) prompt consideration and shall make its best efforts to take final committee action on such bill in an expeditious manner.

(Pub. L. 96–39, title III, § 302, July 26, 1979, 93 Stat. 236; Pub. L. 103–182, title III, § 381(b), Dec. 8, 1993, 107 Stat. 2129; Pub. L. 103–465, title III, § 343(a), (b), Dec. 8, 1994, 108 Stat. 4954, 4955.)

REFERENCES IN TEXT

Title III of the Act of March 3, 1933, referred to in subsec. (c)(2), is act Mar. 3, 1933, ch. 212, title III, 47 Stat. 1520, as amended, known as the Buy American Act, which is classified generally to sections 10a, 10b, and 10c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 10a of Title 41 and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–465, § 343(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''With respect to procurement covered by the Agreement, the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

''(1) shall prohibit the procurement, after the date on which any waiver under section 2511(a) of this title first takes effect, of products (A) which are products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, and (B) which are products covered under the Agreement for procurement by the United States; and

''(2) may take such other actions within his authority as he deems necessary.''

Subsec. (b). Pub. L. 103–465, § 343(b)(2), inserted concluding provisions.

Subsec. (b)(1). Pub. L. 103–465, § 343(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''delay, for a period not to exceed two years, the prohibition of procurement, required pursuant to subsection (a)(1) of this section, of products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, except that no such delay shall be granted with respect to the procurement of products of any major industrial country;''.

1993—Subsec. (a)(1). Pub. L. 103–182 substituted ''are products covered under the Agreement for procurement by the United States'' for ''would otherwise be eligible products''.

CHANGE OF NAME

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note under section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 344 of title III of Pub. L. 103–465 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle E (§§ 341–344 of title III of Pub. L. 103–465, amending this section and sections 2513 to 2515, 2517, and 2518 of this title, repealing section 2516 of this title, and amending provisions set out as a note under section 903 of Title 7, Agriculture] take effect on the date on which the Agreement on Government Procurement referred to in section 101(d)(17) [19 U.S.C. 3511(d)(17)] enters into force with respect to the United States [Jan. 1, 1995].

''(b) SECTION 342(g).—The amendments made by section 342(g) [amending provisions set out as a note under section 903 of Title 7] take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 381(e) of Pub. L. 103–182, set out as a note under section 2511 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to United States Trade Representative, with authority delegated to Secretary of Defense to waive the prohibitions contained in subsec. (b)(3) of this section, see section 1–2 of Ex. Ord. No. 12260, Dec. 31, 1980, 46 F.R. 1653, set out as a note under section 2511 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2514, 2515 of this title.

§ 2513. Waiver of discriminatory purchasing requirements with respect to purchases of civil aircraft

The President may waive the application of the provisions of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.) popularly referred to as the Buy American Act, in the case of any procurement of civil aircraft and related articles of a country or instrumentality which is a party to the Agreement on Trade in Civil Aircraft referred to in section 2503(c) of this title and approved under section 2503(a) of this title. The President may modify or withdraw any waiver granted pursuant to this section.

(Pub. L. 96–39, title III, § 303, July 26, 1979, 93 Stat. 238; Pub. L. 103–465, title III, § 342(a), Dec. 8, 1994, 108 Stat. 4953.)

REFERENCES IN TEXT

Title III of the Act of March 3, 1933, referred to in text, is act Mar. 3, 1933, ch. 212, title III, 47 Stat. 1520, as amended, known as the Buy American Act, which is classified generally to sections 10a, 10b, and 10c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 10a of Title 41 and Tables.

AMENDMENTS

1994—Pub. L. 103–465 inserted ''referred to in section 2503(c) of this title and approved under section 2503(a) of this title'' after ''Civil Aircraft''.

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.

EFFECTIVE DATE

Section effective July 26, 1979, but authority of President to grant waivers under this section effective on

Jan. 1, 1980, see section 309 of Pub. L. 96–39, set out as a note under section 2511 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to United States Trade Representative, see section 1–103(b) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2171 of this title.

§ 2514. Expansion of the coverage of the Agreement

(a) Overall negotiating objective

The President shall seek in the renegotiations provided for in article XXIV(7) of the Agreement more open and equitable market access abroad, and the harmonization, reduction, or elimination of devices which distort trade or commerce related to Government procurement, with the overall goal of maximizing the economic benefit to the United States through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, the development of fair and equitable market opportunities, and open and nondiscriminatory world trade. In carrying out the provisions of this subsection, the President shall consider the assessment made in the report required under section 2516(a)[1] of this title.

(b) Sector negotiating objectives

The President shall seek, consistent with the overall objective set forth in subsection (a) of this section and to the maximum extent feasible, with respect to appropriate product sectors, competitive opportunities for the export of United States products to the developed countries of the world equivalent to the competitive opportunities afforded by the United States, taking into account all barriers to, and other distortions of, international trade affecting that sector.

(c) Independent verification objective

The President shall seek to establish in the renegotiation provided for in article XXIV(7) of the Agreement a system for independent verification of information provided by parties to the Agreement to the Committee on Government Procurement pursuant to article XIX(5) of the Agreement.

(d) Reports on negotiations

(1) Report in the event of inadequate progress

If, during the renegotiations of the Agreement, the President at any time determines that the renegotiations are not progressing satisfactorily and are not likely to result, within twelve months of the commencement thereof, in an expansion of the Agreement to cover purchases by the entities of the governments 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] See References in Text note below.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2512 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 recommendations 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 suspending 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 Agree-

ment 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 pur-

suant 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 subsection (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 Amendments note under section 10a of Title 41, Public Contracts.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury under subsec. (b) of this section 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.

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 OF FUNCTIONS

Functions of President under subsec. (c) of 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 24 section 225h; title 28 sections 1581, 2631, 2636, 2640; title 49 section 50102.

§ 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.

EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 1994 Amendment note under section 2512 of this title.

§ 2517. Availability of information to Members of Congress designated as official advisers

The United States Trade Representative shall make available to the Members of Congress designated as official advisers pursuant to section 2211 of this title information compiled by the Committee on Government Procurement under article XIX(5) of the Agreement.

(Pub. L. 96–39, title III, § 307, July 26, 1979, 93 Stat. 240; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381; Pub. L. 103–465, title III, § 342(e), Dec. 8, 1994, 108 Stat. 4953.)

AMENDMENTS

1994—Pub. L. 103–465 substituted ''article XIX(5)'' for ''part VI, paragraph 9,''.

CHANGE OF NAME

''United States Trade Representative'' substituted in text for ''Special Representative for Trade Negotiations'' pursuant to Reorg. Plan No. 3 of 1979, § 1(1)(b), 44 F.R. 69273, 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. See, also, section 2171 of this title as amended by Pub. L. 97–456.

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.

§ 2518. Definitions

As used in this subchapter—

(1) Agreement

The term ''Agreement'' means the Agreement on Government Procurement referred to in section 3511(d)(17) of this title, as submitted to the Congress, but including rectifications, modifications, and amendments which are accepted by the United States.

(2) Civil aircraft

The term ''civil aircraft and related articles'' means—

(A) all aircraft other than aircraft to be purchased for use by the Department of Defense or the United States Coast Guard;

(B) the engines (and parts and components for incorporation therein) of such aircraft;

(C) any other parts, components, and subassemblies for incorporation in such aircraft; and

(D) any ground flight simulators, and parts and components thereof, for use with respect to such aircraft,

whether to be purchased for use as original or replacement equipment in the manufacture,

repair, maintenance, rebuilding, modification, or conversion of such aircraft, and without regard to whether such aircraft or articles receive duty-free treatment pursuant to section 601(a)(2).

(3) Developed countries

The term ''developed countries'' means countries so designated by the President.

(4) Eligible product

(A) In general

The term ''eligible product'' means, with respect to any foreign country or instrumentality that is—

(i) a party to the Agreement, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States; or

(ii) a party to the North American Free Trade Agreement, a product or service of that country or instrumentality which is covered under the North American Free Trade Agreement for procurement by the United States.

(B) Rule of origin

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(C) Lowered threshold for certain products as a consequence of United States-Israel free trade area provisions

The term ''eligible product'' includes a product or service of Israel for which the United States is obligated to waive Buy National restrictions under—

(i) the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, regardless of the thresholds provided for in the Agreement (as defined in paragraph (1)), or

(ii) any subsequent agreement between the United States and Israel which lowers on a reciprocal basis the applicable threshold for entities covered by the Agreement.

(D) Lowered threshold for certain products as a consequence of United States-Canada Free-Trade Agreement

Except as otherwise agreed by the United States and Canada under paragraph 3 of article 1304 of the United States-Canada Free-Trade Agreement, the term ''eligible product'' includes a product or service of Canada having a contract value of $25,000 or more that would be covered for procurement by the United States under the Agreement (as defined in paragraph (1)), but for the thresholds provided for in the Agreement.

(5) Instrumentality

The term ''instrumentality'' shall not be construed to include an agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(6) Least developed country

The term ''least developed country'' means any country on the United Nations General Assembly list of least developed countries.

(7) Major industrial country

The term ''major industrial country'' means any such country as defined in section 2136 of this title and any instrumentality of such a country.

(Pub. L. 96–39, title III, §308, July 26, 1979, 93 Stat. 241; Pub. L. 99–47, §7, June 11, 1985, 99 Stat. 84; Pub. L. 100–449, title III, §306, Sept. 28, 1988, 102 Stat. 1876; Pub. L. 103–182, title III, §381(c), Dec. 8, 1993, 107 Stat. 2129; Pub. L. 103–465, title III, §342(f), Dec. 8, 1994, 108 Stat. 4953; Pub. L. 104–295, §20(c)(12), Oct. 11, 1996, 110 Stat. 3528.)

REFERENCES IN TEXT

Section 601(a)(2), referred to in par. (2), is section 601(a)(2) of Pub. L. 96–39 title VI, July 26, 1979, 93 Stat. 267, which directed a duty rate of ''Free'' in the rate column numbered 1 of the Tariff Schedules of the United States for articles classified under specified items between 518.51 and 772.65 which the President determines would provide coverage comparable to that provided by foreign countries in the Annex to the Agreement on Trade in Civil Aircraft if such articles were certified for use in civil aircraft in accordance with headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States. The Tariff Schedules of the United States were replaced by the Harmonized Tariff Schedule of the United States, which is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of the title.

AMENDMENTS

1996—Par. (4)(D). Pub. L. 104–295 substituted ''under the Agreement'' for ''under the the Agreement''.

1994—Par. (1). Pub. L. 103–465, §342(f)(1), substituted ''section 3511(d)(17) of this title'' for ''section 2503(c) of this title''.

Par. (4)(C). Pub. L. 103–465, §342(f)(2)(A), substituted ''for which the United States is obligated to waive Buy National restrictions under—'' and cls. (i) and (ii) for ''having a contract value of $50,000 or more which would be covered for procurement by the United States under the Agreement on Government Procurement as in effect on the date on which the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel enters into force, but for the SDR 150,000 threshold provided for in article I(1)(b) of the Agreement on Government Procurement.''

Par. (4)(D). Pub. L. 103–465, §342(f)(2)(B), substituted ''the Agreement (as defined in paragraph (1)), but for the thresholds provided for in the Agreement.'' for ''GATT Agreement on Government Procurement, but for the SDR threshold provided for in article I(1)(b) of the GATT Agreement on Government Procurement.''

1993—Par. (4)(A). Pub. L. 103–182 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The term 'eligible product' means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.''

1988—Par. (4)(D). Pub. L. 100–449 added subpar. (D).

1985—Par. (4)(C). Pub. L. 99–47 added subpar. (C).

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.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 381(e) of Pub. L. 103–182, set out as a note under section 2511 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100–449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2515 of this title.

SUBCHAPTER II—TECHNICAL BARRIERS TO TRADE (STANDARDS)

PART A—OBLIGATIONS OF THE UNITED STATES

§ 2531. Certain standards-related activities

(a) No bar to engaging in standards activity

Nothing in this subchapter may be construed—

(1) to prohibit a Federal agency from engaging in activity related to standards-related measures, including any such measure relating to safety, the protection of human, animal, or plant life or health, the environment, or consumers; or

(2) to limit the authority of a Federal agency to determine the level it considers appropriate of safety or of protection of human, animal, or plant life or health, the environment, or consumers.

(b) Unnecessary Obstacles

Nothing in this subchapter may be construed as prohibiting any private person, Federal agency, or State agency from engaging in standards-related activities that do not create unnecessary obstacles to the foreign commerce of the United States. No standards-related activity of any private person, Federal agency, or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

(Pub. L. 96–39, title IV, § 401, July 26, 1979, 93 Stat. 242; Pub. L. 103–465, title III, § 351(b), Dec. 8, 1994, 108 Stat. 4955.)

AMENDMENTS

1994—Pub. L. 103–465 added subsec. (a), designated existing provisions as subsec. (b), and inserted subsec. (b) heading.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 352 of title III of Pub. L. 103–465 provided that: ''This subtitle [subtitle F (§§ 351, 352) of title III of Pub. L. 103–465, amending this section and sections 2532, 2544, 2571, and 2573 of this title and repealing provisions set out below] and the amendments made by this subtitle take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995].''

EFFECTIVE DATE

Section 454 of Pub. L. 96–39, which provided that this subchapter was to take effect on Jan. 1, 1980, if the Agreement on Technical Barriers to Trade entered into force with respect to the United States by that date, was repealed by Pub. L. 103–465, title III, § 351(g), Dec. 8, 1994, 108 Stat. 4957.

§ 2532. Federal standards-related activities

No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, including, but not limited to, standards-related activities that violate any of the following requirements:

(1) Nondiscriminatory treatment

Each Federal agency shall ensure, in applying standards-related activities with respect to any imported product, that such product is treated no less favorably than are like domestic or imported products, including, but not limited to, when applying tests or test methods, no less favorable treatment with respect to—

(A) the acceptance of the product for testing in comparable situations;

(B) the administration of the tests in comparable situations;

(C) the fees charged for tests;

(D) the release of test results to the exporter, importer, or agents;

(E) the siting of testing facilities and the selection of samples for testing; and

(F) the treatment of confidential information pertaining to the product.

(2) Use of international standards

(A) In general

Except as provided in subparagraph (B)(ii), each Federal agency, in developing standards, shall take into consideration international standards and shall, if appropriate, base the standards on international standards.

(B) Application of requirement

For purposes of this paragraph, the following apply:

(i) International standards not appropriate

The reasons for which the basing of a standard on an international standard may not be appropriate include, but are not limited to, the following:

(I) National security requirements.

(II) The prevention of deceptive practices.

(III) The protection of human health or safety, animal or plant life or health, or the environment.

(IV) Fundamental climatic or other geographical factors.

(V) Fundamental technological problems.

(ii) Regional standards

In developing standards, a Federal agency may, but is not required to, take into

consideration any international standard promulgated by an international standards organization the membership of which is described in section 2571(6)(A)(ii)[1] of this title.

(3) Performance criteria

Each Federal agency shall, if appropriate, develop standards based on performance criteria, such as those relating to the intended use of a product and the level of performance that the product must achieve under defined conditions, rather than on design criteria, such as those relating to the physical form of the product or the types of material of which the product is made.

(4) Access for foreign suppliers

Each Federal agency shall, with respect to any conformity assessment procedure used by it, permit access for obtaining an assessment of conformity and the mark of the system, if any, to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products, whether of domestic or other foreign origin.

(Pub. L. 96–39, title IV, § 402, July 26, 1979, 93 Stat. 242; Pub. L. 103–465, title III, § 351(c), Dec. 8, 1994, 108 Stat. 4956; Pub. L. 104–295, § 20(c)(14), Oct. 11, 1996, 110 Stat. 3529.)

REFERENCES IN TEXT

Section 2571(6)(A) of this title, referred to in par. (2)(B)(ii), was amended generally by Pub. L. 103–465, title III, § 351(e)(4), Dec. 8, 1994, 108 Stat. 4956, and, as so amended, no longer contains clauses.

AMENDMENTS

1996—Par. (4). Pub. L. 104–295 inserted comma after ''system, if any''.

1994—Par. (4). Pub. L. 103–465 substituted ''Access'' for ''Certification access'' in heading, and, in text, substituted ''conformity assessment procedure'' for ''certification system'' and ''an assessment of conformity and the mark of the system, if any'' for ''certification under that system''.

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 352 of Pub. L. 103–465, set out as a note under section 2531 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2533 of this title.

§ 2533. State and private standards-related activities

(a) In general

It is the sense of the Congress that no State agency and no private person should engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States.

(b) Presidential action

The President shall take such reasonable measures as may be available to promote the observance by State agencies and private persons, in carrying out standards-related activities, of requirements equivalent to those imposed on Federal agencies under section 2532 of this title, and of procedures that provide for notification, participation, and publication with respect to such activities.

(Pub. L. 96–39, title IV, § 403, July 26, 1979, 93 Stat. 243.)

PART B—FUNCTIONS OF FEDERAL AGENCIES

§ 2541. Functions of Trade Representative

(a) In general

The Trade Representative shall coordinate the consideration of international trade policy issues that arise as a result of, and shall develop international trade policy as it relates to, the implementation of this subchapter.

(b) Negotiating functions

The Trade Representative has responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to standards-related activities. In carrying out this responsibility, the Trade Representative shall inform and consult with any Federal agency having expertise in the matters under discussion and negotiation.

(c) Cross reference

For provisions of law regarding general authority of the Trade Representative with respect to trade agreements, see section 2171 of this title.

(Pub. L. 96–39, title IV, § 411, July 26, 1979, 93 Stat. 243; Pub. L. 103–182, title III, § 351(b)(2), Dec. 8, 1993, 107 Stat. 2122; Pub. L. 104–295, § 21(b)(1), (2), Oct. 11, 1996, 110 Stat. 3529, 3530.)

AMENDMENTS

1996—Pub. L. 104–295, § 21(b)(1), amended directory language of Pub. L. 103–182, § 351(b)(2). See 1993 Amendment notes below.

Subsec. (c). Pub. L. 104–295, § 21(b)(2), substituted ''Trade Representative'' for ''Special Representatives''.

1993—Pub. L. 103–182, § 351(b)(2)(B), as amended by Pub. L. 104–295, § 21(b)(1), substituted ''Trade Representative'' for ''Special Representative'' in section catchline.

Subsecs. (a), (b). Pub. L. 103–182, § 351(b)(2)(A), as amended by Pub. L. 104–295, § 21(b)(1), substituted ''Trade Representative'' for ''Special Representative'' wherever appearing.

§ 2542. Establishment and operation of technical offices

(a) Establishment

(1) For nonagricultural products

The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) of this section with respect to nonagricultural products.

(2) For agricultural products

The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) of this section with respect to agricultural products.

[1] See References in Text note below.

(b) Functions of offices

The President shall prescribe for each technical office established under subsection (a) of this section such functions as the President deems necessary or appropriate to implement this subchapter.

(Pub. L. 96–39, title IV, § 412, July 26, 1979, 93 Stat. 244.)

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section delegated to Secretary of Commerce regarding technical office established under subsec. (a)(1) of this section, and to Secretary of Agriculture regarding technical office established under subsec. (a)(2) of this section, see section 1–103(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2544 of this title.

§ 2543. Representation of United States interests before international standards organizations

(a) Oversight and consultation

The Secretary concerned shall—

(1) inform, and consult and coordinate with, the Trade Representative with respect to international standards-related activities identified under paragraph (2);

(2) keep adequately informed regarding international standards-related activities and identify those that may substantially affect the commerce of the United States; and

(3) carry out such functions as are required under subsections (b) and (c) of this section.

(b) Representation of United States interests by private persons

(1) Definitions

For purposes of this subsection—

(A) Organization member

The term ''organization member'' means the private person who holds membership in a private international standards organization.

(B) Private international standards organization

The term ''private international standards organization'' means any international standards organization before which the interests of the United States are represented by a private person who is officially recognized by that organization for such purpose.

(2) In general

Except as otherwise provided for in this subsection, the representation of United States interests before any private international standards organization shall be carried out by the organization member.

(3) Inadequate representation

If the Secretary concerned, after inquiry instituted on his own motion or at the request of any private person, Federal agency, or State agency having an interest therein, has reason to believe that the participation by the organization member in the proceedings of a private international standards organization will not result in the adequate representation of United States interests that are, or may be, affected by the activities of such organization (particularly with regard to the potential impact of any such activity on the international trade of the United States), the Secretary concerned shall immediately notify the organization member concerned. During any such inquiry, the Secretary concerned may solicit and consider the advice of the appropriate representatives referred to in section 2547 of this title.

(4) Action by organization member

If within the 90-day period after the date on which notification is received under paragraph (3) (or such shorter period as the Secretary concerned determines to be necessary in extraordinary circumstances), the organization member demonstrates to the Secretary concerned its willingness and ability to represent adequately United States interests before the private international standards organization, the Secretary concerned shall take no further action under this subsection.

(5) Action by Secretary concerned

If—

(A) within the appropriate period referred to in paragraph (4), the organization member does not respond to the Secretary concerned with respect to the notification, or does respond but does not demonstrate to the Secretary concerned the requisite willingness and ability to represent adequately United States interests; or

(B) there is no organization member of the private international standards organization;

the Secretary concerned shall make appropriate arrangements to provide for the adequate representation of United States interests. In cases where subparagraph (A) applies, such provision shall be made by the Secretary concerned through the appropriate organization member if the private international standards organization involved requires representation by that member.

(c) Representation of United States interests by Federal agencies

With respect to any international standards organization before which the interests of the United States are represented by one or more Federal agencies that are officially recognized by that organization for such purpose, the Secretary concerned shall—

(1) encourage cooperation among interested Federal agencies with a view toward facilitating the development of a uniform position with respect to the technical activities with which the organization is concerned;

(2) encourage such Federal agencies to seek information from, and to cooperate with, the affected domestic interests when undertaking such representation; and

(3) not preempt the responsibilities of any Federal agency that has jurisdiction with respect to the activities undertaken by such organization, unless requested to do so by such agency.

(Pub. L. 96–39, title IV, § 413, July 26, 1979, 93 Stat. 244; Pub. L. 103–182, title III, § 351(b)(2)(A),

Dec. 8, 1993, 107 Stat. 2122; Pub. L. 104–295, § 21(b)(1), Oct. 11, 1996, 110 Stat. 3529.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–295 amended directory language of Pub. L. 103–182. See 1993 Amendment note below.

1993—Subsec. (a)(1). Pub. L. 103–182, as amended by Pub. L. 104–295, substituted ''Trade Representative'' for ''Special Representative''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2545 of this title.

§ 2544. Standards information center

(a) Establishment

The Secretary of Commerce shall maintain within the Department of Commerce a standards information center.

(b) Functions

The standards information center shall—

(1) serve as the central national collection facility for information relating to (A) standards, technical regulations, conformity assessment procedures, and standards-related activities, whether such standards, technical regulations, conformity assessment procedures, or activities are public or private, domestic or foreign, or international, regional, national, or local and (B) the membership and participation of Federal, State, or local government bodies or private bodies in the United States in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements concerning standards-related activities;

(2) make available to the public at such reasonable fee as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) other than information to which paragraph (3) applies;

(3) use its best efforts to make available to the public, at such reasonable fees as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) that is of private origin, on a cooperative basis with the private individual or entity, foreign or domestic, who holds the copyright on the information;

(4) in case of such information that is of foreign origin, provide, at such reasonable fee as the Secretary shall prescribe, such translation services as may be necessary;

(5) serve as the inquiry point for requests for information regarding standards-related activities, whether adopted or proposed, within the United States, except that in carrying out this paragraph, the Secretary of Commerce shall refer all inquiries regarding agricultural products to the technical office established under section 2542(a)(2) of this title within the Department of Agriculture; and

(6) provide such other services as may be appropriate, including but not limited to, such services to the technical offices established under section 2542 of this title as may be requested by those offices in carrying out their functions.

(c) Sanitary and phytosanitary measures

(1) Public information

The standards information center shall, in addition to the functions specified under subsection (b) of this section, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

(A) any sanitary or phytosanitary measure of general application, including any inspection procedure or approval procedure proposed, adopted, or maintained by a Federal agency or agency of a State or local government;

(B) the procedures of a Federal agency or an agency of a State or local government for risk assessment and factors the agency considers in conducting the assessment;

(C) the determination of the levels of protection that a Federal agency or an agency of a State or local government considers appropriate; and

(D) the membership and participation of the Federal Government and State and local governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements.

(2) Definitions

The definitions in section 2575b of this title apply for purposes of this subsection.

(Pub. L. 96–39, title IV, § 414, July 26, 1979, 93 Stat. 245; Pub. L. 103–465, title III, § 351(d), title IV, § 431(a), Dec. 8, 1994, 108 Stat. 4956, 4966; Pub. L. 104–295, § 20(c)(15), Oct. 11, 1996, 110 Stat. 3529.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–295 struck out comma after ''procedures,'' in two places.

1994—Subsec. (b)(1). Pub. L. 103–465, § 351(d), inserted ''(A)'' after ''relating to'', substituted ''technical regulations, conformity assessment procedures,'' for ''certification systems'' and ''such standards, technical regulations, conformity assessment procedures,'' for ''such standards, systems'', and inserted ''and'' and cl. (B) before semicolon at end.

Subsec. (c). Pub. L. 103–465, § 431(a), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 351(d) of 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 352 of Pub. L. 103–465, set out as a note under section 2531 of this title.

Amendment by section 431(a) of Pub. L. 103–465 effective on the date of entry into force of the WTO Agreement with respect to the United States [Jan. 1, 1995], except as otherwise provided, see section 451 of Pub. L. 103–465, set out as an Effective Date note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2575a, 2576a of this title.

§ 2545. Contracts and grants

(a) In general

For purposes of carrying out this subchapter, and otherwise encouraging compliance with the Agreement, the Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this subchapter, make grants to, or enter into contracts with, any other Federal agency, any State agen-

cy, or any private person, to assist such agency or person to implement appropriate programs and activities, including, but not limited to, programs and activities—

(1) to increase awareness of proposed and adopted standards-related activities;

(2) to facilitate international trade through the appropriate international and domestic standards-related activities;

(3) to provide, if appropriate, and pursuant to section 2543 of this title, adequate United States representation in international standards-related activities; and

(4) to encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports.

No contract entered into under this section shall be effective except to such extent, and in such amount, as is provided in advance in appropriation Acts.

(b) Terms and conditions

Any contract entered into, or any grant made, under subsection (a) of this section shall be subject to such terms and conditions as the Trade Representative or Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States.

(c) Limitations

Financial assistance extended under this section shall not exceed 75 percent of the total costs (as established by the Trade Representative or Secretary concerned, as the case may be) of the program or activity for which assistance is made available. The non-Federal share of such costs shall be made in cash or kind, consistent with the maintenance of the program or activity concerned.

(d) Audit

Each recipient of a grant or contract under this section shall make available to the Trade Representative or the Secretary concerned, as the case may be, and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, and record that is pertinent to the funds received under such grant or contract.

(Pub. L. 96–39, title IV, § 415, July 26, 1979, 93 Stat. 246; Pub. L. 103–182, title III, § 351(b)(2)(A), Dec. 8, 1993, 107 Stat. 2122; Pub. L. 104–295, § 21(b)(1), Oct. 11, 1996, 110 Stat. 3529.)

AMENDMENTS

1996—Pub. L. 104–295 amended directory language of Pub. L. 103–182. See 1993 Amendment note below.

1993—Pub. L. 103–182, as amended by Pub. L. 104–295, substituted ''Trade Representative'' for ''Special Representative'' wherever appearing.

§ 2546. Technical assistance

The Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this subchapter, make available, on a reimbursable basis or otherwise, to any other Federal agency, State agency, or private person such assistance, including, but not limited to, employees, services, and facilities, as may be appropriate to assist such agency or person in carrying out standards-related activities in a manner consistent with this subchapter.

(Pub. L. 96–39, title IV, § 416, July 26, 1979, 93 Stat. 247; Pub. L. 103–182, title III, § 351(b)(2)(A), Dec. 8, 1993, 107 Stat. 2122; Pub. L. 104–295, § 21(b)(1), Oct. 11, 1996, 110 Stat. 3529.)

AMENDMENTS

1996—Pub. L. 104–295 amended directory language of Pub. L. 103–182. See 1993 Amendment note below.

1993—Pub. L. 103–182, as amended by Pub. L. 104–295, substituted ''Trade Representative'' for ''Special Representative''.

§ 2547. Consultations with representatives of domestic interests

In carrying out the functions for which responsible under this subchapter, the Trade Representative and the Secretary concerned shall solicit technical and policy advice from the committees, established under section 2155 of this title, that represent the interests concerned, and may solicit advice from appropriate State agencies and private persons.

(Pub. L. 96–39, title IV, § 417, July 26, 1979, 93 Stat. 247; Pub. L. 103–182, title III, § 351(b)(2)(A), Dec. 8, 1993, 107 Stat. 2122; Pub. L. 104–295, § 21(b)(1), Oct. 11, 1996, 110 Stat. 3529.)

AMENDMENTS

1996—Pub. L. 104–295 amended directory language of Pub. L. 103–182. See 1993 Amendment note below.

1993—Pub. L. 103–182, as amended by Pub. L. 104–295, substituted ''Trade Representative'' for ''Special Representative''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2543, 2553 of this title.

PART C—ADMINISTRATIVE AND JUDICIAL PROCEEDINGS REGARDING STANDARDS-RELATED ACTIVITIES

SUBPART 1—REPRESENTATIONS ALLEGING UNITED STATES VIOLATIONS OF OBLIGATIONS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 2561 of this title.

§ 2551. Right of action

Except as provided under this subpart, the provisions of this part do not create any right of action under the laws of the United States with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement.

(Pub. L. 96–39, title IV, § 421, July 26, 1979, 93 Stat. 247.)

§ 2552. Representations

Any—

(1) Party to the Agreement; or

(2) foreign country that is not a Party to the Agreement but is found by the Trade Representative to extend rights and privileges to the United States that are substantially the same as those that would be so extended if

that foreign country were a Party to the Agreement;

may make a representation to the Trade Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement. Any such representation must be made in accordance with procedures that the Trade Representative shall by regulation prescribe and must provide a reasonable indication that the standards-related activity concerned is having a significant trade effect. No person other than a Party to the Agreement or a foreign country described in paragraph (2) may make such a representation.

(Pub. L. 96–39, title IV, § 422, July 26, 1979, 93 Stat. 247; Pub. L. 103–182, title III, § 351(b)(2)(A), Dec. 8, 1993, 107 Stat. 2122; Pub. L. 104–295, § 21(b)(1), Oct. 11, 1996, 110 Stat. 3529.)

AMENDMENTS

1996—Pub. L. 104–295 amended directory language of Pub. L. 103–182. See 1993 Amendment note below.

1993—Pub. L. 103–182, as amended by Pub. L. 104–295, substituted ''Trade Representative'' for ''Special Representative'' wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2553, 2561 of this title.

§ 2553. Action after receipt of representations

(a) Review

Upon receipt of any representation made under section 2552 of this title, the Trade Representative shall review the issues concerned in consultation with—

(1) the agency or person alleged to be engaging in violations under the Agreement;

(2) the member agencies of the interagency trade organization established under section 1872(a) of this title;

(3) other appropriate Federal agencies; and

(4) appropriate representatives referred to in section 2547 of this title.

(b) Resolution

The Trade Representative shall undertake to resolve, on a mutually satisfactory basis, the issues set forth in the representation through consultation with the parties concerned.

(Pub. L. 96–39, title IV, § 423, July 26, 1979, 93 Stat. 247; Pub. L. 103–182, title III, § 351(b)(2)(A), Dec. 8, 1993, 107 Stat. 2122; Pub. L. 104–295, § 21(b)(1), Oct. 11, 1996, 110 Stat. 3529.)

AMENDMENTS

1996—Pub. L. 104–295 amended directory language of Pub. L. 103–182. See 1993 Amendment note below.

1993—Pub. L. 103–182, as amended by Pub. L. 104–295, substituted ''Trade Representative'' for ''Special Representative'' wherever appearing.

§ 2554. Procedure after finding by international forum

(a) In general

If an appropriate international forum finds that a standards-related activity being engaged in within the United States conflicts with the obligations of the United States under the Agreement, the interagency trade organization established under section 1872(a) of this title shall review the finding and the matters related thereto with a view to recommending appropriate action.

(b) Cross reference

For provisions of law regarding remedies available to domestic persons alleging that standards activities engaged in by Parties to the Agreement (other than the United States) violate the obligations of the Agreement, see section 2411 of this title.

(Pub. L. 96–39, title IV, § 424, July 26, 1979, 93 Stat. 248.)

SUBPART 2—OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED ACTIVITIES

§ 2561. Findings of reciprocity required in administrative proceedings

(a) In general

Except as provided under subpart 1, no Federal agency may consider a complaint or petition against any standards-related activity regarding an imported product, if that activity is engaged in within the United States and is covered by the Agreement, unless the Trade Representative finds, and informs the agency concerned in writing, that—

(1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 2552(2) of this title; and

(2) the dispute settlement procedures provided under the Agreement are not appropriate.

(b) Exemptions

This section does not apply with respect to causes of action arising under—

(1) the antitrust laws as defined in section 12(a) of title 15; or

(2) statutes administered by the Secretary of Agriculture.

This section does not apply with respect to petitions and proceedings that are provided for under the practices of any Federal agency for the purpose of ensuring, in accordance with section 553 of title 5, that interested persons are given an opportunity to participate in agency rulemaking or to seek the issuance, amendment, or repeal of a rule.

(Pub. L. 96–39, title IV, § 441, July 26, 1979, 93 Stat. 248; Pub. L. 103–182, title III, § 351(b)(2)(A), Dec. 8, 1993, 107 Stat. 2122; Pub. L. 104–295, § 21(b)(1), Oct. 11, 1996, 110 Stat. 3529.)

AMENDMENTS

1996—Pub. L. 104–295 amended directory language of Pub. L. 103–182. See 1993 Amendment note below.

1993—Subsec. (a). Pub. L. 103–182, as amended by Pub. L. 104–295, substituted ''Trade Representative'' for ''Special Representative''.

§ 2562. Consideration of standards-related activities by an international forum

No standards-related activity being engaged in within the United States may be stayed in any judicial or administrative proceeding on the basis that such activity is currently being considered, pursuant to the Agreement, by an international forum.

(Pub. L. 96–39, title IV, § 442, July 26, 1979, 93 Stat. 248.)

PART D—DEFINITIONS AND MISCELLANEOUS PROVISIONS

§ 2571. Definitions

As used in this subchapter—

(1) Agreement

The term ''Agreement'' means the Agreement on Technical Barriers to Trade referred to in section 3511(d)(5) of this title.

(2) Conformity assessment procedure

The term ''conformity assessment procedure'' means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

(3) Federal agency

The term ''Federal agency'' means any of the following within the meaning of chapter 2 of part I of title 5:

(A) Any executive department.

(B) Any military department.

(C) Any Government corporation.

(D) Any Government-controlled corporation.

(E) Any independent establishment.

(4) International conformity assessment procedure

The term ''international conformity assessment procedure'' means a conformity assessment procedure that is adopted by an international standards organization.

(5) International standard

The term ''international standard'' means any standard that is promulgated by an international standards organization.

(6) International standards organization

The term ''international standards organization'' means any organization—

(A) the membership of which is open to representatives, whether public or private, of the United States and at least all Members; and

(B) that is engaged in international standards-related activities.

(7) International standards-related activity

The term ''international standards-related activity'' means the negotiation, development, or promulgation of, or any amendment or change to, an international standard, or an international conformity assessment procedure, or both.

(8) Member

The term ''Member'' means a WTO member as defined in section 3501(10) of this title.

(9) Private person

The term ''private person'' means—

(A) any individual who is a citizen or national of the United States; and

(B) any corporation, partnership, association, or other legal entity organized or existing under the law of any State, whether for profit or not for profit.

(10) Product

The term ''product'' means any natural or manufactured item.

(11) Secretary concerned

The term ''Secretary concerned'' means the Secretary of Commerce with respect to functions under this subchapter relating to nonagricultural products, and the Secretary of Agriculture with respect to functions under this subchapter relating to agricultural products.

(12) Trade Representative

The term ''Trade Representative'' means the United States Trade Representative.

(13) Standard

The term ''standard'' means a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines, or characteristics for products or related processes and production methods, with which compliance is not mandatory. Such term may also include or deal exclusively with terminology, symbols, packaging, marking, or labeling requirements as they apply to a product, process, or production method.

(14) Standards-related activity

The term ''standards-related activity'' means the development, adoption, or application of any standard, technical regulation, or conformity assessment procedure.

(15) State

The term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam and any other Commonwealth, territory, or possession of the United States.

(16) State agency

The term ''State agency'' means any department, agency, or other instrumentality of the government of any State or of any political subdivision of any State.

(17) Technical regulation

The term ''technical regulation'' means a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. Such term may also include or deal exclusively with terminology, symbols, packaging, marking, or labeling requirements as they apply to a product, process, or production method.

(18) United States

The term ''United States'', when used in a geographical context, means all States.

(Pub. L. 96–39, title IV, § 451, July 26, 1979, 93 Stat. 249; Pub. L. 103–182, title III, § 351(b)(1), Dec. 8, 1993, 107 Stat. 2122; Pub. L. 103–465, title III, § 351(e), Dec. 8, 1994, 108 Stat. 4956; Pub. L. 104–295, § 20(c)(16), Oct. 11, 1996, 110 Stat. 3529.)

REFERENCES IN TEXT

Chapter 2 of part I of title 5, referred to in par. (3), probably means chapter 1 of part I of title 5, which is

classified to section 101 et seq. of Title 5, Government Organization and Employees, and which relates to organization of agencies.

AMENDMENTS

1996—Par. (6)(A). Pub. L. 104–295 substituted "; and" for period at end.

1994—Par. (1). Pub. L. 103–465, § 351(e)(1), amended par. (1) generally, substituting "referred to in section 3511(d)(5) of this title" for "approved under section 2503(a) of this title".

Par. (2). Pub. L. 103–465, § 351(e)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: "The term 'certification system' means a system—

"(A) for determining whether a product conforms with product standards applicable to that product; and

"(B) if a product so conforms, for attesting, by means of a document, mark, or other appropriate evidence of conformity, to that conformity.

Such term also includes any modification of, or change to, any such system."

Par. (4). Pub. L. 103–465, § 351(e)(3), substituted "conformity assessment procedure" for "certification system" in two places.

Par. (6)(A). Pub. L. 103–465, § 351(e)(4), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the membership of which is open to representatives, whether public or private, of the United States and—

"(i) all Parties to the Agreement, or

"(ii) some but not all Parties of the Agreement; and".

Par. (7). Pub. L. 103–465, § 351(e)(5), substituted "conformity assessment procedure" for "certification system".

Par. (8). Pub. L. 103–465, § 351(e)(6), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: "The term 'Party to the Agreement' means any foreign country or instrumentality determined by the President to have assumed, and to be applying, the obligations of the Agreement with respect to the United States."

Par. (13). Pub. L. 103–465, § 351(e)(7), amended heading and text of par. (13) generally. Prior to amendment, text read as follows: "The term 'standard' means any of the following, and any amendment or change to any of the following:

"(A) The specification of the characteristics of a product, including, but not limited to, levels of quality, performance, safety, or dimensions.

"(B) Specifications relating to the terminology, symbols, testing and test methods, packaging, or marking or labeling requirements applicable to a product.

"(C) Administrative procedures related to the application of any specification referred to in paragraph (A) or (B)."

Par. (14). Pub. L. 103–465, § 351(e)(8), substituted ", technical regulation, or conformity assessment procedure" for "or any certification system".

Pars. (17), (18). Pub. L. 103–465, § 351(e)(9), added par. (17) and redesignated former par. (17) as (18).

1993—Par. (12). Pub. L. 103–182 amended par. (12) generally. Prior to amendment, par. (12) read as follows:

"(12) SPECIAL REPRESENTATIVE.—The term 'Special Representative' means the Special Representative for Trade Negotiations."

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 352 of Pub. L. 103–465, set out as a note under section 2531 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2532, 2575b, 2576b, 2577 of this title.

§ 2572. Exemptions

This subchapter does not apply to—

(1) any standards activity engaged in by any Federal agency or State agency for the use (including, but not limited to, use with respect to research and development, production, or consumption) of that agency or the use of another such agency; or

(2) any standards activity engaged in by any private person solely for use in the production or consumption of products by that person.

(Pub. L. 96–39, title IV, § 452, July 26, 1979, 93 Stat. 250.)

§ 2573. Reports to Congress on operation of agreement

As soon as practicable after the close of the 3-year period beginning on the date on which this subchapter takes effect, and as soon as practicable after the close of each succeeding 3-year period through 2001, the Trade Representative shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.

(Pub. L. 96–39, title IV, § 453, July 26, 1979, 93 Stat. 250; Pub. L. 103–182, title III, § 351(b)(2)(A), Dec. 8, 1993, 107 Stat. 2122; Pub. L. 103–465, title III, § 351(f), Dec. 8, 1994, 108 Stat. 4957; Pub. L. 104–295, § 21(b)(1), Oct. 11, 1996, 110 Stat. 3529.)

AMENDMENTS

1996—Pub. L. 104–295 amended directory language of Pub. L. 103–182. See 1993 Amendment note below.

1994—Pub. L. 103–465 inserted "through 2001" after "succeeding 3-year period".

1993—Pub. L. 103–182, as amended by Pub. L. 104–295, substituted "Trade Representative" for "Special Representative".

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 352 of Pub. L. 103–465, set out as a note under section 2531 of this title.

PART E—STANDARDS AND MEASURES UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT

SUBPART 1—SANITARY AND PHYTOSANITARY MEASURES

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 2576 of this title.

§ 2575. General

Nothing in this subpart may be construed—

(1) to prohibit a Federal agency or State agency from engaging in activity related to sanitary or phytosanitary measures to protect human, animal, or plant life or health; or

(2) to limit the authority of a Federal agency or State agency to determine the level of protection of human, animal, or plant life or health the agency considers appropriate.

(Pub. L. 96–39, title IV, § 461, as added Pub. L. 103–182, title III, § 351(a), Dec. 8, 1993, 107 Stat. 2118.)

§ 2575a. Inquiry point

The standards information center maintained under section 2544 of this title shall, in addition

to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

(1) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure proposed, adopted, or maintained by a Federal or State agency;

(2) the procedures of a Federal or State agency for risk assessment, and factors the agency considers in conducting the assessment and in establishing the levels of protection that the agency considers appropriate;

(3) the membership and participation of the Federal Government and State governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements; and

(4) the location of notices of the type required under article 719 of the NAFTA, or where the information contained in such notices can be obtained.

(Pub. L. 96–39, title IV, § 462, as added Pub. L. 103–182, title III, § 351(a), Dec. 8, 1993, 107 Stat. 2118.)

§ 2575b. Subpart definitions

Notwithstanding section 2571 of this title, for purposes of this subpart—

(1) Animal

The term ''animal'' includes fish, bees, and wild fauna.

(2) Approval procedure

The term ''approval procedure'' means any registration, notification, or other mandatory administrative procedure for—

(A) approving the use of an additive for a stated purpose or under stated conditions, or

(B) establishing a tolerance for a stated purpose or under stated conditions for a contaminant,

in a food, beverage, or feedstuff prior to permitting the use of the additive or the marketing of a food, beverage, or feedstuff containing the additive or contaminant.

(3) Contaminant

The term ''contaminant'' includes pesticide and veterinary drug residues and extraneous matter.

(4) Control or inspection procedure

The term ''control or inspection procedure'' means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification, or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing, or use of a good, but does not mean an approval procedure.

(5) Plant

The term ''plant'' includes wild flora.

(6) Risk assessment

The term ''risk assessment'' means an evaluation of—

(A) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or

(B) the potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage, or feedstuff.

(7) Sanitary or phytosanitary measure

(A) In general

The term ''sanitary or phytosanitary measure'' means a measure to—

(i) protect animal or plant life or health in the United States from risks arising from the introduction, establishment, or spread of a pest or disease;

(ii) protect human or animal life or health in the United States from risks arising from the presence of an additive, contaminant, toxin, or disease-causing organism in a food, beverage, or feedstuff;

(iii) protect human life or health in the United States from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof; or

(iv) prevent or limit other damage in the United States arising from the introduction, establishment, or spread of a pest.

(B) Form

The form of a sanitary or phytosanitary measure includes—

(i) end product criteria;

(ii) a product-related processing or production method;

(iii) a testing, inspection, certification, or approval procedure;

(iv) a relevant statistical method;

(v) a sampling procedure;

(vi) a method of risk assessment;

(vii) a packaging and labeling requirement directly related to food safety; and

(viii) a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation.

(Pub. L. 96–39, title IV, § 463, as added Pub. L. 103–182, title III, § 351(a), Dec. 8, 1993, 107 Stat. 2119.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2544, 2578b of this title.

SUBPART 2—STANDARDS-RELATED MEASURES

§ 2576. General

(a) No bar to engaging in standards activity

Nothing in this subpart shall be construed—

(1) to prohibit a Federal agency from engaging in activity related to standards-related

measures, including any such measure relating to safety, the protection of human, animal, or plant life or health, the environment or consumers; or

(2) to limit the authority of a Federal agency to determine the level it considers appropriate of safety or of protection of human, animal, or plant life or health, the environment or consumers.

(b) Exclusion

This subpart does not apply to—

(1) technical specifications prepared by a Federal agency for production or consumption requirements of the agency; or

(2) sanitary or phytosanitary measures under subpart 1.

(Pub. L. 96–39, title IV, § 471, as added Pub. L. 103–182, title III, § 351(a), Dec. 8, 1993, 107 Stat. 2120.)

§ 2576a. Inquiry point

The standards information center maintained under section 2544 of this title shall, in addition to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding—

(1) the membership and participation of the Federal Government, State governments, and relevant nongovernmental bodies in the United States in international and regional standardizing bodies and conformity assessment systems, and in bilateral and multilateral arrangements regarding standards-related measures, and the provisions of those systems and arrangements;

(2) the location of notices of the type required under article 909 of the NAFTA, or where the information contained in such notice can be obtained; and

(3) the Federal agency procedures for assessment of risk, and factors the agency considers in conducting the assessment and establishing the levels of protection that the agency considers appropriate.

(Pub. L. 96–39, title IV, § 472, as added Pub. L. 103–182, title III, § 351(a), Dec. 8, 1993, 107 Stat. 2120.)

§ 2576b. Subpart definitions

Notwithstanding section 2571 of this title, for purposes of this subpart—

(1) Approval procedure

The term ''approval procedure'' means any registration, notification, or other mandatory administrative procedure for granting permission for a good or service to be produced, marketed, or used for a stated purpose or under stated conditions.

(2) Conformity assessment procedure

The term ''conformity assessment procedure'' means any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, or approval used for such a purpose, but does not mean an approval procedure.

(3) Objective

The term ''objective'' includes—

(A) safety,

(B) protection of human, animal, or plant life or health, the environment or consumers, including matters relating to quality and identifiability of goods or services, and

(C) sustainable development,

but does not include the protection of domestic production.

(4) Service

The term ''service'' means a land transportation service or a telecommunications service.

(5) Standard

The term ''standard'' means—

(A) characteristics for a good or a service,

(B) characteristics, rules, or guidelines for—

(i) processes or production methods relating to such good, or

(ii) operating methods relating to such service, and

(C) provisions specifying terminology, symbols, packaging, marking, or labelling for—

(i) a good or its related process or production methods, or

(ii) a service or its related operating methods,

for common and repeated use, including explanatory and other related provisions set out in a document approved by a standardizing body, with which compliance is not mandatory.

(6) Standards-related measure

The term ''standards-related measure'' means a standard, technical regulation, or conformity assessment procedure.

(7) Technical regulation

The term ''technical regulation'' means—

(A) characteristics or their related processes and production methods for a good,

(B) characteristics for a service or its related operating methods, or

(C) provisions specifying terminology, symbols, packaging, marking, or labelling for—

(i) a good or its related process or production method, or

(ii) a service or its related operating method,

set out in a document, including applicable administrative, explanatory, and other related provisions, with which compliance is mandatory.

(8) Telecommunications service

The term ''telecommunications service'' means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast, or other electromagnetic distribution of radio or television programming to the public generally.

(Pub. L. 96–39, title IV, § 473, as added Pub. L. 103–182, title III, § 351(a), Dec. 8, 1993, 107 Stat. 2120.)

SUBPART 3—PART DEFINITIONS

§ 2577. Definitions

Notwithstanding section 2571 of this title, for purposes of this part—

(1) NAFTA

The term ''NAFTA'' means the North American Free Trade Agreement.

(2) State

The term ''State'' means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 96–39, title IV, § 481, as added Pub. L. 103–182, title III, § 351(a), Dec. 8, 1993, 107 Stat. 2122.)

PART F—INTERNATIONAL STANDARD-SETTING ACTIVITIES

§ 2578. Notice of United States participation in international standard-setting activities

(a) In general

The President shall designate an agency to be responsible for informing the public of the sanitary and phytosanitary standard-setting activities of each international standard-setting organization.

(b) Notification

Not later than June 1 of each year, the agency designated under subsection (a) of this section with respect to each international standard-setting organization shall publish notice in the Federal Register of the information specified in subsection (c) of this section with respect to that organization. The notice shall cover the period ending on June 1 of the year in which the notice is published, and beginning on the date of the preceding notice under this subsection, except that the first such notice shall cover the 1-year period ending on the date of the notice.

(c) Required information

The information to be provided in the notice under subsection (b) of this section is—

(1) the sanitary or phytosanitary standards under consideration or planned for consideration by that organization;

(2) for each sanitary or phytosanitary standard specified in paragraph (1)—

(A) a description of the consideration or planned consideration of the standard;

(B) whether the United States is participating or plans to participate in the consideration of the standard;

(C) the agenda for the United States participation, if any; and

(D) the agency responsible for representing the United States with respect to the standard.

(d) Public comment

The agency specified in subsection (c)(2)(D) of this section shall provide an opportunity for public comment with respect to the standards for which the agency is responsible and shall take the comments into account in participating in the consideration of the standards and in proposing matters to be considered by the organization.

(Pub. L. 96–39, title IV, § 491, as added Pub. L. 103–465, title IV, § 432, Dec. 8, 1994, 108 Stat. 4970.)

EFFECTIVE DATE

Part effective on the date of entry into force of the WTO Agreement with respect to the United States [Jan. 1, 1995], except as otherwise provided, see section 451 of Pub. L. 103–465, set out as a note under section 3601 of this title.

DESIGNATION OF AGENCY

Secretary of Agriculture designated under this section as official responsible for informing public of sanitary and phytosanitary standard-setting activities of each international standard-setting organization, see par. (4) of Proc. No. 6780, Mar. 23, 1995, 60 F.R. 15847, set out as a note under section 3511 of this title.

§ 2578a. Equivalence determinations

(a) In general

An agency may not determine that a sanitary or phytosanitary measure of a foreign country is equivalent to a sanitary or phytosanitary measure established under the authority of Federal law unless the agency determines that the sanitary or phytosanitary measure of the foreign country provides at least the same level of sanitary or phytosanitary protection as the comparable sanitary or phytosanitary measure established under the authority of Federal law.

(b) FDA determination

If the Commissioner proposes to issue a determination of the equivalency of a sanitary or phytosanitary measure of a foreign country to a measure that is required to be promulgated as a rule under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or other statute administered by the Food and Drug Administration, the Commissioner shall issue a proposed regulation to incorporate such determination and shall include in the notice of proposed rulemaking the basis for the determination that the sanitary or phytosanitary measure of a foreign country provides at least the same level of sanitary or phytosanitary protection as the comparable Federal sanitary or phytosanitary measure. The Commissioner shall provide opportunity for interested persons to comment on the proposed regulation. The Commissioner shall not issue a final regulation based on the proposal without taking into account the comments received.

(c) Notice

If the Commissioner proposes to issue a determination of the equivalency of a sanitary or phytosanitary measure of a foreign country to a sanitary or phytosanitary measure of the Food and Drug Administration that is not required to be promulgated as a rule under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] or other statute administered by the Food and Drug Administration, the Commissioner shall publish a notice in the Federal Register that identifies the basis for the determination that the measure provides at least the same level of sanitary or phytosanitary protection as

the comparable Federal sanitary or phytosanitary measure. The Commissioner shall provide opportunity for interested persons to comment on the notice. The Commissioner shall not issue a final determination on the issue of equivalency without taking into account the comments received.

(Pub. L. 96–39, title IV, § 492, as added Pub. L. 103–465, title IV, § 432, Dec. 8, 1994, 108 Stat. 4971; amended Pub. L. 104–295, § 20(d)(1), Oct. 11, 1996, 110 Stat. 3529.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (b) and (c), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–295 substituted ''phytosanitary'' for ''phystosanitary'' before ''measure of the Food and Drug Administration''.

§ 2578b. Definitions

(a) In general

As used in this part:

(1) Agency

The term ''agency'' means a Federal department or agency (or combination of Federal departments or agencies).

(2) Commissioner

The term ''Commissioner'' means the Commissioner of Food and Drugs.

(3) International standard-setting organization

The term ''international standard-setting organization'' means an organization consisting of representatives of 2 or more countries, the purpose of which is to negotiate, develop, promulgate, or amend an international standard.

(4) Sanitary or phytosanitary standard

The term ''sanitary or phytosanitary standard'' means a standard intended to form a basis for a sanitary or phytosanitary measure.

(5) International standard

The term ''international standard'' means a standard, guideline, or recommendation—

(A) regarding food safety, adopted by the Codex Alimentarius Commission, including a standard, guideline, or recommendation regarding decomposition elaborated by the Codex Committee on Fish and Fishery Products, food additives, contaminants, hygienic practice, and methods of analysis and sampling;

(B) regarding animal health and zoonoses, developed under the auspices of the International Office of Epizootics;

(C) regarding plant health, developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with the North American Plant Protection Organization; or

(D) established by or developed under any other international organization agreed to by the NAFTA countries (as defined in section 3301(4) of this title) or by the WTO members (as defined in section 3501(10) of this title).

(b) Other definitions

The definitions set forth in section 2575b of this title apply for purposes of this part except that in applying paragraph (7) of section 2575b of this title with respect to a sanitary or phytosanitary measure of a foreign country, any reference in such paragraph to the United States shall be deemed to be a reference to that foreign country.

(Pub. L. 96–39, title IV, § 493, as added Pub. L. 103–465, title IV, § 432, Dec. 8, 1994, 108 Stat. 4972.)

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 2581. Auction of import licenses

(a) In general

Notwithstanding any other provision of law, the President may sell import licenses at public auction under such terms and conditions as he deems appropriate. Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

(b) "Import license" defined

For purposes of this section, the term ''import license'' means any documentation used to administer a quantitative restriction imposed or modified after July 26, 1979 under—

(1) section 125, 203, 301, or 406 of the Trade Act of 1974 (19 U.S.C. 2135, 2253, 2411, or 2436),

(2) the International Emergency Economic Powers Act (50 U.S.C. 1701–1706),

(3) authority under the notes of the Harmonized Tariff Schedule of the United States, but not including any quantitative restriction imposed under section 22 of the Agricultural Adjustment Act of 1934 (7 U.S.C. 624),

(4) the Trading With the Enemy Act (50 U.S.C. App. 1–44),

(5) section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854) other than for meat or meat products, or

(6) any Act enacted explicitly for the purpose of implementing an international agreement to which the United States is a party, including such agreements relating to commodities, but not including any agreement relating to cheese or dairy products.

(Pub. L. 96–39, title XI, § 1102, July 26, 1979, 93 Stat. 307; Pub. L. 100–418, title I, § 1214(k), Aug. 23, 1988, 102 Stat. 1158.)

REFERENCES IN TEXT

The International Emergency Economic Powers Act, referred to in subsec. (b)(2), is Pub. L. 95–223, title II, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§ 1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b)(3), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

The Trading With the Enemy Act, referred to in subsec. (b)(4), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39 and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1988—Subsec. (b)(3). Pub. L. 100–418 substituted ''notes of the Harmonized Tariff Schedule of the United States'' for ''headnotes of the Tariff Schedules of the United States''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE

Section 1114 of title XI of Pub. L. 96–39 provided that: ''Except as otherwise provided in this title, this title [enacting this subchapter, amending the Tariff Schedules of the United States and sections 1315, 1337, 2112, 2119, 2131, 2155, 2192, 2253, 2432, 2434, 2435, 2462, 2463, 2464, 2481, and 2486 of this title, section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 13, Census, enacting provisions set out as notes under sections 2111, 2112, and 2464 of this title and 301 of Title 13, and amending a provision set out as a note under section 2101 of this title] shall take effect on the date of enactment of this Act [July 26, 1979].''

§ 2582. Repealed. Pub. L. 98–67, title II, § 214(d), Aug. 5, 1983, 97 Stat. 393

Section, Pub. L. 96–39, title XI, § 1112, July 26, 1979, 93 Stat. 316, authorized payment of compensation to losses in taxes resulting from concessions granted by United States in Tokyo Round of Multilateral Trade Negotiations on articles produced by United States possessions on which excise taxes are levied by United States.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 5, 1983, see section 218(a) of Pub. L. 98–67, which is classified to section 2706 of this title.

CHAPTER 14—CONVENTION ON CULTURAL PROPERTY

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§ 2601. Definitions

For purposes of this chapter—

(1) The term ''agreement'' includes any amendment to, or extension of, any agreement under this chapter that enters into force with respect to the United States.

(2) The term ''archaeological or ethnological material of the State Party'' means—

(A) any object of archaeological interest;

(B) any object of ethnological interest; or

(C) any fragment or part of any object referred to in subparagraph (A) or (B);

which was first discovered within, and is subject to export control by, the State Party. For purposes of this paragraph—

(i) no object may be considered to be an object of archaeological interest unless such object—

(I) is of cultural significance;

(II) is at least two hundred and fifty years old; and

(III) was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water; and

(ii) no object may be considered to be an object of ethnological interest unless such object is—

(I) the product of a tribal or nonindustrial society, and

(II) important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people.

(3) The term ''Committee'' means the Cultural Property Advisory Committee established under section 2605 of this title.

(4) The term ''consignee'' means a consignee as defined in section 1483[1] of this title.

(5) The term ''Convention'' means the Convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property adopted by the General Conference of the United Nations

[1] See References in Text note below.