

TITLE 19 - CUSTOMS DUTIES**CHAPTER 12 - TRADE ACT OF 1974****SUBCHAPTER I - NEGOTIATING AND OTHER AUTHORITY****Part 8 - Identification of Market Barriers and Certain Unfair Trade Actions****§ 2242. Identification of countries that deny adequate protection, or market access, for intellectual property rights****(a) In general**

By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 2241 (b) of this title, the United States Trade Representative (hereafter in this section referred to as the “Trade Representative”) shall identify—

(1) those foreign countries that—

(A) deny adequate and effective protection of intellectual property rights, or

(B) deny fair and equitable market access to United States persons that rely upon intellectual property protection, and

(2) those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.

(b) Special rules for identifications

(1) In identifying priority foreign countries under subsection (a)(2) of this section, the Trade Representative shall only identify those foreign countries—

(A) that have the most onerous or egregious acts, policies, or practices that—

(i) deny adequate and effective intellectual property rights, or

(ii) deny fair and equitable market access to United States persons that rely upon intellectual property protection,

(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

(C) that are not—

(i) entering into good faith negotiations, or

(ii) making significant progress in bilateral or multilateral negotiations,

to provide adequate and effective protection of intellectual property rights.

(2) In identifying priority foreign countries under subsection (a)(2) of this section, the Trade Representative shall—

(A) consult with the Register of Copyrights, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, other appropriate officers of the Federal Government, and

(B) take into account information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 2241 (b) of this title and petitions submitted under section 2412 of this title.

(3) The Trade Representative may identify a foreign country under subsection (a)(1)(B) of this section only if the Trade Representative finds that there is a factual basis for the denial of fair and equitable market access as a result of the violation of international law or agreement, or the existence of barriers, referred to in subsection (d)(3) of this section.

(4) In identifying foreign countries under paragraphs (1) and (2) of subsection (a) of this section, the Trade Representative shall take into account—

(A) the history of intellectual property laws and practices of the foreign country, including any previous identification under subsection (a)(2) of this section, and

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

(B) the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights.

(c) Revocations and additional identifications

(1) The Trade Representative may at any time—

(A) revoke the identification of any foreign country as a priority foreign country under this section, or

(B) identify any foreign country as a priority foreign country under this section, if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semiannual report submitted to the Congress under section 2419 (3) of this title a detailed explanation of the reasons for the revocation under paragraph (1) of the identification of any foreign country as a priority foreign country under this section.

(d) Definitions

For purposes of this section—

(1) The term “persons that rely upon intellectual property protection” means persons involved in—

(A) the creation, production or licensing of works of authorship (within the meaning of sections 102 and 103 of title 17) that are copyrighted, or

(B) the manufacture of products that are patented or for which there are process patents.

(2) A foreign country denies adequate and effective protection of intellectual property rights if the foreign country denies adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such foreign country to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights and mask works.

(3) A foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product protected by a copyright or related right, patent, trademark, mask work, trade secret, or plant breeder’s right, through the use of laws, procedures, practices, or regulations which—

(A) violate provisions of international law or international agreements to which both the United States and the foreign country are parties, or

(B) constitute discriminatory nontariff trade barriers.

(4) A foreign country may be determined to deny adequate and effective protection of intellectual property rights, notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 3511 (d)(15) of this title.

(e) Publication

The Trade Representative shall publish in the Federal Register a list of foreign countries identified under subsection (a) of this section and shall make such revisions to the list as may be required by reason of action under subsection (c) of this section.

(f) Special rule for actions affecting United States cultural industries

(1) In general

By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 2241 (b) of this title, the Trade Representative shall identify any act, policy, or practice of Canada which—

(A) affects cultural industries,

(B) is adopted or expanded after December 17, 1992, and

(C) is actionable under article 2106 of the North American Free Trade Agreement.

(2) Special rules for identifications

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

For purposes of section 2412 (b)(2)(A) of this title, an act, policy, or practice identified under this subsection shall be treated as an act, policy, or practice that is the basis for identification of a country under subsection (a)(2) of this section, unless the United States has already taken action pursuant to article 2106 of the North American Free Trade Agreement in response to such act, policy, or practice. In deciding whether to identify an act, policy, or practice under paragraph (1), the Trade Representative shall—

(A) consult with and take into account the views of representatives of the relevant domestic industries, appropriate committees established pursuant to section 2155 of this title, and appropriate officers of the Federal Government, and

(B) take into account the information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 2241 (b) of this title.

(3) Cultural industries

For purposes of this subsection, the term “cultural industries” means persons engaged in any of the following activities:

(A) The publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing.

(B) The production, distribution, sale, or exhibition of film or video recordings.

(C) The production, distribution, sale, or exhibition of audio or video music recordings.

(D) The publication, distribution, or sale of music in print or machine readable form.

(E) Radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television, and cable broadcasting undertakings and all satellite programming and broadcast network services.

(g) Annual report

The Trade Representative shall, by not later than the date by which countries are identified under subsection (a) of this section, transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a report on actions taken under this section during the 12 months preceding such report, and the reasons for such actions, including a description of progress made in achieving improved intellectual property protection and market access for persons relying on intellectual property rights.

(Pub. L. 93–618, title I, § 182, as added Pub. L. 100–418, title I, § 1303(b), Aug. 23, 1988, 102 Stat. 1179; amended Pub. L. 103–182, title V, § 513, Dec. 8, 1993, 107 Stat. 2156; Pub. L. 103–465, title III, § 313, Dec. 8, 1994, 108 Stat. 4938; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(b)(8)], Nov. 29, 1999, 113 Stat. 1536, 1501A–584.)

Amendments

1999—Subsec. (b)(2)(A). Pub. L. 106–113 substituted “Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office” for “Commissioner of Patents and Trademarks”.

1994—Subsec. (b)(4). Pub. L. 103–465, § 313(1), added par. (4).

Subsec. (d)(3). Pub. L. 103–465, § 313(2)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “A foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product protected by a copyright, patent, or process patent through the use of laws, procedures, practices, or regulations which—”.

Subsec. (d)(4). Pub. L. 103–465, § 313(2)(B), added par. (4).

Subsec. (g). Pub. L. 103–465, § 313(3), added subsec. (g).

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

1993—Subsec. (f). Pub. L. 103–182 added subsec. (f).

Effective Date of 1999 Amendment

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000 (a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

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 316 of Pub. L. 103–465, set out as an Effective Date note under section 3581 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 516(a) of Pub. L. 103–182, set out as an Effective Date note under section 3461 of this title.

Procurement From Countries That Deny Adequate and Effective Protection of Intellectual Property Rights

Pub. L. 101–189, div. A, title VIII, § 852, Nov. 29, 1989, 103 Stat. 1517, as amended by Pub. L. 101–510, div. A, title XIII, § 1302(a), Nov. 5, 1990, 104 Stat. 1668, provided that it is the sense of Congress that it be a very important consideration in procurement of property, services, or technology by the Department of Defense whether such procurement is from any person of any country which has been identified by the United States Trade Representative as denying adequate and effective protection of intellectual property rights or fair and equitable market access to United States persons that rely upon intellectual property protection.

Identification of Countries That Deny Adequate and Effective Protection of Intellectual Property Rights

Section 1303(a) of Pub. L. 100–418 provided that:

“(1) The Congress finds that—

“(A) international protection of intellectual property rights is vital to the international competitiveness of United States persons that rely on protection of intellectual property rights; and

“(B) the absence of adequate and effective protection of United States intellectual property rights, and the denial of fair and equitable market access, seriously impede the ability of the United States persons that rely on protection of intellectual property rights to export and operate overseas, thereby harming the economic interests of the United States.

“(2) The purpose of this section [enacting this section and this note] is to provide for the development of an overall strategy to ensure adequate and effective protection of intellectual property rights and fair and equitable market access for United States persons that rely on protection of intellectual property rights.”