

The Trade Enforcement Act of 2007: Section-by-Section Analysis

SECTION 1: SHORT TITLE.

Section 1 entitles the bill the “Trade Enforcement Act of 2007.”

TITLE I – TRADE ENFORCEMENT PRIORITIES

SECTION 101: IDENTIFICATION OF TRADE ENFORCEMENT PRIORITIES

Section 101 amends Section 310 of the Trade Act of 1974 to include the following provisions:

Section 310(a) requires the United States Trade Representative (USTR) to submit an annual report to the Senate Finance Committee and the House Ways and Means Committee that identifies (1) U.S. trade enforcement priorities; (2) trade enforcement actions taken during the previous year and an assessment of their impact; and (3) “priority foreign country trade practices” on which the USTR will focus its enforcement efforts during the upcoming year.

Section 310(b) sets out the factors the USTR must examine in its identification of priority foreign country trade practices, including trade barriers identified in the most recent National Trade Estimate report, practices identified in the most recent “Special 301” report on intellectual property protection and enforcement, practices identified in the most recent annual report on China’s compliance with its World Trade Organization (WTO) commitments, and a foreign country’s compliance with any trade agreements to which both the foreign country and the United States are parties.

Section 310(c) requires the USTR, at least thirty days before it issues its report, to consult with the Senate Finance Committee and the House Ways and Means Committee. If either Committee requests identification of a priority foreign country trade practice by majority vote, Section 310(c) requires the USTR to include such identification in its report unless the U.S. government is already addressing the practice at issue or identification would be contrary to the interests of U.S. trade policy. If the USTR fails to include a Congressional priority foreign country trade practice for either of these reasons, Section 310(c) requires USTR to set forth the reasons for its action in the report.

Section 310(d) sets out the action that the USTR must take with respect to any priority foreign country trade practice within 120 days of the date its report is due. These actions include initiating dispute settlement consultations in the WTO or under an applicable bilateral or regional trade agreement, initiating a “Section 301” investigation, or negotiating an agreement with the relevant trading partner to eliminate the priority foreign country trade practice or provide compensatory trade benefits.

Section 310(e) requires the USTR to report to the Senate Finance Committee and the House Ways and Means Committee every six months on the progress being made to realize its trade enforcement priorities and the steps being taken to address the priority foreign country trade practices.

TITLE II – WTO DISPUTE SETTLEMENT REVIEW COMMISSION

SECTION 201: DEFINITIONS

Section 201 defines key terms in Title II.

SECTION 202: ESTABLISHMENT OF COMMISSION

Section 202 establishes the WTO Dispute Settlement Review Commission (Commission).

SECTION 203: MEMBERSHIP

Section 203(a) provides that the Commission shall be composed of five members, all of whom shall either be retired federal judges or have substantial international trade law expertise. The President shall appoint the members after consultation with the majority and minority leaders of the Senate and the House of Representatives and with the chairmen and ranking members of the Senate Finance Committee and the House Ways and Means Committee.

Section 203(b) requires the President to make the appointments of the initial members of the Commission within ninety days of the enactment of this bill.

Section 203(c) requires the President to appoint the members for five-year terms, except that the President shall appoint three of the initial members for a three-year term. Section 203(c) also contains provisions for filling vacancies on the Commission.

Section 203(d) requires the Commission to hold its first meeting within thirty days after the President appoints all of its members. Subsequent meetings shall be held at the call of the Chair.

Section 203(e) provides that a majority of Commission members constitutes a quorum, but a lesser number may hold hearings.

Section 203(f) requires the Commission to select a Chair and Vice Chair from among its members.

Section 203(g) provides that an affirmative vote by a majority of Commission members is required for any affirmative Commission determination under Section 204.

Section 203(h) provides travel expenses for Commission members.

SECTION 204: DUTIES OF THE COMMISSION

Section 204(a) requires the Commission to review all WTO dispute settlement panel and Appellate Body reports that contain findings adverse to the United States, as well as any other report that the USTR or the chairman or ranking member of the Senate Finance Committee or the House Ways and Means Committee asks the Commission to review. In each case, the Commission must determine whether the panel or Appellate Body acted improperly by, for example, exceeding its authority, adding to the United States' obligations under the WTO, or deviating from the applicable standard of review. If the Commission makes an affirmative determination, it must also determine whether the action of the panel or Appellate Body materially affected the outcome of the report.

Section 204(b) requires the Commission to provide a report to the Senate Finance Committee and the House Ways and Means Committee that contains its determination as to whether the Commission acted improperly in the ways outlined above and, if it makes an affirmative determination, whether those actions affected the outcome of the panel or Appellate Body report. The Commission shall also make its report available to the public.

SECTION 205: POWERS OF THE COMMISSION

Section 205(a) authorizes the Commission to hold hearings, take testimony, and receive evidence.

Section 205(b) requires the USTR to notify the Commission within five days after the WTO adopts an adverse finding that is to be reviewed by the Commission and provides that a request for the Commission to review any other panel or Appellate Body report must be made within one year after the WTO adopts the report. Section 205(b) also requires the Commission to publish notice of its review and to request public comments, and it requires the Commission to make any such comments available to the public. Finally, Section 205(b) authorizes the Commission to secure any information from federal agencies and departments that it considers necessary to carry out its duties and requires the USTR to give the Commission all relevant documents relating to the panel or Appellate Body report at issue.

SECTION 206: CHANGES IN AGENCY REGULATIONS OR PRACTICE RELATING TO ADVERSE FINDING

Section 206 amends Section 123(g)(1) of the Uruguay Round Agreements Act to provide that no changes may be made to a regulation or practice of a U.S. department or agency to comply with an adverse finding of a panel or Appellate Body report unless and until the Senate Finance Committee and the House Ways and Means Committee have, among other things, received the Commission's report under Section 204(b) with respect to the relevant panel or Appellate Body report. The Commission's report will help inform the Committees on any vote that they take under Section 123(g)(3) to indicate their agreement or disagreement with the proposed change.

TITLE III – MARKET DISRUPTION BY IMPORTS FROM CHINA

SECTION 301: LIMITATION ON PRESIDENTIAL DISCRETION

Section 301 amends Section 421 of the Trade Act of 1974 as follows:

Section 421(a), as amended, requires the President to proclaim any increased duties or other import restrictions that the International Trade Commission (ITC) recommends.

Section 421(e), as amended, provides that a divided ITC vote in a Section 421 investigation shall be considered an affirmative determination.

Section 421(f) and (g), as amended, make technical corrections to conform these sections with the amendments to Section 421(a) and (e).

Section 421(h), as amended, requires the USTR to (1) publish in the Federal Register notice of any relief recommended by the ITC and an opportunity for interested parties to submit comments on the recommended relief; and (2) submit a report to the President recommending what action to take under Section 421(k). It also requires the USTR to make the report available to the public and to publish a summary of the report in the Federal Register.

Section 421(i), as amended, (1) makes technical corrections to conform Section 421(i) with the amendments to Section 421(a) and (e); (2) requires the USTR to submit a report to the President recommending what action to take with respect to provisional relief under Section 421(k); and (3) requires the President to proclaim any provisional relief recommended by the ITC.

Section 421(j), as amended, (1) makes technical corrections to conform Section 421(j) with the amendments to Section 421(e); and (2) authorizes the USTR to enter into agreements with China to prevent or remedy market disruption, but requires the President to provide the relief recommended by the ITC if no agreement is reached with China in the time required for Presidential action under Section 421(k) or if any agreement reached fails to prevent or remedy the market disruption at issue in the time required for Presidential action under Section 421(k).

Section 421(k), as amended, requires the President to proclaim the relief recommended by the ITC within fifteen days after receipt of the report from USTR under Section 421(h). It also provides that the President may decline to proclaim the relief recommended by the ITC (1) only in extraordinary cases; and (2) only if the President determines that the relief recommended by the ITC (A) would have an adverse impact on the U.S. economy that clearly and significantly outweighs the benefits of such action; or (B) would cause serious harm to the national security of the United States.

Section 421(l), as amended, provides that the President's decision must be submitted to the Senate Finance Committee and the House Ways and Means Committee and published in the Federal Register. If the President takes action that differs from the relief recommended by the ITC or declines to take action, the President must state in detail the reasons for such action or inaction.

Section 421(m), as amended, provides that, if the President takes action that differs from the action recommended by the ITC or declines to action pursuant to the economic exception in Section 421(k), the relief recommended by the ITC shall nonetheless take effect upon the enactment of a joint Congressional resolution disapproving the President’s action or inaction. Section 421(m) also contains various procedural provisions that apply to the joint resolution.

Section 421(n), as amended, provides that import relief shall take effect within fifteen days after the President’s determination to provide such relief or within thirty days after the enactment of a joint resolution under Section 421(m).

Section 421(o), as amended, provides that the President must wait at least one year after the relief takes effect before asking the ITC to provide a report on the probable effect of a modification, reduction, or termination of the relief.

Section 421(p), as amended, makes technical corrections to conform Section 421(p) with the amendments to Section 421(m).

TITLE IV – STRENGTHENING ANTIDUMPING AND COUNTERVAILING DUTY LAWS

SECTION 401: APPLICATION OF COUNTERVAILING DUTIES TO NONMARKET ECONOMIES

Section 401(a) amends Section 701(a)(1) of the Tariff Act of 1930 by inserting “(including a nonmarket economy country)” after “country” each place it appears.

Section 401(b) provides that the amendment made by Section 401(a) applies to countervailing duty petitions filed on or after October 1, 2006.

SECTION 402: CLARIFICATION OF DETERMINATION OF MATERIAL INJURY

Section 402 amends Section 771(7) of the Tariff Act of 1930 to override the Federal Circuit’s Bratsk decision by providing that the ITC shall make its material injury determinations in antidumping and countervailing duty cases without regard to (1) whether other imports are likely to replace the subject merchandise; or (2) the effect of a potential order on the domestic industry.

TITLE V – TRADE ENFORCEMENT PERSONNEL

SECTION 501: CHIEF TRADE ENFORCEMENT OFFICER

Section 501(a) amends Section 141(b)(2) of the Trade Act of 1974 to establish a Senate-confirmed position of Chief Trade Enforcement Officer (“Enforcement Officer”) at the Office of the USTR.

Section 501(b) amends Section 141(c) of the Trade Act of 1974 by describing the functions of the Enforcement Officer as, among other things, ensuring that U.S. trading partners comply with trade agreements and making recommendations with respect to the administration of U.S. trade laws relating to foreign government barriers.

Section 501(c) amends Section 5314 of title 5, U.S.C., by adding the Enforcement Officer to the executive compensation schedule.

Section 501(d) makes certain technical corrections to Section 141(e) of the Trade Act of 1974.

SECTION 502: TRADE ENFORCEMENT WORKING GROUP

Section 502(a) requires the USTR to establish an interagency Trade Enforcement Working Group chaired by USTR’s Enforcement Officer.

Section 502(b) provides that the Working Group shall include representatives from the Departments of State, Treasury, Commerce, and Agriculture, and from such other departments and agencies as the USTR considers appropriate.

Section 502(c) provides that the Working Group shall assist and advise the Enforcement Officer and that the Enforcement Officer shall carefully consider any advice received from the Working Group, but clarifies that the Enforcement Officer shall not seek clearance or other approval from the Working Group for any actions the Enforcement Officer takes in carrying out his or her functions.

Section 502(d) authorizes \$5,000,000 in appropriations to the USTR to carry out the provisions of this title.

TITLE VI – INTELLECTUAL PROPERTY ENFORCEMENT PERSONNEL

SECTION 601: SECTION 337 JUDGES

Section 601 amends Section 337 of the Tariff Act of 1930 to authorize the ITC to appoint hearing officers, rather than administrative law judges (ALJs), to take evidence and make initial decisions in Section 337 investigations. Unlike the current ALJs, the hearing officers would be required to have technical expertise and experience in intellectual property law.

TITLE VII – INTERAGENCY TRADE ORGANIZATION

SECTION 701: CLARIFICATION OF ROLE OF INTERAGENCY TRADE ORGANIZATION

Section 701 amends Section 141(c)(1)(I) of the Trade Act of 1974 to clarify that the USTR shall carefully consider any advice provided by the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962, but that the USTR shall not seek clearance or other approval from the interagency trade organization for any actions the USTR takes in performing his or her functions.