

(4) This policy is in addition to the existing policies cited in paragraph 3 of this Policy Letter.

(5) These provisions for subcontracting plans for commercial item contractors do not in any way relieve contracting officers, prime contractors or subcontractors of their responsibilities for assuring that small, small disadvantaged and women-owned small businesses have the maximum practicable opportunity to participate in contracts awarded by Federal agencies.

5. *Responsibilities.* The Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this Policy Letter is published in the **Federal Register**. Promulgation of final regulations within the 210-day period shall be considered issuance in a "timely manner" as prescribed in 41 U.S.C. 405(b).

6. *Information Contact.* Questions regarding this Policy Letter should be directed to William Coleman, Deputy Administrator, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone 202-395-3503, facsimile 202-395-5105.

7. *Judicial Review.* This Policy Letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any persons. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this Policy Letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this Policy Letter.

8. *Effective Date.* The Policy Letter is effective 30 days after the date of issuance.

Steven Kelman,
Administrator.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Request for Comments Concerning Foreign Government Discrimination in Procurement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comments.

SUMMARY: This notice requests written submissions from the public concerning discrimination against U.S. products and services by foreign governments in their procurement practices. This information will be used in compiling the annual report on government

procurement specified by Section 305 of the Trade Agreements Act of 1979 (Trade Agreements Act), as amended by Title VII of the Omnibus Trade and Competitiveness Act of 1988 and Title III, Section 341 of the Uruguay Round Agreements Act of 1994 (19 U.S.C. 2515).

Section 305 of the Trade Agreements Act requires the President to submit an annual report on the extent to which foreign countries discriminate against U.S. products or services in making government procurement. Section 341 of the Uruguay Round Agreements Act specifies that the report also contain information about countries which employ nontransparent procurement procedures or fail to maintain effective prohibitions on bribery and other corrupt practices. Specifically, the President is required to identify any countries that:

(a) Are signatories to the GATT Agreement on Government Procurement (Agreement) and are not in compliance with the requirements of the Agreement;

(b) Are signatories to the Agreement; are in compliance with the Agreement, but maintain a significant and persistent pattern or practice of discrimination in the government procurement of products or services from the United States not covered by the Agreement, which results in identifiable harm to U.S. business; and whose products or services are acquired in significant amounts by the U.S. Government; or

(c) Are not Signatories to the Agreement and maintain a significant and persistent pattern or practice of discrimination in government procurement of products or services from the United States, which results in identifiable harm to U.S. business, and whose products or services are acquired in significant amounts by the U.S. Government; or

(d) Are not Signatories to the Agreement and fail to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement and whose products and services are acquired in significant amounts by the U.S. Government; or

(e) Are not Signatories to the Agreement and fail to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement and whose products and services are acquired in significant amounts by the U.S. Government.

The functions vested in the President under Section 305 of the Trade Agreements Act were delegated to the United States Trade Representative

(USTR) pursuant to Section 4-101 of Executive Order 12661 (54 FR 779).

DATES: Submissions containing the information described below must be received on or before March 1, 1995.

ADDRESSES: Comments must be submitted to the Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20506, and must include not less than twenty (20) copies. Submissions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. Any business confidential material must be clearly marked as such at the top of the cover page or letter and each succeeding page and must be accompanied by a nonconfidential summary.

FOR FURTHER INFORMATION CONTACT: Elena Bryan (202-395-5097) or Mark Linscott (202-395-3063), Office of GATT Affairs, or Laura B. Sherman (202-395-3150), Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: Section 305 of the Trade Agreements Act requires an annual report to be submitted no later than April 30, 1995 to the appropriate Committees of the House of Representatives and the Senate. The USTR is required to request consultations with any countries identified in the report to remedy the procurement practices cited in the report.

USTR invites submissions from interested parties concerning foreign government procurement practices that should be considered in developing the annual report. Pursuant to Section 305(d)(5) of the Trade Agreements Act, submissions are sought from any interested parties in the United States and in countries that are signatories to the Agreement, as well as in other foreign countries whose products or services are acquired in significant amounts by the U.S. Government.

Each submission should provide, in order, the following general information: (1) The party submitting the information; (2) the foreign country or countries that are the subject of the submission and the entities of each subject country's government whose practices are being cited, and (3) the U.S. products or services that are affected by the non-compliance or discrimination.

Each submission should also provide specific information on the particular

problem: (1) Non-compliance with the GATT Agreement on Government Procurement; (2) the type of discrimination encountered, including information regarding the date and nature of affected procurement(s); (3) policies or practices which are discriminatory, not transparent or anti-competitive (where possible, include copies of discriminatory laws, policies or regulations), and (4) the extent to which the problem has impeded the ability of U.S. suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when they are seeking to sell goods or services to the U.S. Government; (5) examples of failure to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement.

Finally, each submission should: (1) If applicable, identify provisions of the GATT Government Procurement Agreement which are not being observed by the country identified or describe how the country identified has maintained a significant and persistent pattern or practice of discrimination in government procurement of non-Code-Covered goods or services; (2) identify the specific impact of the discriminatory policy or practice on U.S. businesses (including an estimate of the value of market opportunities lost and, if any, the cost of preparing bids which are rejected during the course of a procurement evaluation for discriminatory reasons), and (3) describe the extent to which the products or services of the country identified are acquired in significant amounts by the U.S. Government.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

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[Docket No. 301-92]

Determination of Action Concerning the People's Republic of China's Protection of Intellectual Property and Provision of Market Access to Persons Who Rely on Intellectual Property Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination pursuant to sections 301 and 304 of the Trade Act of 1974, as amended (Trade Act), 19 U.S.C. 2414.

SUMMARY: Pursuant to section 304(a)(1)(A)(ii) of the Trade Act, the United States Trade Representative

(USTR) has determined that certain acts, policies and practices of the Chinese government with respect to the enforcement of intellectual property rights and the provision of market access to persons who rely on intellectual property protection are unreasonable and constitute a burden or restriction on U.S. commerce. Pursuant to section 304(a)(1)(B) and section 301(b), the USTR has determined that trade action is appropriate and that sanctions are appropriate. The sanctions will take the form of increasing duties on products listed in the attached Annex originating in China to 100 percent ad valorem.

EFFECTIVE DATE: USTR's determination as to actionability and the specific action to be taken was made on February 4, 1995. The increased duties will be assessed upon all products of China identified in the Annex to this notice that are entered, or withdrawn from warehouse for consumption, on or after February 26, 1995.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20606.

FOR FURTHER INFORMATION CONTACT: Deborah Lehr, Director for China and Mongolian Affairs (202) 395-5050, Joseph Papovich, Deputy Assistant USTR for Intellectual Property (202) 395-6864, or Thomas Robertson, Assistant General Counsel (202) 395-6800.

SUPPLEMENTARY INFORMATION: On June 30, 1994, China was identified as a priority foreign country under the "special 301" provisions of the Trade Act for its failure to enforce intellectual property rights or to provide fair and equitable market access to persons who rely on intellectual property protection. On the same day, the USTR initiated an investigation of those acts, policies and practices of China that were the basis for its identification as a priority foreign country. See 59 FR 35558 (July 12, 1994).

The effectiveness of China's enforcement regime is hampered by, among other things, internally inconsistent laws; a lack of transparency in the enforcement structure; a lack of protection for existing works; gaps in responsibility in the enforcement structure; a lack of consistent application of the laws throughout the central, provincial and local governments; a lack of funding, training and education; possible conflicts of interest; burdensome and discriminatory agency requirements that restrict foreign access to trademark protection; overly-broad compulsory licensing provisions; a failure of

enforcement authorities to coordinate; and the absence of an effective border control mechanism.

In the area of market access, the most serious problems with the Chinese system are found in the areas of audio-visual products, sound recordings, and published written materials. Particular concerns include a hidden system of internal quotas, a lack of transparency, a lack of consistency in application, monopoly control over the importation and distribution of products embodying intellectual property, and a prohibition on the production or distribution of products embodying intellectual property that is not related to the content of those products.

Extension of Investigation, Proposed Determinations, and Public Comment

On January 5, 1995, the USTR published a notice that the six-month statutory deadline for the close of this investigation had been extended until February 4, 1995, in light of the complex and complicated nature of the issues involved. See 60 FR 1829, 1830 (January 5, 1995). In that notice, the USTR also published a proposed determination of action and request for public comment concerning the proposed action. The USTR proposed to determine that China's failure to enforce intellectual property laws or to provide market access to persons who rely on intellectual property protection is unreasonable and discriminatory and constitutes a burden or restriction on U.S. commerce. If that determination were finally made, the USTR also proposed to increase duties on certain products of China in an amount equivalent to the damage caused by the Chinese acts, policies and practices which formed the basis of the investigation. The USTR published, as an annex to the notice, a list of products from which specific products could be selected for the imposition of increased duties.

In response to the January 5, 1995, **Federal Register** notice, the USTR and the section 301 Committee receive approximately 198 sets of written comments and heard the oral testimony of 53 witnesses at public hearings held on January 24-25, 1995. The comments primarily focused on the appropriateness of subjecting the products listed in the proposed retaliation list to an increase in duties, the levels at which duties on particular products should be set, and the degree to which an increase in duties on particular products might have an adverse effect on U.S. consumers, workers and industries.