

**(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.)

**Editorial Notes****AMENDMENTS**

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

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 1994 AMENDMENT**

Pub. L. 103-465, title III, §352, Dec. 8, 1994, 108 Stat. 4957, 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**

Pub. L. 96-39, title IV, §454, July 26, 1979, 93 Stat. 250, 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if the Agreement on Technical Barriers to Trade entered into force with respect to the United States by that date, was repealed by Pub.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)<sup>1</sup> 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.)

**Editorial Notes****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,

<sup>1</sup> See References in Text note below.

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”.

**Statutory Notes and Related Subsidiaries**

## 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.

**§ 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.)

**Editorial Notes**

## 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) 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) with respect to agricultural products.

**(b) Functions of offices**

The President shall prescribe for each technical office established under subsection (a) 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.)

**Executive Documents**

## 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.

**§ 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).

**(b) Representation of United States interests by private persons****(1) Definitions**

For purposes of this subsection—