

Summary  
of  
**Statutory  
Provisions  
Related  
to**

**IMPORT RELIEF**



# **UNITED STATES INTERNATIONAL TRADE COMMISSION**

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## PREFACE

This summary describes several important types of import-related investigations and provides contacts for further information. Because this is only a summary, **consult the actual statutes and regulations referenced before attempting to make use of these provisions.**

The U.S. International Trade Commission's *Rules of Practice and Procedure*, which set forth the procedures for Commission investigations, are published in chapter II of title 19 of the Code of Federal Regulations (19 CFR ch. II), which is republished in revised form annually. Copies of the Commission's *Rules* are also available from:

Secretary  
U.S. International Trade Commission  
500 E Street SW.  
Washington, DC 20436  
Telephone: 202-205-2000



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# Investigations of Injury to U.S. Industries From Increased Imports

Sections 201 to 204 of the Trade Act of 1974 (19 U.S.C. §§ 2251 to 2254), concern investigations by the U.S. International Trade Commission (Commission) as to whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to a domestic industry. If the Commission makes an affirmative determination, it recommends to the President the action that will facilitate positive adjustment by the industry to import competition. After considering the Commission's recommendation, the President may take action in the form recommended by the Commission or may take certain other action.<sup>1</sup> Sections 201 to 204 also provide for the filing of industry adjustment plans and commitments in connection with an investigation, for provisional relief in the case of perishable agricultural articles or critical circumstances, and for Commission monitoring of action and reports on the effectiveness of the action taken.

## **Commission Investigations and Recommendations**

The Commission conducts investigations upon receipt of a petition from an entity such as a trade association, firm, certified or recognized union, or other group of workers that is representative of an industry; upon request from the President or the United States Trade Representative (USTR); upon resolution of the House Committee on Ways and Means or the Senate Committee on Finance; or upon its own motion.

If the Commission makes an affirmative injury determination, it may recommend action to the President in the form of an increase in or imposition of a duty, a tariff-rate quota, modification or imposition of a quantitative restriction, one or more appropriate adjustment measures including the provision of trade adjustment assistance, or any combination of such actions. In addition, the Commission may also recommend that the President initiate international negotiations to address the underlying cause of the increase in imports or otherwise to alleviate the injury or threat, or that he implement any other action authorized under law that is likely to facilitate positive adjustment to import competition.

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<sup>1</sup> Affirmative Commission determinations provide a basis for the President to take an action under article XIX of the General Agreement on Tariffs and Trade (GATT), the so-called GATT escape clause, which permits a country to "escape" from international obligations when certain conditions are present. Article XIX also provides that countries against whom actions are taken under article XIX may suspend certain concessions or other obligations under the GATT toward the country taking the actions.

The Commission must make its injury determination within 120 days of receipt of the petition, request, resolution, or institution on its own motion (150 days in more complicated cases). The Commission must complete its investigation and submit to the President a report that includes the Commission's findings and any recommendations for Presidential action not later than 180 days after receipt of the petition, request, resolution, or institution on its own motion. The Commission must hold a public hearing in connection with the injury phase of its investigation and must hold a second hearing on the question of remedy if it makes an affirmative injury determination.

Except for good cause found to exist, the Commission may not reinvestigate the same subject matter within one year of completing a prior investigation. An industry for whose benefit action has been taken may not re-petition for action unless a period equal to the period of the prior action has elapsed since termination of that action.

### **Adjustment Plans and Industry Commitments**

A petitioner may submit to the Commission an adjustment plan to facilitate positive adjustment to import competition either at the time that the petition is filed or within 120 days of the filing of the petition. Before doing so, the petitioner and others in the industry may consult with the USTR and with any other Federal agency designated by the USTR for the purpose of evaluating the adequacy of the proposals being considered for inclusion in the plan.

Regardless of whether such a plan is submitted, in the course of the investigation any firm, certified or recognized union or group of workers, trade association representing the industry, or any other person or group of persons may individually submit to the Commission commitments regarding action such persons and entities intend to take to facilitate positive adjustment to import competition. The Commission in determining what action to recommend, and the President in determining what action to take, are to take into account any plan and commitments.

### **Presidential Action**

Within 60 days of receipt of a report from the Commission containing an affirmative injury determination and remedy recommendation, the President is to take "all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs." In determin-

ing what action to take, if any, the President is to take into account the Commission's report, industry efforts being made or to be implemented to make a positive adjustment to import competition, factors related to the national economic interest of the United States, and certain other statutory factors.

The President may take action by proclaiming an increase in or imposition of a tariff, a tariff-rate quota, or a modification or imposition of a quantitative restriction; negotiating an orderly marketing agreement; auctioning import licenses; initiating international negotiations; submitting legislative proposals to Congress; taking any other appropriate and feasible action otherwise authorized; or any combination of the above actions.

Action may last for a period of up to 8 years, including one extension. No tariff may be increased to a level that is more than 50 percent ad valorem above the rate existing before the proclamation of action. Any quantitative restriction imposed must allow entry of at least that quantity or value of imports entered during the most recent period that the President finds is representative of imports of such article. To the extent feasible, action in the form of a duty, tariff-rate quota or quantitative restriction is to be progressively phased down starting no later than 3 years from the start of the action. If the Commission finds injury or threat of injury, the Secretary of Labor is to give expedited consideration to petitions by workers for certification of eligibility to apply for adjustment assistance; the Secretary of Commerce is to do the same regarding such petitions from firms.

### **Congressional Action**

The President must report to Congress on the action that he is taking, and if he takes action that differs from that recommended by the Commission or takes no action at all, Congress may, through a joint resolution within 90 days, direct the President to proclaim the action recommended by the Commission.

### **Provisional Relief in the Case of Perishable Agricultural Products or Critical Circumstances**

An entity representing a domestic industry that produces a perishable agricultural product may also petition the Commission for provisional relief, provided that such article has been the subject of import monitoring by the Commission for at least 90 days prior to the filing of the request for provisional relief. Requests for such monitoring are made to the USTR, which is authorized to request that the Commission monitor imports of a perishable agricultural article.

Upon the filing of such a petition, the Commission has 21 days in which to determine whether increased imports of a perishable product are a substantial cause of serious injury or threat to the domestic industry producing a like or directly competitive perishable article *and* whether either the serious injury is likely to be difficult to repair or cannot be timely prevented through a full 180-day investigation. If it makes an affirmative finding, the Commission is to recommend relief to the President in the form of a tariff and/or quota. The President has 7 days in which to consider the Commission's recommendation and provide any provisional relief.

A petitioner may allege that critical circumstances exist. Critical circumstances are considered to exist if a substantial increase in imports over a relatively short period of time has led to circumstances in which delay in taking action would cause harm that would significantly impair the effectiveness of such action. In general, the Commission would make its determination with respect to critical circumstances at the same time as it makes its injury determination. If the Commission finds both injury and critical circumstances, it must at the same time find the amount or extent of appropriate provisional relief in the form of a tariff and/or quota and immediately report its determination and finding to the President. The President has 7 days in which to consider the Commission's finding and provide any provisional relief.

Provisional relief terminates if the Commission subsequently makes a negative injury determination; when the President takes a more permanent action after receiving the Commission's report at the end of the 180-day investigation; when the President, after receiving that report, determines that he will not take any action; or when the President determines that, because of changed circumstances, relief is no longer warranted.

#### **Monitoring; Advice on Extension or Modification of Action**

The Commission monitors developments in industries for which action has been taken under these provisions. For each such industry, the Commission must hold a biennial hearing and issue a biennial report to the President and Congress. After receiving the first report, the President may terminate or modify an action in certain circumstances. The President may also terminate action by negotiating orderly marketing agreements. The President may take additional action to eliminate circumvention of action previously taken.

Upon request, the Commission advises the President on the probable economic effect of the extension, reduction, modification, or termination of action. In addition, for each concluded action, the Commission must hold a hearing and issue a report on the effectiveness of the action.

Commission procedures regarding the above provisions are contained in part 206 of the Commission's *Rules of Practice and Procedure*. Part 201 contains rules of general application.

For further information contact:

Secretary  
U.S. International Trade Commission  
500 E Street SW.  
Washington, DC 20436  
Telephone: 202-205-2000

# Investigations of Market Disruption by Imports from Communist Countries

Under section 406 of the Trade Act of 1974 (19 U.S.C. § 2436), the U.S. International Trade Commission conducts investigations to determine whether imports of an article produced in a Communist country are causing market disruption with respect to a domestically produced article. Market disruption is defined to exist whenever imports of an article like or directly competitive with an article produced by a domestic industry are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry. The term "Communist country" means any country dominated or controlled by communism.

## Investigations by the Commission

The Commission conducts investigations under section 406 at the request of the President or the United States Trade Representative (USTR); upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate; upon the filing of a petition by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry; or upon the Commission's own motion. Most investigations under section 406 are conducted on the basis of petitions filed by an entity representative of an industry. The Commission must hold a public hearing in the course of the investigation and must complete its investigation within 3 months.

## Action by the President

If the Commission finds that market disruption exists, it finds the amount of duty or other import restriction necessary to remedy the market disruption. The President has 60 days after receiving such a recommendation from the Commission to advise Congress as to what, if any, relief he will proclaim. The President may increase or impose a duty, proclaim a tariff-rate quota, modify or impose a quantitative restriction, negotiate an orderly marketing agreement, or take any combination of the above actions. Action may last for up to 5 years, with the possibility of an extension of up to 3 years. No tariff may be increased to a level that is more than 50 percent ad valorem above the rate existing before the proclamation of action. Any quantitative restriction imposed must allow entry of at least that quantity or value of imports entered during the most recent period that the President finds is representative of imports of the article. Relief may apply only to imports from

the subject Communist country or countries. The President may reduce or terminate relief if he finds that such action is in the national interest.

### **Congressional Action**

The President must report to Congress on the action he is taking, and if he takes action that differs from that recommended by the Commission or takes no action at all, Congress may, through a joint resolution within 90 days, direct the President to provide the action recommended by the Commission.

### **Emergency Action**

Even before an investigation and determination by the Commission, the President may take action described above if he finds reasonable grounds to believe that market disruption exists and that temporary emergency action is necessary.

The Commission's rules concerning the filing of petitions and the conduct of investigations under section 406 are set forth in part 206 of its *Rules of Practice and Procedure*. Part 201 contains rules of general application.

For further information contact:

Secretary  
U.S. International Trade Commission  
500 E Street SW.  
Washington, DC 20436  
Telephone: 202-205-2000

# Countervailing Duty and Antidumping Investigations

## Countervailing Duty Investigations

Two separate statutory provisions address countervailing duties—(1) subtitle A of title VII of the Tariff Act of 1930, added by the Trade Agreements Act of 1979 (19 U.S.C. § 1671 et seq.), and (2) section 303 of the Tariff Act of 1930 (19 U.S.C. § 1303).

The provisions of subtitle A of title VII apply to imports from “countries under the Agreement,” i.e., countries that have assumed the obligations (or substantially equivalent obligations) of the Multilateral Trade Negotiations Agreement on Subsidies and Countervailing Measures.<sup>2</sup> Under title VII, countervailing duties are imposed when (a) the U.S. Department of Commerce (Commerce) determines that a country under the Agreement or person or organization of that country is providing a subsidy with respect to a class or kind of merchandise imported into the United States, and (b) the U.S. International Trade Commission (Commission) determines that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of imports of that merchandise.

Section 303 applies to the imposition of countervailing duties on imports from countries not under the Agreement. If Commerce determines that a bounty or grant is being bestowed on merchandise manufactured in countries that are not under the Agreement, a countervailing duty can be levied on dutiable articles in the amount of the bounty or grant without a Commission determination of material injury. If a duty-free article is imported from a country not under the Agreement, but to which the United States otherwise owes an international obligation to provide an injury test,<sup>3</sup> countervailing duties may be imposed under section 303 only if there is an affirmative determination by the Commission under the procedures of title VII.

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<sup>2</sup> The United States Trade Representative may revoke the status of a country as being “under the Agreement” for purposes of these provisions in certain circumstances. The term “Agreement on Subsidies and Countervailing Measures” means the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (GATT) (relating to subsidies and countervailing measures), approved under section 2(a) of the Trade Agreements Act of 1979. The basic requirements of title VII for the imposition of countervailing and antidumping duties parallel in many respects provisions found in article VI of the GATT.

<sup>3</sup> Such a situation may exist, for example, if the country is a signatory of GATT, but is not under the Agreement.



## **Antidumping Duty Investigations**

Subtitle B of title VII of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979 (19 U.S.C. § 1673 et seq.), provides that antidumping duties will be imposed when (a) Commerce determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than fair value, and (b) the Commission determines that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of imports of that merchandise.<sup>4</sup>

Figure 1 on the next page illustrates the timetable for countervailing duty and antidumping duty investigations.

## **Initiation of Countervailing Duty or Antidumping Duty Investigations**

Countervailing duty or antidumping duty investigations are conducted either on the basis of a petition filed with Commerce and the Commission on behalf of a domestic industry, or by Commerce upon its own initiative. Eligible petitioners include manufacturers, producers, or wholesalers of a product that is like the investigated imports, or unions, other groups of workers, or certain other associations connected with such manufacturers, producers, or wholesalers. A petitioner may allege both a subsidy and sales at less than fair value in regard to the same merchandise.

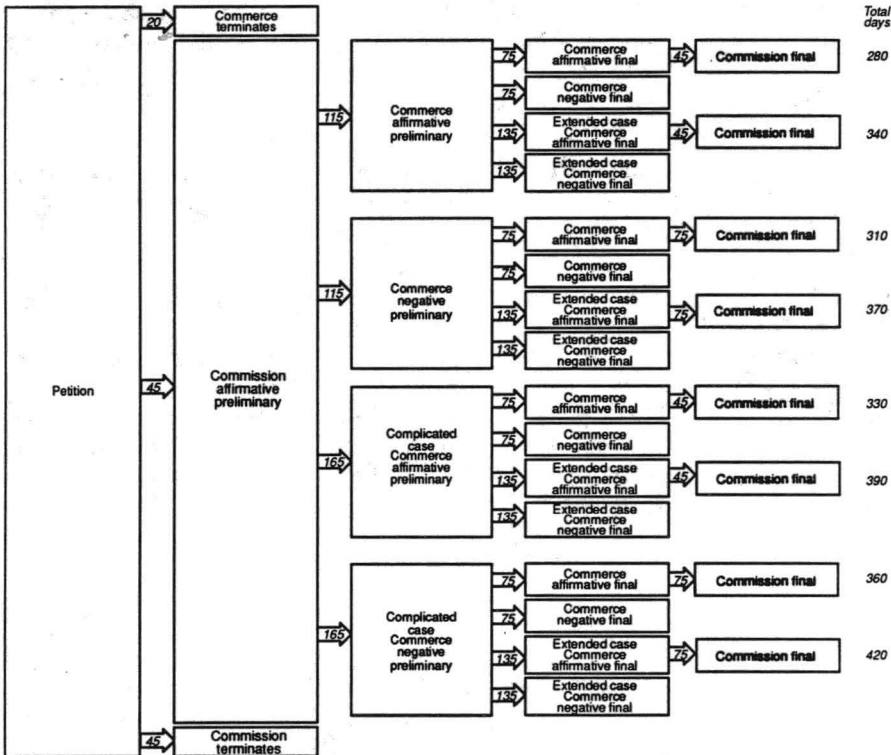
As soon as a petition is filed or an investigation is begun upon the initiative of Commerce, the Commission begins to investigate whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of the merchandise which is the subject of the investigation. Meanwhile, if the proceedings are begun by petition, Commerce determines within 20 days whether the petition alleges material injury or threat to a domestic industry by reason of subsidized imports (in a countervailing duty investigation) or imports sold at less than fair value (in an antidumping duty investigation), and whether the petition includes information

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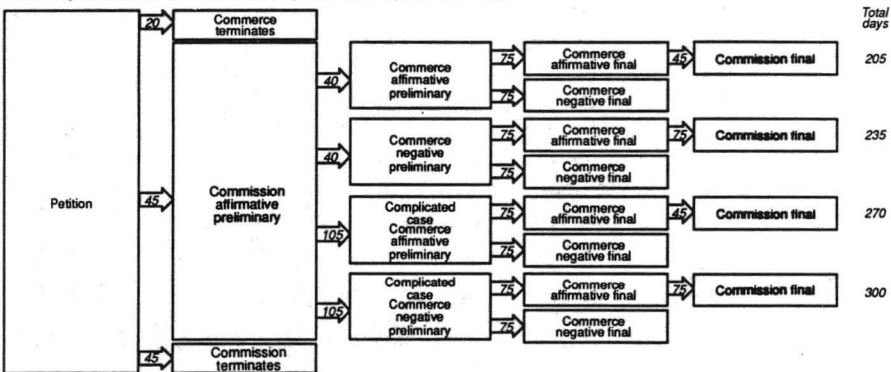
<sup>4</sup> In a related provision added by section 1317 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418), a domestic industry producing a product that is like or directly competitive with a product manufactured in another country may submit a petition to the USTR alleging that dumping of the foreign product is occurring in a country under the Agreement and that the dumping is causing injury or threat of injury to the U.S. industry. The petition would also request the USTR to file an application with the country under article XII of GATT, requesting that the country take appropriate antidumping action.

# Statutory Timetables for Antidumping and Countervailing Duty Investigations

Statutory timetable for antidumping investigations (in days)



Statutory timetable for countervailing duty investigations (in days)



reasonably available to the petitioner supporting the allegations. If Commerce's determination is negative, the proceedings end. If its determination is affirmative, Commerce begins an investigation to determine whether there is a subsidy or sales at less than fair value and the Commission continues its investigation.

## **Preliminary Determinations**

Within 45 days after a petition is filed or an investigation is begun by Commerce upon its own initiative, the Commission makes its preliminary determination. The Commission determines, on the basis of the best information available to it at the time, whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of the merchandise which is the subject of the investigation.<sup>5</sup> If the determination is negative, the proceedings end.

If the Commission's determination is affirmative, Commerce makes its preliminary determination. Commerce determines, on the basis of the best information available to it at the time, whether there is a reasonable basis to believe or suspect that there is a subsidy or sales at less than fair value. If Commerce finds a reasonable basis, it estimates the amount of the subsidy or, in an antidumping investigation, the average amount by which the foreign market value of the merchandise exceeds the U.S. price ("dumping margin"). In a countervailing duty investigation, Commerce makes this determination within 85 days after a petition is filed or an investigation is begun upon its own initiative. If petitioner requests or if the case is extraordinarily complicated, this determination can be made within 150 days. In an antidumping investigation, the determination is made within 160 days or, if petitioner requests or the case is extraordinarily complicated, within 210 days.<sup>6</sup>

If Commerce's preliminary determination is affirmative, Commerce (a) suspends liquidation<sup>7</sup> of the investigated merchandise subsequently entered into the United States or withdrawn from warehouse, (b) requires bonds or cash deposits to be posted for each entry of the merchandise in an amount

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<sup>5</sup> The Commission generally holds a staff conference in the course of a preliminary investigation.

<sup>6</sup> Certain domestic entities may petition the Commission to establish a product category for particular "short life cycle merchandise," as defined by statute. In certain antidumping investigations concerning merchandise contained in such a product category established by the Commission, Commerce makes its preliminary determination within either 100 or 120 days.

<sup>7</sup> "Liquidation" completes the transaction of entry of goods and includes a final determination of the amount of duties on the goods.

## **Final Determinations**

equal to the estimated net subsidy or dumping margin, and (c) continues its investigation. In addition, the Commission institutes a final investigation concerning injury, threat, or retardation. If Commerce's preliminary determination is negative, Commerce's investigation simply continues.

Within 75 days after its preliminary determination, Commerce makes a final determination as to whether a subsidy is being provided or sales at less than fair value are being made. In an antidumping investigation, this determination can be made within 135 days upon request of exporters if the preliminary determination was affirmative or upon request of petitioner if the preliminary determination was negative. If the final determination of Commerce is negative, the proceedings end, and any suspension of liquidation is terminated, bonds or other security are released, and deposits are refunded. Before making a final determination, Commerce must hold a hearing upon request of any party to the proceeding.

If Commerce's final determination is affirmative, suspension of liquidation, if not yet ordered, is ordered. In addition, the Commission makes a final determination as to whether a domestic industry is being materially injured or threatened with material injury, or its establishment materially retarded, by reason of subsidized imports or imports sold at less than fair value. If Commerce's preliminary determination was affirmative, the Commission makes its final determination before the later of (a) the 120th day after Commerce makes its affirmative preliminary determination, or (b) the 45th day after Commerce makes its affirmative final determination. If Commerce's preliminary determination was negative, the Commission's final determination is made within 75 days after Commerce's affirmative final determination. Before making a final determination, the Commission must hold a hearing upon request of any party to the proceeding.<sup>8</sup>

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<sup>8</sup> In countervailing duty cases, the time period for Commerce's preliminary and final determination may be extended if Commerce determines that there is a reasonable basis to believe or suspect that "upstream subsidies," as defined by statute, are being provided. In addition, if countervailing and antidumping duty investigations are initiated simultaneously and concern imports of the same class or kind of merchandise, the petitioner can request Commerce to extend the date for a final countervailing duty determination to coincide with the date of the final antidumping determination.

## **Issuance of Countervailing Duty or Antidumping Duty Orders**

If the final determination of the Commission is affirmative, Commerce issues a countervailing duty or antidumping duty order, within 7 days of notification of the Commission's determination, requiring imposition of duties in the amount of the net subsidy or dumping margin. In the usual case, the order requires the deposit of an estimated countervailing or antidumping duty at the same time as other estimated customs duties are deposited on the merchandise, pending calculation of the final countervailing or antidumping duty. If the final determination of the Commission is negative, no countervailing or antidumping duties are imposed, and any suspension of liquidation is terminated, bonds or other security are released, and deposits are refunded.

## **Critical Circumstances**

In an investigation, the petitioner may allege the existence of critical circumstances. If so, in a countervailing duty investigation Commerce must determine promptly whether there is a reasonable basis to believe or suspect that the alleged subsidy is inconsistent with the Agreement and that massive imports of the merchandise have occurred over a relatively short period. In an antidumping duty investigation, Commerce must determine promptly whether there is a reasonable basis to believe or suspect either that there is a history of dumping of the subject merchandise in the United States or elsewhere or that the importer knew or should have known that the exporter was selling the merchandise at less than fair value; and whether massive imports of the merchandise have occurred over a relatively short period. If Commerce makes an affirmative finding, it extends retroactively any suspension of liquidation to include unliquidated entries of merchandise entered into the United States or withdrawn from warehouse in the 90 days before the suspension of liquidation was first ordered.

Whether or not this initial determination is affirmative, if Commerce's final determination as to subsidy or sales at less than fair value is affirmative, Commerce will include with that determination a final determination concerning critical circumstances. If the final determination regarding critical circumstances is affirmative, retroactive suspension of liquidation, if not yet ordered, is ordered. In addition, the Commission in its final determination decides whether retroactive imposition of duties is necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period and (in a countervailing duty investigation) that will be difficult to repair. If this determination is affirmative, any countervailing or antidumping duty order shall apply to the goods for which retroactive suspension of liquidation had been ordered. If the final deter-

mination of Commerce or the Commission as to critical circumstances is negative, any retroactive suspension of liquidation is terminated.

## **Suspension of Investigations**

An investigation can be suspended prior to a final determination by Commerce as to subsidies or sales at less than fair value if (1) exporters accounting for substantially all of the imports of the merchandise under investigation, or in the case of a subsidy the government alleged to be providing the subsidy, agree to eliminate the subsidy or dumping margin, to completely offset the net subsidy, or to cease exports of the merchandise to the United States, within 6 months after suspension of the investigation; (2) extraordinary circumstances are present and the government or exporters described above agree to take action that will completely eliminate the injurious effect of the imports of the merchandise under investigation (in the case of subsidies this may include a quantitative restriction agreed to with the foreign government); or (3) the investigation concerns alleged sales at less than fair value from a non-market economy country and that country agrees to restrict exports of the merchandise to the United States.

At least 30 days in advance of any suspension, Commerce must notify parties to the proceeding and consult with petitioner. At the same time as it suspends a proceeding, Commerce must issue an affirmative preliminary determination as to subsidy or sales at less than fair value, if such a determination has not already been made. If within 20 days of the date of publication of the notice of suspension certain interested parties or a country alleged to be providing a subsidy request continuation, the suspended investigation must be continued. In such a case, if the final determination by Commerce or the Commission is negative, the agreement has no effect and the investigation is terminated.

If within 20 days of the date of publication of the notice of suspension, the Commission receives a petition for review of a suspension issued under (2) above, it determines within 75 days whether the injurious effect of imports is eliminated completely by the agreement. If the Commission determines that the injurious effect is not eliminated, then the investigation, if not yet completed, is resumed. In addition, if Commerce determines that an agreement reached under (1) or (2) above is being violated or no longer satisfies certain other statutory criteria, then the investigation, if not yet completed, is resumed.

## **Agency Review**

If requested, Commerce must review and determine, as often as every 12 months, the amount of the net subsidy or dumping margin for merchandise under an outstanding countervailing or antidumping duty order. If the request concerns a suspended investigation, Commerce must review the status of and compliance with the agreement as well as reviewing the underlying net subsidy or dumping margin. In addition, when requested or upon its own initiative, Commerce or the Commission may review certain determinations or agreements for changed circumstances. If requested by an interested party, a hearing must be held in connection with either of the reviews described above. Based upon a review, Commerce may revoke a countervailing or antidumping duty order in whole or in part or terminate or resume a suspended investigation.

## **Prevention of Circumvention of Countervailing or Antidumping Duty Orders**

In certain circumstances, Commerce may include within the scope of an outstanding countervailing or antidumping duty order additional merchandise in order to prevent circumvention of the order. Such additional merchandise may include (1) certain component parts used to create a finished product that is subject to an order, (2) merchandise completed or assembled in a third country, (3) merchandise altered in minor respects, and (4) later developed merchandise. Except in the case of merchandise altered in minor respects, if the Commission has made a prior affirmative injury determination concerning the original merchandise, the statute provides for consultations between the Commission and Commerce over whether the proposed inclusion would be inconsistent with the prior Commission determination.

## **Disclosure of Business Proprietary Information**

The Commission or Commerce, as the case may be, releases business proprietary information submitted to it only under administrative protective order to authorized representatives of interested parties that are parties to a proceeding.<sup>9</sup> Excepted from release under protective order are privileged information, classified information, and information which there is a clear and compelling need to withhold from disclosure. When submitting to the Commission or Commerce information that is covered by an administrative protective order, a party must serve such information upon all parties that are under the protective order.<sup>10</sup>

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<sup>9</sup> The Commission may also release proprietary information to the public if the person submitting it consents to release, or in a form that cannot be used to identify operations of a particular person.

<sup>10</sup> These provisions concerning release of information apply only to investigations and reviews initiated after August 23, 1988, the date of enactment of the Omnibus Trade And Competitiveness Act of 1988 (Public Law 100-418). Release is more limited in investigations and reviews initiated before that date. In addition, section 135 of the Customs and Trade Act of 1990 (Public Law 101-382) places certain limits on the disclosure of customer names under administrative protective order.

## **Appeal of Determinations**

A party adversely affected by a determination by Commerce or the Commission may appeal the determination to the United States Court of International Trade in New York City.

Part 207 of the Commission's *Rules of Practice and Procedure* sets forth procedures for Commission investigations concerning countervailing and antidumping duties. Part 201 contains rules of general application.

For further information contact:

- (1) Office of Investigations  
International Trade Administration  
U.S. Department of Commerce  
14th Street and Constitution Avenue NW.  
Washington, DC 20230  
Telephone: 202-482-5497
- (2) Secretary  
U.S. International Trade Commission  
500 E Street SW.  
Washington, DC 20436  
Telephone: 202-205-2000



# Investigations of Infringements of Patents, Trademarks, Copyrights, or Mask Works, and Other Unfair Practices in Import Trade

Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) declares unlawful:

(a) The importation, sale for importation, or sale after importation by the owner, importer, or consignee of articles that infringe a valid and enforceable United States patent, or a registered trademark, copyright, or mask work, for which an industry exists or is in the process of being established in the United States, and

(b) Unfair methods of competition and unfair acts in importation or sale, by the owner, importer, or consignee of articles, if such methods or acts have the threat or effect of destroying or substantially injuring an industry in the United States, of preventing the establishment of such an industry, or of restraining or monopolizing trade and commerce in the United States.<sup>11</sup>

The U.S. International Trade Commission is authorized, upon the filing of a complaint or on its own initiative, to investigate alleged violations of section 337 and to determine whether such violations exist. In lieu of a determination, the Commission may terminate an investigation, in whole or in part, on the basis of a settlement agreement or consent order. In appropriate circumstances, the Commission may issue limited or general exclusion orders, which direct that certain goods be denied entry into the United States, and/or may issue cease and desist orders, which enjoin a person from further violation of section 337.

## Relation of Section 337 to Antidumping and Countervailing Duty Laws

If the Commission has reason to believe that a complaint or investigation under section 337 is based solely on alleged facts falling under the antidumping or countervailing duty laws, the Commission must decline to institute or must terminate, as the case may be, its investigation under section 337. If the complaint or investigation before the Commission is based in part on section 337 and in part on the antidumping or countervailing duty laws, the Commission may institute or continue an investigation.

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<sup>11</sup> Section 1342 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418; Aug. 23, 1988) eliminated the requirement that complainant show injury in regard to acts listed in paragraph (a) above. An injury requirement remains, however, with respect to other types of unfair acts.

## **Default**

The Commission may issue a general exclusion order applicable to imports from all countries if no person appears to contest a complaint and a violation of section 337 is established by substantial, reliable, and probative evidence. In addition, if a complainant under section 337 seeks relief limited to a particular respondent who fails to appear in the action without good cause, the Commission is required to presume the facts as alleged by the complainant and, upon request, to issue an exclusion order or cease and desist order or both, limited to the particular respondent. The Commission may refuse to issue a general or limited order described above after considering the effect of such an order on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

## **General Procedures**

All Commission investigations under section 337 are conducted on the record after publication of notice and with opportunity for a hearing in conformity with the adjudicative provisions of the Administrative Procedure Act (5 U.S.C. § 551 et seq.). The Commission is required to conclude an investigation under section 337 and make its determination at the earliest practicable time, but not later than one year (18 months in more complicated cases) from the date of publication in the *Federal Register* of notice of the investigation.

## **Confidential Business Information**

Information that is properly designated as confidential in accordance with the Commission's rules will not be disclosed without the consent of the person submitting it to the Commission, with certain exceptions. Such information will only be disclosed to Government employees who are directly involved in an investigation, in Presidential review of an order, or in implementation of an exclusion order, or to authorized persons under administrative protective order.

## **Remedial Orders**

In the course of an investigation under section 337, the Commission may issue temporary exclusion or cease and desist orders, or both, if it determines that there is reason to believe that there is a violation of section 337. In the case of a temporary exclusion order, entry of goods is to be permitted under bond, and the Commission may also require the complainant to post a bond. If a complainant requests a temporary exclusion or cease and desist order, the Commission must decide whether to issue such an order within 90 days from the institution of the investigation, or within 150 days if the case is more complicated. The Commission may refuse to issue a temporary order after consideration of the public interest factors listed above.

If at the completion of the investigation the Commission determines that there has been a violation of section 337, it may direct that the foreign articles be excluded from entry into the United States. In addition to or in lieu of an exclusion order, the Commission may prohibit further violation of section 337 by issuance of a cease and desist order. The Commission may refuse to issue an exclusion or cease and desist order after considering the public interest factors listed above. Following the issuance by the Commission of a temporary or final exclusion or cease and desist order, the President may disapprove "for policy reasons" the Commission's determination within 60 days after notification of the determination, in which case the Commission's order will have no effect.

### **Sanctions for Violations of Orders**

A violator of a Commission cease and desist order is subject to a civil penalty of up to the greater of \$100,000 per day or twice the domestic value of the articles concerned for each day the articles are entered or sold in violation of the order. The Commission may direct that goods imported in violation of an exclusion order be seized and forfeited to the United States in certain circumstances. The goods may be seized and forfeited if the owner, importer, consignee, or the agent of any such person, had entry of the goods previously denied because of the exclusion order and was given a written warning that further attempts at importation would result in forfeiture.

### **Appeal of Commission Determinations**

Persons adversely affected by a Commission determination may appeal the determination to the United States Court of Appeals for the Federal Circuit.

Part 210 of the Commission's *Rules of Practice and Procedure* sets forth procedures related to Commission investigations under section 337. Part 211 pertains to enforcement procedures. Part 201 contains rules of general application.

For further information contact:

Secretary  
U.S. International Trade Commission  
500 E Street SW.  
Washington, DC 20436  
Telephone: 202-205-2000

## Investigations Under the Agricultural Adjustment Act

Under the provisions of section 22 of the Agricultural Adjustment Act (7 U.S.C. § 624), if the Secretary of Agriculture has reason to believe that an article is being imported into the United States under such conditions and in such quantities as to render or tend to render ineffective or materially interfere with any program or operation undertaken by the United States Department of Agriculture (USDA), or to reduce substantially the amount of any product processed in the United States from any agricultural commodity covered by a USDA program, the Secretary so advises the President.

If the President agrees that there is reason for such belief, he requests the U.S. International Trade Commission to investigate the matter. The Commission must hold a public hearing in the course of an investigation. The Commission reports to the President the findings of its investigation and any recommendations as to action. Following receipt of the Commission's report, the President may impose either an import fee of up to 50 percent ad valorem or a quantitative restriction reducing allowable imports of the article by up to 50 percent below the amount imported in a representative period as determined by the President.

Following advice by the Secretary and an investigation by the Commission, the President may modify, suspend, or terminate relief for changed circumstances. In addition, if the Secretary of Agriculture determines and reports to the President that a condition exists requiring emergency treatment, the President may take immediate action under section 22, pending the report of the Commission and any action by the President based on the report. Requests for investigations under section 22 are normally filed with the Secretary of Agriculture.

Part 204 of the Commission's *Rules of Practice and Procedure* sets forth procedures for Commission investigations under the Agricultural Adjustment Act. Part 201 contains rules of general application.

For further information contact:

- (1) Administrator  
Foreign Agricultural Service  
U.S. Department of Agriculture  
14th Street and Independence Avenue SW.  
Washington, DC 20250  
Telephone: 202-720-3935
- (2) Secretary  
U.S. International Trade Commission  
500 E Street SW.  
Washington, DC 20436  
Telephone: 202-205-2000

## General Investigations of Trade and Tariff Matters

Under section 332 of the Tariff Act of 1930 (19 U.S.C. § 1332), the U.S. International Trade Commission conducts investigations into trade and tariff matters upon request of the President, the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, either branch of the Congress, or upon the Commission's own initiative. The Commission has broad authority to investigate matters pertaining to the customs laws of the United States, foreign competition with domestic industry, and international trade relations.

Unlike other investigations by the Commission, there is no established procedure for the initiation of investigations under section 332 by public petition. However, in the course of an investigation under section 332, the Commission generally seeks written submissions and participation in hearings by the public. In general, the Commission makes its reports under section 332 available to the public, with the exception of confidential business information or reports (or portions of reports) classified as confidential under national security criteria.

General rules concerning the submission of documents and participation in hearings are set forth in part 201 of the Commission's *Rules of Practice and Procedure*.

For further information contact:

Secretary  
U.S. International Trade Commission  
500 E Street SW.  
Washington, DC 20436  
Telephone: 202-205-2000

# Investigations of Denial of U.S. Rights Under Trade Agreements and Other Unjustifiable, Unreasonable, or Discriminatory Acts by Foreign Countries

Chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. § 2411 et seq.) ("Section 301") concerns investigations by the Office of the United States Trade Representative (USTR) into allegations that foreign countries are denying benefits to the United States under trade agreements or are otherwise engaged in unjustifiable, unreasonable, or discriminatory acts that burden or restrict commerce of the United States.

USTR may initiate investigations upon petition by any interested person, or upon its own initiative. If petitioned, USTR decides within 45 days whether or not to initiate the investigation. If USTR decides to initiate the investigation, petitioner and other interested persons are afforded an opportunity to present their views—including a public hearing if requested. In addition to investigations by petition, USTR must initiate investigations of each major barrier or trade-distorting practice that USTR considers a "priority practice" if such practice is by a "priority country," as defined by statute and as identified by USTR in reports submitted to Congress in 1989 and 1990. USTR must also publish in the *Federal Register* an annual list of "priority countries" that deny protection of intellectual property rights or market access to U.S. persons that rely on such protection. USTR must initiate investigations against such countries unless USTR decides that such investigations are detrimental to the economic interests of the United States.

## Consultations

In each investigation, USTR consults with the foreign country involved to attempt to reach a settlement. If the investigation concerns a trade agreement of the United States and settlement is not reached, USTR must use whatever formal dispute-resolution procedures are found in the agreement. USTR must consult with appropriate private sector advisory committees, and may also consult with the U.S. International Trade Commission.

## Determinations

In the investigation, USTR determines whether U.S. rights under trade agreements are being denied or whether acts or policies of the foreign country are unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce. USTR finds such circumstances, USTR then considers what

actions are appropriate to enforce the rights of the United States under the agreements or to eliminate the acts or policies. With certain exceptions, USTR is required to take action, subject to any direction of the President, if USTR finds that U.S. rights under trade agreements are being denied, or that acts or policies of the foreign country are "unjustifiable," as defined by statute, and burden or restrict U.S. commerce. If USTR finds an act or policy to be "unreasonable" or "discriminatory" as defined by statute, and to burden or restrict U.S. commerce, USTR has discretion over whether to take action.

### **Actions by USTR**

USTR has authority to (1) suspend trade agreement concessions, (2) impose duties or other import restrictions, (3) impose fees or restrictions on services, (4) enter into agreements with the subject country to eliminate the offending practice or to provide compensatory benefits for the United States, and (5) restrict service sector authorizations. The actions may be taken against all countries or solely against the subject country. Most actions may be taken against any goods or economic sectors, without regard to whether the goods or economic sectors were the subject of the investigation. USTR is to give preference to duties over other types of import restrictions.

The time period for a determination by USTR concerning the practices in question and any actions to be taken varies according to the type of practices alleged. USTR must implement any actions decided upon, subject to any direction of the President, within 30 days after making a decision. USTR may delay implementation of a decision for up to 180 days in certain circumstances.

### **Monitoring of Compliance**

USTR monitors whether foreign countries are complying with steps they have agreed to take under these provisions. The USTR can take further action in appropriate circumstances after consulting with the petitioner and affording an opportunity for interested parties to present their views.

### **Modification or Termination of Actions**

USTR may modify or terminate actions in certain circumstances, after affording interested parties an opportunity to present views. In addition, USTR terminates those actions that have been in operation for at least 4 years, unless the domestic industry concerned requests a continuation and USTR decides that continuation is appropriate after considering certain factors.



**Confidential  
Business  
Information**

Persons submitting information to USTR may certify that the information is confidential business information. If USTR finds such certification to be well founded, the information may only be disclosed to Government officials involved in the investigation or in a manner that prevents identification of the persons submitting the information.

When requested and to the extent available, USTR must provide to any person certain non-confidential information regarding trade policies or practices of foreign countries, proceedings arising from such policies or practices, and rights and remedies under U.S. trade agreements and domestic law.

Regulations concerning the procedures described above may be found in 15 CFR Part 2006.

For further information contact:

Chair, Section 301 Committee  
Office of The United States Trade  
Representative  
600 17th Street NW.  
Washington, DC 20506  
Telephone: 202-395-3432

## Investigations of Impact of Imports on National Security

Under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862) the Secretary of Commerce conducts investigations to determine whether articles are being imported into the United States in such quantities or under such circumstances as to threaten to impair national security. On the basis of a report by the Secretary, the President has authority to take action to "adjust imports" of the article in question.

The Secretary of Commerce initiates investigations upon the request of the head of any department or agency, upon application of an interested party, or upon his own motion. The Secretary of Commerce consults with the Secretary of Defense and other relevant agency experts regarding methodological and policy issues raised in an investigation. In the course of an investigation, the Secretary of Commerce solicits written comments from the public and may hold public hearings or afford other opportunities for interested parties to present their views.

The Secretary of Commerce must report to the President his findings as to the effects of the imports on national security and recommendations for action or inaction within 270 days from the commencement of an investigation. Within 90 days from receipt of the Secretary's report, the President decides whether he agrees with the report and whether he will take action to adjust imports to address an identified national security threat. The President is required to notify the Congress of his decision and the reasons for it within 30 days thereafter. Following the President's decision, the Secretary publishes in the *Federal Register* an executive summary of his report to the President.

Procedures for investigations under section 232 are set out in 15 CFR Part 359.

**For further information contact:**

**Deputy Assistant Secretary for Industrial  
Resource Administration**

**Room 3878**

**U.S. Department of Commerce**

**14th Street and Constitution Avenue NW.**

**Washington, DC 20230**

**Telephone: 202-482-4506**

# Trade Adjustment Assistance

## Workers

Chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. § 2271 et seq.) concerns trade adjustment assistance for eligible workers in the United States in the form of trade readjustment allowances, training and other employment services, and relocation and job search allowances. To receive assistance, a worker must complete two steps. First, a group of workers or their certified or recognized union or representative must file a petition with the Department of Labor's Office of Trade Adjustment Assistance for certification of eligibility to apply for assistance. Upon receipt of the petition, the Department will conduct a factfinding investigation that will include a public hearing if one is requested by an interested party. The Department will issue a certification if it determines that increases in imports of articles that are like or directly competitive with articles produced by the workers' firm have contributed importantly both to (a) the total or partial separation or threat of separation of a significant number or proportion of workers, and to (b) a decrease in production or sales of the firm.

Once certified as eligible to apply, the individual worker must be approved for benefits by the State agency—ordinarily the State employment security agency—that is administering the benefits provisions as an agent of the United States. Requirements for this approval vary according to the type of assistance sought. To receive a trade readjustment allowance, a certified worker must ordinarily have exhausted unemployment insurance benefits and be enrolled in or have completed an approved training program.

For further information contact:

- (1) State employment security agency

or

- (2) Office of Trade Adjustment Assistance  
Employment and Training Administration  
U.S. Department of Labor  
601 D Street NW.  
Washington, DC 20213  
Telephone: 202-219-5555

## Firms

Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. § 2341 et seq.), concerns the provision of technical assistance to certain domestic firms. To receive assistance, a firm must complete two steps. First, the firm must petition the Secretary of Commerce for certification of eligibility to apply for assistance. A firm may seek assistance in preparing its petition from one of a network of Trade Adjustment Assistance Centers (TAACs) funded by the Department of Commerce. The Secretary of Commerce issues a certification if the Secretary determines that increased imports of articles that are like or directly competitive with articles produced by the firm have contributed importantly both to (a) the total or partial separation or threat of separation of a significant number or proportion of workers of the firm, and to (b) a decrease in sales or production by the firm. If requested by an interested person, a public hearing must be held in connection with this determination.

Second, once certified as eligible to apply, the firm must submit to the Secretary an adjustment proposal that describes in detail the firm's strategy for recovery and the technical assistance the firm is seeking. A firm may request assistance from a TAAC in preparing an adjustment proposal. The Secretary approves an adjustment proposal if the Secretary determines that it is reasonably calculated to contribute to the firm's economic adjustment, gives adequate consideration to workers' interests, and demonstrates that the firm will make all reasonable efforts to use its own resources for economic development. Following acceptance of the firm's adjustment proposal, the firm may apply for technical assistance to implement the recovery strategy.

There is no charge to the firm for assistance in preparing the certification petition. For the other forms of technical assistance, the Government assumes up to 75 percent of the cost, with the firm assuming the remainder.

For further information and/or a list of TAACs, contact:

Office of Trade Adjustment Assistance  
Economic Development Administration  
U.S. Department of Commerce  
14th Street and Constitution Avenue NW.  
Washington, DC 20230  
Telephone: 202-482-4031





