

Summary
of
**Statutory
Provisions
Related
to**

IMPORT RELIEF



United States International Trade Commission

**UNITED STATES INTERNATIONAL TRADE
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F. Scott Kieff

Rhonda K. Schmidlein

Prepared by:

Office of the General Counsel

**Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436**

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PREFACE

This summary describes several import relief provisions and provides contacts for further information. Because this is only a summary, the reader is strongly advised to **consult the statutes and regulations referenced before attempting to file a petition or complaint under any of these provisions or otherwise make use of these provisions.** For information on other statutory provisions administered by the U.S. International Trade Commission, please consult the agency's website (www.usitc.gov/press_room).

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 Chap. II), which is updated and republished regularly. 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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Countervailing Duty and Antidumping Duty Investigations

Countervailing Duty Investigations

Subtitle A of title VII of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979 (19 U.S.C. § 1671 et seq.) and subsequently amended, provides that countervailing duties will be imposed when two conditions are met: (a) the U.S. Department of Commerce (Commerce) determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of the subject merchandise that is imported or sold (or likely to be sold) for importation into the United States *and* (b), in the case of merchandise imported from a Subsidies Agreement country,¹ 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.

If Commerce determines that a countervailable subsidy is being bestowed upon merchandise imported from a country that is not a Subsidies Agreement country, a countervailing duty can be levied on the merchandise in the amount of the net countervailable subsidy without a Commission determination of material injury.

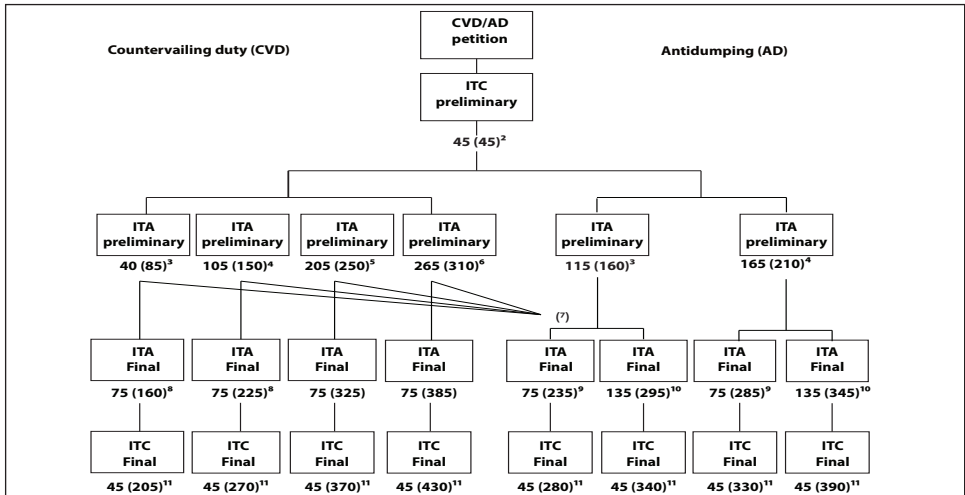
Antidumping Duty Investigations

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.) and subsequently amended, provides that antidumping duties will be imposed when two conditions are met: (a) Commerce determines that the foreign subject 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.

¹ A Subsidies Agreement country is (1) a World Trade Organization (WTO) member country, (2) a country which the President has determined has assumed obligations with respect to the United States that are substantially equivalent to the obligations under the Subsidies Agreement, i.e. the Agreement on Subsidies and Countervailing Measures resulting from the Uruguay Round of multilateral trade negotiations, or (3) a country with respect to which the President makes the determinations specified in §19 U.S.C. 1671(b)(3). The basic requirements of title VII for the imposition of countervailing and antidumping duties parallel in many respects provisions found in article VI of GATT 1947, i.e. the General Agreement on Tariffs and Trade dated October 30, 1947.

Figure 1 below illustrates the timetable for countervailing duty and antidumping duty investigations.

TITLE VII SCHEDULES¹



¹ Shown in incremental days and, in parenthesis, total days from the filing of the petition. There will be some slippage in the schedules because of the time lags in having ITA determinations published in the *Federal Register*. ITA= International Trade Administration, U.S. Department of Commerce; ITC= U.S. International Trade Commission.

² Normal case. ITA may extend the time allowed for it to initiate an investigation from 20 days for up to 40 days after a petition is filed if the extra time is needed to determine industry support for the petition. In the event of such an extension, the deadline for the ITC’s preliminary determination and all following dates would be increased by the amount of the extension.

³ Normal case. In AD cases, expedited determinations are authorized when “short life cycle” merchandise is involved (see section 739 of the Tariff Act of 1930). In such cases the schedule following the ITC preliminary determination would be shortened by either 40 or 60 (in the case of multiple offenders) days.

⁴ Complicated case, extended at request of petitioner or on ITA’s motion.

⁵ Normal case with upstream subsidy allegation; extended on ITA’s motion.

⁶ Complicated case with upstream subsidy allegation; extended on ITA’s motion.

⁷ At this time, ITA may, at the request of petitioner, extend the date for its final subsidy determination to the date of its final dumping determination in simultaneously filed AD cases.

⁸ It is also possible for ITA to extend an investigation after its preliminary determination for the purpose of investigating an upstream subsidy allegation. In such cases the schedule following ITA’s preliminary determination would be extended by 90 days in a normal case or 150 days in a complicated case.

⁹ Normal case

¹⁰ Extended at request of exporters.

¹¹ If ITA’s preliminary determination was negative, add 30 days (to incremental total of 75) to ITC’s final determination.

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, rarely, 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 engaged in the production of a product that is like the investigated imports, or certain other associations of 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 accurately and adequately 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), whether the petition includes information reasonably available to the petitioner supporting the allegations, and whether the petition has been filed by or on behalf of the industry.² If Commerce's determination is negative, the proceedings end. If its determination is affirmative, Commerce initiates an investigation to determine whether there is a countervailable 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.³ The Commission determines, on the basis of the 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

² If Commerce must poll the industry or otherwise determine its support for the petition, it may take a maximum of 40 days to make its determination. The domestic producers or workers supporting the petition must account for at least 25 percent of total production of the product and more than 50 percent of production of those supporting or opposing the petition.

³ If Commerce has extended its deadline for initiating the investigation, the Commission must make its preliminary determination within 25 days after Commerce informs the Commission of the initiation of the investigation.

the merchandise which is the subject of the investigation and that imports of the subject merchandise are not negligible.^{4,5} If the determination is negative or if the Commission otherwise determines that imports of the subject merchandise are negligible, the proceedings end.

If the Commission's determination is affirmative, Commerce makes its preliminary determination. Commerce determines, on the basis of the information available to it at the time, whether there is a reasonable basis to believe or suspect that a countervailable subsidy or sales at less than fair value exist. If Commerce finds a reasonable basis, in a countervailing duty investigation, it estimates a subsidy rate for each firm or country investigated and Commerce makes this determination within 65 days after it initiates an investigation. If, however, the petitioner requests or if the case is extraordinarily complicated, this determination can be made within 130 days. In an antidumping investigation, Commerce estimates the weighted-average dumping margin, the amount by which the normal value of the foreign like product exceeds the export price (or constructed export price) of the subject merchandise. Commerce makes this determination within 140 days after it initiates the investigation or, if the petitioner requests or if the case is extraordinarily complicated, within 190 days.

If Commerce's preliminary determination is affirmative, Commerce (a) suspends liquidation⁶ of the investigated subject 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 equal to the estimated net subsidy rate or dumping margin,⁷ and (c) continues its investigation. In addition, the Commission schedules a final phase investigation. If Commerce's preliminary determination is negative, Commerce's investigation simply continues.

Final Determinations

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

⁴ With exceptions, imports shall be generally deemed "negligible" if they amount to less than 3 percent of all such merchandise imported into the United States in the most recent 12-month period preceding the filing of the petition for which data are available.

⁵ The Commission generally holds a staff conference in the course of a preliminary investigation.

⁶ "Liquidation" completes the transaction of entry of goods and includes a final determination of the amount of duties on the goods.

⁷ Commerce must, in making its determination, disregard any weighted-average dumping margin that is less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise, i.e., any *de minimis* weighted-average dumping margin.

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 conducts the final phase of its investigation and 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.⁸

Issuance of Countervailing Duty or Antidumping Orders

If the final determination of the Commission is affirmative, Commerce issues a countervailing duty or antidumping duty order, within seven days of notification of the Commission's determination, requiring imposition of duties in the amount of the net subsidy or dumping margin.⁹ 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,

⁸ 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.

⁹ As it must when making its preliminary determination, Commerce must disregard any *de minimis* weighted-average dumping margin.

and any suspension of liquidation is terminated, bonds or other security are released, and deposits are refunded

Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”) (“Byrd Amendment”)

The Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”), commonly referred to as the “Byrd Amendment,” provided for the annual distribution of anti-dumping and countervailing duties assessed on or after October 1, 2000, pursuant to antidumping duty and countervailing duty orders in effect on or after January 1, 1999.¹⁰ The Byrd Amendment was repealed in February 2006, effective for entries of goods made and filed on or after October 1, 2007. The distribution was available to “affected domestic producers for qualifying expenditures.” An “affected domestic producer” is defined as a manufacturer, producer, farmer, rancher, or worker representative (including associations of such persons) that (1) was a petitioner or interested party in support of a petition with respect to which an antidumping duty or countervailing duty order was in effect and (2) remains in operation. Producers that had ceased production of the product covered by the order or that had been acquired by a firm that opposed the petition were not considered to be an affected domestic producer.

The USITC does not award funds or determine what funds an eligible firm or entity may receive under the CDSOA/Byrd Amendment. That task is given by statute to the Commissioner of U.S. Customs and Border Protection (“Customs”). The USITC’s sole responsibility under the Act was to forward to Customs within 60 days after issuance of an antidumping duty or countervailing duty order an initial list of potentially eligible “affected domestic producers” that publicly indicated support for the petition through a response to an USITC questionnaire during the investigation or by letter submitted to the USITC during that investigation.¹¹

Customs is responsible under the Act for the annual distribution of antidumping and countervailing duties assessed during the preceding fiscal year. Prior to the annual distribution, Customs published in the Federal Register a notice of intent to distribute and the list of affected domestic producers potentially eligible for the distribution based largely on the list forwarded by the USITC. Potentially eligible affected domestic producers submit to Customs certifications indicating that they

¹⁰ Deficit Reduction Act of 2005, Pub. L. 109-171, §7601(b), 120 Stat.4, 154 (February 8, 2006). There still may be funds available for disbursement under the program from duties on entries of goods made and filed before October 1, 2007, but which were liquidated on or after that date.

¹¹ “Affected domestic producers” must have publicly indicated support for the petition in an original investigation, not merely in five-year (sunset) review.

desire to receive a distribution and are eligible to receive a distribution, and identifying “qualifying expenditures” incurred since the issuance of the order for which distribution has not previously been made. Customs distributes the funds from assessed duties in proportion to qualifying expenditures identified in certifications received.

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 countervailable subsidy is inconsistent with the Subsidies Agreement and that massive imports of the merchandise have occurred over a relatively short period. In an antidumping duty investigation, Commerce must determine promptly (a) whether there is a reasonable basis to believe or suspect either that there is a history of dumping and material injury by reason of dumped imports 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 that there was likely to be material injury by reason of such sales; and (b) 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 alleged. If the final determination regarding critical circumstances is affirmative, retroactive suspension of liquidation, if not yet ordered, is ordered. In addition, in its final determination, the Commission decides whether the imports are likely to undermine seriously the remedial effect of the order. 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 determination of Commerce or the Commission as to critical circumstances is negative, any retroactive suspension of liquidation is terminated.

Suspension of Investigation

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 six 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. Before or 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, 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 Commission and Commerce reach affirmative determinations, the suspension agreement remains in effect. 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 agreement it determines within 75 days whether the injurious effect of the subject merchandise 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 a suspension agreement is being violated or no longer satisfies certain other statutory criteria, then the investigation, if not yet completed, is resumed.

Agency Review

Commerce Administrative Reviews. If requested, Commerce must review and determine, as often as every 12 months, the amount of the net countervailable subsidy or dumping margin for merchandise under an outstanding countervailing or anti-dumping duty order. If the request concerns a suspended investigation, Commerce must review the status of and compliance with the agreement as well as the underlying net countervailable subsidy or dumping margin.

Changed Circumstances Reviews. 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 a suspended investigation.

Five-Year (Sunset) Reviews. The Uruguay Round Agreements Act amended the antidumping and countervailing duty laws to require that Commerce and the Commission conduct “sunset reviews” no later than five years after issuance of an order, suspension of an investigation, or changed circumstances review. Such review determines whether revocation of the relevant order would be likely to lead to continuation or recurrence of dumping or countervailable subsidies and material injury. If the Commission determines that revocation of an order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time, the order will be revoked or the suspended investigation terminated.

Five-year reviews of all antidumping and countervailing duty orders that were issued prior to 1995 were initiated by Commerce beginning in July 1998. Five-year reviews of antidumping and countervailing duty orders that have been issued since January 1, 1995, are initiated by Commerce on or before their five-year anniversary. Following Commerce’s initiation of each five-year review, the Commission sets its schedule for the review and publishes this information in the Federal Register and on its Internet web site (www.usitc.gov). Reviews are conducted every five years if an order remains in place.

The Commission usually will complete five-year reviews within 360 days of initiation. However, if interested party responses to the notice of institution are inadequate, the Commission can make an expedited determination within 150 days. Both Commerce and the Commission have authority to extend these deadlines by up to 90 days in all transition reviews and other extraordinarily complicated cases.

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, upon the

Commission's request, 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.¹² 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.¹³

Appeal of Determinations

An interested party adversely affected by a determination by Commerce or the Commission that concludes an investigation or review may appeal the determination to the United States Court of International Trade in New York City. In determinations involving subject merchandise from Canada or from Mexico, an interested party may forgo judicial review for binational panel review pursuant to the North American Free Trade Agreement.

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

¹² 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.

¹³ 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.

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

3. For CDSOA/Byrd Amendment information:
USITC-related responsibilities, e-mail the USITC at: cdsoa@usitc.gov
Customs-related responsibilities, e-mail Customs at: cdsoa@dhs.gov

Investigations of Unfair Practices in Import Trade, Including Infringement of Patents, Trademarks, Copyrights, Mask Works, or Boat Hull Designs

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, mask work, or boat hull design, for which an industry exists or is in the process of being established in the United States, and
- a. 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.¹⁴

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 consent order or an agreement between the private parties to the investigation, including an agreement to present the matter for arbitration. 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.

¹⁴ 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.

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.).

There are no statutory deadlines for final determinations. However, the Commission is required to conclude such investigations at the earliest practicable time. To promote expeditious adjudication, the Commission is required, within 45 days after an investigation is instituted, to establish a target date for issuing its final determination.

In investigations concerning alleged infringement of a patent, trademark, copyright, mask work, or boat hull design, relief can only be granted if a complainant proves that a domestic industry exists or is in the process of being established. A domestic industry exists if there is in the United States, with respect to the articles protected by the intellectual property right at issue, significant investment in plant and equipment, significant employment of labor or capital, or substantial investment in its exploitation, including engineering, research and development, or licensing.

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 review of an order by the President or the U.S. Trade Representative, in implementation of an exclusion order, or to authorized persons under administrative protective order.

Remedial Orders

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 determine not to issue a general exclusion order applicable to imports from all countries in a contested case if necessary to prevent circumvention of an exclusion order limited to products of named persons, or there is a pattern of violation of section 337 and it is difficult to identify the source of infringing imports. The Commission may issue a general exclusion order applicable to imports from all countries in an uncontested case if a violation of section 337

is established by substantial, reliable, and probative evidence and either a general exclusion order is necessary to prevent circumvention of an exclusion order limited to products of named persons or there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products.

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.

The Commission may refuse to issue an exclusion or cease and desist order after taking into account statutory public interest factors. The Commission must consider in this regard the effects of a remedial order on: (1) the public health and welfare; (2) competitive conditions in the United States economy; and (3) the product of like or directly competitive articles in the United States; and (4) United States consumers. Following the issuance by the Commission of a temporary or final exclusion or cease and desist order, the U.S. Trade Representative may disapprove “for policy reasons” the Commission’s determination within 60 days after notification of the determination.

Default

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.

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

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 U.S. House Committee on Ways and Means, the U.S. Senate Committee on Finance, 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 industries, 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 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 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. (See also the section of this Summary relating to injury to U.S. industries from increased imports under a free trade agreement, p. 29 *infra*.)

If the Commission makes an affirmative determination, it recommends to the President the action that will address the serious injury or threat and facilitate positive adjustment by the industry to import competition. The President makes the final decision on remedy, including the form, amount, and duration.¹⁵ Sections 201 to 204 also provide for the filing of industry adjustment plans and commitments in connection with an investigation, for provisional relief pending completion of the full investigative process in the case of perishable agricultural articles or critical circumstances, for Commission monitoring of relief actions taken, for Commission investigations and determinations relating to extension of relief actions, and for Commission reports on the effectiveness of the relief actions taken.

Commission Investigations and Recommendations

The Commission conducts investigations upon receipt of a petition from an entity, including a trade association, firm, certified or recognized union, or 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 U.S. House Committee on Ways and Means or the U.S. 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

¹⁵ 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.

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. For the purpose of assisting the President in determining whether to exclude certain countries with which the United States has implemented free trade agreements from a relief action, the Commission also must make a finding concerning whether imports from those countries account for a substantial share of total imports and are contributing importantly to the serious injury or threat of serious injury.

Except when critical circumstances are alleged to exist (see special timing procedure below), 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.

Disclosure of Confidential Business Information

The Commission releases confidential business information submitted to it only under administrative protective order to authorized representatives of interested parties that are parties to a proceeding. 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 information that is covered by an administrative protective order, a party must serve such information upon all parties that are under the protective order.

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 (50 days if provisional relief is in place as a result of a determination that critical circumstances exist), 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 determining 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 agreements; 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 be taken for a period of up to four years and may be extended one or more times, but the overall period of relief, including extensions, may not exceed eight 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 three years that the President finds is representative of imports of such article, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy serious injury. Any action in the form of a duty, tariff-rate quota or quantitative restriction that has an effective period of more than one year is to be phased down at regular intervals. 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.

Under implementing legislation for certain free trade agreements (FTAs) that the United States has entered into, the Commission is required to make certain additional findings with respect to whether imports from the FTA country are a substantial cause of the serious injury or threat of serious injury, or have contributed importantly to the serious injury or threat of serious injury, and the President may exempt such FTA imports from the remedy action.

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

Perishable agricultural products. An entity representing a domestic industry that produces a perishable agricultural product may also petition the Commission for provisional relief, provided that such product 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 product.

Upon the filing of a petition that contains a request for provisional relief, the Commission has 21 days in which to determine whether increased imports of a perishable agricultural product are a substantial cause of serious injury or threat to the domestic industry producing a like or directly competitive perishable article and whether 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 required to recommend relief to the President, which would generally be in the form of a tariff. The President has seven days in which to consider the Commission's recommendation and provide any provisional relief. Such relief would generally remain in effect pending completion of the Commission's investigation. The Commission continues its investigation regardless of whether its preliminary determination is affirmative or negative. The 21-day provisional relief phase of the investigation is counted as part of the 120-day injury phase.

Critical circumstances. A petitioner may allege in its petition that critical circumstances exist. Critical circumstances are considered to exist if (1) there is clear evidence that increased imports of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and (2) delay in taking action would

cause damage to that industry that would be difficult to repair. Within 60 days of the filing of the petition containing such a request, the Commission is required to determine whether such circumstances exist and, if so, find and recommend to the President appropriate provisional relief. After receiving a Commission report containing such a determination and recommendation, the President has 30 days in which to determine what, if any, provisional relief action to take. Such provisional relief would generally be in the form of a tariff. The Commission continues its investigation regardless of whether its preliminary determination is affirmative or negative. It begins the 120-day injury phase of a section 202 investigation only after it has completed the critical circumstances phase (that is, the 60-day critical circumstances phase is not counted as part of the 120-day phase).

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. Provisional relief may not exceed 200 days.

Monitoring, Modification, or Extension of Action

The Commission monitors developments in industries for which action has been taken under these provisions and, when the relief action exceeds three years, submits a report to the President and the Congress on the results of such monitoring not later than the midpoint of the relief period. The Commission holds a hearing in the course of preparing each such report.

Upon request of the President, the Commission advises the President on the probable economic effect of the reduction, modification, or termination of action. After taking into account a Commission report or advice and after seeking advice from the Secretaries of Commerce and Labor, the President may reduce, modify, or terminate action if he determines that changed circumstances so warrant.

Upon request of the President, or upon receipt of a petition from the industry concerned filed with the Commission not earlier than nine months or later than six months before a relief action is scheduled to terminate, the Commission is to investigate and determine whether action continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition. The Commission holds a hearing in the course of each such investigation and reports its determination to the President not later than 60 days before the action is scheduled to terminate. The President, after receiving an affirmative determination from the Commission, may extend the

period of relief if he determines that the action continues to be necessary to prevent or remedy serious injury and there is evidence that the domestic industry is making a positive adjustment to import competition.

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 with Respect to Imports Under a Free Trade Agreement

The U.S. International Trade Commission also conducts safeguard investigations under several U.S. trade laws that implement safeguard provisions in free trade agreements (FTAs) that the United States has entered into. The statutory standards for taking safeguard actions under those laws are similar to the standard in the U.S. global safeguard law in sections 201-204 of the Trade Act of 1974, except that in making its determination the Commission generally considers imports only from the FTA country, and the Commission must also find that the increase in imports is the result of the reduction or elimination of a duty under the FTA. The safeguard provisions in U.S. FTA implementing legislation have sunset provisions, with the Commission authorized to conduct investigations only during the transition period of the FTA, usually 10 years, as specified in the implementing legislation.

As in investigations under sections 201-204, the Commission conducts investigations on the basis of an industry petition or at the request of the President or the U.S. Trade Representative or upon receipt of a resolution of the House Committee on Ways and Means, or the Senate Committee on Finance. If the Commission makes an affirmative injury determination, the Commission then recommends an appropriate remedy to the President, who makes the final decision on whether to impose a remedy or form of remedy. The remedy may take the form of a duty increase or suspension of further scheduled reductions in duty under the FTA. However, a duty may not be increased to a level that exceeds the lesser of the rate of duty on such goods in effect immediately before the FTA entered into force, or the current U.S. column 1 (most favored nation) rate of duty set forth in the Harmonized Tariff Schedule of the United States. The maximum duration of a remedy varies with the FTA, but is generally two to four years.

At the time this summary was prepared, the United States had entered into FTAs with Australia, Bahrain, Canada and Mexico (NAFTA), Chile, Colombia, the Dominican Republic and five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua -- CAFTA-DR), Israel, Jordan, Korea, Morocco, Oman, Panama, Peru, and Singapore. Most of those FTAs contained bilateral transitional safeguard provisions. U.S. legislation implementing the safeguard provisions in those FTAs can generally be found at 19 U.S.C. 3351 (NAFTA), 19 U.S.C. 4051 (CAFTA-DR), and 19 U.S.C. 3805 note.

The Commission's rules concerning the filing of petitions and the conduct of investigations 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

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 exists when 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 U.S. House Committee on Ways and Means or the U.S. Senate Committee on Finance; 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 its 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 three months.

Actions by the President

If the Commission finds that market disruption exists, it finds the amount of duty or other import restriction necessary to prevent or 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 agreement, or take any combination of the above actions. Action may last for up to five years, with the possibility of an extension of up to three 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 proclaim 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

Investigations of Impact of Imports of Certain Agricultural Products

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 appropriate 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. However, no fee or quantitative restriction may be imposed with respect to any article that is the product of a member of the World Trade Organization.

Following advice by the Secretary and an investigation by the Commission, the President may modify, suspend, or terminate relief due to 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

Investigations Under Other Statutes not Administered in Whole or in Part by the Commission

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 U.S. commerce. In general, the USTR may initiate investigations upon petition by any interested person or upon its own initiative.

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: 202-395-3150

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.

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

For further information, contact:

Deputy Assistant Secretary for Strategic
Industry and Economic Security
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 reemployment services, and relocation and job search allowances. This is a two-step process. 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. Second, 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.

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
200 Constitution Avenue, NW
Washington, DC 20210
Telephone: 202-693-3560
Web: <http://www.doleta.gov/tradeact/>

Firms

Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. § 2341 et seq.) concerns Trade Adjustment Assistance for Firms. This federal program provides financial assistance to manufacturers affected by import competition. Sponsored by the U.S. Department of Commerce, the program is regionally managed by a network of 11 not-for-profit organizations across the country.

For further information, see: <http://www.taacenters.org/index.html>.