

**SUMMARY OF STATUTORY
PROVISIONS RELATED
TO IMPORT RELIEF**



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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FOREWORD

This brief summary of the various U.S. statutory provisions related to import relief has been prepared to provide the public with a concise reference source on the availability and types of import relief, the characteristics of the various types of import-related investigations, and the points of contact for instituting investigations or obtaining further information.

It should be noted that the material contained herein is intended only as an introductory guide and in all instances where the exact provisions of law are required, the referenced statutes should be consulted directly.

Countervailing Duty Investigations

Section 303(a)(1) of the Tariff Act of 1930, as amended, provides:

Whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant, however, the same be paid or bestowed.

The Secretary of the Treasury upon being petitioned conducts an investigation to make a determination as to whether or not any bounty or grant is being paid or bestowed on the articles in question. When the Secretary of the Treasury finds that: (1) grants or bounties are being paid on exports of articles to the U.S. (2) such articles are imported duty-free, and (3) a determination of injury is required by international obligation before duties can be applied, he shall so notify the Commission. The Commission will conduct an investigation to determine whether a U.S. industry is being or is likely to be injured, or is prevented from being established by reason of the importation of such article. The Commission must make its determination within 3 months of receipt of notification of the Secretary's determination.

In the event of affirmative determinations by the Secretary of the Treasury and the Commission in the case of a duty-free article, or an affirmative determination by the Secretary in the case of a dutiable article, duties in the amount of the bounty or grant are assessed and collected, except where the Secretary determines that adequate steps have been taken to reduce or eliminate the adverse effect of the bounty or grant, that there is a reasonable prospect that trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers or other distortions of international trade, or that the imposition of the additional duty would be likely to seriously jeopardize the satisfactory completion of such negotiations.

For further information contact: Office of Tariff Affairs
Department of the Treasury
1301 Constitution Ave., NW.
Washington, D.C. 20229
Phone: 202/566-8256

Investigations of Alleged Unfair Practices in Import Trade

Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), declares unlawful unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry efficiently and economically operated, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States. The United States International Trade Commission is authorized to investigate allegations of such unfair practices and to make determinations as to the existence of such practices in violation of section 337.

If such a violation is found, the Commission is required to direct that the foreign article(s) be excluded from entry into the United States or, in lieu of issuing such an exclusion order, it may issue an appropriate cease and desist order to be served on the violating person(s) unless after considering the effect of certain public interest and welfare factors it finds it should not be excluded. In appropriate circumstances, the Commission may also issue interim temporary orders where it determines "there is reason to believe that there is a violation" of section 337. In the event of a temporary exclusion order, entry is to be permitted under bond.

Following the issuance of exclusion or cease and desist orders by the Commission, the President may, within 60 days of receiving such notification, disapprove the Commission's determination for policy reasons, in which case the Commission's determination and action in connection therewith has no force or effect. Persons adversely affected by a final Commission determination may appeal the determination to the U.S. Court of Customs and Patent Appeals.

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 provisions of the Administrative Procedures Act (5 U.S.C. 551, et seq.). The Commission is required to conclude any such investigation and make its determination at the earliest practicable time, but not later than 1 year (18 months in more complicated cases) after the date of publication in the Federal Register of notice of such investigation. In the course of each such investigation, the Commission is required to consult with and seek advice and information from the Department of

Health, Education and Welfare, the Department of Justice, the Federal Trade Commission, and other appropriate departments and agencies.

The majority of the section 337 complaints filed with the Commission have alleged importation of an article made in accord with the claims of a valid, unexpired U.S. patent as the unfair practice. Holders of U.S. process patents should note the protections afforded by section 337a of the Tariff Act (19 U.S.C. 1337a--not to be confused with section 337(a)), concerning process patents.

For further information contact: Secretary
 U.S. International Trade Commission
 701 E Street, NW.
 Washington, D.C. 20436
 Phone: 202/523-0161

Section 332 Investigations

Section 332 is not a statutory provision for import relief per se, however, the findings of an investigation under this section may in effect lead to relief through modifications of treaties, laws, policies, or procedures or through subsequent import relief investigations.

Section 332 of the Tariff Act of 1930, as amended, sets forth the Commission's authority to investigate, among other things--

1. The administration and fiscal and industrial effects of the customs laws of this country;
2. The relationship between the rates of duty on raw materials and finished or partly finished products;
3. The effects of ad valorem and specific duties and of compound (specific and ad valorem) duties;
4. All questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law;
5. The operation of customs laws, including their relation to the Federal revenues and their effect upon the industries and labor of the country;
6. The tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, and economic alliances;
7. The effect of export bounties and preferential transportation rates;

8. The volume of importations compared with domestic production and consumption; and

9. Conditions, causes, and effects relating to competition of foreign industries with those of the United States.

This type of investigation is instituted by request of the President, either House of Congress, the House Ways and Means Committee, or the Senate Finance Committee, or by the Commission upon its own motion. This is the basic authority for the Commission to conduct fact-finding investigations into tariff and trade matters. It is used frequently by the President and by Congressional committees to order the Commission to conduct such investigations.

For further information contact: Secretary
 U.S. International Trade
 Commission
 701 E Street, NW.
 Washington, D.C. 20436
 Phone: 202/523-0161

Investigations of Injury from Increased Imports

Industries

Under section 201(b) of the Trade Act of 1974 (19 U.S.C. 2251(b)), the Commission shall investigate to determine 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 the domestic industry producing an article like or directly competitive with the imported article. If the Commission makes an affirmative determination under section 201(b), it is required (a) to find the amount of increase in, or imposition of, any duty or other import restriction which is necessary to prevent or remedy the injury, or (b), if it finds that adjustment assistance can effectively remedy the injury, recommend the provision of such assistance. A public hearing is required to be held in the course of all such investigations.

The Commission is required to report the results of its investigation to the President not later than 6 months after receiving a proper petition filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. If the Commission makes an affirmative injury determination and recommends the provision of import relief (as opposed to adjustment assistance), the President must decide within 60 calendar days what, if any, relief is to be provided and to so advise the Congress. The Commission would recommend only such relief as the President has authority

to proclaim under section 203 of the Trade Act (i.e., higher tariffs, a tariff-rate quota system, quantitative restrictions or some combination thereof 1/). In determining what relief, if any, to provide, the President is required to take into account various factors, including the national economic interest. If the President takes action which is different from that recommended by the Commission, or if the President declines to take any action, Congress may, within 90 legislative days, pass a concurrent resolution, approved by a majority of those present and voting in each House, directing the President to proclaim the relief recommended by the Commission. Where the Commission recommends the provision of adjustment assistance as the form of relief, the President is to direct the Secretaries of Labor and Commerce to give expeditious consideration to petitions for such relief.

Relief is temporary and may be provided for up to 5 years, with the possibility of one 3-year extension. Tariffs may be increased to a level no more than 50 percent ad valorem above the presently existing rate (i.e., if the present rate is 10 percent, they may be increased to no more than 60 percent), and any quantitative restraint (quota) proclaimed by the President must permit the importation of a quantity or value of an article which is not less than that entered during the most recent period representative of imports of that article.

Under section 203(i) of the Trade Act (19 U.S.C. 2253(i)) (or under section 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1981), if relief was initially provided under that section), the Commission reports with respect to developments within an industry that has been granted import relief and advises the President of the probable economic effect of the extension, reduction, or termination of relief that has been granted. The President may continue, modify, or terminate the import relief previously granted.

For further information contact: Secretary
 U.S. International Trade Commission
 701 E Street, NW.
 Washington, D.C. 20436
 Phone: 202/523-0161

Workers

A group of workers or their certified or recognized union or other duly authorized representative may file a petition for adjustment assistance with the Secretary of Labor under section 221 of the Trade Act (19 U.S.C. 2271). Upon the receipt of the petition, the Secretary publishes a notice in the Federal Register that he has received the petition and initiated an investigation.

1/ The President may also negotiate orderly marketing agreements with the countries supplying the imports.

Under the worker adjustment assistance provisions, workers in a firm qualify for trade adjustment benefits if the Secretary of Labor, within 60 days after the filing of a petition, finds that an absolute or relative increase in imports contributed importantly to the workers' unemployment, and to a decrease in sales or production of the firm from which they have become unemployed.

The Trade Act provides for direct readjustment allowances to workers certified as eligible for trade adjustment assistance as well as for measures aimed at helping adversely affected workers to find new employment, including job search, training, and relocation allowances. This program expires September 30, 1982.

For further information contact: Office of Trade Adjustment
Assistance
U.S. Department of Labor
Washington, D.C. 20210
Phone: 202/523-6225

Firms

Firms may file petitions for adjustment assistance with the Secretary of Commerce under section 251(a) of the Trade Act. Upon receipt of the petition, the Secretary publishes a notice in the Federal Register that he has received the petition and initiated an investigation. Firms which are found eligible for assistance are entitled to technical assistance and/or financial assistance in the form of loans and loan guarantees. The Secretary of Commerce is required to reach his decision on a firm's adjustment assistance proposal no later than 60 days after receiving the firm's application.

The Secretary shall certify a firm as eligible to apply for adjustment assistance if he determines that increases in imports have contributed importantly to the separation or threat of separation of a significant number of workers in the firm and that sales or production, or both, of such firms have decreased absolutely.

The program of adjustment assistance for firms expires September 30, 1982.

For further information contact: Trade Act Certification Division
U.S. Department of Commerce
Washington, D.C. 20230
Phone: 202/377-3211

Communities

Communities may file petitions for adjustment assistance with the Secretary of Commerce under section 271(a) of the Trade Act. Upon

receipt of the petition, the Secretary publishes a notice in the Federal Register that he has received the petition and initiated an investigation.

The program of community adjustment assistance is intended to help restore the economic viability of areas adversely affected by increased imports. Communities will be certified as eligible to apply for adjustment assistance if the Secretary determines that a significant number or proportion of the workers employed within the "trade impacted area" defined by the Secretary of Commerce have been or are threatened to become totally or partially separated, that sales or production of a firm or firms within the area have decreased absolutely, and that increased imports or the transfer of productive facilities to a foreign nation have contributed importantly to the unemployment or decline in sales or production. Eligible communities could receive a variety of developmental assistance including technical assistance and direct grants for the acquisition and development of land and improvements of public works and public services.

The bill also contains several provisions designed to attract new investment to trade impacted areas. The Secretary of Commerce is authorized to make loans and loan guarantees to qualified applicants to acquire, construct, or modernize plant facilities or for such other purposes as the Secretary determines are likely to attract new investment and to create new, long-term employment opportunities within the area.

For further information contact: Trade Act Certification Division
U.S. Department of Commerce
Washington, D.C. 20230
Phone: 202/377-3211

Investigations of Market Disruptions

As provided for in section 406 of the Trade Act of 1974, market disruption investigations may be requested by (1) the President, (2) the Special Representative for Trade Negotiations, (3) the House Ways and Means Committee, (4) the Senate Finance Committee, (5) an entity representative of the domestic industry, or (6) the Commission on its own motion. The Commission in its investigation determines, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry. A public hearing will be held in the course of all such investigations. For an affirmative finding the imports must be: (1) products of a Communist country that are like or directly competitive with an article produced by the domestic industry, (2) increasing rapidly, either absolutely or relatively, and (3) a significant cause of material injury, or threat thereof, to such domestic industry. The Commission is

required to report its determination and any relief findings to the President not later than 3 months after the date on which the petition is filed. The Commission would recommend only such relief as the President has authority to proclaim under section 203 of the Trade Act (i.e., an increase in or imposition of a duty, a tariff-rate quota system, a quantitative restriction, or some combination of such forms 1/).

Section 406 also authorizes the President to take temporary emergency action without receiving a Commission report and recommendation where he has reason to believe that market disruption exists. Relief, temporary or otherwise, would be proclaimed only with respect to imports from the disrupting country.

For further information contact: Secretary
 U.S. International Trade
 Commission
 701 E Street, NW.
 Washington, D.C. 20436
 Phone: 202/523-0161

Investigations Under the Agricultural Adjustment Act

If, under the provisions of section 22 of the Agricultural Adjustment Act, as amended, the Secretary of Agriculture has reason to believe that any article or articles are being, or are practically certain to be, 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 loan, purchase, or other program or operation conducted by the U.S. Department of Agriculture, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity with respect to which any such program is undertaken, he will so advise the President.

If the President agrees that there is reason for such belief, he will cause an immediate investigation to be made by the U.S. International Trade Commission with a report to him of its findings and recommendations. Following receipt of the Commission's report, the President may impose either an import quota or an appropriate import fee (not in excess of 50 percent ad valorem) to alleviate the difficulty. In any case where the Secretary of Agriculture determines and reports to the President that a condition exists requiring emergency treatment, however, the President may take immediate action under section 22 without awaiting the recommendations of the U.S. International Trade Commission, such action to continue in effect pending

1/ The President may also negotiate orderly marketing agreements with the countries supplying the imports.

the report and recommendations of the U.S. International Trade Commission and action thereon by the President. Requests for investigations under section 22 are normally filed with the Secretary of Agriculture who has delegated the administration of this provision to the Administrator of the Foreign Agricultural Service.

For further information contact: Assistant Secretary for
International Affairs
Room 210-A, Administration Bldg.
U.S. Department of Agriculture
Washington, D.C. 20250
Phone: 202/447-3111

Investigations Regarding Foreign Import Restrictions,
Export Subsidies or Withholding of Supplies

Under Section 301 of the Trade Act of 1974, the President is authorized to respond to tariffs, other import restrictions on access to food, raw materials, or manufactured or semi-manufactured products, and any other act or policy which is unjustifiable or unreasonable and which burdens, restricts or discriminates against United States commerce (including services associated with international trade). Complaints by any interested party concerning foreign import restrictions and export subsidies should be filed with the Special Representative for Trade Negotiations. The Special Representative shall conduct a review of the alleged restriction, act, policy, or practice, and, at the request of the complainant, conduct public hearings thereon.

In addition, this section provides that Presidential response to export subsidies by foreign governments may be made only if (1) the Secretary of Treasury finds that there are subsidies (or incentives having the same effect), (2) the Commission finds that the subsidized imports are substantially reducing the sales of competitive United States products, and (3) the President determines that the Antidumping Act, 1921, and sec. 303 of the Trade Act of 1930 (countervailing duties) are inadequate to deter such practices.

Before taking action in response to any of the above acts, the President may request from the Commission its views on the probable economic effects of the action which he proposes. The responses open to the President are suspension of trade agreements concessions and imposition of duties and other restrictions on imports and fees and restrictions on services. These responses can be applied to the country(s) involved or, subject to possible cancellation by Congress, on a non-discriminatory basis.

For further information contact: Chairman, Section 301 Committee
Office of the Special Representative for Trade Negotiations
1800 G Street, NW.
Washington, D.C. 20506
Phone: 202/395-3432

Antidumping Investigations

The Commission conducts investigations under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of merchandise which the Secretary of the Treasury has determined is being, or is likely to be, sold at less than its fair value. If the Commission's determination is affirmative, the Secretary of the Treasury imposes a dumping duty on imports of the articles in question.

The Commission is required to complete such investigations within 3 months of receiving appropriate notice from the Secretary of the Treasury of a determination that there are sales at less than fair value. The Commission is required, upon receipt of a request from an appropriate interested party, to hold a public hearing in the course of such an investigation.

The Commission also conducts inquiries under section 201(c)(2) of the Antidumping Act (19 U.S.C. 160(c)(2)) after receiving notification from the Secretary of the Treasury that he has concluded, in the course of his investigation, that there is substantial doubt whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of certain merchandise into the United States. In such cases, the Commission conducts 30-day inquiries and, if it determines there is "no reasonable indication" that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of such importation, it advises the Secretary of the Treasury and the Treasury investigation is terminated. If, on the other hand, the Commission does not conclude that there is "no reasonable indication," the Treasury investigation is continued. The Commission holds public hearings in such investigations when, in its judgment, there is good and sufficient reason therefor.

For further information contact: Office of Tariff Affairs
Department of the Treasury
1301 Constitution Avenue, NW.
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Phone: 202/566-2951

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