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**Implementation of Safeguards and Transitional
Safeguards for Developing and Developed
Economies in APEC Region - Investigations of
Serious Injury by the United States**

Submitted by: United States



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Investigations of Serious Injury by the United States

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The U.S. International Trade Commission (ITC) is the U.S. government agency that makes serious injury determinations in safeguard investigations. Sections 201 - 204 of the Trade Act of 1974 (19 U.S.C. §§ 2251 – 2254) concern investigations by the ITC 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.¹

If the ITC makes an affirmative determination, it recommends to the President the action that will address the serious injury or threat of serious injury and facilitate positive adjustment by the industry to import competition. The President makes the final decision or remedy, including the form, amount, and duration. Sections 201 – 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 critical circumstances, for ITC monitoring of relief actions taken, for ITC investigations and determinations relating to relief actions, and for ITC reports on the effectiveness of the relief actions taken.

ITC Investigations and Recommendations

The ITC 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 ITC makes an affirmative serious injury determination, it may recommend action to the President in the form of an increase in or imposition

¹ The ITC also conducts safeguard investigations under several U.S. trade laws that implement safeguard provisions in free trade agreements (FTAs) into which the United States has entered. 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 ITC considers imports only from the FTA country, and the ITC also must find that the increase in imports is the result of the reduction or elimination of a duty under the FTA.

of a duty, a tariff-rate quota, modification or imposition of a quantitative restriction, one or more appropriate adjustment measures, or any combination of such actions. In addition, the ITC may also recommend that the President initiate international negotiations to address the underlying cause of the increase in imports or otherwise to alleviate the serious injury or threat, or that the President 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 ITC 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, the ITC 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 ITC must complete its investigation and submit to the President a report that includes the ITC'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 ITC 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 serious injury or threat of serious injury determination.

Disclosure of Confidential Business Information

The ITC 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 ITC 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 ITC 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 or workers, trade association representing the industry, or any other person or group or persons may individually submit to the ITC commitments regarding action such persons and entities intend to take to facilitate positive adjustment to import competition. The ITC, 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 ITC containing an affirmative serious injury or threat of serious 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 ITC’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; 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. 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.

Provisional Relief in the Case of 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 ITC is required to determine whether such circumstances exist and, if so, find and recommend to the President appropriate provisional relief. After receiving an ITC 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 ITC continues its investigation regardless of whether its preliminary determination is affirmative or negative. It begins its 120-day injury phase of an investigation only after it has completed the critical circumstances phase (i.e., the 60-day critical circumstances phase is not counted as part of the 120-day phase).

Provisional relief terminates if the ITC subsequently makes a negative serious injury or threat of serious injury determination; when the President takes a more permanent action after receiving the ITC's report at the end of the 180-day investigation; when the President, after receiving that report, determines that no action will be taken; 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 ITC 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 ITC holds a hearing in the course of preparing each such report.

Upon request of the President, the ITC advises the President on the probable economic effect of the reduction, modification, or termination of action. After taking into account an ITC 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 ITC not earlier than nine months or later than six months before a relief action of scheduled to terminate, the ITC 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 ITC 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 ITC, may extend the period of relief if the President 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 ITC must hold a hearing and issue a report on the effectiveness of the action.