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Trade Remedies: Section 201 of the Trade Act of 1974

On January 23, 2018, President Trump proclaimed a four-year safeguard measure on imports of certain crystalline silicon photovoltaic cells (solar cells) and modules, and a three-year safeguard on large residential washing machines. These safeguards, issued under Section 201 of the Trade Act of 1974 (19 U.S.C. §2251), imposed additional tariffs and quotas on U.S. imports of these products. The safeguards were instituted based on findings by the U.S. International Trade Commission (ITC) that these goods are being imported into the United States in such increased quantities that they are a substantial cause of serious injury to U.S. manufacturers. The ITC also recommended that the President impose a remedy of this type.

What Is Section 201?

Section 201 or "safeguard" actions are designed to provide a temporary "safeguard" (for example, additional tariffs or quotas on imports) in order to facilitate positive adjustment of a domestic industry to import competition. "Positive adjustment" in the law means the ability of the industry to compete successfully with imports after termination of the safeguard measure, or the industry's orderly transfer of resources to other productive pursuits; and the ability of dislocated workers to transition productively. Section 201 actions are deemed consistent with U.S. international obligations provided that they conform to the World Trade Organization (WTO) Agreement on Safeguards.

Section 201 Process

Section 201 investigations are generally initiated by a written petition filed by a trade association, firm, union, or group of workers representing a U.S. industry. Investigations may also be triggered by House Ways and Means or Senate Finance Committee resolutions, at the request of the U.S. Trade Representative (USTR), or at the ITC's own initiative. The petitioner must also include a plan to facilitate the industry's positive adjustment to import competition. If a plan is not filed at the same time as the petition, it must be filed by the petitioner within 120 days.

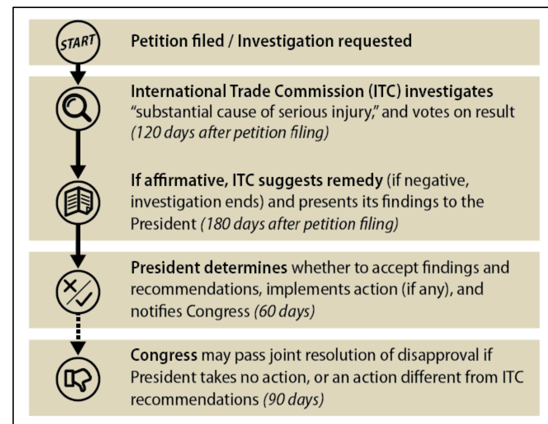
Determining Injury

The ITC's investigative process occurs in two phases. In each phase, the ITC must hold hearings, solicit public comments, and publish all findings in the Federal Register.

In the first phase, the focus is on the affected U.S. industry and whether it is being seriously injured or threatened with serious injury; and, if so, whether an increase in imports are a "substantial cause" thereof. This phase must be completed within 120 days after the filing of the petition, unless the ITC determines that the investigation is "extraordinarily complicated." In this case, it may take up to 30 additional days to make an injury determination. The timeline may be further extended if the petitioner has alleged "critical circumstances" or the product is perishable; temporary relief may be provided in these cases pending the final ITC decision.

Factors the ITC must consider when determining injury include (1) the significant idling of production facilities; (2) the inability of a significant number of firms to carry out domestic production at a reasonable level of profit; and (3) significant unemployment or underemployment within the U.S. industry. The ITC also considers import trends and other factors, as well as declines in production, profits, wages, productivity, and employment. The ITC makes its injury determination based on a vote of the Commissioners. If the Commission is equally divided, the President may select either option.

Figure 1. Section 201 Timeline



Source: Chart by CRS.

Note: Timeline may be extended if ITC determines the case is complicated, if critical circumstances are alleged or if merchandise is perishable.

Remedy Phase

If the ITC makes an affirmative injury determination, it then considers actions that would address the serious injury and be most effective in facilitating the industry's positive adjustment to import competition. It may recommend (1) an increase in, or imposition of, a duty on the imports; (2) a tariff-rate quota on the product; (3) a modification, or imposition of, any quantitative restriction on imports; or (4) any combination of these actions. In addition to these remedies, the ITC may also recommend that the President initiate international negotiations or otherwise alleviate the injury or threat, or implement any other action authorized under law to facilitate positive import competition. Only those Commission members who concurred in the affirmative injury determination may vote on the recommended remedy, although other Commissioners may submit separate views.

ITC Report to the President

Unless an extension is granted, the ITC must report its findings to the President within 180 days of the petition filing. After submission, the ITC must also release its findings (business confidential information redacted) in the Federal Register.

Presidential Action

After receiving the ITC's report, the President has 60 days to decide which, if any, of the ITC's recommendations to implement. The deadline may be extended another 15 days if the President requests additional information from the ITC. The President may opt to implement the ITC's recommendations, modify them, or do nothing. When making a determination under Section 201, the President must consider

- the recommendations and report of the ITC;
- the degree to which workers and firms are already benefiting from adjustment assistance and worker retraining programs;
- the industry's efforts (including proposals outlined in the adjustment plan) to make a positive adjustment to import competition;
- the probable effectiveness of the ITC's proposed actions to facilitate the industry's positive adjustment;
- the short- and long-term economic and social costs of the actions as opposed to the potential benefits; and
- the position of the domestic industry in the U.S. economy.

The President must also weigh U.S. national economic and security interests, including the proposed remedy's possible impact on U.S. consumers and on other U.S. industries. If the President decides to impose a remedy, he has several options. He may

- proclaim a tariff, tariff increase, tariff-rate quota, or quota on imports;
- implement adjustment measures for U.S. firms and workers;
- negotiate and implement agreements limiting exports with other countries;
- proclaim procedures for the auction of import licenses; initiate international negotiations;
- submit legislative proposals to Congress;
- take any other actions under the President's legal authority; or
- use any combination of these actions.

Congressional Role

On the day the President takes action (or decides to take no action) under Section 201, he is required to report to Congress in writing, describing the action and the reasons for it. If the President's action differs from the ITC's recommendation, or if the President opts to take no action, Congress may enact a joint resolution of disapproval within 90 days of receiving the President's report. If a resolution is enacted, the ITC's recommendation becomes the remedy, and the President must proclaim it within 30 days.

Duration and Review

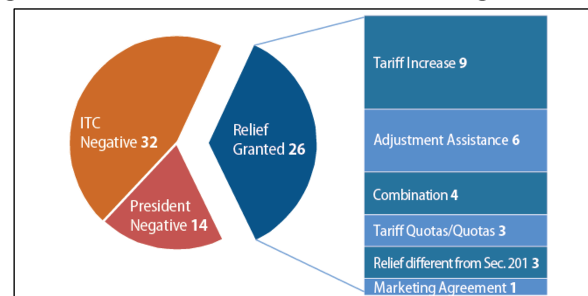
The President may grant import relief for an initial period of up to four years and extend it one or more times, up to a maximum of eight years. The ITC must monitor Section 201 actions as long as they are in effect, especially with respect to the efforts and progress of the domestic industry and workers to adjust positively to import competition. If the initial period of the action exceeds three years, the ITC is also required to submit a midterm review to the President and Congress.

After the President receives the ITC review and consults with the Secretaries of Commerce and Labor, he may modify, reduce, or terminate the action if he determines that the industry has not made adequate efforts toward positive adjustment or the action is no longer effective due to economic circumstances. He may also terminate or change the remedy if the industry petitions the President to do so on the basis of positive adjustment to import competition.

Section 201 Actions

Prior to the Trump Administration, the ITC conducted 73 Section 201 investigations from 1975 to 2001. The ITC determined in the negative in 32 cases (including 3 tie votes for which the President accepted the ITC negative determination). The President decided to grant no relief in 14 cases. The President granted relief 26 times in the form of tariff increases (9), adjustment assistance (6), tariff-rate quotas or import quotas (3), marketing agreement (1), and combinations of these actions (4). In 3 cases, he granted more open-ended types of relief (voluntary restraint agreement, income supports, retraining/relocation of workers).

Figure 2. Outcomes of Section 201 Investigations



Source: CRS Chart based on GAO data and Federal Register documents.

In 2002, based on a Section 201 case, President George W. Bush implemented a combination of quotas and tariff increases on various types of steel imports. The action was subsequently challenged in the WTO. In 2003, WTO panels determined that the safeguard action was inconsistent with the United States' WTO obligations, and on December 8, 2003, President Bush terminated the action.

On May 14, 2018, South Korea requested WTO consultations with the United States regarding both recent U.S.-implemented safeguards on washing machines and solar products and, on August 16, formally requested that WTO dispute settlement panels be established. On August 14, 2018, China requested consultations with the United States on the safeguard on solar products.

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