

# Duties, special under Section 201

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The International Trade Commission also issued Frequently Asked Questions about the Global Safeguard Investigations (Section 201) as below to inform the public.

## 1.. What is a Section 201 (Global Safeguard) investigation?

Investigations under this law may be requested when increased imports of a product are alleged to be a substantial cause of serious injury, or threat of serious injury, to a U.S. industry. If the Commission makes an affirmative determination, this law allows the United States to "escape" from our obligations under our international trade agreements to give affected industries temporary relief for a limited period of time to enable them to adjust to import competition. The U.S. law implements U.S. obligations under the WTO Agreement on Safeguards and Article XIX of GATT 1994.

## 2.. Is there an unfair trade practice involved?

No. Global safeguard investigations do not require the finding of an unfair trade practice. The Commission's responsibility is to decide whether an article is being imported in such increased quantities that it is a substantial cause of serious injury, or threat of serious injury, to the U.S. industry. However, the injury requirement under section 201 is considered to be more difficult than those of the unfair trade practice statutes. Section 201 requires that the injury or threatened injury be "serious" and that the increased imports must be a "substantial cause" of the serious injury or threat of serious injury.

## 3.. Is it different from a dumping case?

Yes. Dumping, or sales in the United States of an imported product at less than fair value, is an unfair trade practice. Dumping investigations are conducted under a different law, have different injury standards and procedures, and, if affirmative, result in different remedies. Safeguard investigations involve imports of a product from all countries, while dumping cases are country specific.

## 4.. What are the definitions of "substantial cause" and "serious injury"?

Both definitions are found in the statute: Substantial cause means a "cause which is important and not less than any other cause."

Serious injury means a "significant overall impairment in the position of a domestic industry."

## 5.. What happens now that the request has been made?

The Commission will conduct an investigation to determine whether the imports involved are a substantial cause of serious injury or threat of serious injury to the U.S. industry or industries.

The overall investigation must be completed within 180 days from receipt of the request. Within that 180 days, the Commission will complete an injury phase, and if it makes an affirmative injury determination, a remedy phase.

As a general matter, the Commission has 120 days to complete the injury phase and 60 days to complete the remedy phase. It holds a public hearing in each phase.

If the Commission's injury determination is affirmative, a remedy phase will be completed. At the conclusion of the remedy phase, the Commission will announce its remedy recommendation(s).

The Commission's findings and any remedy recommendations must be forwarded in a report to the President within 180 days of the receipt of the request.

If the Commission makes an affirmative injury determination, within 60 days of receipt of the Commission's report, the President decides whether to provide relief to the U.S. industry, and if so, the type and kind of relief to provide. The President may request additional information from the Commission within 15 days of receiving its report; if he does so, the Commission has 30 days to provide that information.

If the Commission makes a negative injury determination, the case will end and no relief may be provided.

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

If the Commission makes an affirmative injury determination (or is equally divided) on some products but not others, the remedy phase will include only those products for which the Commission makes an affirmative determination or is equally divided.

6.. Is it unusual for the U.S. Trade Representative to request an investigation under this law?

It is rare, but certainly not unprecedented. While investigations under this law are generally sought by firms in the industry, the law also authorizes the President or the USTR, as well as the House Committee on Ways and Means and the Senate Committee on Finance, to make such requests. The last time the Administration requested an investigation under section 201 was in 1985 and involved apple juice imports. The Administration requested a stainless steel investigation in 1982 as well as a mushroom investigation in 1976.

7.. What kinds of relief are possible for the industry?

The Commission may recommend to the President an increase in a duty, > imposition of a quota, imposition of a tariff-rate quota (e.g., a two-level tariff, under which goods enter at a higher duty after the quota is filled), trade adjustment assistance, or any combination of such actions. In addition, the Commission may also recommend that the President initiate international negotiations to address the underlying cause of the increase in imports or that he implement any other action authorized under the law that is likely to facilitate positive adjustment to import competition. The Commission's relief recommendation may differ for each product under investigation. The decision concerning the form of relief ultimately granted is made by the President. The President may take action for an initial period of up to four years.

8.. What countries are affected?

Basically, all countries. Global safeguard investigations are not country specific. They involve imports of the products under investigation from all sources. However, Commissioners who make affirmative injury determinations are required to make additional separate findings for certain countries with which the U.S. has free trade agreements. These include the NAFTA countries (Canada and Mexico), the beneficiary countries of the Caribbean Basin Economic Recovery Act, the beneficiary

countries of the Andean Trade Preference Act, and Israel.

9.. What does the Commission look at in these investigations, and how do they work?

The Commissioners base their determinations in global safeguard investigations on the requirements of the law (sections 201-204 of the Trade Act of 1974) and the factual record developed in the investigation.

The Commission employs a variety of fact-gathering techniques, which include industry- specific questionnaires, telephone interviews, plant visits, consultations with technical and marketing specialists, public hearings, briefs by the parties and non-party submissions, and reviews of industry and market literature. A public hearing is held in the injury phase of the investigation; if the Commission makes an affirmative injury determination and completes a remedy phase in the investigation, a hearing on remedy will also be held.

The Commission collects and analyzes the extensive data in the investigation, which include the industry's productive capacity, actual production, capacity utilization, domestic and export shipments, inventories, imports, domestic market shares held by U.S. and foreign suppliers, employment, hours worked, productivity, wages and total compensation paid, unit labor costs, pricing, and full financial data on the U.S. companies producing the product under investigation. The Commission also gathers and analyzes information about the foreign industries producing the product under investigation.

10.. Can global safeguard determinations be appealed?

Commission determinations are not appealable to U.S. courts except on procedural grounds. Countries may seek dispute settlement in the World Trade Organization at any time if they feel a U.S. global safeguard action is inconsistent with WTO obligations. WTO members may seek review of any U.S. action by a panel under the WTO Dispute Settlement Understanding. In addition, under the NAFTA, Canada and Mexico may seek review of a global safeguard action by a NAFTA panel.