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SECTION 201
"SAFEGUARD" PROVISION

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Section 201 of the *Trade Act of 1974*, as amended, codifies the *Agreement on Safeguards* under the *General Agreement on Tariffs and Trade* ("GATT") and the subsequent *Uruguay Round Trade Agreements*. This *Agreement on Safeguards* permits a signatory nation to impose import restrictions on a product when increased imports of that product are found to cause, or threaten to cause, serious injury to the domestic industry which manufactures that product.

1. OVERVIEW OF SECTION 201

Section 201 establishes a bifurcated procedure in which the U.S. INTERNATIONAL TRADE COMMISSION ("ITC") and the PRESIDENT have the primary roles in investigating and resolving requests for import relief.

The ITC will determine whether increased imports of a product are a "substantial cause" of "serious injury," or the threat of serious injury, to the U.S. industry producing that product. If the ITC makes an affirmative injury determination, it will send a report to the PRESIDENT with its findings and recommendations for import relief. The possible forms of import relief are discussed more fully in Section 7, below.

After the PRESIDENT receives the ITC's report, the U.S. TRADE REPRESENTATIVE ("USTR") will conduct an independent inquiry on the effectiveness of the import relief recommended by the ITC, and as part of this inquiry the USTR will consider the impact of such relief on the entire U.S. economy, including customers. The USTR will submit a report to the PRESIDENT, who has complete discretion to select what remedial action, if any, to take in the case. Any remedial action will apply only to the product under investigation.

2. <u>STANDARD OF INJURY UNDER SECTION 201</u>

Section 201 requires that an increase in imports be a "substantial cause" of "serious injury," or the threat of serious injury, to the domestic industry which produces the product under investigation. The law defines "substantial cause" as "a cause which is important and not less than any other cause," and it defines "serious injury" as the "significant overall impairment in the position of the domestic injury."

A request for a Section 201 investigation does not allege that the imported product is dumped, subsidized, or otherwise unfairly traded. The domestic industry must show only that imports have increased, either in absolute terms or relative to domestic consumption, and that this increase is a substantial cause of serious injury or the threat of serious injury. Evidence of serious injury includes idle production facilities or plant closings, significant unemployment or underemployment, and "the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit."

The law defines "threat" as "serious injury that is clearly imminent." Some of the "threat" factors considered by the ITC are declines in sales or market share; higher or increasing inventory levels; downward trends in production, profits, wages, profitability and full employment; changes in the level of prices, production and productivity; inability of domestic firms to finance modernizations of plant and equipment and to maintain existing levels of R & D; and the extent to which trade restraints in third country markets cause a diversion of exports to the United States.

3. <u>COVERAGE OF SECTION 201 PROCEEDING</u>

A Section 201 proceeding covers all imports from all sources of the product under investigation. It is global in scope, unlike an antidumping or countervailing duty investigation which targets a specific country or countries. Any exporting country or producer may appear before the ITC as a respondent and fully participate in all phases of the proceeding. There is a special rule under Section 201 for NAFTA countries (*i.e.*, Canada and Mexico), and this rule is discussed more fully in Section 8, below.

4. <u>INITIATION OF SECTION 201 INVESTIGATION</u>

A petition requesting relief under Section 201 may be filed by a producer, trade association, or labor union which is "representative" of the domestic industry. The law also permits the PRESIDENT, the USTR, and the trade committees of the CONGRESS (*i.e.*, the Senate Finance Committee and the House Ways and Means Committee) to request a Section 201 investigation. Finally, the ITC itself is authorized to self-initiate an investigation.

5. ITC PROCEDURES UNDER SECTION 201

The ITC must make its injury determination within four months—or five months in a complicated case — after it receives a petition from the domestic industry or a request from the ADMINISTRATION or the CONGRESS. The ITC will send questionnaires to domestic and foreign producers, importers and purchasers, and these parties may submit briefs and testify before the ITC. In these respects, a Section 201 investigation is similar procedurally to a final injury investigation in an antidumping or countervailing duty case.

The ITC is required to hold a public hearing regarding injury, generally three months after it receives a petition or request. If the ITC makes an affirmative injury determination, it will hold a second public hearing in order to consider the issue of the appropriate remedy or remedies. The ITC will also entertain written comments from all parties on this subject. Section 201 provides for a range of possible remedies, which are discussed more fully in Section 7, below.

6. PRESIDENTIAL REVIEW AND DECISION

The ITC must submit its findings and recommendations for relief to the PRESIDENT within 6 months after it receives a petition or request. The PRESIDENT must make his decision on the form of relief, if any, within 60 days after receiving the ITC's report. During this period, the USTR will conduct an independent inquiry in conjunction with the other members of the interagency Trade Policy Staff Committee. The Committee will evaluate the likely effectiveness of the ITC's recommended relief as well as other remedies, and it will assess the impact of the potential remedies on the economy as a whole. Domestic producers, consumers and other parties will be given an opportunity to submit their views to the Committee.

The USTR will report the Committee's findings and recommendations to the PRESIDENT. The PRESIDENT has complete discretion to select the appropriate remedy, if any, for the domestic industry. In making his decision, the PRESIDENT must consider a number of factors, including the ITC's recommendations, the domestic industry's efforts to adjust to the import competition, the probable effectiveness of the recommended relief, the short- and long-term economic and social costs of the recommended relief, the national security interests, and the effect of the recommended relief on consumers and competition in the domestic market for the product under investigation.

The PRESIDENT must report his decision to the CONGRESS. If he takes action that differs from the ITC's recommended relief or if he takes no action at all, the CONGRESS may direct the PRESIDENT through a joint resolution to implement the ITC's recommended relief.

7. REMEDIES UNDER SECTION 201

(a) *Higher Duty Rate*

Section 201 provides that, if import relief is in the form of increased duties, such an increase can be no greater than 50 percent *ad valorem* above the current duty rate.

(b) *Quantitative Restriction*

Section 201 provides that the PRESIDENT may impose a quantitative restriction or quota as a remedy. The *Uruguay Round Agreements Act* amended Section 201 to provide that, if import relief is in the form of a quota, the quota must permit the importation of a quantity or value of the product which is not less than the average quantity or value of imports during the most recent three "representative" years. However, the PRESIDENT may override this limitation if he finds that setting a quota at a lower quantity or value is "clearly justified" in order to prevent or remedy serious injury or the threat of serious injury. It should be noted that the law does not require that these three representative years be consecutive.

Quotas are normally allocated on the basis of import shares established over a representative period of time. However, the *Uruguay Round Agreement on Safeguards* permits a deviation from this rule if there has been a surge of imports from one or more countries.

(c) *Tariff-Rate Quota*

A tariff-rate quota provides that a certain quantity of imports may enter the United States at the current duty rate but that any additional imports will be subject to an increased rate of duty.

(d) *Trade Adjustment Assistance*

Under Section 201, the PRESIDENT can direct the SECRETARIES OF COMMERCE and LABOR to consider adjustment assistance for workers, firms and communities which are adversely affected by increased imports. This assistance may take the form of direct benefits and retraining programs for employees; technical and financial assistance, including loans and loan guarantees, for companies; and technical assistance and direct grants for "trade impacted areas."

(e) *International Negotiations*

The PRESIDENT can initiate negotiations with the exporting countries to address the underlying cause of increased imports or otherwise alleviate the injury caused by the increased imports. Such negotiations may consider a wide variety of potential agreements, understandings or actions which could limit imports or provide relief to the domestic industry.

(f) *Limitations on Remedy*

The following limitations apply to remedies involving higher duties, quantitative restrictions, and/or tariff-rate quotas. *See* Section 7(a)—(c).

> *(i) Duration of Remedy*. If the PRESIDENT acts upon the ITC's affirmative injury determination, the remedy cannot extend beyond eight years — up to four years initially and a further four years if extended.
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> *(ii) Monitoring of Remedy*. If the initial import relief is imposed for more than three years, the ITC must monitor the effects of that remedy on the domestic industry and submit periodic reports to the PRESIDENT and the CONGRESS.
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> *(iii) Graduated Reduction of Remedy*. If the PRESIDENT imposes a higher duty or quantitative restriction on imports that will be in effect for more than one year, that remedy must be "degressive"—that is, the remedy must be progressively relaxed over the period in which the relief is in effect.
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> *(iv) Retaliation by Other Countries*. The *GATT Agreement on Safeguards* provides that other countries may retaliate against a member state which takes safeguard measures against their products. Such retaliation can take the form of restrictions on exports of other products from the state taking safeguard measures, often leading to intense internal debate about the tradeoff between protection versus retaliation. In the past, this provision encouraged the ADMINISTRATION to negotiate compensation agreements with the exporting countries affected by Section 201 remedies. However, the *Uruguay Round Agreement on Safeguards* changed the retaliation provision so that exporting countries may not impose trade retaliation for the first three years of any safeguard measure if there has been an absolute increase in the volume of imports. This change does not apply if the increase in imports has been relative (*i.e.*, as a share of domestic consumption) rather than absolute.

8. <u>SPECIAL RULE FOR NAFTA COUNTRIES</u>

Section 201 sets higher standards of causation and injury for NAFTA countries. The ITC analyzes separately the imports from Canada and Mexico to determine whether they account for a "substantial share" of total imports. Such imports account for a substantial share if these countries are among the top five suppliers of the product during the most recent three-year period. Canada and Mexico will be exempt from import relief measures if the PRESIDENT determines that imports from either or both of these countries are insubstantial (generally less than 5 to 10 percent of total imports) and are not contributing "importantly" to serious injury or the threat of serious injury.

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