



BY THE COMPTROLLER GENERAL

# Report To The Congress

OF THE UNITED STATES

AD A100586

## 6 Changes Needed In Administering Relief To Industries Hurt By Overseas Competition.

The Trade Act of 1974 contains an "escape clause" which allows industries adversely affected by overseas competition an opportunity to become more competitive. If the International Trade Commission determines that an industry is or may be injured from increased imports, it recommends an appropriate remedy to the President, who takes the U.S. national economic interest into consideration in deciding whether or not to provide relief.

GAO recommends a number of steps the International Trade Commission and the Office of the U.S. Trade Representative should take to improve administration of this program.

①

LEVEL II

11 3 Aug 82

12 99

DTIC ELECTE  
NOV 4 1981  
S B

FILE COPY



DISTRIBUTION STATEMENT A  
Approved for public release  
Distribution Unlimited

14 GAO/RS-81-42

81 11 04 101

422972



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

B-199373

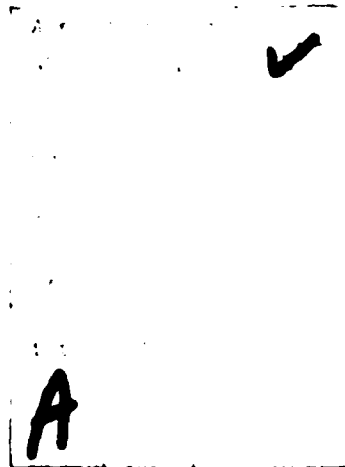
To the President of the Senate and the  
Speaker of the House of Representatives

This report discusses the administration of the Government program designed to assist U.S. industries adjust to foreign competition. The review was made to determine whether the current program, as administered, is fulfilling its objectives and to identify areas in need of improvement. At the specific request of Senator John Heinz, we also addressed the possible circumvention of import restraints on mushrooms.

We are sending copies of this report to the Director, Office of Management and Budget; United States Trade Representative; International Trade Commission; Council of Economic Advisers; and Secretaries of State, Treasury, Commerce, and Labor.

*Milton J. Fowler*

Acting Comptroller General  
of the United States



COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESS

CHANGES NEEDED IN ADMINISTERING  
RELIEF TO INDUSTRIES HURT BY  
OVERSEAS COMPETITION

D I G E S T

Section 201 of the Trade Act of 1974, known as the escape clause, provides temporary relief for industries injured by imports. The legislative intent is to provide a "breathing space" from import competition to enable the industry to facilitate adjustments to become more competitive.

The process begins at the International Trade Commission (ITC), which must determine whether (1) there are increased imports, (2) the domestic industry producing a like or directly competitive article is seriously injured or threatened with serious injury, and (3) the increased imports are a substantial cause of the injury.

If these three criteria are met, the ITC recommends an appropriate remedy to the President, who, considering also the U.S. national economic interest, decides whether or not to provide relief.

However, GAO found that the program, as administered, does not provide the intended level of import relief. The Government and the petitioners do not agree on specific adjustment commitments to improve competitiveness. These problems can be rectified with better administration.

GAO recommends several steps the ITC and the Office of the U.S. Trade Representative should take to improve the administration of this program.

WHY THE REVIEW WAS MADE

GAO evaluated the implementation of sections 201-203 of the Trade Act of 1974 to determine whether the legislation was being administered effectively to enable U.S. industry to become more competitive. Also, at the request of Senator John Heinz, GAO specifically reviewed whether monitoring systems were adequate to prevent avoidance of import restraints and the transshipment of mushrooms through Hong Kong.

## IMPORT INJURY DETERMINATION PROCESS

ITC's process for conducting investigations, making its injury determinations, and when necessary recommending remedies, consists of three steps--a staff level analysis and report, public hearings, and Commissioners' opinions. GAO's review of these steps indicated that:

- Insufficient use of inhouse expertise and uneven assessments of industry efforts to compete have resulted in the omission or unclear presentation of important material in the final reports to the Commissioners.
- In some cases, Commissioners' opinions were so general that their judgments were not clearly explained. This makes the report less credible and less useful to potential petitioners in deciding whether to seek import relief.

## RECOMMENDATIONS

The International Trade Commission should:

- Improve financial analysis and technological expertise and consider using consultants as team members when needed. (See pp. 10 to 15.)
- Ensure data verification from firms with multiproduct operations or with sophisticated accounting procedures by requiring petitioners' certified public accountants to certify the accuracy of data presented for deliberations and followup. (See pp. 10 to 15.)
- Expand price analyses to require explanation of the possible underlying reasons (quality, delivery period, cost of raw materials, or other costs such as labor) for the price differences between imported and domestic products. (See pp. 10 to 15.)
- Require that reports on investigations include evaluations of petitioners' efforts to become competitive--including Government policies which may hinder competitive efforts. (See pp. 18 and 19.)
- Require that the Commissioners fully explain the significance of critical facts used in making their decisions. (See pp. 20 to 22.)

## EXECUTIVE BRANCH DECISIONMAKING PROCESS

The executive branch relief-remedy determination process meets its intended objective of enabling the President to make his decision within the allotted time. To guarantee that the national economic interest is served and to maintain a consistent trade policy, the executive branch should continue to assess and rule on the broader implications of providing import relief. The process could be improved, however, by a fuller explanation of why the President does or does not take certain actions. Also, there is some duplication in certain report requirements.

## RECOMMENDATIONS

The Office of the U.S. Trade Representative should more fully explain in the Presidential report to Congress the rationale for decisions, including the national economic interest considerations. (See p. 34.)

The Congress should repeal section 264 of the Trade Act of 1974, as amended, requiring a separate report from the Secretary of Commerce on trade adjustment assistance to firms, since it duplicates other reporting efforts. (See pp. 34 and 35.)

## MONITORING AND ENFORCEMENT

After import relief is implemented, the ITC and the Office of the U.S. Trade Representative are responsible for monitoring the condition of the industry. An ad-hoc interagency monitoring group, chaired by the Department of Commerce, also monitors the effectiveness of orderly marketing agreements and quotas.

GAO noted the following deficiencies in monitoring and enforcing the relief program.

- Some industries are omitted from quarterly and annual surveys, resulting in a lack of current knowledge as to the economic well-being of these industries and how the adjustment process is working.
- Petitioners' adjustment strategies supplied to the Government are not specific, and there are no binding commitments on the part of petitioners to take necessary steps to become

competitive if import relief is granted. Current legislation allows petitions for relief from entities which do not have the authority to carry out adjustment strategies.

--Incomplete and imprecise survey reports reduce the Government's ability to review industry developments.

--ITC does not regularly meet its requirement to review developments with respect to industries granted relief, including the progress and specific efforts made by the firms in the industries to adjust to import competition.

--Although the executive branch has anticipated increases in imports from countries not subject to import restraint, failure to control these increases has reduced the level of protection originally intended.

--Tariffs are administratively less complex than other forms of relief; however, the effective level of protection provided by tariffs fluctuates with movements in exchange rates.

#### RECOMMENDATIONS

The Office of the U.S. Trade Representative, in cooperation with the International Trade Commission, should:

--Request petitioners to submit more detailed adjustment strategies tied to the level of relief granted and monitor their compliance. (See pp. 37 to 41.)

--Periodically collect data on the conditions of all industries provided with import relief to determine whether their financial conditions have improved and what they have done to increase their competitiveness. (See pp. 38 to 40.)

The Office of the U.S. Trade Representative should:

--At the inception of orderly marketing agreements, notify countries which could potentially reduce the relief's effectiveness that prompt enforcement action will be taken. If necessary, a trigger mechanism, based on historical import trends, should be set up with

countries not subject to the restraint to signal the need for timely discussions in cases where increased imports are reducing the level of protection originally intended. (See pp. 41 to 49.)

--In those cases where a tariff is the form of relief selected, explore the feasibility of providing intended protection with a variable tariff keyed to the movement in exchange rates. (See pp. 50 and 51.)

We recommend that the Congress amend the Trade Act of 1974, as amended, to:

--Require petitioners to submit to the Office of the U.S. Trade Representative specific adjustment strategies.

--Prohibit one segment of the manufacturing process to petition; e.g., labor or management unless it is evident that this is the only segment from which specific adjustment commitments will be sought. (See p. 52.)

#### AGENCY COMMENTS

Comments were received from the ITC and the Office of the U.S. Trade Representative. The comments were also provided on behalf of the Departments of Commerce, Labor, State, Treasury, Agriculture, Justice, and Interior; and the Council of Economic Advisers.

In most instances, the agencies did not disagree with the facts as presented in our report, but, rather, believed they had taken or planned corrective actions.

ITC stated that a number of the issues cited by GAO have been of interest to the Commission for years and that it has already taken steps to correct the problems. GAO's report recognizes these improvements; however, GAO does not believe the response adequately addresses the need for some improvements which it believes are necessary.

While recognizing many of the problems GAO cited with the implementation of the import relief program, the Office of the U.S. Trade



Representative disagreed with the recommendations regarding monitoring and enforcement. Nevertheless, GAO continues to believe that increased attention should be given to adjustment plans and monitoring of compliance with these plans. GAO also believes its conclusions remain valid. GAO's evaluation of the agencies' comments are included in the appropriate chapters.

## C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	Import relief program	2
	Why the review was made	3
	Objectives, scope, and methodology	4
2	ITC DETERMINATIONS	6
	Statutory requirements	7
	Investigation structure	8
	Inherent limitations on investigations	9
	Staff analysis and report could be improved	10
	Recommendations	16
	ITC's comments and our evaluation	16
	Uneven assessment of industry efforts to compete	18
	Recommendation	20
	ITC's comments and our evaluation	20
	Lack of clarity in Commissioner opinions	20
	Recommendation	22
	ITC's comments and our evaluation	22
3	RELIEF-REMEDY DETERMINATION	24
	Statutory requirements	24
	Interagency groups	25
	Interagency deliberations	26
	Intra-agency deliberations	28
	The TPSC, TPRG, TPC relief-remedy role	28
	The President's decision	31
	Criticisms of the process	32
	Recommendations	35
	OUSTR comments and our evaluation	35
4	MONITORING AND ENFORCEMENT	37
	Industry monitoring	37
	Import monitoring and enforcement	41
	Recommendations	52
	Agency comments and our evaluation	53
5	SECTION 203 EXTENSION INVESTIGATION	60
	Legislative background	60
	Investigative procedures and decisionmaking process	60
	Identification of specific efforts to compete	62
	National and international implications of import relief	62

APPENDIX

I	Letter from the OUSTR dated April 17, 1981	63
II	Letter from the ITC dated April 10, 1981	72

ABBREVIATIONS

CB	citizens band
CEA	Council of Economic Advisers
GAO	General Accounting Office
GATT	General Agreement on Tariffs and Trade
HCF	high carbon ferrochromium
ITC	International Trade Commission
OMA	orderly marketing agreement
OUSTR	Office of the U.S. Trade Representative
R&D	research and development
TPC	Trade Policy Committee
TRPG	Trade Policy Review Group
TPSC	Trade Policy Staff Committee

## CHAPTER 1

### INTRODUCTION

World trade is recognized as fundamental to the economic objectives of all nations. Efforts have been made in the post-World War II period to establish an international set of ground-rules to govern world trade. Generally, these efforts sought to promote a fair and open world trading system. The basic rules are contained in the General Agreement on Tariffs and Trade (GATT) (Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700). U.S. policy is to promote an open, nondiscriminatory, and fair world economic system and to stimulate fair and free competition between the United States and foreign nations. This policy contributes to the most efficient use of resources which, in turn, helps to promote domestic economic growth, stable prices, higher income, and full employment.

The United States and other countries have recognized that liberalizing trade can result in broad national benefits; they also recognize, however, that trade concessions can result in increased imports and cause injury to specific industries. Thus, international agreements contain escape clause provisions which allow a country to suspend, withdraw, or modify a previously agreed upon trade concession in order to provide the domestic industry with a temporary relief period during which to adjust to the new competitive environment.

Article XIX of the GATT, which provides the basis for escape clause relief, states that a country must comply with certain conditions before it can take an escape or safeguard action. For example, a country can suspend a GATT obligation to the extent and for such time as may be necessary to prevent or remedy an injury but must consult with other countries affected by such action. The affected countries can ask for compensation for the escape clause action, including tariff reductions on other products it exports or modification of trade concessions previously granted. Although the President sometimes cites the threat of compensation/retaliation as one reason for denying relief, no compensation has been paid or retaliation taken for import relief cases decided after revised escape clause legislation was implemented in 1974. However, the United States has been trying to reach agreement on outstanding compensation claims involving (1) specialty steel and industrial fasteners with Canada and (2) porcelain-on-steel cookware with Japan and Spain.

Not all safeguard measures are taken under GATT Article XIX; some countries, including the United States, use voluntary agreements which may include some elements of coercion to restrain another country's exports. The recent Multilateral Trade Negotiations discussed updating Article XIX to reflect these current trends, but no agreement was reached on a safeguards code, basically because consensus was never reached on (1) the kinds of actions or measures that would be covered and (2) the consequence of taking such actions, both for the country taking the action

and those countries directly or indirectly affected. A further area of contention was the issue of nondiscrimination, or selectivity. Article XIX requires that safeguard actions be applied to all GATT members, but, in practice, Article XIX is rarely used.

#### IMPORT RELIEF PROGRAM

The United States has had legislation authorizing an import relief program since 1951. Sections 201-203 of the Trade Act of 1974 (19 U.S.C. 2251-53), as amended, provide formal procedures for responding to import injury from trade competition. The purpose of such import relief is to facilitate orderly adjustment to import competition. In this Act, Congress liberalized the legislative criteria for obtaining relief, but made it clear that import relief was not to be granted unless certain conditions were met. The legislative history also indicates that the escape clause is not intended to protect industries which have not made reasonable efforts on their own to be competitive. Before an affirmative import relief determination can be made

- imports of an article must be increasing, either actually or relative to domestic production;
- a domestic industry producing an article like or directly competitive with the imported article must be incurring or be threatened with serious injury; and
- the increased imports must be a substantial cause of the serious injury or threat thereof.

Although the purpose of granting relief is to facilitate orderly adjustment to import competition, it is not clear what is meant by "adjustment." Section 201 states that the import petition shall include a statement describing the specific purposes for which import relief is being sought, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjusting to new conditions of competition. Executive agency documents contain various definitions of adjustment, including need to increase profits in order to modernize production facilities and expand domestic output and need to reallocate investment funds to more profitable areas. Industry petitions for relief cited various definitions of adjustment; for example, one petition argued that adjustment can vary with the circumstances of the case and may mean shifting to production of alternative goods, making technological or other improvements in a production process to render it more efficient, or inducing changes in the marketing or pricing practices of foreign suppliers. Given this diversity of views, there will be continued debate over whether import relief has effectively facilitated orderly adjustment to new competitive conditions.

A petition for import relief goes through a two-step process, which essentially involves a determination of injury by the

International Trade Commission (ITC) and consideration of relief by the President.

If the ITC does not find that serious injury or the threat of such injury exists, no further action is taken. When ITC's determination is positive or if there is an evenly divided decision, the petition is examined by executive branch agencies concerned with foreign trade. Their advice, along with ITC's recommendation, is provided to the President, who determines what relief, if any, is in the national economic interest. When ITC recommends relief and the President does not, he must promptly report to the Congress his reasons for not doing so. In such cases, Congress, by concurrent resolution passed by both Houses, may order that ITC's relief recommendation be put into effect.

Activity under the program

The chart below shows the determinations made under the import relief program since its inception.

ITC Injury Determinations

<u>Determination</u>	<u>1951-62</u>	<u>Percent</u>	<u>1962-74</u>	<u>Percent</u>	<u>1975-80</u>	<u>Percent</u>
Affirmative	33		3		24	
Split	8		6		3	
	<u>41</u>	37	<u>9</u>	32	<u>27</u>	61
Negative	<u>71</u>	63	<u>19</u>	68	<u>17</u>	39
Total	<u>112</u>		<u>28</u>		<u>44</u>	

Presidential Relief Determinations

<u>Determination</u>	<u>1951-62</u>	<u>Percent</u>	<u>1962-74</u>	<u>Percent</u>	<u>1975-80</u>	<u>Percent</u>
Affirmative	15	37	6	67	9	33
Negative	<u>26</u>	63	<u>3</u>	33	<u>18</u>	67
Total	<u>41</u>		<u>9</u>		<u>27</u>	

WHY THE REVIEW WAS MADE

We made this review to evaluate the implementation of sections 201-203 of the Trade Act of 1974 and to determine whether the legislation has been effective in fulfilling its intended purpose.

We also reviewed the procedures for determining injury, granting relief, and enforcing and monitoring remedies provided. At the request of Senator John Heinz, we specifically reviewed whether the monitoring systems were adequate to prevent avoidance

of import restraints and the transshipment of mushrooms through Hong Kong.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

To achieve our objectives of examining the entire import relief process, we selected four cases for review. At that time, there were seven cases for which affirmative decisions had been made to provide import relief--high carbon ferrochrome (HCF), citizens band radio transceivers (CBs), color television receivers, industrial fasteners, specialty steel, footwear, and clothespins. We examined in depth the entire process for HCF, CBs, color television receivers, and industrial fasteners. We also reviewed 11 cases of the 40 cases for which ITC had made both positive and negative findings to verify observed strengths or weaknesses in particular aspects of the import relief process. In selecting cases for review, we used our judgment and considered such factors as employment, the items' economic and strategic importance to the nation, and volume and value of domestic production.

We examined the authorizing legislation and the legislative history of the import relief program. At ITC, we interviewed officials, staff, and the Commissioners and examined industry petitions and briefs, staff analyses and reports, hearing transcripts, Commissioner opinions, and appropriate budgetary and internal planning, organizational, and procedural documents.

For the interagency and the Presidential parts of the import relief process, we performed detailed work at the Office of the U.S. Trade Representative, the Council of Economic Advisers, and the Departments of Commerce, State, Treasury, and Labor. We interviewed officials responsible for preparing required analyses, correspondence, decision papers, etc., and obtained their views on the operations of the import relief process and its strengths and weaknesses. We reviewed files, transcripts of hearings, correspondence, and other related data regarding the four specific cases selected for detailed examination. We were also briefed on White House procedures for handling section 201-203 import relief cases.

We interviewed petitioner representatives from industry, trade associations, and unions to obtain their views of the process and its strengths and weaknesses. Data on specific cases was obtained from these officials, law firms, and others involved with processing petitions. We also visited nonpetitioner representatives, toured production facilities, and obtained data on industries involved with cases selected for detailed review. A literature search for pertinent material was made and appropriate articles, studies, etc., were obtained and reviewed.

We used these materials and information in our evaluation of the administration of the 201 import relief program; specifically we reviewed the (1) Commissioners' opinions to determine whether

the bases for their judgments were adequately explained, (2) agency files, such as analyses submitted to the Trade Policy Staff Committee, to verify that specified legislative considerations were being addressed, and (3) industry petitions to determine whether sufficient information was provided to allow informed consideration by Government officials.

We did not attempt to make a cost-benefit analysis of the import relief program or of any particular case because of state-of-the art and data limitations. We contributed to the August 1979 task force 1/ effort to consider ways of standardizing the methodology and improving the quality of economic analyses of alternative import relief remedies. The task force report concluded that estimates of economic costs and benefits deriving from alternative import relief remedies are based on an inexact science and are most appropriately viewed as indicators of relative orders of magnitude. We did, however, review executive agencies' efforts to take into consideration such legislative criteria as (1) the effect of import relief on consumers and on competition in domestic markets and (2) the economic and social costs that would be incurred by taxpayers, communities, and workers if import relief were or were not provided. (See ch. 3.)

We believe that ITC's investigation procedures can be improved, but we cannot say whether the ITC made right or wrong decisions in the cases we reviewed. ITC decisions are judgmental and are based on many sources of data, such as final staff reports, public hearings, and oral briefings. The Commissioners consider economic factors specified by law and other relevant factors before rendering their judgments. Because of the judgmental nature of the process, we concentrated on the quality of the staff analyses and clarity of explanations for the Commissioners' judgments.

---

1/ Report of the Task Force on Economic Input into Trade Relief Cases, Council of Economic Advisers.



## CHAPTER 2

### ITC DETERMINATIONS

ITC investigations to determine whether increased imports are a substantial cause or threat of serious injury to domestic industry essentially consist of (1) staff level analyses and reports, (2) public hearings, and (3) Commissioner opinions. It should be noted that ITC decisions ultimately are judgments by the Commissioners after all relevant economic factors are considered. Statutory guidelines recognize the importance of the Commissioners' judgements in making recommendations. However, the legislative history indicates that the Commissioners should explain the bases for their decisions in clear and well-documented opinions. If ITC finds injury, a remedy recommendation is made to the President.

Although we believe ITC's injury and remedy determination process could be improved, we recognize that there are inherent limitations in the performance of any import relief investigation. We found that certain procedural weaknesses--insufficient use of inhouse expertise and uneven assessments of industry efforts to compete--resulted in the omission or unclear presentation of important material in the final staff reports to the Commissioners. Also, in some instances the Commissioners' opinions were so general that the judgments exercised were not clearly explained. The absence of clear, well-documented opinions makes ITC's reports to the President less credible and less useful to potential future petitioners in deciding whether to seek import relief.

A trade association, firm, certified or recognized union, or a group of workers which is representative of an industry may file a petition for import relief. ITC is then required to investigate whether increased imports are a substantial cause or threat of serious injury to a domestic industry producing an article like or directly competitive with the imported article. Such investigations can also be opened upon request by the President, the Office of the U.S. Trade Representative (OUSTR), the House Ways and Means or the Senate Finance Committees, and upon ITC's initiative.

If ITC makes an affirmative injury determination, it must decide the amount of increase in or imposition of any duty or other import restriction necessary to prevent or remedy the injury. ITC would recommend only such relief as the President has authority to proclaim under the Trade Act of 1974, as amended. Generally, relief can be a higher tariff, a tariff rate quota system, quantitative restriction, or some combination of these actions. ITC can also recommend that trade adjustment assistance be provided if it finds that such assistance can effectively remedy the injury. ITC's injury determinations are final, but its remedy findings are only recommendations to the President. However, when ITC recommends that adjustment assistance be provided, the President is required to direct the Secretaries of

Labor and Commerce to give expeditious consideration to petitions for adjustment assistance.

Relief is temporary and may be provided for up to 5 years, with a possible extension of up to 3 years. There are also limits on the increase in duty rates and the quantity or value of articles subject to quantitative restrictions.

#### STATUTORY REQUIREMENTS

In making an injury determination, ITC is required to take into account all economic factors which it considers relevant, including, but not limited to, significant idling of productive facilities, inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry. In considering the threat of serious injury, ITC is required to examine such factors as a decline in sales; a higher and growing inventory; and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry. An increase in imports can be measured in absolute terms or relative to domestic production while a substantial cause of injury, according to the legislation, is a cause which is important and not less than any other cause.

ITC is also required to investigate and report on efforts made by firms and workers in the industry to compete more effectively with imports. This is to assist the President in making his determination of whether relief should be provided and, if so, what form of relief should be granted.

ITC's investigation and report to the President must be made no later than 6 months after a petition for import relief is filed. At that time ITC must also issue a public report, but must exclude information determined to be confidential. The President is provided with both the public and confidential reports, a transcript of the hearings, and any briefs submitted in connection with the investigation.

ITC's process for conducting its investigation and making its injury determination and, if necessary, its remedy recommendation, essentially consists of three steps--a staff level analysis and report, public hearings, and Commissioner opinion. The total determination process consists of the following steps.

- Petition filed
- Investigation started
- Public notice issued
- Questionnaire prepared and  
then approved by Commissioners
- Questionnaire tested by ITC  
staff in fieldwork
- Questionnaires received by ITC
- Prehearing report prepared
- Public hearings

Final briefs submitted  
 Final staff report prepared  
 Memorandums on the national economic  
 interest considerations, summary of  
 public hearings and testimony, draft  
 opinions, pro/con paper, and remedy  
 options prepared  
 Commissioners briefed orally  
 Commissioners vote and prepare opinions  
 Final report to the President

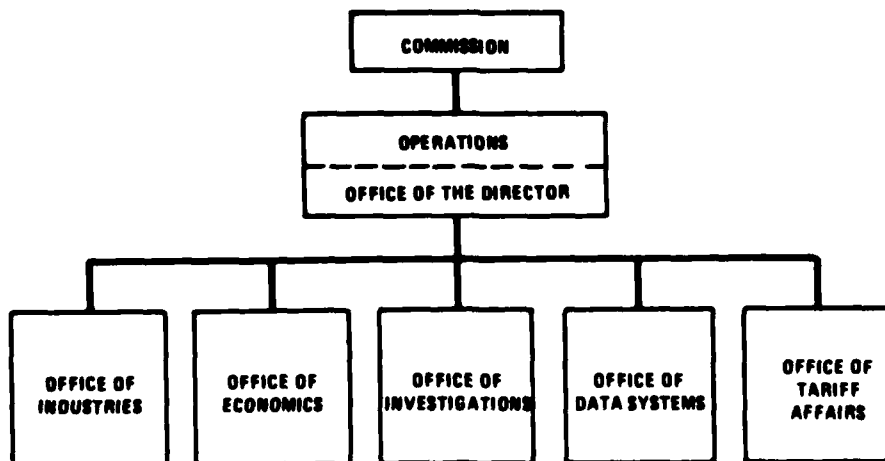
**INVESTIGATION STRUCTURE**

In 1976, ITC reorganized its investigative functions under a Director of Operations to better respond to responsibilities set forth in the Trade Act of 1974. Essentially, the new approach envisions a coordinated effort directed by a staff member of the Office of Investigations and production of a report which reflects use of the specialized skills and knowledge of the Offices of Industries and Economics.

ITC had previously used a staff coordinating committee to oversee investigations; however, it was believed this "all are equals" approach lacked the necessary leadership to control an investigation. ITC hoped the new approach would eliminate fragmented responsibilities and lead to more coherent staff reports.

In May 1980, ITC realigned the Office of Investigations by establishing a new Support Division to provide financial analyses and statistics for the investigation staff. This realignment is primarily a response to the perceived increased workload resulting from the Trade Agreements Act of 1979 (Public Law 96-39, July 26, 1979), but it also recognizes past investigative weaknesses.

**ITC ORGANIZATION FOR INJURY INVESTIGATIONS**



Import relief investigations are conducted on the basis of broad policy statements and basic legislation. No written internal procedures govern 201 investigations, because ITC believes that such investigations vary with the industry concerned. Investigations must deal with diverse economic conditions and marketing and financial practices. ITC Commissioners expect the staff to produce an objective and factual analysis to help them make their decisions; they do not desire staff judgments or conclusions nor do they desire a public perception that the staff unduly influences a decision. The Commissioners strongly believe the judgment and the decision to be theirs. Thus, the staff attempts to provide factual analysis and avoids the role of advocate.

#### INHERENT LIMITATIONS ON INVESTIGATIONS

Inherent limitations to import relief investigations include the relatively short timeframe (6 months) within which the ITC must complete its work, staff unfamiliarity with certain industries that file petitions, the return of incomplete questionnaires, absence of data or lack of desired breakouts, and the necessity to make a series of judgments about what is or is not important during the course of the investigation.

Although ITC tries to maintain inhouse knowledge about American industries, its industrial analysts, economists, or investigators cannot be expected to be familiar with all the different industries that may become involved in section 201 proceedings; e.g., footwear, fresh roses, fish, leather wearing apparel, copper, cookware, etc. Thus, a learning curve is to be expected. Unfortunately, the tight timeframe necessitates a rapid learning process since questionnaires, a prime data collection technique, must be prepared and sent to industry representatives very early in the investigation. The desire for additional information or more specific breakouts at later stages of the investigation must generally be satisfied by staff judgments on what can best be done. For example, in the CB case, it was not feasible to make price comparisons for identical products, so price comparisons were presented for the best selling imported product and the best selling domestic product.

The identification of the domestic industry that produces the like or directly competitive article is also a critical judgment which must be made early in the investigation to help facilitate data collection. This judgment is subjective, yet it directly affects the determination of whether there has been injury and whether effective import relief can be provided. For example, some cases involve the question of how to handle imports of like articles or components and subassemblies from American-owned production overseas. The multinationalization of industries has made it more difficult for ITC to define precisely what constitutes the domestic industry.

The dilemma faced by ITC in this regard is demonstrated in the color TV investigation. Since many U.S. firms rely upon foreign sources of supply, including overseas subsidiaries, it was believed that including certain components and subassemblies in the definition of the industry would be counterproductive for U.S. TV manufacturers. On the other hand, certain domestic component suppliers could justifiably claim that they are part of the domestic TV industry and that these offshore purchases have caused injury to their operations. During the hearings on this case, it was noted that 30,000 job opportunities were lost in companies supplying the domestic TV industry. The petitioners in the TV case included only two manufacturers, representing approximately 8 percent of the domestic market; several component supplying firms; and a number of labor unions involved in the manufacture of component parts. This diversity highlights the difficulties in defining the industry. It took approximately a month to agree on the scope of the investigation, which ultimately included only certain subassemblies and excluded others. U.S. manufacturers were, to some extent, dependent on offshore sources of supply for both categories of subassemblies. Three Commissioners found that injury had occurred to the industry which provided subassemblies covered by the investigation; however, they recommended that import relief not be applied to those subassemblies since the U.S. manufacturers did depend to a large extent upon offshore sources of supply. The President ultimately provided only partial coverage for TV subassemblies, primarily to prevent potential circumvention through product alteration.

In the copper case, ITC also recommended relief for a narrowly defined stage of a multistage production process. Such a recommendation, if implemented, could effectively reduce the level of import relief anticipated, because circumvention is relatively easy by importing products at a lower or higher stage of production.

It should be noted that the scope of investigation does not in and of itself define the domestic industry or the like or directly competitive articles but only provides the basis for making such findings at the conclusion of the investigation.

STAFF ANALYSIS AND REPORT  
COULD BE IMPROVED

The factual and analytical content of the staff report, including remedy recommendations, depends to a large degree on the procedures used to conduct the investigation and on the capability of the principal investigator. Because of certain procedural weaknesses, important material may be omitted or unclearly presented in the final reports to the Commissioners, as discussed in the following sections.

## Financial analysis

The financial analyst is responsible for assuring the reliability and comparability of data and the significance of specific indicators to a particular industry. However, our review showed minimal participation of the financial analyst/accountant in the investigative process. This can result in unclear presentations in the final reports, which may make it more difficult to assess the impact of imports on the industries under investigation.

For example, data is requested by product line when a corporation manufactures or imports products other than those subject to investigation if these products account for more than 20 percent of total sales. In the CB case, the profit and loss data for one company seemed to include all operations rather than strictly CB manufacturing. Yet the accountant was not involved, except for routine review of the industry questionnaire before it was sent out, until the investigator had a problem with the reported data. By this time, it was too late to visit the corporation to try to verify the information. The accountant said he was uncomfortable in attempting to solve the problem by telephone because of his limited knowledge of the industry and the restrictive timeframe for seeking solutions. Thus, the data as submitted in the questionnaire was included in the final staff report, making it more difficult to assess the impact of imports on the ability of U.S. firms to operate at a reasonable level of profit--one of the factors considered by the Commissioners in determining whether imports have caused injury.

During our review, ITC had only one accountant, whose principal responsibility was reviewing unfair trade petitions. ITC did hire a financial analyst to work with the Office of Investigations. The analyst developed a 20-hour financial analysis course for investigators and is expected to participate in selected 201 import relief cases. The recent realignment also established a new Support Division for the Office of Investigations, with 2 accountants, 1 statistician, and 4 statistical assistants to provide financial analyses and statistics for the investigation staff. We believe these actions will provide for better financial analyses in ITC investigations, especially if the financial analyst is involved throughout the course of any investigation, including required field trips to discuss data submitted in questionnaires. ITC has recognized that one of the most serious difficulties with an investigation is proper allocation of data for comparing imports with like or directly competitive domestic articles. Recognizing this and the other inherent limitations on investigations previously mentioned, ITC should require that petitioners' certified public accountants certify the accuracy of data provided. Such accountants are familiar with the petitioners' production processes and accounting procedures as well as with costs and allocations of other expenses, such as overhead, to various products. This familiarity and professional expertise would improve the quality of data required for financial analyses.

## Industry analysis

The Office of Industries is responsible for collecting and analyzing the economic and technical data related to the competitive posture of U.S. industries, both domestically and in world markets. ITC relies on this Office's expertise in determining factors that need to be analyzed in assisting the Commissioners to make their determinations.

Again, we found that the industry analysts became involved at a late stage of some investigations, and thus limited time precluded full development of their views. The final staff report, therefore, did not present as clear or as much explanatory information as it could have. The reports on the high carbon ferrochrome investigations are examples of this omission.

ITC conducted two section 201 import relief investigations on HCF, one of several ferroalloys used as a source of chromium in the production of stainless steel. When the industry analyst was asked to informally review the final draft of the staff report for the first investigation, he objected to a section on possible substantial causes of serious injury because the report did not properly emphasize the importance of stainless steel scrap as an alternative source of chromium. Although the draft report emphasized that HCF consumption varies according to stainless steel production, the industry analyst felt it completely overlooked the relationship between consumption of HCF and the price and availability of stainless steel scrap. The analyst was concerned because this relationship should be considered in evaluating the decline in HCF consumption, which the petitioner alleged was the result of predatory pricing of imports.

The investigator did not redraft the section because of time constraints but did insert a paragraph explaining the relationship between HCF consumption and stainless steel scrap and provided a table showing the use of stainless steel scrap by HCF consumers. The effects of scrap prices on HCF consumption were not discussed. Representatives of two major corporations that produce stainless steel and import HCF informed us that steel scrap prices are followed closely, since companies will substitute stainless steel scrap for HCF whenever prices are advantageous.

It should be noted that just before the recent realignment, ITC appointed some of its former investigators as supervisors responsible for more than one investigation, including both 201 and other Trade Act cases. This has resulted in delegation of responsibility and more involvement of industry analysts and economists. In some cases, the industry analyst has been appointed as principal investigator.

## Economic analysis

An economist serves as a consultant and adviser, providing authoritative professional advice on international trade to Commission officials. Economists explain the effects of economic factors in investigations, such as how recession, inflation, and movements in exchange rates affect the industry.

Commissioners we interviewed told us about two specific tasks to be performed by the economist: (1) the price analysis and (2) the remedy paper. The price analysis is directly considered in the injury determination and is used to assess the potential generation of and availability of funds for research and development and capital equipment. The remedy paper advises the Commissioners on the effectiveness of alternative remedies in providing relief from import injury.

### Price analysis

In most of the cases we reviewed in depth, the investigator prepared the section on prices in the staff reports. These were essentially factual, straightforward presentations, merely describing the differences between import and domestic prices. They did not attempt to disclose the underlying reasons for the differences, information which we believe should be considered in determining whether injury is related to imports and in evaluating competitiveness and remedial alternatives.

In the HCF case, domestic production costs differed substantially from those of South Africa, which was the main source of U.S. imports. Ore, which U.S. producers must import, accounts for about half the cost of HCF production. South African producers are located at or very near the chrome deposits and thus enjoy substantial transportation savings. There is also a major difference in energy costs, and the gap appears to be increasing. Although the ITC reported the advantage of having production facilities located at or very near the chrome deposits, it did not analyze the effect of this advantage on price competitiveness.

In some cases, the economists' price analyses are not included in the staff report. We believe price analyses should focus more on evaluating the underlying reasons for any difference between import and domestic prices and that economists should be directly involved with preparing this section of the staff report as well as participating fully throughout the investigation. Price analyses are essential in evaluating the causes of import injury and in determining appropriate remedy recommendations.

### Remedy paper

Several economists we interviewed commented that under the investigation procedures used during the time of our review, the



Office of Economics was responsible for the remedy paper but was not initially involved in preparing the questionnaire or in other aspects of the investigation. They considered this procedure counterproductive, since they believed analyses greatly depend on the information requested in the questionnaire and on knowledge of the causes affecting the industry's decline. This lack of involvement affects the quality of the remedy paper. For example, in the second HCF case, the remedy paper did not discuss the probable impact that a tariff remedy would have on the substitution of stainless steel scrap for domestically produced HCF. The paper said the principal effect of an increased tariff would be an increase in prices of imported and domestic HCF, but it did not highlight the relationship between increased prices as a result of a tariff increase and the potential switch to stainless steel scrap as a source of chromium. This potential was mentioned within the discussion of the feasibility of a global quota.

Our review of the remedy papers for three of the four cases showed that the potential impact of exchange rate movements on the effectiveness of tariffs as a remedy was not discussed. These exchange rate movements subsequently reduced the level of import relief originally intended in the industrial fastener case. (See ch. 4.) Since exchange rate movements can affect the level of import relief provided by a tariff remedy, we believe the remedy paper should consider the impact of these movements in providing advice to the Commissioners, especially in cases where the vast majority of imports come from a country whose currency may reasonably be expected to fluctuate widely against the dollar during the period of relief.

#### Review of draft investigation reports

Current ITC investigation procedures include no formal process for the Offices of Industries and Economics to review draft investigation reports. Informal comments are sought, but there is no provision for discussions nor is there adequate time to implement suggestions. For example, in the second industrial fastener investigation, the Director of Economics wrote comments objecting that no correlation was conclusively established between increased import market share and low foreign prices since not enough data was used to support such a conclusion. Market share and price data were available for 5 years, but the narrative cited only 2-1/2 years of price data. In addition, another part of the report showed a price inversion (import prices higher than domestic prices) just prior to the 2-1/2 year period cited in the draft. Nevertheless, no changes were made to the report.

In the same draft report, the Director of Economics commented that during 1975 and 1976 demand in the U.S. capital goods sector did not increase as quickly as expected. In his opinion, this accounted for some of the depressed demand for industrial fasteners in those 2 years. "Imports are not the only culprit," he stated. In another part of the report, he said that this was

an important point which needed more development. Changes made in the final report were minor and did not appear to reflect the level of concern expressed by the Director of Economics. The investigator explained that often there is not enough time to deal with comments provided during the review. He admitted that he could have written two or three pages about the slow recovery of the capital goods sector as a causal factor of injury but that he was limited by time and resources.

To ensure development of a good quality final product, we believe the review process should include all offices of operations and allow sufficient time for substantive comments and corrections. The Director of Operations said that disagreements on substantive issues probably do not occur in more than one out of every three or four investigations and that, if an acceptable compromise is not reached, the views presented in the staff report generally reflect those of the supervisory investigator.

The Commission implemented a dissent memo procedure in January 1980 to provide the option of submitting dissenting or more comprehensive views to the Commissioners at the same time the final staff report is forwarded. This dissent memo was developed in response to the ITC Vice Chairman's inquiry about how the Commissioners can be assured that they are receiving all the different views. The only requirement for exercising the option is that the staff member initiating the memo must inform others involved with the investigation. We were told that no dissent memos have been written since the procedure was established.

### Conclusions

The factual and analytical content of the final staff report, including remedy recommendation, depends on current investigation procedures and on the capability of the principal investigator. The success of an investigation would be increased if the inhouse experts in the areas of finance, industry, and economics were fully involved throughout the entire investigation. Overall, the general procedures and task assignments should ensure that necessary expertise is channeled into the discussions and resolutions of issues; from inception of the case to drafting of the report. Our review showed that there was insufficient use of inhouse expertise by the Office of Investigations. This has led to omissions or unclear presentations of important material in the final investigative report.

Some of these omissions were discovered during the informal review process by the Offices of Economics and Industries. This process, however, did not allow sufficient time to discuss significant objections and make corrections, if warranted.

### RECOMMENDATIONS

To improve the system of collecting, analyzing, and reporting information, we recommend that the Commission:

- Improve financial analysis and technological expertise and consider using consultants as team members when needed.
- Ensure data verification from firms with multi-product operations or with sophisticated accounting procedures by requiring petitioners' certified public accountants to certify the accuracy of data presented for deliberations and followup.
- Expand price analyses to require explanation of the possible underlying reasons (quality, delivery period, cost of raw materials or other costs, such as labor costs) for the price differences between imported and domestic products.

#### ITC's COMMENTS AND OUR EVALUATION

ITC said it could endorse many of our recommendations, but noted that it has already identified and taken steps to correct problems we cited. Our report gives recognition to the improvements cited in the ITC's response. As discussed below, however, this response does not adequately address the need for some improvements which we believe are necessary.

#### Financial analysis and technological expertise

ITC noted its efforts to improve inhouse financial analysis and technological expertise. This will provide for better analysis, especially if these inhouse resources are involved throughout the entire investigation.

ITC believes that using consultants as members of investigative teams is inconsistent with statements by members of Congress discouraging the use of consultants. It also noted the absence of an efficient method of hiring consultants on a timely basis, considering the tight statutory deadlines for investigations, requirements for competitive bidding, and rigid conflict-of-interest limitations. Lastly, it said its experience has shown that many business firms are reluctant to provide highly sensitive business data if they know it would be reviewed by outside consultants.

We recognize the difficulties in using consultants. However, we are advocating their use only in cases where required expertise is not otherwise available. Several of the problems noted could be overcome if experts from other Government agencies were used as consultants. It should be noted that consultants need not be required to provide "an acceptable product", but rather they could provide advice to the investigation team on what to analyze and how. The analysis could then be performed inhouse without concern for some of the problems noted by ITC.

### Data verification

ITC believes that it has a strong ongoing data verification program and that its procedures constitute an effective data verification process. ITC feels that certification by a petitioner's certified public accountant would, in some instances, delay receipt of data and that such delay would be at the expense of time available for analysis.

Our review showed minimal participation of the financial analyst/accountant in 201 investigations. We recognize that ITC has taken steps to improve the capabilities of its staff and investigation procedures; however its staff resources are limited and, in most cases, permit little more than a cursory review of submitted data. Our recommendation would increase the reliability of data without an increase in ITC staff, since it adds independent versus company certification. We wish to emphasize that our intent is to require such certification only from firms with multiproduct operations or with sophisticated accounting procedures. This would not delay receipt of data, since a firm's independent accountants are familiar with its production processes and accounting procedures.

### Expand price analyses

ITC agrees with our concern for expanded price analyses and noted several moves to strengthen such analyses. However, it stopped short of requiring explanations of the possible underlying reasons for the price differences between imported and domestic products. We continue to believe that such explanations should be a required part of any price analysis, because without them it is impossible to determine what type of adjustment is feasible if relief is granted.

### Full participation in investigations

We proposed in our draft report to the agencies that the ITC ensure full participation of all relevant ITC offices in 201 investigations, especially the Offices of Industries and Economics. Subsequent to our review, the ITC reorganized its staff to establish a separate Office of Investigations responsible for all statutory investigations conducted by the Commission. At the same time, ITC adopted a policy of having an investigation team composed of staff of all relevant offices, including the Offices of Industries and Economics, under a supervisory investigator assigned to each investigation. We believe that these steps adequately address our concerns regarding lack of office participation and, therefore do not repeat our proposal.

### Formal draft review process

The ITC concurred with our proposal that the Offices of Economics and Industries be included in a formal draft review process; it emphasized that adequate review of investigation

reports is of continuing concern to the Commission. According to ITC, additional time for senior review of both prehearing and final reports is now being provided in the work schedules for all current investigations. For investigations involving particularly controversial issues, the reviewers meet to discuss the content of the final staff report. For those instances in which staff disagreements on substantive issues cannot be resolved, ITC also implemented a dissent memo procedure to provide the staff the option of submitting dissenting or more comprehensive views to the Commissioners with the final staff report. We believe that these changes and the concerns expressed by ITC adequately implement our proposal.

#### UNEVEN ASSESSMENT OF INDUSTRY EFFORTS TO COMPETE

Under Section 201(b)(5), of the Trade Act of 1974 (19 U.S.C. 2251(b)(5)) the ITC, to assist the President in making his determinations, is required to "investigate and report on efforts made by firms and workers in the industry to compete more effectively with imports."

The legislative history in reference to this section indicates that it is not the intent of the escape clause to protect an industry which has not acted to help itself become more competitive. This section names specific efforts, such as reasonable research and investment, steps to improve productivity, and other methods that competitive industries must continually undertake. Thus, ITC should consider adjustment efforts being made or to be implemented in deciding whether imports have caused injury.

#### Need to analyze and report industry's efforts to compete

Recent reports varied in the coverage of this issue. For example, the case, "Fresh Cut Roses," completed in April 1980 devotes about a page to a discussion of three distinct categories of competitive efforts and, although it does not clearly state the degree of success achieved through these efforts, it does state the results expected.

Two cases completed in January 1980 showed different coverage. "Leather Wearing Apparel" devotes one small paragraph to a brief description of what the industry reported, using general statements like expansion of sales forces, increased emphasis on styling, and installation of computerized inventory and filing systems. "Certain Fish," which covered cod, haddock, and others collectively referred to as groundfish, had no discussion on efforts to compete.

Even when competitive efforts have been discussed during hearings, ITC is reluctant to comment on the subject. For example, during the HCF hearings, opponents of the petition questioned whether some domestic facilities were adequate to

produce low chromium grade HCF. At that time the trend in consumption was shifting away from the high chromium grade HCF to the less-expensive low chromium grade. The report, however, did not discuss efforts to compete. It mentioned the different types of furnaces available and the capital investments made by the industry, but gave no information about efforts to upgrade existing furnaces to produce for existing demand. Mentioning the different types of furnaces gave no indication as to the industry's competitiveness. Additional information, however, was available which showed that U.S. demand was for low chromium grade HCF, which was produced by only one domestic corporation. The smaller producers had small furnaces and relied on high grade, high priced chrome ore to produce HCF.

### Conclusions

ITC's investigation and reporting on efforts to compete should include evaluations of such efforts to help assess whether the petitioner has genuinely sought to become more competitive and inquiries into the extent to which U.S. Government policies (environmental regulations, etc.) may be impeding industry's efforts to become competitive. This would help the Commissioners in determining whether imports were a substantial cause of injury and help the President in deciding whether relief should be granted.

Commissioners we spoke with recognized the importance of this subject; one stated that these evaluations would be a major undertaking, while others were concerned that support for statements in this area is very hard to procure.

ITC has the authority to gather information on and to evaluate the factors affecting an industry's competitive position prior to determining if there has been import injury. The intent of the Trade Act is that such efforts be undertaken. In its budget estimates for fiscal year 1979, submitted to the Congress in January 1978, ITC stated that:

"A principal long-term Commission goal is to know, and to be able to apply its knowledge of, the degree to which each domestic industry is competitive with its foreign counterpart--including the reasons why it is or is not competitive.\* \* \*"

ITC then reported being actively involved in collecting and analyzing information on this subject. These activities are authorized under section 332 of the Tariff Act of 1930 (19 U.S.C. 1332).

### RECOMMENDATION

We recommend that the ITC Commissioners require reports on investigations to include evaluations of efforts made by petitioners to become competitive--including Government policies which may hinder competitive efforts.

## ITC's COMMENTS AND OUR EVALUATION

ITC recognized the importance of investigating a petitioning industry's efforts to compete and stated that, whenever appropriate, this information is given in a separate section of the report. It also stated that it will endeavor to obtain more comprehensive and detailed information in future investigations.

Given the importance of this area to the overall investigation, all reports on investigations should have a separate section on efforts to compete, containing an evaluation and analysis of these efforts and not merely reporting information gathered, as the ITC response seems to imply.

### LACK OF CLARITY IN COMMISSIONER OPINIONS

To provide the clear and well-documented opinions suggested by the legislative history, the Commissioners need to clearly articulate the rationale for their injury determinations. This requires that Commissioners explain with reasonable clarity the significance of crucial facts in their opinions. We found that in some instances opinions were so general that the judgments exercised were not clearly explained. The absence of clear, well-documented opinions makes the report less credible and less useful to the OUSTR and to potential future petitioners in deciding whether to seek import relief.

The Trade Act provides criteria for determining whether an industry has been injured by imports. The Commissioners, however, have to exercise judgment in determining the influence of such criteria as significant idling of productive facilities, inability of a significant number of firms to operate at a reasonable profit, significant unemployment or underemployment, and other economic factors considered relevant; these factors are not relevant if they resulted primarily from conditions unrelated to imports. Since the Commissioners have told us that each industry is different, it would seem that the opinions would identify the significance of crucial facts in each case. For example, the reason a small volume of imports may have a significant impact on one industry and not on another should be clearly explained.

The opinions we reviewed were incomplete or did not clearly set forth the significance of certain factors. When an opinion conflicted with information found in the staff analyses, no recognition was given to the analyses, which were provided by either the economist or the investigator.

In the industrial fastener case, by a 2-to-1 vote the ITC determined that there was serious injury, or threat thereof, to the domestic industry by reason of increased imports of industrial fasteners. Two of the Commissioners, one finding affirmatively and the other negatively, discussed idle capacity in their

separate opinions, drawing on information compiled and evaluated by ITC staff. One of them, however, noted that capacity utilization and domestic production registered pronounced declines in recent years and that five sizable production establishments had been closed the prior year, which implied a connection between low production and establishments going out of business. This Commissioner's opinion failed to discuss the staff recommendation that capacity utilization figures should be viewed with caution when assessing the ability of the industry to expand production rapidly. Since substantial delivery leadtimes would probably develop when the ratio of production to capacity reaches 75 percent, the staff for analytical purposes defined practical capacity as 80 percent of theoretical plant capacity.

Thus, while the staff presented a practical capacity utilization figure of 72 percent for the period January to June 1978, this Commissioner, without explaining the rationale, chose to use the theoretical capacity, thus showing a capacity utilization of 57 percent and concluding that a "significant portion" of production facilities was idle. In contrast, the Commissioner who failed to find serious injury used the practical capacity figures developed in the staff analysis and concluded that capacity utilization was improving. The third Commissioner's opinion did not discuss idle capacity.

The ITC, in a unanimous decision, found serious injury in the HCF case. One Commissioner, in a separate opinion, agreed with the majority finding, basing the determination of serious injury on a number of factors, including two not addressed in the majority opinion--inventories and prices. This Commissioner's opinion did not address (1) the staff analysis finding that some part of the inventory accumulation was attributed to an attempt by importers and consumers to beat the possible ITC recommendation to increase the duty rate or (2) a statement in the remedy paper that there is little hard evidence that inventories are excessively out of line with the current U.S. level of HCF consumption. No explanation was given in the opinion for how this inventory information was significant in assisting the Commissioner to make the determination, and there was no recognition of the findings in the staff analyses. The other Commissioners did not present inventory information in their opinions.

### Conclusions

The Commissioners should more fully explain the rationale for the positions they take. Better explanations of ITC decisions should help to clarify the rationale used to determine whether imports are a substantive cause of injury and would benefit future petitioners in deciding whether or not it is worthwhile to file a petition.



## RECOMMENDATION

We recommend that the ITC Commissioners fully explain the significance of critical facts used in making their decisions.

## ITC's COMMENTS AND OUR EVALUATION

Although the ITC agrees with us that the Commissioners should clearly explain the significance of critical facts used in making their decisions, it does not agree with our conclusion that this was not done in the cases we reviewed.

Concerning the industrial fastener industry example, ITC stated that we overlooked the following key considerations. First, the Commissioner in question supports her position with the best facts available, which are taken from the Commission report. Second, the capacity utilization data which the Commissioner cited is the only such data in the Commission report. Third, no matter how it is calculated, capacity utilization still showed the same downward trend. Fourth, the report itself noted possible shortcomings in the capacity data.

Despite ITC's comments, we continue to believe that this example supports our conclusion. The Commissioner's opinion does not clearly support the rationale for the determination. Although the Commissioner in question quotes from the staff analysis, the Commissioner quotes selectively and leaves out a cautionary note on use of the capacity utilization figure cited, which is important if the data is used to reach a determination. It should also be noted that the capacity utilization data which the Commissioner cited was not the only such data in the Commission report.

We do not agree that capacity utilization, no matter how calculated, still showed the same downward trend. The staff report does not establish any clear trend. The Commissioner noted that capacity utilization was, in fact, improving. Furthermore, another Commissioner, who found no injury, based the finding, in part, on the claim that capacity utilization was improving.

In addition, it should be noted that the legislation requires that there be significant idling of productive facilities to support a finding of serious injury. A downward trend in capacity utilization normally is used to support a finding only of a threat of serious injury. Since the Commissioner in question found serious injury, ITC's discussion of trends appears to be immaterial.

We do not, as stated in the ITC comments, favor one set of capacity utilization figures over another, but only wish to point out that the rationale for selecting a given measure should be adequately explained.

The ITC also stated that our criticism in the HCF example is not realistic because (1) the Commissioner fully discusses each of

the three economic factors which the statute requires to be discussed; the discussion on inventories is of secondary importance, (2) the staff section of the report is part of the final Commission document and its contents are approved prior to release, and (3) there was no need to rebut the staff analysis of inventories in the remedy paper. The fact that the level of inventories is of secondary importance appears to us less important than our concern that information is selectively used to present an argument with no explanation as to how or why the information supports a position taken. The significance of the high level of HCF inventories appears to be largely discounted by information found in other areas of the investigation; i.e., the staff summary and remedy paper. Which paper the information comes from also does not appear to us as being relevant. We are not advocating open rebuttal of information provided by the staff, but we believe that use of information which appears to be questionable should be either qualified or more fully explained.

We believe our conclusion is still valid based upon the examples given. It should be noted, however, that more recent opinions we reviewed (e.g., mushrooms and automobiles) have shown a marked improvement.

## CHAPTER 3

### RELIEF-REMEDY DETERMINATION

After the ITC finds that injury, or the threat thereof, has been caused by increased imports, the President must determine whether relief is warranted and what remedy is most appropriate. In meeting these requirements, the President is assisted by several interagency groups composed of representatives of various executive branch departments and agencies. Under the overall direction of the OUSTR, these groups use criteria specified in the Trade Act to develop, analyze, and recommend the relief options available to the President. These options are transmitted to the President in the form of a "decision memo package," which serves as the basis for his final decision.

We reviewed the relief-remedy determination process for the four cases--CB radios, color TVs, HCF, and fasteners--and found that it was adequately suited to the intended objective of enabling the President to fulfill his obligations within the specified time. Our analysis, however, did suggest that there may be duplication of effort concerning certain report requirements.

### STATUTORY REQUIREMENTS

The President, upon receiving the ITC report notifying him that increased imports have been or threaten to be a substantial cause of serious injury to the petitioner, has 60 days under the Trade Act to reach a decision on whether it is in the "national economic interest" for the petitioner to receive relief and, if so, what form such relief should take.

The law mentions five options from which the President can choose: (1) tariff, (2) quota, (3) tariff-rate quota, (4) orderly marketing agreement (OMA), and (5) any combination of these options. The Trade Act also stipulates that the President must evaluate the degree to which trade adjustment assistance has been and/or could be made available to workers, firms, and communities in which the affected industry is located. To aid the President in this regard, the law further provides that the Secretaries of Labor and Commerce shall submit reports--the so-called section 224 and 264 reports, respectively--within 15 days of an ITC decision. Ultimately, however, the primary basis for the President's decision rests on the following nine considerations set forth in section 202(c). (Agencies noted in parentheses virtually always are assigned to the consideration cited).

1. Extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance or other manpower program benefits (Department of Labor).

2. Extent to which firms in the industry have applied for, are receiving, or are likely to receive adjustment assistance (Department of Commerce).
3. Probable effectiveness of import relief in promoting adjustment, industry efforts to adjust to import competition, and other information on the industry's position in the U.S. economy (Department of Commerce).
4. Effect of import relief on consumers and on competition in domestic markets for the article(s) in question (Department of the Treasury).
5. Effect of import relief on U.S. international economic interests (Department of State).
6. Effect on U.S. industries and firms of possible retaliation/compensation claims pursuant to existing international agreements (Department of State).
7. Geographic concentration of the imported product as marketed in the United States (OUSTR).
8. Extent to which the U.S. market is the focal point for exports of the article(s) in question because of restraints on exports or imports to third-country markets of that article (Department of State).
9. Economic and social costs that would be incurred by taxpayers, communities, and workers if import relief were or were not provided (Department of the Treasury).

The Trade Act of 1974 (19 U.S.C. 2253(c)) and the Tax Reform Act of 1976 (19 U.S.C. 1330(d)(2)) contain provisions that define the relationship between the President's relief-remedy decision and possible congressional actions in response to that decision. For example, a majority vote of both Houses of Congress on a concurrent resolution can override the President's decision not to provide relief or to provide relief differing from that recommended by ITC. Should this occur, the Trade Act provides that the President shall proclaim within 30 days the majority recommendation of the ITC Commissioners. Under the Tax Reform Act, if the six Commissioners' remedy votes are split evenly and the President chooses one of the recommended options, the other option automatically becomes the basis for any potential congressional override. If the President takes no action or proclaims a form of import relief that differs from any recommended in the split decision, Congress can choose either of the Commissioners' remedy options for override purposes.

## INTERAGENCY GROUPS

The President obtains the information he needs to fulfill his relief-remedy determination responsibilities through a system of hierarchically related interagency groups, all chaired by the OUSTR, and include the:

- Trade Policy Committee (TPC), composed of cabinet-level representatives;
- Trade Policy Review Group (TPRG), composed of assistant secretary-level representatives;
- Trade Policy Staff Committee (TPSC), composed of deputy assistant secretary and/or office director-level representatives; and
- TPSC Task Force, composed of division director and/or professional staff-level representatives.

In the cases we reviewed, these interagency groups fell into two general categories: (1) a "core" group, consisting of the Departments of Commerce, Labor, State, Treasury; OUSTR; and ITC (serving in a nonvoting, technical advice capacity), which have been involved routinely in section 201 cases since the Trade Act went into effect, and (2) agencies that participate on the basis of their own interest and/or expertise, such as the Departments of Agriculture, Defense, Interior, and Justice and the Council of Economic Advisers (CEA). This differentiation should not be construed as an indication that the role played by the group in the second category is unimportant; indeed, an official with whom we spoke explained that the Department of Justice had played a pivotal part in a 201 case in which antitrust questions were involved.

At the start of the relief-remedy determination process, an OUSTR announcement in the Federal Register invites interested parties to submit any information they think might aid the President in reaching his decision. A senior official said this is done to permit those involved in the case to express their views to the OUSTR and to TPSC Task Force representatives. Although much of the response to this announcement predictably will amount to lobbying for a given relief-remedy position, we were told that it also serves as a way for Task Force members to obtain useful information on rather short notice.

## INTERAGENCY DELIBERATIONS

After the ITC found that injury was caused by increased imports in the cases we reviewed, OUSTR selected a chairman for the TPSC Task Force from one of its offices (e.g., industrial or agricultural trade policy) which has ongoing responsibility for the product or commodity in question. The Chairman, via telephone and formal memo, invited interested agencies to select

representatives to participate in the proceedings and scheduled the initial interagency meeting. These agencies select representatives on the basis of their familiarity with trade policy issues and/or product-commodity expertise. These representatives, in many instances, will have become familiar with the case during the ITC investigation and, accordingly, are likely to be well prepared to respond quickly to their assignments within the timeframe stipulated by the Trade Act. The TPSC Task Force generally tries to finish its work within 30 to 45 calendar days to allow the higher-level TPSC and TPRG groups adequate time to consider recommendations to the President and the President sufficient lead time to make his decision.

As the most important operational part of the relief-remedy determination process, the TPSC Task Force is charged with gathering, refining, and analyzing the information that will serve as the basis for all relief-remedy actions, up to and including the Presidential decision. In the cases we examined, the Task Force met between four and six times to carry out this vital informational analytical function. In the initial meeting, subject area assignments keyed to the section 202(c) considerations are divided among the representatives (see p. 24), tentative deadlines are established for completing these individual assignments, and ITC staff who have worked on the investigation brief Task Force members and respond to their questions. In particularly complex or controversial cases (for example, CB radios), an "ad-hoc consumer cost subgroup" may meet once or twice to reconcile differences that may arise from the need to reach some agreement on the economic assumptions to be used in estimating relief-caused consumer costs. A Treasury task force representative chairs this subgroup, and Commerce, Labor, State, and CEA task force members typically participate in the subgroup discussions. The remaining meetings, which range in number from three to five depending on the complexity of the case, are geared toward developing a consensus among the task force members on a relief, no relief, recommendation and the best remedy option available from among those provided in the law. In the course of these meetings, ITC staff continues to be available to answer questions and provide additional information. Draft papers on the section 202(c) considerations are circulated, critiqued, and revised and a tentative date for the formal TPSC vote on the task force's recommendations is scheduled.

A more precise idea of how the task force members prepare for and participate in these meetings can be obtained by considering the kinds of concerns they may address in their respective assignments. For the issue of trade adjustment assistance for firms, for example, the size of the companies involved is usually an important factor. In the CB case, adjustment assistance could have been beneficial only to smaller firms, because the amounts available for direct loans and loan guarantees were limited to \$1 million and \$3 million, respectively. Larger companies were not likely to receive benefits, because the Trade Act requires them to use their own resources before adjustment assistance can be provided.

For consumer and economic-social cost considerations, an intrinsic factor would be whether or not restrictions would produce a major ripple effect elsewhere in the U.S. economy. In the CB case, for instance, the radios were an end product, so import restrictions would likely have little ripple impact. Conversely, HCF is a raw material used in making stainless steel, so a major ripple effect could be anticipated because import restrictions would likely cause an increase in its price and, consequently, in the price of stainless steel-based finished products.

Lastly, on the extent to which the United States is a focal point for imports of the item in question, task force members might try to find out what the item's status is among other major trading countries. In the HCF case, the European Community and Japan, in order to maintain a domestic processing capability, had already restricted imports of this commodity into their markets, with obvious attendant consequences for U.S. producers.

The ultimate product of the TPSC Task Force effort is a report to the TPSC. This report becomes part of the official record and serves as the basis for both the TPSC vote and any further deliberations, such as review by the TPRG or TPC, requisite to the President's final relief-remedy decision. Report formats may differ according to case specifics and the styles of those involved in preparation, but each report we reviewed contained (1) a concise statement of the problem, (2) recommendations, (3) a background summary discussion-analysis of the industry, particularly in terms of the ITC report to the President, (4) discussion-analysis of the mandatory section 202(c) considerations, and (5) a pro and con discussion of the prescribed remedy options.

#### Section 224 and 264 reports

Section 224 and 264 trade adjustment assistance reports are due within 15 days of affirmative ITC findings. The Department of Labor's section 224 report is prepared by the Office of Trade Adjustment Assistance. The Department of Commerce's section 264 report was originally prepared by the Trade Act Certification Division of the Economic Development Administration. In 1979, however, Commerce officials agreed that this function should be moved to the International Trade Administration, but this move failed to materialize and the section 264 report requirement has not been met in 10 cases (TA-201-33 to TA-201-42).

Linkage between the section 224 and 264 reports and the interagency deliberative process can occur in one or two ways. First, the reports can be circulated among the representatives at the interagency meetings. Second, the Commerce and Labor task force representatives will routinely summarize the reports and/or consult with their respective trade adjustment assistance offices to prepare draft papers on information obtained; these papers are ultimately incorporated into the final TPSC Task Force report to the TPSC.

## INTRA-AGENCY DELIBERATIONS

When the TPSC Task Force is initiated, its members begin to gather information for their respective agencies to use in determining their positions on relief-remedy action to be taken. Task Force members in the cases we reviewed used similar procedures, consisting of (1) analyzing the ITC report, talking with inhouse experts and others interested in the case, and developing preliminary answers to an informal checklist of questions (such as why the ITC found injury, the likely effect of following ITC's remedy recommendation, and whether the ITC report data was adequate for relief-remedy determination purposes) and (2) formal and informal meetings and corresponding paperwork to inform the appropriate inhouse decisionmakers about the case. The culmination of these intra-agency efforts is a decision, usually made at the deputy assistant secretary level in time for the TPSC vote, on the agency's relief-remedy position. In more complex or controversial cases, however, this individual agency position decision may involve the assistant secretary and/or secretary. The individual agency position pattern that emerged in the cases we reviewed shows the Labor Department to be virtually always in favor of relief, the Commerce Department and OUSTR more often than not in favor, and the State and Treasury Departments and CEA almost always against relief.

## THE TPSC, TPRG, TPC RELIEF-REMEDY ROLE

When the intra-agency and interagency facets of the relief-remedy determination process have been completed, in the cases we examined the TPSC "cleared" the Task Force report and voted on the recommendations made. What happens next depends on the extent of agreement on relief and/or remedy reached by the TPSC and the potential impact of other important factors, such as the threat of a congressional override of the President's prospective decision. When agreement is reached and no other potentially important factors are involved, the TPSC chairman, Task Force chairman, and other OUSTR officials will prepare the decision memo package for the President, containing:

- A concise summary of the problems, action required, case background, majority and minority recommendations (including pros and cons for each option if there is more than one), and a checkoff line for each option, consisting of "approve, disapprove or let's discuss (discuss with me)".
- Required draft documents keyed to each option, including letters to the President of the Senate and Speaker of the House of Representatives, a brief statement describing the action taken and the reasons for that choice, a memo regarding the decision to be released by the OUSTR, and letters to the Secretaries of Labor and Commerce when expedited trade adjustment assistance has been selected.



--The complete Task Force report.

When the TPSC vote shows insufficient agreement on the relief-remedy issue and/or other potentially important factors have to be considered, the case moves up to the next level, the TPRG. When consensus on the relief-remedy question can be reached and/or the questions arising out of the other factors can be overcome at this level, the decision memo package is prepared for the President. Similarly, when the TPRG is unable to reach agreement on relief-remedy and/or other problems persist, the matter then would move to the highest interagency level, the TPC, where some final action would be taken. Estimates provided by an OUSTR official indicate that in about 44 percent (11) of the cases, a decision was reached at the TPSC level, 40 percent (10) went to the TPRG level for resolution, and 16 percent (4) were finalized by the TPC. In the majority of the 25 cases we reviewed, the President followed the individual and/or combined final TPSC/TPRG/TPC recommendation, as indicated below.

<u>Recommendation</u>	<u>Number of cases</u>	<u>President's decision</u>	<u>Number of cases</u>
Relief	7	Relief	7
		No relief	0
No relief	<u>18</u>	Relief	1
		No relief	<u>17</u>
Total	<u>25</u>		<u>25</u>

#### Role and effect of other factors

Other potentially important factors involved in the decision include the congressional right in certain circumstances to overturn the President's decision; 1/ international agreements, negotiations, or related activities that may occur before or during relief-remedy deliberations; and domestic economic and political considerations, especially other recently decided or pending 201 cases, that may arise before the President makes his decision.

Although it is difficult to show precisely how and when these other factors affect relief-remedy deliberations, there is no doubt that they do. One way they do is by pushing the interagency decision level from the TPSC to the TPRG, or even to the TPC. Another way is reflected in a memorandum written in connection with the CB radio case, which lists the names of 20 Senators and 45 Representatives who had contacted the OUSTR in support of relief.

---

1/Congress has never overturned a relief-remedy decision, but the fact that such recourse exists has constituted a definite consideration for the President and his advisers at all levels in the process.

When these other factors are present, they are likely to be operating at the same time and, indeed, to be playing off one another. In the third fastener case, for example, a TPSC Task Force representative argued that important trade legislation pending in Congress would be imperiled if the President chose the no-relief option. In the CB case, the minority opinion among the TPC representatives was that by denying relief the President would be complying with mutual agreements reached at recent international meetings to resist protectionist pressures.

Another example of the role and effect of these other factors occurred after the President refused to provide relief for the fastener industry in its second attempt to obtain it. (In response to this industry's first 201 petition, the ITC had failed to find sufficient injury or threat thereof.) Quickly reacting to the President's decision, Congress started override-related actions. In the Senate, a concurrent resolution was introduced but was never voted on; in the House, the Subcommittee on Trade of the Committee on Ways and Means voted narrowly in favor of a resolution to overturn the President's decision. This latter vote was reversed by the full Committee which, instead, decided to send a letter to the ITC asking that it determine whether "good cause" existed for another investigation of the industrial fastener industry. This the ITC did, finding sufficient cause to commence another investigation. This so-called third fastener case (TA-201-37), with the House Ways and Means Committee serving as the petitioner, resulted in another affirmative finding, with the President this time agreeing to provide relief in the form of a tariff.

#### THE PRESIDENT'S DECISION

The decision memo packages in the cases we examined were sent to the White House where they were circulated among key advisors, including the Domestic Policy Council, National Security Council, Office of Management and Budget, and Office of Congressional Liaison. This internal White House input is solicited whenever possible while the decision memo is being prepared in the OUSTR to minimize the amount of extra time required before the President actually receives it. If these internal White House sources have additional comments, the Staff Secretary to the President summarizes them in a brief paragraph, which is attached to the package that finally goes to the President. The entire process culminates when the President marks the check-off designation--approve, disapprove, let's discuss (discuss with me) 1/--keyed to the option selected.

---

1/We were told that the President has never checked the "let's discuss (discuss with me)" designation.

## Conclusions

The institutions and procedures comprising the relief-remedy determination process are soundly conceived and function adequately, based on affirmative answers to the questions: Does the interagency deliberative process generate the information on which the President's decision will be based within the allotted time? Is that information accurately and effectively transmitted to the President? Does he, in fact, use it in rendering his decision?

Our analysis showed that the interagency system brings to the relief-remedy process both sufficient expertise and staff to perform required tasks. The nine section 202(c) considerations provide an excellent substantive framework around which the interagency effort can be organized effectively. TPSC Task Force procedures (meetings, assignment breakdowns, etc.) and reports to the TPSC provided an adequate foundation for any subsequent relief-remedy-related actions, up through and including the President's decision.

An examination of the decision memo packages for two recent cases confirmed that they accurately and effectively reflected the findings, conclusions, and recommendations generated by the interagency deliberative process. We were also assured by informed officials that the President does use the decision memo package as the basis for his decision.

## CRITICISMS OF THE PROCESS

Some industry and interagency sources charge that the President's decision often appears to be made more on the basis of "political" factors than on the economic merits of the case. In our opinion, political considerations are an intrinsic part of Presidential decisions under the Trade Act.

In the cases reviewed, political factors for the most part have operated as legitimate reflections of realities that are inherent in Presidential decisionmaking. For instance, in the third industrial fastener case, the President may have had to consider a possible political tradeoff--providing relief in return for congressional support for the ratification of important international trade agreements. In our view, this reflected a real need to balance free trade commitments with protectionist sentiment. In the CB radio case, in response to substantial congressional interest, reinforced by relief having been denied in two other preceding cases, the TPC, for the first and only time, reversed the TPSC's unanimous no-relief recommendation. Some executive branch officials, it seems, were persuaded that if relief again was denied a congressional override would become correspondingly more likely.

A second criticism was expressed by an industry representative who believed the Departments of State and the Treasury to be biased against relief because of a seemingly doctrinaire commitment to free trade. Our interviews with interagency representatives of these Departments confirmed that they are strong supporters of free trade. In addition, they (along with the CEA) almost always vote against relief in the TPSC, TPRG, or TPC. It must be recognized, however, that State and Treasury Department tendencies against relief may balance pro-relief leanings on the part of other executive branch participants. We believe, accordingly, that differing individual agency positions are a strength in the interagency deliberative process because they insure the consideration of all sides of an issue.

A third criticism concerns the perception of some congressional and interagency observers that the (1) Task Force's economic analyses of the effects of import relief on consumers and on competition in domestic markets (sec. 202(c)(4)) and (2) economic and social costs that would be incurred by taxpayers, communities, and workers if import relief were or were not provided (sec. 202 (c)(9)) sometimes has been incomplete, inconsistent and/or inaccurate. Clearly, there is some basis for this criticism although some of the considerations are very difficult to assess. In a recent congressional hearing, for example, a Task Force representative admitted that, in the case about which he was testifying, trade adjustment assistance estimates had not been included in economic and social cost calculations. It is not clear, however, that these weaknesses have any adverse effect on the decisionmaking process since only two of the nine 202(c) considerations are affected and the President's decision is based on all nine considerations. In addition, the President appears to receive the best available information.

There does not seem to be much that can be done about this issue. A report submitted to the OUSTR in August 1979 by a task force "formed to consider ways of standardizing the methodology and improving the quality of this economic analysis," concedes that:

"\* \* \* estimates of economic costs and benefits deriving from alternative import relief remedies are: (a) based on an inexact science, (b) most appropriately viewed as indicators of relative orders of magnitude, (c) most useful for comparisons, and can be subject to error for factors difficult to integrate into the analysis \* \* \*"

Also, it seems equally doubtful that, given the limitation of the present state-of-the-art, the kind of uniform "minimum criteria" called for by one critic can be developed because, as one official who worked on the above case put it, "Each [import relief] investigation inevitably contains its own set of special circumstances, not to mention its own set of data limitations."

A fourth criticism is that the two-step (ITC injury determination and Presidential relief-remedy decision) process makes it unreasonably difficult for an affected industry to get relief. These critics assert that the overall program would be better served by either doing away with the Presidential decision step or requiring the President to grant import relief if ITC finds injury.

We believe that the two-step process provides a necessary balance between the two essential, but different, questions that must be resolved before provision of relief becomes appropriate--has the petitioner been injured? and, if so, is it in the national economic interest for relief to be granted? It seems appropriate that the ITC, acting in effect as a fact-finding entity, should focus primarily on case specifics as they relate to injury. Similarly, it seems appropriate that the President, assisted by the interagency deliberative system, should consider the broader national interest implications of granting relief and design an appropriate remedy package.

Finally, lack of adequate explanation for Presidential decisions is criticized. For example, in the leather wearing apparel case, the President stated that import relief was not in the national economic interest because (1) "Import relief would have an inflationary impact and a consumer cost that I consider unacceptable in light of the strong emphasis that this Administration is placing on its anti-inflation efforts" and (2) "There is serious doubt that import relief would help the domestic industry effectively adjust to compete with imports once the relief has expired." Considering the large amount of work by ITC in making a case for relief and by the TPSC in making its determination, we believe that such general comments do not adequately explain the basis for the decision. In our opinion, the OUSTR should at least provide appropriate congressional committees with the information used to evaluate the nine section 202(c) considerations and more fully explain in the Presidential report to the Congress the rationale for decisions.

#### Section 264 report

The mandatory section 264 trade adjustment assistance report has not been made by the Commerce Department in 10 import relief investigations (TA-201-33 to TA-201-42) because no office assumed responsibility for it during and following a departmental reorganization. Yet, discussion with the end-users of this report found them uniformly agreeing that the 264 report, per se, was not missed and that its absence had no negative impact on relief-remedy deliberations. The OUSTR staff which normally would have received the 264 report explained that the report was not missed because they got precisely the same information from the TPSC Task Force report analysis of firm trade adjustment assistance, per section 202(c)(2). Considering that firm trade adjustment assistance information routinely has reached those who needed it, with or without the 264 report, we question the necessity for having this function restarted.

The section 264 report requirement is nearly identical to the Labor Department's section 224 report on the status of trade adjustment assistance for workers, both in terms of the reports themselves and the section 202(c) context. Labor Department officials said that they considered the effort expended in preparing the 224 report well worthwhile because the information obtained in the investigation upon which the report is based is almost totally new in each case and is unavailable anywhere else. They emphasized that the 224 report requirement has proven valuable for their own internal purposes as well as in the inter-agency relief-remedy context.

Commerce Department sources, in contrast, had an entirely different attitude toward the 264 report process. An official pointed out that the law specifies that the work needed for the report should be initiated at the same time that the ITC 201 investigation is commenced. This official contended that the problem with this requirement is that if the ITC finding is negative--as it has been in 17 of 42 investigations--the need for the report ceases to exist. Second, Commerce has no other interest in or apparent use for the report outside the report process itself. Third, because the number of firm trade adjustment assistance petitions received by Commerce has been relatively small compared with the large volume of worker adjustment assistance petitions routinely received by the Labor Department, it seems likely that the required data for firms would be more readily available than that for workers. However, section 264 requires a report regardless of the outcome of the ITC determination. For these reasons, Commerce's attitude toward the 264 report process has become a question of, why devote precious resources to an undertaking whose results stand a good chance of being meaningless and have no other significant inhouse use?

#### RECOMMENDATIONS

We recommend that Congress repeal section 264 of the Trade Act of 1974, as amended, requiring a separate report from the Secretary of Commerce on trade adjustment assistance to firms since it duplicates other reporting efforts.

We also recommend that the OUSTR more fully explain, in the Presidential report to Congress, the rationale for decisions, including the national economic interest considerations.

#### OUSTR COMMENTS AND OUR EVALUATION

It should be noted that the OUSTR comments are also made on behalf of the Departments of Commerce, Labor, State, Treasury, Agriculture, Justice, and Interior and the Council of Economic Advisers.

OUSTR concurs with our assessment that the section 264 report requirement constitutes an unnecessary duplication of effort and supports our recommendation that this requirement be repealed.

It also agrees with our recommendation that more detailed explanations of the President's import relief decisions should be provided to the Congress. To accomplish this, it is willing to provide to the House Ways and Means Trade Subcommittee and the Senate Finance International Trade Subcommittee reports which summarize the TPSC analyses, including discussion of the section 202(c) criteria, within 2 weeks of a Presidential decision. We believe this would be in the overall interests of all parties concerned and we support such action.

#### Agency voting patterns

OUSTR objected to our reference to agency votes in past 201 cases on the grounds that agencies' recommendations to the President constitute privileged information. OUSTR also noted that, while agencies do differ on the emphasis they place on specific criteria, the agencies are not as rigid in their decisionmaking processes as our report implies.

We do not believe that our reference to general agency voting patterns is inappropriate information. This information is presented in response to industry criticisms and to support our feeling that the differing agency positions are a strength that insures consideration of all sides of an issue in interagency deliberations. We agree that agencies place different emphases on specific parts of the nine national economic interest considerations, but we do not feel our report implies rigid position-taking. In fact, we say that in about 44 percent of the cases consensus is reached at the TPSC level.

## CHAPTER 4

### MONITORING AND ENFORCEMENT

Section 203(i) of the Trade Act and the Presidential proclamation granting relief provide the basis for executive agencies to monitor developments concerning the industry during the import relief period. ITC is responsible for making reports to the OUSTR or, upon request, to the President. Section 203(i) specifically charges ITC with reviewing the progress and specific efforts made by the firms in the industry concerned to adjust to import competition. This review basically consists of questionnaires and compiling submitted data into quarterly and annual reports.

When the relief granted is a quota or some form of quantitative restriction, including an orderly marketing agreement, the Presidential proclamation usually authorizes the OUSTR to take any actions necessary to administer and implement the relief. Using the authority, the OUSTR establishes an ad-hoc interagency monitoring committee chaired by Commerce. The committee's specific functions vary depending on the form of relief granted, but generally address the impact of the relief in limiting imports, including monitoring for shifts in sources of supplies and for product alteration.

The Government's ability to determine whether the adjustment process is working is limited, because not all industries are monitored and because questionnaires do not elicit precise and complete data. Also, since the adjustment strategies that the petitioners provide to the Government are often vague, it is difficult to determine whether positive adjustment can occur. In any case, no industry followup, as required by the legislation, is regularly made to determine the specific steps that petitioning firms in the industry take to adjust during the import relief period.

The ad-hoc interagency monitoring committees chaired by Commerce have successfully monitored and anticipated increases in imports, but failure to control the increases from third countries has materially reduced the level of relief intended. Section 203 of the Trade Act authorizes additional restraint for such cases, and the Presidential proclamation implementing the relief typically delegates this authority to the OUSTR.

#### INDUSTRY MONITORING

##### Legislative background

A fundamental purpose of import relief is to give a seriously injured domestic industry additional time to adjust and to become competitive again under relief measures and, at the same time, create an incentive for it to adjust, if possible, to competition in the absence of long-term import restrictions. To assure that these objectives are being met, section 203(i) provides that as



long as any import relief remains in effect, ITC shall review developments concerning the recipient industry, including the progress and specific efforts made by the petitioning firms in the industry to adjust to import competition and, upon request, shall report to the President concerning such developments.

To fulfill the legislative criteria for industry monitoring, the Presidential proclamation may provide for surveys on U.S. production, profits, prices, employment, and capital expenditures. The ITC sends out questionnaires and compiles information in quarterly and annual reports to the OUSTR.

The high carbon ferrochromium and citizen band radio industries were not being surveyed because the Presidential proclamations did not require surveys. Although the CB petition stated that import relief would allow it to increase capital expenditures and to rehire and retrain its labor force, the Government was not in the position to formally verify if this was occurring. A representative from ITC's Office of Industries informed us that the only information it collected in the CB case came from newspaper articles, trade magazines, or informal and voluntary telephone discussions with industry representatives. OUSTR and the ITC appeared not to know either the adjustment efforts or the condition of the HCF industry at the time of our review.

#### Incomplete monitoring surveys

In the industrial fastener case, a major objective of the relief was to help generate increased earnings for capital investment and modernization. Although capital expenditure data is reported on an annual basis, it does not distinguish between expenditures which could enhance U.S. manufacturers' competitiveness vis-a-vis foreign manufacturers and other expenditures; for example, one manufacturer stated that the cost of a new roof for the factory was reported to the ITC as a capital expenditure. This clearly demonstrates that aggregate capital and research and development (R&D) expenditures can be misleading as indicators of adjustment efforts; a new roof would not normally be expected to increase manufacturing efficiency.

Increased R&D expenditures were identified by both the Government and the industrial fastener industry as an important adjustment objective. Commerce's Economic Development Administration indicated that R&D is needed if the industry is to be revitalized and to challenge foreign competition. These expenditures, however, are not being monitored.

The ITC, although required to do so under the legislation, does not normally review specific industry efforts to adjust unless an investigation pursuant to a petition to extend protection is made under section 203(h). An ITC official said the ITC believes that its current quarterly and annual reports to the OUSTR fulfill the legislative requirement. In the cookware case

which was decided during the course of our review, provisions were made for such a qualitative change in monitoring. The relief provides for a report, halfway through the import relief period, reviewing the progress of the firm's adjustment efforts; the relief will be continued for the entire period only if progress in adjusting to import competition has been made and if continuation would facilitate adjustment.

#### Adjustment strategies not specific

The petitioner provides adjustment plans in the petition or is asked about them during different phases of the investigation, but replies are sometimes so vague as to be virtually useless. For example, the CB petition stated that during the period of protection the domestic industry could (1) continue to develop and purchase new manufacturing equipment in order to compete even more efficiently and (2) rehire and retrain its labor force in order to have a well-established and highly skilled labor force in place when trade restrictions were removed. The general nature of these remarks raises such questions as: To what extent is the current quality and condition of the manufacturing equipment and unskilled labor force responsible for competitive difficulties? Can improvements in these areas be expected to solve the import problem? What type of machinery and training is contemplated? In our opinion, unless an industry more specifically delineates adjustment measures to be taken, the Government cannot really evaluate the industry's potential for success in adjusting to import competition.

Another problem caused by lack of specific adjustment strategies involves conflicting industry and Government perceptions as to what constitutes the best course of adjustment. In the industrial fastener case, for example, the industry maintained that competitiveness in the domestic standard fastener market was essential to its health and vitality and that it perceived relief as being intended to restore such competitiveness. The Government, on the other hand, appears to have intended relief to provide a breathing space to enable the industry to make a smooth transition to the production of more "specialized" fastener products, which, because of their more stringent specifications and higher technology level, would not be as vulnerable to foreign competition. A similar problem, it should be noted, occurred in connection with the HCF case, because Government and industry had different views about the type of relief that should be provided and how it should be used to facilitate adjustment.

The current legislation permits a lack of specificity in adjustment strategies, because it allows entities to petition that do not have the authority to carry out such strategies, such as certified or recognized unions or groups of workers. This was clearly demonstrated in the color TV case where the majority of petitioners were labor unions and the two U.S. television

manufacturing firms involved accounted for only about 8 or 9 percent of total domestic production. Adjustment strategies were not discussed in the petition. At the hearings, both TV firms were questioned about their adjustment plans. One of the firms spoke only in very general terms, and, when we contacted the firm later, we were told that it never did supply any detailed adjustment strategies. The other firm, which agreed to supply detailed plans, has announced that it could no longer compete in the marketplace and has sold its television business.

The only area in which labor could conceivably make a commitment on adjustment is by agreeing to reduce current wages and/or benefits or to at least moderate prospective compensation demands. This goes to the heart of the international competitive difficulties of a number of U.S. industries and there appears to be increasing recognition that, for some industries to increase their international competitiveness, future labor costs must be reduced. The possibility of this type of adjustment was not even addressed by the labor unions who petitioned in the color TV and automobile cases, even though much of their competitive difficulty stems from high labor costs relative to foreign manufacturers.

#### Conclusions

Since insulating an industry from competition can tend to prolong rather than accelerate the adjustment process, we believe that, for the import relief program to be effective, a comprehensive adjustment strategy should be supplied to the Government as a quid-pro-quo for relief so the Government can monitor the petitioner's adjustment progress. The OUSTR has recognized the utility of adjustment plans; however although OUSTR regularly requests such information, the industry is not required to provide it.

We believe that besides providing information on increased imports and the resulting injury, petitioners for import relief should be required by law to provide detailed strategies for competitive adjustments tied to the level of relief requested. If such a requirement were enacted, the Government should ensure that adjustment strategies are accompanied by operating and financing plans. If relief is provided, a memorandum of understanding should be prepared to reflect the agreement between the Government and the petitioners about implementing the plans. This memorandum should provide for periodic progress reports, revision procedures, etc. Verification of implementation might be certified by the petitioner's general counsel or its certified public accountant. It is recognized that the requirement for such actions, preparation of plans, etc., would need to reflect the nature of the industry and the capability and financial condition of the petitioner(s).

The heterogeneity of industry members--some of whom may not have petitioned for relief and therefore do not wish to

cooperate--will also have to be considered. At a minimum, recognizing that adjustment commitments will not cover everyone, those firms which petition and represent the industry should be required to submit detailed adjustment strategies, either individually or as a group.

Not only should the condition of the industry be monitored regularly during the import relief period, but also the petitioning firms' specific efforts to adjust should be reviewed as required by legislation. We believe that current practices do not fulfill this requirement. The recent cookware and mushroom decisions, which provide for interim progress reports on efforts made by the firms to adjust, constitute a step in the right direction.

Since we believe the law should be amended to provide that petitioners' commitments on adjustment be a precondition for relief, only those entities which can make a commitment for the industry should be allowed to petition. Such a commitment may require support of both labor and management, because adjustment by either group in isolation may not be adequate. For example, a labor union cannot commit the industry to make any necessary capital or R&D expenditures and management cannot commit labor to reduce or moderate compensation demands.

In two of the cases we reviewed in which labor unions petitioned for relief, the petitioners did not address the possibility of adjusting compensation levels as a form of adjustment. Compensation rates in an industry can, of course, be an important element in the total adjustment process.

The cases we reviewed revealed (1) lack of industry-Government agreement on the relationship between relief provided and adjustment desired, (2) lack of meaningful adjustment plans, and (3) incomplete monitoring of post-relief adjustment efforts. These facts preclude a useful post-relief assessment of program results, including the success of industry efforts to adjust to import competition.

#### IMPORT MONITORING AND ENFORCEMENT

##### Implementation

Typically the Presidential proclamation issued subsequent to a decision to provide import relief authorizes the OUSTR to delegate authority to appropriate officials or agencies for administering and implementing the relief provided.

Using this authority, the OUSTR establishes an ad-hoc inter-agency monitoring committee chaired by Commerce, when the form of relief is either a quota or orderly marketing agreement (OMA). <sup>1/</sup> Other members on the committee include the Census Bureau, OUSTR, Treasury (including Customs), State, Labor, and the ITC in an advisory capacity. Other agencies may be invited to participate when matters concerning their areas of expertise are to be considered. The committee is directed to meet periodically at the call of the chairman or upon request of the OUSTR or any member agency. It remains in operation during the period of relief. For the cases we reviewed, committees were established for footwear, color TVs, and specialty steel.

The committees' specific functions vary according to the form of relief granted. For the specialty steel case, which involved quotas on all foreign suppliers (except for Japan, with whom an OMA was negotiated), one primary function was to deal with anticipated shortfalls in filling country quotas; if a particular product quota was not filled by a given country, OUSTR would then reallocate all or part of the expected quota shortfalls to another country or group of countries. This reallocation would maintain a given level of restraint as well as assure equitable treatment among countries.

Identifying "loopholes" or quota evasion tactics was also a function of the specialty steel monitoring group, but it did not play as large a role as in the footwear and color TV cases for which OMAs were signed. An OMA is much harder to enforce than a worldwide quota which covers all suppliers of the product so that the total level of imports is always controllable. An OMA typically controls products only from those countries considered to be the cause of the problem, so shifts in quantities supplied by countries not covered by the OMA can reduce the level of restraint originally contemplated.

The assurance provided to the mushroom industry after the President decided to forego formal import restraint provides less certainty of protection than an OMA, because it is merely an expression of intent made by a foreign government as an informal and unofficial means of controlling its exports. Besides possible increases in imports from other countries, imports can continue to increase from the countries providing the assurances, since they are not legally binding. This is, in fact, what happened in the mushroom case.

---

<sup>1/</sup>We were informed that no similar committee is established when the relief is in the form of a tariff, since the administration of a tariff requires only that the Customs Service be notified to amend the U.S. tariff schedules to reflect the increased tariff.

The Presidential proclamation in the color TV case recognized the possibility that shifts in supplies among countries could reduce the effectiveness of the relief. It therefore authorized the OUSTR to extend the relief to other countries if it was determined that increases in imports from countries not subject to the OMA reduced the effectiveness of the import restraint. Before the OUSTR could take action, however, it was directed to consult with TPSC representatives.

In addition to authority to enter into new agreements which is provided in the Presidential proclamation, section 203 of the Trade Act authorizes the President to provide quota or tariff relief if an OMA does not continue to be effective. Such authority has not yet been used.

#### Geographical circumvention and third-country surges

The ad-hoc monitoring committees have been able to fairly quickly identify shifts in imports from countries not covered by original restraints. Nevertheless, slowness or reluctance to act to control these imports can and has reduced the level of restraint originally intended for the color TV and footwear industries.

Although no committee was established to monitor imports of mushrooms, the OUSTR was directed to monitor these imports in conjunction with the assurance. Nevertheless, mushroom imports continued to grow by substantial amounts.

All three industries have since sought additional import relief. The original petitioners for the color TV industry, for example, petitioned for an extension of relief, claiming that it actually had only 16 months of effective relief instead of the 3 years of relief originally granted. The color TV and mushroom industries have since been granted additional relief, and the footwear petition was recently denied.

#### Color television OMA

After the color TV OMA with Japan became effective on July 1, 1977, the Ad Hoc Interagency Committee to Monitor Imports of Color TVs noted at its first meeting on October 25, 1977, that third-country circumvention needed to be monitored closely. As early as January 1978, the Department of Labor and the original petitioner notified the OUSTR that preliminary data indicated that third-country imports were undermining the import relief.

At a Committee meeting in March 1978, it was disclosed that Taiwan planned to double exports of complete TVs to the United States in 1978 and that up to 1.3 million to 1.4 million incomplete sets were expected to be sent here from abroad, with Japanese incomplete TVs limited to a mere 190,000. Both complete

and incomplete or partially assembled sets were covered by the OMA with Japan. At its fourth meeting on March 30, 1978, the Committee approved an interim report which concluded that Japan's rollback under the OMA would be offset by increased imports from other countries. Not until the Japanese complained in July that they were restraining their exports while other countries were increasing their market share in the United States did the OUSTR take action. On August 9, at the Trade Policy Staff Committee meeting, the OUSTR recommended that OMAs be negotiated with Korea and Taiwan. These OMAs were finally signed on December 29, 1978, to become effective on February 1, 1979, more than a year after preliminary data showed that imports from those countries were undermining the effectiveness of the OMA with Japan.

As a result of the shift in imports from Japan to countries not subject to the OMA, total imports of complete color TV sets actually increased by 9.3 percent from 1977 to 1978, as shown below.

Complete Color TV Sets

	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>Percent</u> <u>change 1977-78</u>
	- - - (000 omitted) - - -			
Japan	2,029	1,434	513	-29.3
Taiwan	322	624	368	93.8
Korea	96	437	314	355.2
Singapore	15	61	73	306.7
Canada	74	212	91	186.5
Other	2	7	10	250.0
Total	<u>2,538</u>	<u>2,775</u>	<u>1,369</u>	9.3

After the OMAs with Taiwan and Korea were signed, imports of complete TVs fell as a percent of domestic supply from 25.1 percent in 1978 to 13.2 percent in 1979. Thus, it appears that once the additional OMAs were signed, the relief effectively limited imports of complete color TVs. However, even with these agreements, the effective level of relief was reduced by imports of incomplete TVs from countries not covered by OMAs, e.g., Mexico and Singapore, which continued to increase substantially throughout the relief period, as shown below.

Incomplete Color TV Sets

	<u>2d half 1977</u>	<u>1st half 1978</u>	<u>1978</u>	<u>1979</u>	<u>percent change 1978-79</u>
	- - - - - (000 omitted) - - - - -				
Mexico	294	563	1,045	1,491	42.7
Taiwan	137	344	856	513	-40.1
Japan	108	91	221	286	29.4
Singapore	-	-	-	172	-
Other	<u>8</u>	<u>11</u>	<u>21</u>	<u>51</u>	<u>142.9</u>
Total	<u>547</u>	<u>1,009</u>	<u>2,143</u>	<u>2,513</u>	17.3

Footwear OMA

Similar developments and results surrounded the monitoring and enforcement of the nonrubber footwear OMA. Within 8 weeks after the footwear restraint program went into effect on June 28, 1977, the Ad Hoc Interagency Committee to Monitor Imports of Non-rubber Footwear began to receive and discuss reports alleging that some Taiwanese manufacturers planned to relocate their production facilities to Hong Kong. This could constitute a circumvention of the restraint levels provided in the OMAs. Conclusive evidence of such geographical circumvention was difficult to obtain. By early January 1978, however, enough cause for concern existed to convene an Ad Hoc Committee meeting to discuss continuing industry and trade reports that Taiwanese manufacturers were establishing production facilities or entering into joint ventures with third-country producers. Also, nonrubber footwear exports from Hong Kong to the United States had increased significantly over the previous year and officials expressed concern that this trend would continue in 1978. This concern soon proved accurate, as first quarter 1978 data showed that such imports totaled 5.8 million pairs, a 210-percent increase over the same period in 1977 and a 307 percent increase over the first quarter of 1976.

With this data providing the impetus, the Ad Hoc Committee sent a memo to the OUSTR in May 1978 warning that a continuing rapid surge of nonrubber footwear imports from Hong Kong could threaten the effectiveness of the OMAs in providing relief to the domestic footwear industry. Formal consultations with the Government of Hong Kong arranged by the OUSTR were held in mid-August, at which the United States proposed that an OMA be negotiated to restrain the import surge. Hong Kong rejected this idea on the grounds that such an agreement would be contrary to its position on applying selective import relief in the Multilateral Trade Negotiation's safeguards code. Instead, it proposed a system of controls which would enable the United States to deny entry of nonrubber footwear from Hong Kong that



had been assembled from third-country components. This system would involve licensing all nonrubber footwear exports to the United States and validation, via a certificate of origin, that the footwear uppers and bottoms had been both manufactured and fixed together in Hong Kong. Further consultations in mid-September 1978 resulted in agreement on the certificate of origin system. The agreement (actually an administrative arrangement accomplished by an exchange of letters signed in Hong Kong on October 24) was implemented on November 27, 1978, with a scheduled expiration date of June 30, 1981.

Consultations were held early in June 1979, at which time it was clear that the downturn expected as a result of the certification system had not occurred.

Hong Kong Nonrubber Footwear Imports, 1976-80

<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
	(millions of pairs)			
6.7	8.7	28.3	22.1	20.8

These consultations produced no concrete results on whether or not further action was needed. The United States argued that the system was not working and that more needed to be done to return Hong Kong footwear exports to more "traditional" levels. The Hong Kong delegation maintained that the system had accomplished its purpose; i.e., to eliminate assembly in Hong Kong of nonrubber footwear from Taiwanese parts. These consultations were followed by another series of equally unproductive meetings in July 1979, and since then no further consultations have been held.

Analysis of the Hong Kong situation suggests several observations and conclusions regarding the effectiveness of import relief program monitoring and enforcement actions and procedures. First, the Ad Hoc Committee clearly was able to monitor circumvention-related trade pattern shifts that began after the restraint program became operational. Second, despite the fact that this monitoring generated adequate information, more than a year elapsed from the time U.S. officials began to receive reports of circumvention of the OMAs (Aug./Sept. 1977) and the time the certificate of origin system became effective (Nov. 1978). This elapsed time was far in excess of what we perceive to constitute effective enforcement.

Third, and most important, even with the certificate of origin system in effect, the flow of Hong Kong nonrubber footwear exports has continued at levels far above those existing before the import restraint program was established. This point becomes

more significant when one takes into account the fact that similar situations have been identified in other Far East countries. For example, nonrubber footwear exports from Singapore and the Philippines to the United States between 1976-79 increased from zero to 5.6 million pairs and 400,000 to 13.2 million pairs, respectively. In other words, imports from these three countries, which amounted to about 7 million pairs in 1976, jumped to just under 41 million pairs by the end of 1979. The meaning of this increase becomes more readily apparent when compared with combined exports to the United States by the OMA-controlled countries, Taiwan and Korea, which fell from just under 200 million pairs in 1976 to just under 150 million pairs in 1979. In effect, the surges from Hong Kong, Singapore, and the Philippines virtually negated the reductions effected by the OMAs.

The Hong Kong Government claims that the certification system was successful because it eliminated the reexport of Taiwanese footwear components and that any continuing production increases were entirely from Hong Kong components and manufacturing facilities. Even if the system solved the problem of circumvention, which would be difficult to prove, imports continued to increase from Hong Kong as well as from other non-controlled countries, including Italy, Singapore, and the Philippines, thereby violating the intent of the overall restraint effort. This intent was readily apparent in a State Department cable noting that "sudden shifts in trade which disrupt our market and interfere with the President's adjustment assistance program would not be acceptable," sent the day after the Presidential relief announcement to Ambassadors in virtually all footwear-producing countries.

In conclusion, as shown below, the "bottom line" is that the footwear import relief effort has not been effectively enforced. As a result both of circumvention-related surges instigated by Taiwanese producers and surges from uncontrolled countries, non-rubber footwear imports have continued to exceed the levels of import relief originally intended.

Nonrubber Footwear Imports 1976-80

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
	(millions of pairs)				
OMA-controlled countries (Taiwan & Korea)	199.8	225.1	147.8	149.3	181.0
Uncontrolled countries	<u>170.2</u>	<u>143.0</u>	<u>225.7</u>	<u>255.3</u>	<u>185.0</u>
Total	<u>370.0</u>	<u>368.1</u>	<u>373.5</u>	<u>404.6</u>	<u>366.0</u>

### Mushroom assurance

On March 10, 1977, after the President determined that import relief for the mushroom industry was not in the national economic interest, he directed the OUSTR to inform the Governments of Taiwan and Korea, the principal suppliers, that their existing assurances should be maintained. The OUSTR was also directed to continue to monitor imports on a weekly basis.

An assurance is less enforceable than an OMA, relying almost entirely upon the word of the country that agrees to restrain its exports. Since an assurance is not an agreement, the Customs Service has no authority to enforce it, even when a fairly large surge of imports occurs relative to the market.

Letters exchanged with the Government of Taiwan gave assurances that imports of canned mushrooms from that country "will not increase at a rate which would disrupt the United States market in any way." This assurance was a qualitative statement with no clarification of the term, "market disruption." Imports increased substantially and the OUSTR expressed concern informally to the Government of Taiwan.

After formal consultations, the OUSTR received a written assurance which agreed to limit Taiwan's exports to the United States to 44.5 million pounds, or 20,140 metric tons, drained weight, exclusive of straw mushrooms and frozen mushrooms. These levels applied to cropyears 1978 and 1979. U.S. statistics of canned mushrooms at the time included straw mushrooms. A new breakout on straw mushrooms was requested.

The Department of Agriculture analyzed actual calendar year imports (which align closely to the Taiwanese cropyear when shipping delays are allowed for) as follows.

<u>Year</u>	<u>Imports</u> (metric tons)
1978	a/ 23,395
1979	b/ 23,067
Jan. to June 1980	b/ 13,243

Department of Agriculture, Foreign Agricultural Service.

a/ Included canned straw mushrooms.

b/ Excluded canned straw mushrooms. In calendar year 1979, 1,456 metric tons of canned straw mushrooms were imported from Taiwan.

This analysis indicated that Taiwan exported about 15 percent more than the agreed quantity of canned mushrooms to the United States in 1979 and that it probably exceeded the agreed

quantity in 1978. ITC marketyear statistics also showed marked increases from Taiwan and Hong Kong.

The Customs Service investigated whether Taiwan was transshipping mushrooms through Hong Kong in order to circumvent the assurance and concluded that, although Taiwan was exporting mushrooms to Hong Kong for reexport to the United States and other countries, the mushrooms were desalinated and canned in Hong Kong, thereby qualifying Hong Kong as the country of origin.

Although we do not dispute the legality of this substantial transformation decision, it appears that the investigation was not comprehensive enough to establish conclusively that transshipment was not taking place. The fact that the investigation took place in a sovereign foreign country, however, limited the authority of the Customs Service to pursue all avenues.

Also, the fact that, during this period, the European Community restricted imports of mushrooms into its market contributed to increased imports into the United States. The European Community's restriction virtually closed the largest market, West Germany, and thus diverted mushrooms into the Canadian and U.S. markets. The Oustr monitored these occurrences, but 201 legislation contains no provisions for dealing with this type of problem. In the recent Multilateral Trade Negotiations, these types of problems were discussed but no agreement was reached.

#### Product alteration

Many products, such as color TVs, CB radios, and footwear are composed of many component parts. Quota and OMA relief decisions specifying precisely what is subject to restraint may be relatively easy to avoid by removing a part or making some other minor adjustment. For example, an incomplete color TV would be counted under the OMA only if it required a chassis frame and the frame is at least partially included. According to a U.S. manufacturer, one could design a set that required a nonfunctional frame and then import the fully wired set of parts excluding the nonfunctional frame and claim that the quota had not been used. This manufacturer believes it is possible to eliminate the frame by molding supports, brackets, and blocks into a plastic cabinet or by mounting the chassis to supports, blocks, and wood surfaces in a console cabinet. It could be contended that a frame was still required although not shipped, and, therefore, the quota was not used. We have not been able to identify the extent to which such loopholes have been used, but Government and private individuals we interviewed agreed that the color TV OMA is easy to circumvent.

Tariff relief under a floating  
exchange rate system

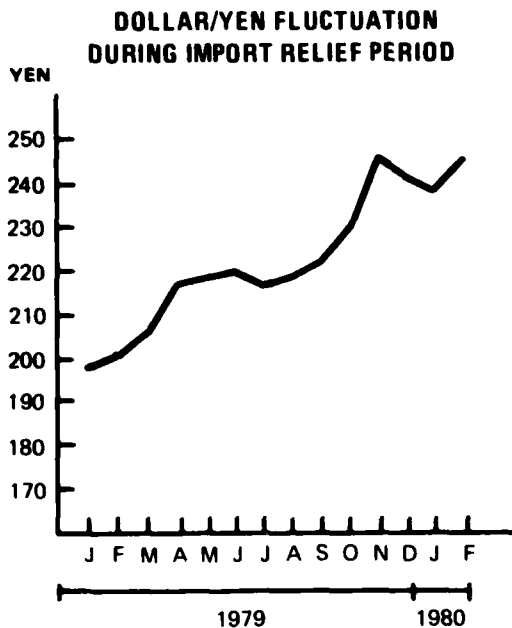
An OMA is not the only form of relief whose level of protection can be affected by developments not readily apparent when the relief was originally implemented. Wide currency fluctuations can also either reduce or enhance the level of tariff protection. Such fluctuations subsequently reduced the level of protection originally intended in the industrial fastener case.

As the dollar appreciates, foreign goods tend to become cheaper, while a depreciating dollar normally results in higher import prices. When a tariff is applied to the cost of a foreign product, it is expected that this will make the U.S. product more price competitive. This approach was the objective of the 15-percent tariff relief proclaimed for the fastener industry in December 1978; but much of the relief was offset by an appreciating dollar after the relief was implemented.

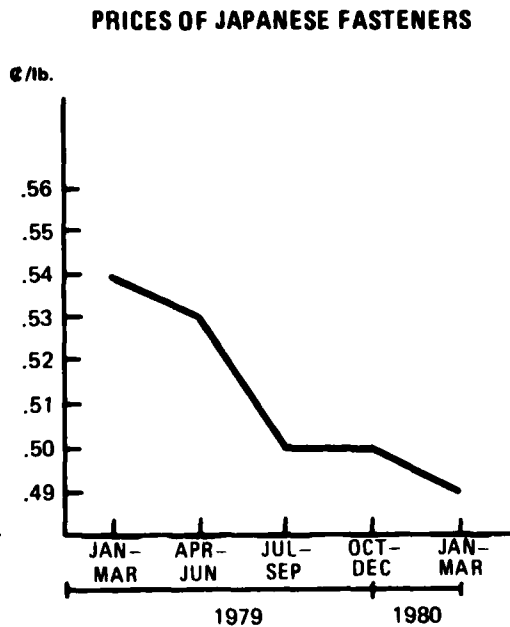
At the time the relief was instituted, the United States imported approximately 70 percent of its industrial fasteners from Japan, which, according to the ITC, generally was the lowest priced supplier. The dollar was also very weak at the time, having depreciated by about 27 percent against the yen from the 3d quarter of 1977 to the 4th quarter of 1978.

The weak dollar tended to increase import prices, as pointed out by the ITC remedy determination paper, which stated that the increase in import prices seemed largely related to the substantial depreciation of the dollar vis-a-vis the Japanese yen. This increase in import prices, in fact, led two Commissioners to recommend that tariff relief be reduced to 20 percent from the original recommendation of 30 percent in the 1977 investigation. Immediately after the tariff was proclaimed in December 1978, the dollar reversed course and appreciated by about 23.5 percent by February 1980. Import prices did not decline by an equivalent amount, but, as the charts on the next page show, as the dollar recovered, prices of Japanese imports declined.

The Japanese were able to reduce their prices by about 9.3 percent between the 1st quarters of 1979 and 1980, corresponding to the depreciation of the yen. However, average lowest net selling prices for U.S.-produced fasteners, except for cap screws and structural bolts, rose by about 9 percent during this same period. The dollar has since depreciated somewhat since its highs in the early part of 1980 but has not yet reached the level in effect when the tariff was implemented. The recent currency fluctuations reinforce the problems inherent in tariff relief provided under a highly volatile, flexible exchange rate system.



SOURCE:  
INTERNATIONAL MONETARY FUND  
INTERNATIONAL FINANCIAL STATISTICS



SOURCE:  
DEPARTMENT OF COMMERCE

### Conclusions

Although the executive branch has successfully anticipated increases in imports from countries not subject to import restraint, failure to stem these increases has reduced the level of protection originally intended. Given the realities of an existing import relief program, we believe that failure to adequately enforce the remedies granted merely prolongs an industry's adjustment to imports and encourages petitions for extension, as noted in both the color TV and footwear cases.

An OMA can be an attractive form of relief, since it eliminates possible compensation and retaliation. We believe that OMAs and quotas can be effective, provided the Government responds quickly when confronted with geographical circumvention or possible evasion through product alteration. A tariff is administratively less complex; however, effective protection is also less certain if substantial currency fluctuations occur. Therefore, the possibility of adjusting the level of tariff protection based on fluctuations in exchange rates may have to be examined in order to provide the intended tariff protection.

The weaknesses we noted--failure to provide the level of protection originally intended, lack of consensus between the Government and industry over desired adjustment, and lack of specificity in adjustment plans and commitments--reduce the chance of achieving the program's objective of facilitating orderly adjustment to import competition.

The constraint to competitive trade inherent in the import relief program is mitigated because (1) legitimate opportunities for compensation are afforded U.S. trading partners for any restraint measures taken and (2) import relief is limited to 5 years, with a possible 3-year extension, and is not intended to indefinitely shield inefficient industries, as would a purely protectionist policy.

#### RECOMMENDATIONS

To strengthen the import relief program, we recommend that the Office of the U.S. Trade Representative, in conjunction with the International Trade Commission:

- Request petitioners to submit more detailed adjustment strategies tied to the level of relief granted and monitor their compliance.
- Periodically collect data on the conditions of all industries provided import relief to determine whether their financial conditions have improved and what they have done to increase their competitiveness.

We recommend also that the Office of the U.S. Trade Representative:

- At the inception of orderly marketing agreements, notify countries which could potentially reduce the relief's effectiveness that prompt enforcement action will be taken. If necessary, a trigger mechanism, based on historical import trends, should be set up with countries not subject to the OMA to signal the need for timely discussions in cases where increased imports are reducing the level of protection originally intended.
- In those cases where a tariff is the form of relief selected, explore the feasibility of providing intended protection with a variable tariff keyed to the movement in exchange rates.

We recommend that the Congress amend the Trade Act of 1974, as amended to:

- Require petitioners to submit to the OUSTR specific adjustment strategies.
- Prohibit one segment of the manufacturing process to petition, e.g., labor or management unless it is evident that this is the only segment from which specific adjustment commitments will be sought.

## AGENCY COMMENTS AND OUR EVALUATION

Both ITC and the OUSTR commented on our recommendations about petitioner adjustment strategies and monitoring of industry adjustment efforts. It should be noted again that the OUSTR comments are made also on behalf of the Departments of Commerce, Labor, State, Treasury, Agriculture, Justice, and Interior and the Council of Economic Advisers. ITC did not comment on enforcement of relief and a variable tariff. Except for our discussion on mushrooms, the agencies did not disagree with the facts as presented in our report.

### Petitioner adjustment strategies and monitoring of industry adjustment efforts

The OUSTR shares our interest in insuring that import relief fosters rather than impedes the adjustment process. It expressed willingness to consider developing procedures to provide for additional emphasis on "adjustment" issues in the initial executive branch section 201 decisionmaking process and for periodic (perhaps biannual) OUSTR requests for ITC evaluations of industry adjustment efforts during the relief period.

OUSTR expressed reservations, however, about our recommendation to tie relief to petitioner compliance with mutually agreed adjustment strategies. It was concerned about the implications such a recommendation would have upon the level of Government intervention in business decisions. Finally, it believes that the objective of promoting adjustment is best served by (1) having industries and their workers continue to make their own decisions regarding appropriate and feasible adjustment strategies and (2) ensuring that there is thorough U.S. Government attention to these adjustment plans in the executive branch decisionmaking process. ITC did not agree that the Commission should become involved in negotiating detailed adjustment strategies and believed this should be done by OUSTR or Commerce.

We concur with the OUSTR that the petitioning industries should continue to develop their own plans and do not mean to imply that the Government should be making those plans or other business decisions. We also did not intend that ITC become involved in negotiating adjustment strategies, but rather that it should work with OUSTR in monitoring industry compliance. The agreement reached between the Government and petitioning industry on adjustment strategies does not mean that the Government is dictating strategies but rather that it is reaching agreement on what the petitioning industry will do if a particular form and level of relief is granted. The actual adjustment strategy must be tied to the level of relief granted, because the level of relief determines the new resources available to the industry.



Furthermore, it is important to remember that the granting of import relief to an industry imposes a cost on consumers that is just as real as if a new tax were imposed. Similarly, the relief confers a benefit on the protected industry just as real as a cash subsidy from the U.S. Treasury. Therefore, it is reasonable to establish a process that insures that relief promotes adjustment and is not dissipated without effect.

We recognize OUSTR's willingness to consider developing procedures to provide for additional emphasis on "adjustment" issues and for requesting ITC evaluations of industry adjustment efforts. If the interagency discussions result in insuring that there is thorough U.S. Government attention to adjustment plans in the executive branch decisionmaking process and monitoring of compliance with these plans, our recommendations will be satisfactorily implemented.

We also believe that OUSTR's suggestion that ITC evaluate industry adjustment efforts biannually would adequately address the need for more frequent attention in this area. However, the objective of this monitoring should be to determine whether the petitioning industry is complying with the agreed upon efforts. The U.S. Government should then have the option of terminating the relief if no progress is being made. It should be noted that a precedent for such a requirement has already been established in the porcelain-on-steel cookware case.

#### Periodic data collection

ITC said that it currently collects data on the condition of industries provided with import relief when instructed to do so by the President. ITC also said that the President may request it to investigate under section 203(i)(1) of the Trade Act of 1974 the industry's efforts to compete with imports. We believe that the ITC should be monitoring developments with respect to industries provided with import relief whether or not it is instructed to do so by the President. It is our opinion that section 203(i)(1) requires ITC to keep under review the progress and specific efforts made by the firms in the industry granted relief to adjust to import competition. This section also requires reports to the President when requested. This required monitoring would easily meet the suggested biannual evaluations of industry adjustment efforts.

#### Enforcement of footwear and TV import relief

OUSTR comments focused on nonsupport for what it believed was our recommendation that increases in imports from countries not subject to OMA import restraints should "trigger" consultations with foreign supply countries. OUSTR said it has serious problems with the degree of automaticity and the lack of flexibility implied.

OUSTR pointed out that use of selective OMA relief (as opposed to comprehensive quota relief) indicates that it did not intend to limit all sources of either shoe or color TV imports as our report seemed to imply. It noted that both import relief programs included thorough monitoring of actual and forecasted imports from non-OMA sources as well as numerous followup actions by OUSTR to consult with and, in some cases, seek additional OMAs with countries not originally subject to restraint. A summary of enforcement actions for the color TV and footwear import relief programs is presented in support of OUSTR's position that there was effective enforcement. (See app. I.)

OUSTR noted that any discussion of the intentions, effectiveness, and administration of import relief should reflect the fact that multiple objectives are often associated with a decision to grant a particular form, level, and duration of import relief. It felt that chapter 4 ignored the fact that these multiple objectives also play a role in subsequent decisions regarding additional import restrictions on countries whose exports were not originally subject to restraints. It points out that chapter 3 recognizes that these other considerations are legitimately a part of the President's decision to grant a particular form and level of relief.

Our recommendation consists of two parts--(1) at the inception of OMAs, notify non-OMA countries that prompt enforcement action would be taken if their imports could potentially reduce the level of import relief originally provided to the domestic industry and (2) establish, if necessary, a trigger mechanism to prompt discussions with non-OMA countries in cases where increased imports are reducing the level of protection originally intended.

We believe that OUSTR agrees with the first part of our recommendation, since it cites this notification procedure as one element of its enforcement of the footwear import relief program. We believe that such a procedure should be part of all OMA import relief actions.

OUSTR appears to have misinterpreted our second point. We did not recommend that increases in imports from non-OMA countries should trigger consultations. What we recommend is that discussions with these countries be triggered in cases where increased imports are reducing the level of protection below that originally intended. OUSTR was also troubled by our use of the word "trigger" which it interpreted to mean rigid automaticity. This rigidity was not intended, and we believe this approach allows for desired flexibility and interagency evaluation of national economic interest considerations. Discussions will not necessarily result in extending relief to imports from non-OMA countries, since the decisionmaking process will continue to provide for consideration of the full range of national and international interests and concerns.

We believe this approach is needed if the petitioning domestic industry is to receive the agreed protection from import competition for the period during which adjustments are made to become more competitive. Effective import restraint is the other side of the coin to requiring commitment to specific adjustment strategies from petitioning industries.

In our opinion, our conclusions regarding the enforcement of the color TV and footwear import relief programs remain valid. We note no disagreement of fact, but rather of conclusion. We agree with OUSTR that the relief provided in these cases was intended to be selective and recognize the existence of a monitoring program. Our concern in the TV case is based on the amount of time (approximately 10 months) between the monitoring committee's determination that the import relief's effectiveness was being eroded and the extension of import restraint to Taiwan and Korea. In the footwear case, domestic capacity utilization showed no appreciable increase and actually fell in 1978, despite the executive branch expectation that import relief would increase domestic sales at the expense of imports. It also seems that the total import level of 370 million pairs of shoes in the period prior to import relief would be affected by the approximate 45 million pair reduction provided in the June 1977 OMAs with Taiwan and Korea. However, footwear imports in 1978 increased slightly to 373.5 million pair. It should also be noted that surges in 1979 (other than Italian "Candies" shoes) virtually negated the reductions effected by the OMAs.

#### Proposal for flexible tariffs

The OUSTR has strong reservations regarding flexible tariffs because (1) a tariff adjusted for exchange-rate movements on a trade-weighted basis would discriminate against smaller suppliers if the dollar exchange rates of major suppliers depreciate, (2) different duty rates for different exporting countries would violate international obligations under GATT and the equal treatment provisions of U.S. bilateral Treaties of Friendship, Commerce, and Navigation, (3) flexible tariffs would significantly increase the burden of administering import relief, and (4) tariffs adjusted for exchange-rate movements would probably require new legislation.

Our section on exchange-rate fluctuations was meant to bring to OUSTR's attention the difficulty caused by fluctuating exchange rates in attempting to establish a predictable and constant level of protection when a tariff is the form of import relief granted. Thus, we are recommending a feasibility study of a variable tariff as a means of providing a more consistent level of relief. Consistency is important, since we are also recommending that an industry provide specific adjustment strategies tied to the level of relief granted.

We recognize that there may be difficulties, administrative and legal, domestic and international, in implementing such a major policy change. Thus, we recommended that the feasibility of a flexible tariff be explored. It was not our intent to suggest that this be done unilaterally, because we agree that it would be more appropriately explored in a multilateral context.

Most of OUSTR's reservations result from a misunderstanding regarding the form of flexible tariffs suggested. The policy concerns cited by the OUSTR and its concerns vis-a-vis our international obligations would be relevant only if the tariff was adjusted and different for each individual country rather than a uniform tariff adjusted for exchange-rate movements on a trade-weighted basis.

Given the nature of exchange-rate fluctuations, we do not consider such a policy to be inherently discriminatory against smaller suppliers. Although smaller suppliers would be negatively affected if the major suppliers' currencies depreciated, they would benefit if the major suppliers' currencies appreciated.

There may be some additional administrative costs associated with flexible tariffs, but no one is currently in a position to say that these additional costs would outweigh the benefits to the program of possibly providing a more constant level of intended relief. Also, use of a uniform flexible tariff rather than a multiple tariff should greatly reduce any administrative burden. Such a policy could also potentially have a positive effect on consumer costs if the dollar were to depreciate vis-a-vis the foreign exporters' currencies. Adjusting the tariff downward in this case would prevent the U.S. consumer from paying too much as a result of protection as well as eliminate any unintended windfall for the protected industry. Similarly, if the dollar appreciates the adjusting industries would be assured a constant level of real protection.

Recommendation to limit the ability  
of labor and management to petition  
separately for import relief

OUSTR believes that our recommendation to the Congress to disallow petitions for relief unless they have the support of all parties expected to make adjustments would have the practical effect of curtailing labor's ability to petition. It points out that such a recommendation is counter to longstanding congressional policy that recognizes labor's right to petition for import relief. It also cites possible situations in which labor and management interests differ and believes this may give management an unfair advantage to demand labor concessions as a quid-pro-quo for joining in a petition; for example, the management of a multiproduct firm may find it more expeditious and profitable to discontinue operations and move to some other activity without regard for the welfare of workers.

We recognize the congressional policy of granting unions the right to petition for import relief. However, the law authorizes the 201 import relief program for the purpose of facilitating orderly adjustment to import competition. The problems of import-impacted industries usually cannot be solved without support of all elements of the manufacturing process. The connection between relief and adjustment breaks down if one segment of the industry is allowed to petition which cannot make the necessary adjustment commitments, such as investment in more productive equipment or moderation of wage demands. The practical effect of continuing to allow petitions from either management or labor, when support of both is required for successful adjustment, is to ensure failure in achieving the purpose of the legislation.

The example cited by OUSTR merely reinforces this argument. If management does not support the adjustment objectives of the relief as proposed by labor, what is the likelihood that it will undertake steps to reach those objectives? Also, while it may appear that labor will be the most negatively affected if such a recommendation were implemented, it should be kept in mind that labor will also be free to extract certain concessions from management in those instances where management needs the support of labor to petition. When specific adjustment strategies are required, for example, labor might ask for a profit-sharing or stock-option plan in return for wage moderation.

#### Mushrooms

OUSTR takes issue with our analysis of the Mushroom assurance for several reasons. First, the categorization of the assurance provided by the Taiwanese as a VRA is inaccurate. (See p. 71.) Second, our statement that a VRA is less enforceable than an OMA is incorrect since both are equally enforceable. Third, the type of mushrooms we said were covered by the assurance was also incorrect. Finally, we draw an erroneous conclusion that Taiwan exceeded its assurance during the 1978 crop year by 11 percent since it was impossible to draw this conclusion on the basis of trade statistics collected and reported by the U.S. Government at that time.

We appreciate the efforts to improve the factual accuracy of this section and have made changes where appropriate. The technical description of the item covered by the assurance has been corrected. We have also eliminated the use of the acronym VRA to denote a voluntary restraint assurance. This should eliminate any confusion between an assurance (letter of intent) and an agreement under legislation.

Regarding our erroneous conclusion that Taiwan exceeded its assurance by 11 percent during crop year 1978, the OUSTR is correct in pointing out that it would be impossible to make that determination. U.S. statistics at that time did not reflect the desired breakouts that would make such a determination possible.

However, by 1979, statistics were in place to make reasonable calculations. The Department of Agriculture made such calculations for OUSTR and its analysis shows that the assurance for the shipments in 1979 was exceeded by 15 percent and noted that Taiwan probably exceeded the agreed upon quantity in 1978. The fact that the assurance included terms which we could not monitor at the time was a deficiency in itself.

## CHAPTER 5

### SECTION 203 EXTENSION INVESTIGATION

A section 203 investigation provides for reviewing the probable economic effects on the industry of terminating, extending, or reducing import relief. The mechanics of a 203 investigation are somewhat similar to those of a 201 investigation in that the (1) ITC makes the investigation, including hearings, and issues a report, (2) TPSC makes a recommendation to the President, and (3) President then decides whether or not to extend or terminate the relief. Four key differences, however, distinguish a 203 investigation from a 201 investigation: (1) ITC's Office of Industries is somewhat more familiar with the industry, since it was involved in monitoring the condition of the industry during the import relief period, (2) a determination is made concerning progress by the industry's firms in adjusting to import competition, with specific adjustment steps taken by the industry identified by the ITC, (3) ITC, in advising the President, is required to take into account the national and international implications of any extension, reduction, or termination of import relief, and (4) the President's decision is not subject to the possibility of a congressional override.

#### LEGISLATIVE BACKGROUND

The legislation provides that a 203 investigation can be activated by the President, ITC, or industry involved. The President or the ITC may initiate a 203 investigation at any time; the industry must file a petition no sooner than 9 months and no later than 6 months before the expiration date of the relief. Unlike a 201 investigation, which the ITC is statutorily required to complete in 6 months, there is no statutory requirement for 203 investigations; a review of two cases, however, showed that they were completed in about 4 to 5 months.

The legislation specifically provides for a public hearing and directs ITC to take into account all economic factors which it considers relevant, including the national and international considerations set forth in section 202(c) and the industry's progress and specific efforts to adjust to import competition.

#### INVESTIGATIVE PROCEDURES AND DECISIONMAKING PROCESS

At the time of our review, six section 203 investigations had been completed, as summarized on the following page.

The 203 investigation proceeds much the same way as in a 201 case, including industry questionnaires, briefs submitted by interested parties, public hearings, etc. One major difference is that by the time a 203 investigation is initiated, the ITC is usually somewhat more familiar with the industry in question, particularly if it has been monitoring the industry's progress as

Section 203 Investigations Completed

<u>Commodity/product</u>	<u>Year</u>	<u>Requester</u>	<u>ITC advice on extension</u>	<u>President's action</u>
Certain ceramic tableware	1976	Industry	Termination on some categories would have an adverse effect	Relief extended on certain articles
Certain alloy tool steel (bearing steel)	1977	OUSTR	Termination would have a negligible effect	Relief terminated
Stainless steel & alloy tool steel	1977	OUSTR	Termination would have a serious adverse economic effect	Relief not terminated except for chipper knife blade steel and bandsaw steel
Certain ceramic tableware	1978	OUSTR	Termination would have minimal effect	Relief terminated
Stainless steel & alloy tool steel	1979	Industry	Split decision	Relief extended
Color television receivers & subassemblies thereof	1980	Industry	Termination would have an adverse economic effect on the domestic industry except for complete and incomplete receivers from Japan	Relief extended on imports from Korea and Taiwan, relief terminated for Japan

is sometimes required in the Presidential proclamation implementing the relief. This information resides in the Office of Industries, which appears to have a much greater role in a 203 investigation than it does in a 201 investigation; this tends to have a positive impact, since institutional expertise has been built up during the monitoring process.

After the ITC prepares its report, it is sent to the President through the U.S. Trade Representative in the form of advice rather than a recommendation. The TPSC then follows essentially the same decisionmaking process as for a 201 review. (See ch. 3.)



IDENTIFICATION OF SPECIFIC  
EFFORTS TO COMPETE

Specific adjustment steps taken by the industry are identified by the ITC; for example, in the color TV investigation, the following question was addressed to all domestic manufacturers.

"What specific actions have been taken by your firm to adjust to import competition? Please explain in detail the particulars for such actions or programs and the date(s) implemented. General statements such as 'increased marketing and sales efforts, instituted a cost-cutting program, began a value engineering program, etc.,' will not serve the Commission's needs. Details of manufacturing consolidations, redesign of products, investments in new plant and equipment, increase in offshore operations, innovations, changes in financial arrangement, etc., should be provided. If such programs by your firm are not expected to show positive results until some future date, please provide your estimation of that date."

NATIONAL AND INTERNATIONAL  
IMPLICATIONS OF IMPORT RELIEF

ITC, in advising the President about the probable economic effect on an industry of extending, reducing, or terminating import relief, is mandated by legislation to take into account all economic factors which it considers relevant, including the national and international considerations found in section 202(c) (1)-(9) of the Trade Act.

ITC's advice is submitted to the President through the OUSTR, who coordinates an interagency review before making recommendations to the President. A decision is then made to extend, modify, or terminate the existing import relief.

OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE  
EXECUTIVE OFFICE OF THE PRESIDENT  
WASHINGTON  
20506

April 17, 1981

Mr. J. K. Fasick  
Director, International Division  
United States General Accounting  
Office  
Washington, D.C. 20548

Dear Mr. Fasick:

I am responding to your March 12 letter to Ambassador Brock regarding the General Accounting Office (GAO) proposed draft report to the Congress on Administration of the 201 Import Relief Program--Some Changes Needed. Your letter requested written comments from this Office, on behalf of Executive Branch agencies involved in the Trade Policy Committee's consideration of Section 201 import relief cases.

This letter transmits comments on the proposed GAO report on behalf of the following agencies: the Office of the United States Trade Representative (OUSTR); the Departments of Commerce, Labor, State, Treasury, Agriculture, Justice, and Interior; and the Council of Economic Advisors. Our comments are based on the draft GAO report as transmitted to the OUSTR on March 12. To the extent that review of this draft report within the GAO has resulted in revisions to the March 12 version, our comments may not be relevant.

The remainder of this letter provides substantive comments on a number of policy issues raised in the GAO report. Our Office has already given your staff technical comments on the report.

Explanations of the Rationale for President's Import Relief Decisions

The OUSTR agrees with GAO's view (see page iv of the GAO report) (now p. iii) that it would be desirable to provide the Congress with more detailed explanations of the President's import relief decisions. The OUSTR would be willing to provide the Chairmen of the House Ways and Means Trade Subcommittee and the Senate Finance International Trade Subcommittee with brief reports which summarize the TPSC analysis of the case and include a discussion of the section 202(c) criteria within 2 weeks of announcement of the President's decision to grant or deny import relief.

Petitioner Adjustment Strategies

Regarding the discussion of petitioner adjustment strategies (on pages 58-62 of the GAO report), we share GAO's interest in ensuring that provision of import relief fosters rather than impedes the adjustment process. The OUSTR, in conjunction with other TPSC agencies, would be willing to consider developing procedures to provide for additional emphasis on "adjustment" issues in the initial Executive Branch Section 201 decisionmaking process and for periodic (perhaps biannual) OUSTR requests for USITC evaluations of industry adjustment efforts during the relief period (under the authority provided by Section 203(i)(1) of the Trade Act). (now pp. 37-41)

The GAO's recommendations (on page iv of the report) regarding tying of relief to petitioner compliance with mutually agreed adjustment strategies raise some basic questions regarding the degree of government intervention in business decisions. We are not persuaded that GAO's approach of requiring specific, written industry/firm adjustment commitments is practicable or advisable. We feel that the objective of promoting adjustment is best served by: (1) having industries and their workers continue to make their own decisions regarding appropriate and feasible adjustment strategies; and (2) ensuring that there is thorough U.S. Government attention to these adjustment plans in the Executive Branch decisionmaking process.

Recommendation to Limit the Ability of Labor and Management to Petition Separately for Import Relief

On page v of the report, GAO recommends that the Congress amend current escape clause laws so as to require joint management and labor petitions for import relief unless it is evident that adjustment commitments will be sought from only one of these two segments. In our view, enactment of this GAO proposal will have the practical effect of withholding from labor the right given to it by Congress to seek relief whenever imports cause or threaten to cause the loss of jobs. Further, the GAO proposal may have the unintended effect of preventing labor from seeking relief in legitimate situations in which its interests differ from those of management and may give management an unfair advantage to demand labor concessions as a quid pro quo for joining in a petition. Though we are sympathetic to GAO's concern that any relief granted result in effective adjustment, we believe that the GAO proposal is not the proper vehicle for accomplishing this objective.

The Trade Agreements Extension Act of 1951, which legislated escape clause import relief, provided that the Congress, selected Congressional Committees, the U.S. Tariff Commission, or other "interested parties" could petition for escape clause investigations. In the Trade Agreements Extension Act of 1958, Congress clarified the identity of the interested parties and explicitly recognized the right of workers to petition for import relief. The Committee on Ways and Means report on the Act states:

...the bill contains a committee amendment to Section 7(a) of the Trade Agreements Extension Act of 1951, which makes it clear that organizations or groups of employees can file an application for an escape clause investigation. This amendment is aimed at removing any doubt that employee organizations or groups of workers who are or have been employed in a particular industry are qualified to make application for escape clause investigations even though management does not join in the application. Such applications of employee organizations or groups of employees must of course conform to reasonable rules which the Tariff Commission is authorized to adopt (p. 8).

While in most escape clause cases the interests of labor and management in seeking import relief coincide, there are situations in which they may not. For example, a multinational corporation or a domestic operation with several diverse production facilities may not have the incentive to seek import relief if the segment of its total operations affected by imports is small. Management may find it more expeditious and profitable to discontinue operations and move to some other activity without regard for the welfare of workers. The availability of import relief may induce management to continue to operate and undertake strategies to become more competitive or may facilitate workers to take over the operation with the same objective.

In summary, the GAO proposal, by curtailing the ability of labor to petition for import relief, may create inequities which make the implementation of this proposal undesirable. We are not persuaded that the case for specificity of adjustment plans presented by the GAO is strong enough to reverse the longstanding principle formulated by Congress which recognizes that the interests of labor and management in the well-being of U.S. industries may not always be congruent. We believe that objective of more specific adjustment plans can be accomplished through increased OUSTR and interagency attention and emphasis on adjustment issues in escape clause cases, as discussed in the section on petitioner adjustment strategies above.

Enforcement of Footwear and TV Import Relief

The OUSTR does not support the GAO recommendation (on page iv of the GAO report) that increases in imports from uncontrolled sources (i.e. countries not subject to OMA import restraints) "trigger" consultations with foreign supplying countries. While we agree that increases in imports from non-OMA sources merit careful consideration, we have serious problems with the degree of automaticity and the lack of flexibility implied by this GAO recommendation. Decisions to expand the coverage of OMAs to additional countries or to consult with foreign governments on this issue are based on an interagency evaluation of the national economic interest (including the section 202(c) criteria). Since there are many factors considered in deciding when to take follow-up action with countries not initially covered by OMAs, it would not be desirable to establish an automatic trigger mechanism for this purpose. Flexibility is needed to deal with individual situations as they arise. For example, surges in imports from non-OMA sources at a time when total U.S. imports are declining might not be considered disruptive and consultations with foreign supplying countries might not be warranted in such a case.

We also take issue with the discussion of enforcement of footwear and TV import relief on pages 65-72 of the GAO report. The fact that selective OMA relief (as opposed to comprehensive quota relief) was chosen indicates that we did not intend to limit all sources of either shoe or color TV imports as the GAO report seems to imply. Increases in imports from non-restricted sources represent a form of degressivity, as contemplated in section 203(h)(2) of the Trade Act of 1974. Moreover, both the shoe and TV import relief programs included thorough monitoring of actual and forecasted imports from non-OMA sources as well as numerous follow-up actions by the OUSTR to consult with, and in some cases, seek additional OMAs with countries not originally subject to restraint. (now pp. 41-47)

In the color TV case, the interagency monitoring committee submitted to the OUSTR in late March 1978 a report on domestic industry and trade developments which included forecasts of 1978 U.S. imports by country. As noted on page 67 of the GAO report, a decision was made in early August 1978 to seek OMAs from Korea and Taiwan, whose TV exports to the United States were forecast to offset the reduction in imports from Japan. By that time, an additional 4 months of available U.S. import data confirmed the validity of the monitoring committee's forecast. During the last 4 months of 1978, the OUSTR held negotiations with Taiwan and Korea; OMAs were signed with these countries by year end and were in effect for nearly half the duration of the 3-year relief period. (now p. 44)

Regarding footwear import relief, shortly after announcement of the President's decision to grant relief, the State Department notified foreign footwear supplying countries that "sudden shifts in trade which disrupt our market and interfere with the President's adjustment assistance program would not be acceptable." These countries were also notified that the United States would monitor imports and that, if new problems were to arise, the U.S. Government would consult with them on ways to avoid disruption of our domestic market.

Two months after import relief went into effect, the OUSTR first expressed concern to Hong Kong regarding possible Taiwanese circumvention of import relief through Hong Kong. Ongoing consultations with the Government of Hong Kong resulted in implementation by that Government of a certificate of origin system which moderated the sharp increases in footwear shipments from Hong Kong.

The OUSTR also consulted with Singapore, the Phillipines, Thailand, and others in response to increases in imports from these countries. In response to a potential import surge from Italy, consultations were held on several occasions with both Italian Government and EC Commission officials. The increase in imports from Italy was primarily attributable to a short-lived fad associated with "Candie's" type ladies' shoes. Once this fad ended, U.S. imports of Italian shoes fell sharply (from 97 million pairs in 1979 to 46 million pairs in 1980).

Except for 1979, when U.S. imports were inflated by the Italian "Candie's" shoes, annual U.S. footwear imports during the relief period were stabilized at 365-370 million pairs. Thus, it is not correct to conclude (as stated on page 72 of the GAO report) that (now p. 47) footwear import relief has not been effectively enforced.

Finally, in response to the GAO report discussion regarding the "intentions" of import relief, the OUSTR notes that any discussion of the intentions, effectiveness, and administration of import relief should reflect the fact that there are often multiple objectives associated with a decision to grant a particular form, level, and duration of import relief. In addition to our interest in remedying domestic industry injury (or preventing threatened injury from materializing) other considerations (such as mitigating the adverse impacts of relief on inflation, consumers, and U.S. international economic interests) also influenced the decisions to grant non-comprehensive relief in the footwear and TV cases. While Chapter 3 of the GAO report recognizes that these considerations are legitimately a part of the President's decision to grant a particular form and level of relief, Chapter 4 (Monitoring and Enforcement) ignores the fact that these objectives also play a role in subsequent decisions regarding additional import restrictions on countries whose exports were not originally subject to restraints.

Proposal for Flexible Tariffs

The OUSTER has strong reservations about the GAO recommendation (on page iv of the report) regarding flexible tariffs for the (now p. v) following reasons:

Policy Considerations: A tariff adjusted for exchange rate movements on trade-weighted basis would discriminate against smaller suppliers if the dollar exchange rates of major suppliers depreciate. Different duty rates for different exporting countries would tend to freeze relative import prices at an artificially selected time and would be unfair to an exporting country which is becoming more competitive relative to other countries exporting to the United States.

International Obligations: Different duty rates for different exporting countries would violate U.S. obligations under GATT Article I, which requires equal treatment to the products of signatories. Multiple tariffs are also inconsistent with the equal treatment provisions of our bilateral treaties of Friendship, Commerce, and Navigation, which the United States has with many trading partners.

Administrative Burden: The complexity of calculating these duty rates and the increased frequency of tariff changes would significantly increase the burden of administering import relief. Additional tariff changes would require more frequent changes in the Tariff Schedules of the United States, would increase the information Customs officials need to assess duties owed, and would unnecessarily increase the uncertainty of trade for businesses.

Legal Considerations: Tariffs adjusted for exchange rate movements would probably require new legislation. The Trade Act of 1974 does not explicitly authorize the President to administer flexible tariffs. It mentions only tariffs, tariff-rate quotas, quotas, and orderly marketing agreements. The Act does not permit an increase in import protection after the initial Presidential decision or a reduction or termination of import protection without the advice of the U.S. International Trade Commission and the Departments of Commerce and Labor. Without special authorizing legislation, interested parties could contest the legality of flexible tariff rates, arguing that they can substantially increase or decrease import relief.

GAO Recommendation to Delete Legal Requirement for Section 264 Report

(now p. iii)

On p. ii of its report, GAO notes that "there is some duplication of effort in certain reporting requirements" in the Executive

Branch decisionmaking process. Apparently, the GAO is referring to the fact that the legally required Section 264 Commerce Department report on Trade Adjustment Assistance (TAA) is redundant since the same information is obtained from the TPSC task force analysis of firm TAA (under Section 202(c)(2)). If so, we concur with the GAO's assessment that this Section 264 report constitutes an unnecessary duplication of effort.

#### Agency Voting Patterns

(now p. 33)

The OUSTER objects to reference on page 49 of the GAO report to agency votes in past cases on the grounds that agencies' recommendations to the President constitute privileged information. We also note that while agencies do differ on the emphasis they place on specific criteria used in determining whether and when import relief is appropriate, the agencies are not as rigid in their decisionmaking processes as the GAO report implies. Also, each agency's views are represented to the President, who makes the final decision. All agencies, regardless of their initial positions, work to develop a TPSC consensus on recommendations to the President.

#### Mushrooms

The section of the GAO report on the mushroom case is factually incorrect on several counts. First, the report refers in the subtitle on page 72 and throughout pages 73-74 to Voluntary Restraint Agreements (VRAs) negotiated with Korea and Taiwan on mushrooms. The OUSTER has no record whatsoever of any VRAs on mushrooms. We do, however, have written expressions of intent by exporting countries on their future plans for shipping to the United States. These can best be referred to as assurances. (now pp. 48 & 48-49)

Attached for illustration is one such assurance we received from the Government of Taiwan on November 16, 1978. Please note that the fourth paragraph states, "In conclusion, let me say that we do not consider this statement as an agreement but simply as an affirmation of our intentions." The attached letter is erroneously referred to in the second full paragraph of page 73 as a VRA.

Secondly, the GAO report states erroneously in the second paragraph on page 73 that "a VRA is less enforceable than an OMA..." A VRA negotiated under the existing legal authority of Section 204 of the Agricultural Act of 1956 is just as enforceable as an OMA. This statement on page 73 of the report is clear evidence that the nature of the assurances received from Taiwan and Korea on mushrooms is not understood by GAO. Such assurances are obviously not enforceable by the United States, while OMAs, and VRAs negotiated pursuant to the Agricultural Act, are. (now p. 48) (p. 48)



APPENDIX I

Finally, the facts noted and conclusions drawn in the second full paragraph on page 73 are incorrect. In its November 16, (now p. 48) 1978 letter, Taiwan stated that it planned "...to ship to the United States in the 1978 crop year (December 1, 1977-November 30, 1978) around...44.5 million pounds, drained weight basis, of canned mushrooms, exclusive of straw, frozen and dried mushrooms (emphasis added)." The GAO report errs in reporting Taiwan's assurances as, "...44.5 million pounds of frozen and dried mushrooms, drained weight and exclusive of straw mushrooms... (emphasis added)." The Taiwanese assurances applied to canned mushrooms not frozen, dried, and/or straw mushrooms.

In addition, GAO draws the erroneous conclusion in the second paragraph that Taiwan exceeded its assurance for shipments during the 1978 crop year by 11 percent. It is impossible to draw this conclusion on the basis of trade statistics collected and reported by the U.S. Government. In 1978, straw mushrooms, which were not covered by Taiwan's assurance, were included in U.S. import statistics for canned mushrooms. Hence, the excessive shipments cited by GAO as reflected in U.S. trade statistics could very well have been straw mushrooms not covered by the assurances.

Sincerely,



Ann H. Hughes  
Chairman  
Trade Policy Staff  
Committee

Attachment

Embassy of the Republic of China  
2311 Massachusetts Avenue, N.W.  
Washington, D.C. 20008

November 16, 1978

Dear Mr. Ambassador:

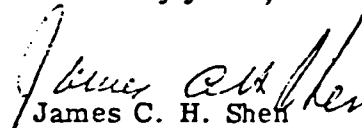
You recall our exchange of letters on March 11, 1977, pertaining to your concern about the level of U. S. mushroom imports from my country. In my letter I assured you that our sales to the United States would not increase at such a rate as to disrupt the United States market in any way. I also assured you of my government's readiness to consult with you at any time and cooperate with you if problems of market disruption should arise.

In this regard, I would like to inform you that if our share in U. S. mushroom imports does not show a decrease, we agree to ship to the United States in the 1978 crop year (December 1, 1977-November 30, 1978) around 1,850,000 cases or roughly 44.5 million pounds, drained weight basis, of canned mushrooms, exclusive of straw, frozen and dried mushrooms. We also intend to observe the same level during the 1979 crop year. Both of these levels are approximately the same as what we exported to your country during the 1977 crop year.

In conclusion, let me say that we do not consider this statement as an agreement but simply as an affirmation of our intentions.

I appreciate your cooperation in this matter and can assure you of our continued effort to live up to the positions as stated in the letters we exchanged on March 11, 1977.

Sincerely yours,

  
James C. H. Shen  
Ambassador of the  
Republic of China

H. E. Ambassador Alan Wm. Wolff  
Office of the Special Representative  
for Trade Negotiations  
1800 G Street, N.W.  
Washington, D. C. 20506

CHAIRMAN



---

UNITED STATES INTERNATIONAL TRADE COMMISSION

---

WASHINGTON, D.C. 20436

April 10, 1981

Mr. J. K. Fasick, Director  
International Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Fasick:

Thank you for your letter of March 12, 1981, and the accompanying copy of your draft report to the Congress on "Administration of the 201 Import Relief Program--Some Changes Needed." The Commission has reviewed the report and is submitting herewith its written comments. The comments were prepared as responses to the specific recommendations made on pages 27, 28, 78, and 79 of the report concerning the Commission's role in the 201 import relief process. (now pp. 15, 19, 22 & 52)

On the basis of the cases examined from the 1976-1978 period, the GAO has cited a number of issues which have been of interest to the Commission for years. The Commission could endorse many of the GAO recommendations. But, as will be noted, the Commission has already identified and taken steps to correct these problems.

If you have any questions concerning the attached comments or you require any additional information, please contact me on 523-0133 or Mr. Charles Ervin, the Commission's Director of Operations, on 523-4463.

Sincerely yours,

A handwritten signature in cursive script that reads "Bill Alberger".

Bill Alberger  
Chairman

Attachment

Recommendation

The International Trade Commission should insure full participation by the Offices of Economics and Industries, as well as the Office of Investigations.

Response

It is an ongoing management concern of the Commission that all its offices and employees make the fullest possible contribution of their expertise to our investigations. There is full participation by the Offices of Economics and Industries in all our investigations, including escape-clause cases. At least one and often more than one representative from the Offices of Industries, Economics, and the General Counsel is assigned to each 201 investigation, in addition to representatives from the Office of Investigations. The Commission approves these staff assignments. In addition, a nomenclature analyst from the Office of Tariff Affairs must approve all notices and reports issued in connection with these investigations. The Office of Data Systems reviews and approves all reports for the accuracy of the statistical data contained therein, and all final reports are reviewed by our Editorial Section before they are released for publication. Thus, the investigative process at the Commission is a total team effort, involving full participation by all Commission offices which can contribute to an investigation.

The four investigations which were examined in depth--color television receivers, citizens band radio transceivers, high-carbon ferrochromium, and color fasteners--were conducted by the Commission between September 1976 and January 1977. During this period, the Commission approved and implemented a reorganization plan, which became effective on January 4, 1977. An Office of Operations was established under the Deputy Director of Operations in order to exercise central control over investigations by having one person bear the

## APPENDIX II

primary responsibility for gathering information and preparing the report in each investigation. However, the investigator was to obtain assistance from individuals in the Offices of Economics and Industries on each investigation and from other Commission offices on an as-needed basis. In the early stages of an investigation, the person assigned from the Office of Industries was to assist in developing a mailing list, designing questionnaires, and defining the products to be included in the scope of the investigation. The person assigned from the Office of Economics was to assist the investigator in developing the price section of the questionnaires. Comments and suggestions on prehearing and final staff reports were requested from these offices prior to the reports' being put in final form for distribution to the Commission. Representatives from other offices were requested to provide input to investigations on an as-needed basis.

The level of participation by representatives of other offices during the months following this major reorganization varied by investigation. Informal moves to insure more participation occurred during 1977 and 1978 and culminated in official assignments of analysts and economists to all 201 and 203 investigations beginning in March 1978. On January 2, 1980, the Commission changed the alignment of its staff organization to establish a separate Office of Investigations with responsibility for all statutory investigations of the Commission (see attached new organization chart). At the same time, the Commission, recognizing the need for full participation by all Commission offices in investigations, implemented a policy whereby an investigative team, under the supervision of a supervisory investigator, is assigned to each investigation. All the Commission's principal offices--Investigations, Industries, Economics, and the General Counsel--are represented on the investigative teams.

Recommendation

Improve financial analysis and technological expertise. If these types of expertise cannot be fully developed in-house, ITC should consider using consultants as team members.

Response

We recognize that the financial analysis in Commission reports should be improved and have taken several specific measures to accomplish this. Since May 1980, two experienced accountants have been assigned to the Office of Investigations on a full-time basis to assist each 201 investigating team with respect to financial analysis. In addition, all members of the investigative staff have taken or are scheduled to complete within the next 2 months an in-house training course, Financial Analysis for Nonfinancial Executives, provided by the Wharton School. Several members of the investigative staff have taken or are currently taking accounting courses from local universities. In addition, when we hire new investigators, we look for persons having an educational background or work experience in the area of accounting or financial analysis.

In the area of technological expertise, analysts in the Office of Industries are improving their knowledge of the technology and technical advancements in each of the industries for which they are responsible through field trips to plants, frequent contacts with industry officials, and attendance at training courses or industry conferences. The Office of Economics has obtained advanced data processing equipment to aid in the development of econometric models and to improve the forecasting capabilities of the Commission's economists.

We do not agree that the ITC should consider using consultants as members of its investigative teams. We believe this is consistent with statements of Members of Congress discouraging Government agencies from contracting for such services. We have explored the possibility of using consultants in the past but have not found an efficient method of hiring them on a timely basis. The tight statutory deadlines for investigations which are imposed on the Commission do not allow sufficient time to select a consultant through competitive bidding and have an acceptable product returned in time to be incorporated in the staff's final report to the Commission. In addition, our experience has shown that many of the business firms which are required to provide the Commission with highly sensitive business data would be reluctant to furnish this information if they knew it would be reviewed by outside consultants. Furthermore, some of the most capable consultants would not be interested in working for the Commission if we imposed rigid conflict-of-interest limitations on their acceptance of future work from the industry involved in our investigation.

Although it is our view that it is not cost effective to use consultants as team members on investigations, the Commission has hired consultants to improve the investigative process as a whole. For example, the financial analyst mentioned on page 14 of the GAO report was a consultant who was hired to develop (now p. 11) a 20-hour financial analysis course for all investigators and to work with individual investigators to improve their skills in financial analysis on specific investigations. The Commission will continue to hire consultants in the future for comparable projects for the purpose of improving the overall investigative process.

Recommendation

The International Trade Commission should insure data verification from firms with multiproduct operations or with sophisticated accounting procedures by requiring the petitioner's certified public accountants to certify the accuracy of data presented for deliberations and followup.

Response

We believe that the Commission has a strong ongoing data verification program. Both an investigator and a statistical assistant review questionnaire responses to determine whether there are any apparent errors in the document prior to the data's being tabulated. Entries that appear to be of questionable validity are immediately discussed with the respondents. Financial data from the questionnaires are reviewed by an accountant, who checks any questions he might have concerning allocation of costs and questionable accounting practices with the respondent. If necessary, the accountant will visit a producer and verify what he believes to be questionable financial data. The economist assigned to the case reviews pricing data and data on lost sales. Such data are frequently verified by the submission of invoices and salesmen's reports. The accuracy of the statistical tables presented in the Commission reports are checked by a statistician in the Office of Data Systems.

In addition, the Commission requires that each questionnaire returned in connection with an investigation contain a certification statement, signed by an appropriate officer of the company (president, treasurer, controller, and so forth), stating that the information supplied in response to the questionnaire is complete and correct to the best of the official's knowledge and belief. The Commission also requests that companies submit copies of their completed auditors' reports showing their profit-and-loss experience in producing the



## APPENDIX II

product which is the subject of the investigation. If certified copies of auditors' reports are not available, or if they do not give enough detail to substantiate the information reported, companies are requested to submit copies of their internal reports or other reports prepared by their accountants which will show their profit-and-loss experience on such products. Firms are also required to submit any annual reports to stockholders, as well as 10-K forms submitted to the Securities and Exchange Commission. All these submissions are used by the Commission accountant assigned to the investigation as additional means of verifying the accuracy of the profit-and-loss information supplied in the questionnaire. It is our view that these procedures constitute an effective data verification process and that the certification by a petitioner's certified public accountant would in some instances result in delaying receipt of the data. Any such delay would be at the expense of the time available for analysis of the data and thus would be of considerable concern to the Commission.

Recommendation

The International Trade Commission should expand price analyses to require explanation of the possible underlying reasons (quality, delivery period, cost of raw materials or other, such as labor costs) for the price differences between imported and domestic products.

Response

Commission staff is on notice to seek out full explanations, where possible, of the underlying causes of the phenomena affecting an industry's performance. We have made several moves to expand price analyses since 1977-78, the period covered in the in-depth investigation review. The principal approach to expanding price analysis has been to reorganize and strengthen the Office of Economics, whose staff are responsible for obtaining and analyzing prices. The office reorganization included the creation of the Investigation Support Division, whose economists are assigned to investigative work on a full-time basis. This organizational change assures that the work of junior economists assigned to an investigation will be reviewed by senior economists to insure complete and accurate analysis. To strengthen its participation in all investigations, the Office of Economics has also recruited several new economists, including an experienced transportation economist. The latter's expertise will be particularly helpful in analyzing the impact of transportation costs in investigations where injury to a regional industry is an issue.

The current system provides for more extensive participation by economists in the analysis of prices for import-injury determinations and in the preparation of the Commission's questionnaires. Also, if the Commission is to recommend import relief to the President, the Office of Economics prepares an extensive analysis of prices for the Commission's consideration. This analysis includes estimating the effects on prices of alternative remedy proposals, such as tariffs, quotas, or tariff-rate quotas.

## APPENDIX II

The Commission's analyses of the underlying reasons for price differences between imported and domestically produced articles should be thorough; however, we recognize that questionnaires which request pricing information from a company in great detail tend to discourage prompt and complete responses. Accordingly, the staff assigned to each investigation (including the economist and accountant) devise the pricing section so as to obtain sufficient detail without imposing an undue burden on those who must respond. Although we do not take the position that price analysis is not important in a 201 or 203 investigation, we do note that it is less critical in these types than it is in dumping and countervailing duty investigations.

Recommendation

The International Trade Commission should include the Offices of Economics and Industries in a formal draft review process.

Response

We concur with this recommendation but a review process involving these offices has always been in effect. When the Staff Coordinating Committee (composed of the Directors of Investigations, Economics, Industries, and the General Counsel) was disbanded after the Commission's reorganization on January 4, 1977, senior review by these offices continued on every 201 investigation. Copies of final reports are sent to the Office of Industries, Economics, General Counsel, Tariff Affairs, and Data Systems for their review and comments prior to transmittal to the Commission.

The question of adequate review of investigative reports continues to be of concern to the Commission. The Director of Investigations schedules a meeting of the team assigned at the beginning of each investigation to discuss issues and problems which may arise and outlines procedures to resolve these questions early in the investigative process--before the questionnaires are drafted. Furthermore, additional time for senior review of both prehearing and final reports is being provided for in the work schedules for all current investigations and, in those involving particularly controversial issues, a meeting of the reviewers is scheduled to discuss the content of the final staff report.

In the event that there are differences of opinion among staff members concerning the content of reports, there is a procedure for informing the Commission of differing staff views. Most disagreements among staff members regarding reports relate to matters of fact which can be resolved through additional research and to nonsubstantive issues such as writing style and format.

## APPENDIX II

Disagreements on substantive issues probably do not occur in more than one out of every three or four investigations. In instances where **disagreements** primarily involve **legal** issues or nomenclature considerations, it is the practice of the Office of Operations to accept the advice of the General Counsel or the Office of Tariff Affairs as to what information will be included in the report. Where investigators, commodity analysts, and economists disagree concerning substantive issues such as the relevancy of certain data, the scope of the domestic industry, regional markets, the reliability or the interpretation of price and financial data, the supervisory investigator endeavors to resolve the differences. If an acceptable compromise is not reached, the views presented in the staff report generally reflect those of the supervisory investigator. It should be stressed, however, that staff members agree on the information presented on substantive issues in virtually all reports which are transmitted to the Commission.

The Commission's policy with respect to unresolved disputes on substantive issues permits staff members who believe that their views were not correctly or adequately presented in a staff document to submit dissenting or more comprehensive views in a memorandum to the Commission at the same time that the staff document is forwarded to the Commission. This policy was designed to assure the Commission that it was not being shut off from dissenting staff views. In addition, individual Commissioners generally meet with investigative teams prior to voting. At this time, they solicit the views of individual staff members concerning various issues involved in the case, and staff members are encouraged to present their points of view.

Recommendation

The International Trade Commission should require that the Commissioners fully explain the significance of critical facts used in making their decisions.

Response

The Commission agrees with the drafters of the report that Commissioners' opinions should clearly explain determinations. The statute and legislative history so require. 1/ However, the Commission disagrees with the conclusion of the report that opinions are "incomplete or unclear." 2/ The two examples of such incomplete or unclear opinions given by the GAO report drafters do not support the GAO report's conclusions.

On pages 32 and 33 of the GAO report, the drafters refer to discussion (now pp. 20 & 21) concerning the idling of productive capacity in the industrial fasteners industry, apparently in the views of Commissioner Bedell in investigation No. TA-201-37, Bolts, Nuts, and Large Screws of Iron or Steel (the GAO drafters do not expressly identify the opinion, but it apparently is that of Mrs. Bedell). The drafters conclude that Commissioner Bedell's statements on industry capacity utilization are "not supportable by the facts" in the "staff" report, that Mrs. Bedell should have used an alternative approach to calculating capacity use suggested by Commission economists, and that she should have cited possible shortcomings discussed in the Commission report concerning capacity utilization data.

The GAO report's comments on this opinion overlook several key considerations. First, Mrs. Bedell cites and quotes from the data in the Commission

---

1/ See § 201(d)(1) of the Trade Act of 1974, and pp. 120-21 of the Senate Finance report on the act.

2/ GAO report, p. 32.

## APPENDIX II

report (p. A-16). Thus, her conclusions are supportable by facts which are the best available. Second, the capacity utilization data which Mrs. Bedell cites are the only such data in the Commission report. Third, no matter how the data are calculated--i.e., whether "full" capacity is considered to be 100 percent of maximum capacity (allowing for normal maintenance downtime) or is arbitrarily set at 80 percent of the 100 percent level on the theory that the latter is unrealistically high--they still show the same economic trend, namely, that capacity utilization had declined very sharply from prior levels despite reductions in total industry capacity as a result of plant closings. And fourth, the report itself notes possible shortcomings in the capacity data.

In the second example, on page 33 of the GAO report, the drafters refer to a discussion concerning high-carbon ferrochromium inventories, apparently in the views of Commissioner Alberger in investigation No. TA-201-35, High-Carbon Ferrochromium (again, the report does not identify the actual opinion). The drafters assert that Mr. Alberger's opinion did not reflect "staff analysis" in the Commission report concerning reasons behind an inventory accumulation, that he did not explain the significance of the inventory information, and that he did not rebut staff analysis in a remedy paper that inventories were not excessive.

(now  
p.21)

The GAO report criticism is not realistic. First, the Alberger opinion, which supports a finding of serious injury (as opposed to a "threat" of serious injury) fully discusses each of the three economic factors which the statute requires to be discussed (capacity utilization, profits, and employment). Thus, the discussion in the opinion on inventory and other trends, while relevant, is of secondary importance. One is required to discuss trends when one has found a "threat" of serious injury. Second, the inventory analysis which is

## APPENDIX II

set forth in the attached Commission report (p. A-25; additional data are on p. A-77) is, as a practical matter, part of the opinion. The final report in an investigation is a Commission document, not a staff document, because the Commissioners approve the content of the report before it is released. Opinions are, among other things, analyses of information in the report. No Commissioner will approve a report that contains statements or conclusions that conflict with those to be expressed in his or her opinion. Thus, any analysis or conclusions in the report are those on which all Commissioners agree. Third, there was no need to rebut the staff analysis of inventories in the remedy paper. That paper was concerned with remedy, not injury, and was not prepared for the purpose of assisting Commissioners in their injury determination.



Recommendation

The International Trade Commission should require that reports on investigations include evaluations of petitioners' efforts to become competitive--including Government policies which may hinder competitive efforts.

Response

The Commission recognizes the requirements of section 201(b)(5) and in each investigation includes any information obtained concerning efforts of domestic firms to compete with imports in its report to the President. In cases where there is strong domestic competition, there may be little additional information to report to the President on adaptations made specifically to meet international competition. The Commission always seeks this information through specific questions in its producers' questionnaires and reports what it finds, both from responses to questionnaires and from information submitted by the petitioner in the petition, briefs, and testimony at the public hearing. Whenever appropriate, this information is given in a separate section on this subject. However, information on efforts to compete and Government policy affecting an industry may be spread among different sections of the report, reflecting the fact that there may be a number of areas in which firms and workers are making efforts to compete. For example, the report on certain fish did not contain a separate section on efforts to compete; however, it did contain an analysis of such efforts as the building of new vessels, the development of a frozen fish block industry, the pursuit of joint ventures with fishing fleets of other countries, and the development of underutilized species.

The Commission will endeavor to obtain more comprehensive information concerning the industry's efforts to compete in international markets.

AD-A106 586    GENERAL ACCOUNTING OFFICE WASHINGTON DC    INTERNATIONAL DIV    F/6 5/3  
CHANGES NEEDED IN ADMINISTERING RELIEF TO INDUSTRIES HURT BY OV--ETC(U)  
AUG 81  
UNCLASSIFIED    GAO/ID-81-42

NL

2 of 2

AD-A  
106 586



END

DATE  
FILMED

11-81

DTIC

Recommendation

The United States Trade Representative, in cooperation with the International Trade Commission, should require petitioners to submit more detailed adjustment strategies, tied to the level of relief granted, and monitor their compliance with the strategies. These strategies should be supported by operating and financing plans detailing planned actions and how they will be financed.

The two agencies should also periodically collect data on the conditions of all industries provided with import relief to determine whether their financial conditions have improved and what they have done to increase their competitiveness.

Response

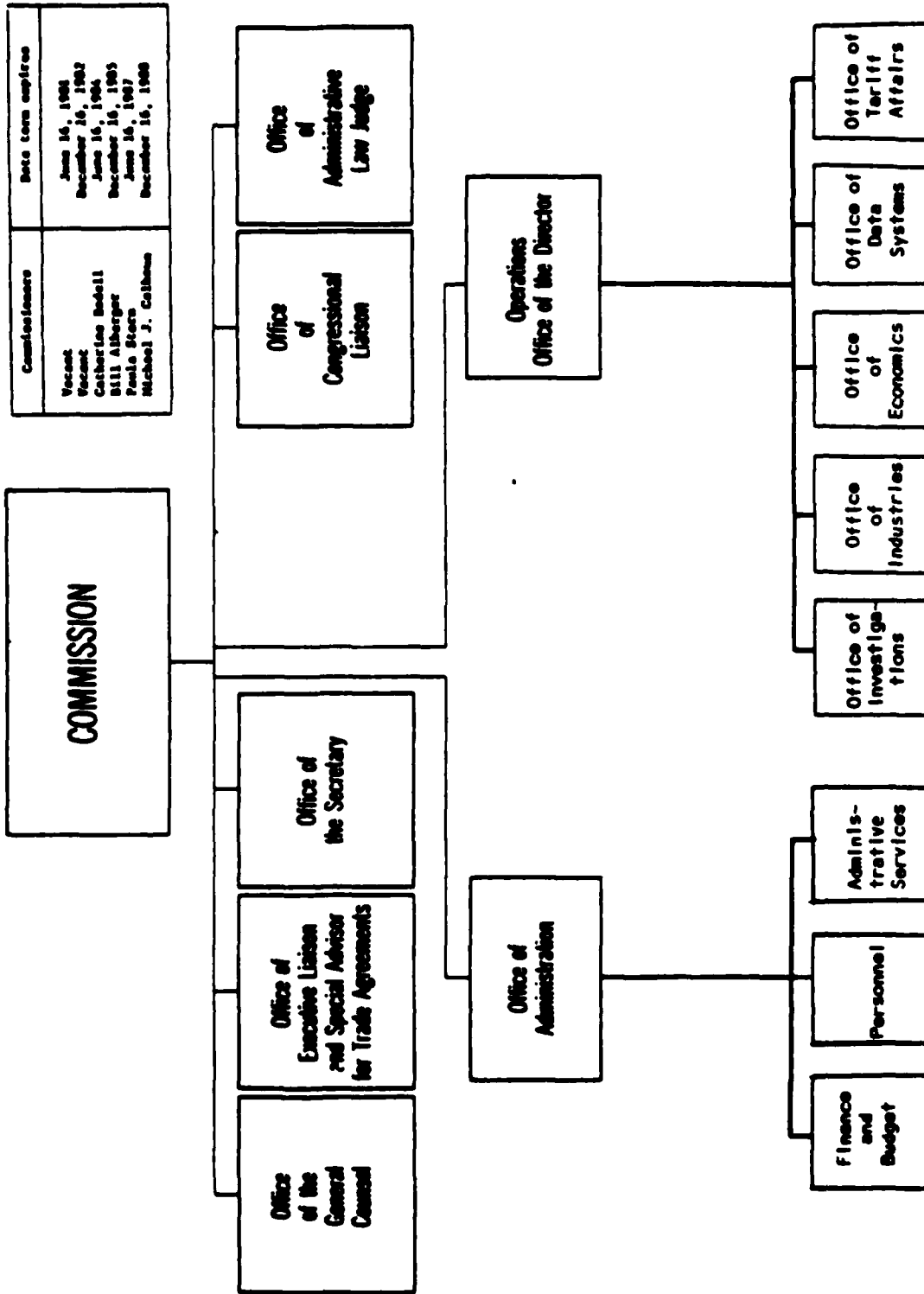
We do not agree that the Commission should become involved in negotiating detailed adjustment strategies, tied to the level of relief granted, with petitioners in escape-clause investigations. Since the President is the ultimate decisionmaker regarding the level of relief to be granted to a petitioner, we believe that executive branch agencies such as the United States Trade Representative and the Department of Commerce should negotiate any such detailed adjustment strategy. This is currently done by the Department of Commerce when it grants trade adjustment assistance to firms, and thus that agency has the requisite experience to negotiate and monitor detailed adjustment plans with escape-clause petitioners.

The Commission currently collects data on the condition of industries provided with import relief when instructed to do so by the President. Such Presidential instructions generally specify the frequency of the data collection and are usually contained in the Presidential proclamation of the import relief, which is published in the Federal Register at the same time. The President may

## APPENDIX II

also request, at any time during the period of import relief, that the Commission conduct an investigation under section 203(1)(1) of the Trade Act of 1974 regarding the industry's efforts to compete with imports. The President's memorandums to the United States Trade Representative on import relief in the porcelain-on-steel cookware and mushrooms cases instructed the USTR to request the Commission to conduct such investigations about midway through the period of import relief. Accordingly, the President has requested a review by the Commission of an industry's efforts to compete when he has determined that such a review is needed.

# UNITED STATES INTERNATIONAL TRADE COMMISSION



Commissioners	Date term expires
Vacant	June 16, 1981
Catherine Bebell	December 16, 1982
Bill Alberger	June 16, 1984
Paula Stern	December 16, 1985
Michael J. Colburn	June 16, 1987
	December 16, 1988

(483080)