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The Evolution of the Escape Clause: The United States' Quest for Effective Relief from Fairly Traded Imports

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NOTES

The Evolution of the Escape Clause: The United States’ Quest for Effective Relief from Fairly Traded Imports

The escape clause in U.S. international trade law is once more under congressional scrutiny, this time within the Omnibus Trade and Competitiveness Legislation of 1987. The escape clause provides the legal framework for relief in the form of quotas or other trade restrictions for a domestic industry injured by fairly traded imports. The clause is currently undergoing its third major revision since its appearance in U.S. statutory law in 1951, and is most controversial this time because of the nation’s immense $159.2 billion 1987 trade deficit.

This note describes the evolution of the U.S. escape clause and discusses its roots in the General Agreement on Tariffs and Trade (GATT), the various revisions it has experienced up to its present status, and the possible changes it will undergo by means of the pending trade legislation.

Article XIX of the GATT is the international basis for the U.S.
escape clause, currently embodied in section 201 of the Trade Act of 1974.7 The GATT clause was the realization of U.S. desires8 for a safeguard promise within the GATT which would allow states to waive their commitments or infringe upon agreed rules of conduct in the event of exceptional circumstances, such as the decline of inefficient domestic industries that fail to compete effectively with imports.9 The escape clause provides a means by which governments can literally “escape” GATT tariff concessions and thereby protect their interests from imports that are likely to injure domestic industries.10 The particular purpose of the escape clause in the GATT was to give more flexibility to the commitments undertaken, and to insure countries would not find themselves in such a rigid position that they could not resolve emergency trade situations.11 Article XIX was therefore aimed at remedying a temporary situation.

Article XIX, 1(a), entitled “Emergency Action of Imports of Particular Products,” expressly provides for certain protective action if, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products...12

8 U.S. pressures produced the GATT escape clause. As Jackson explains, the clause was a prerequisite for the U.S. signing the treaty:

U.S. participation in GATT was not a 'free-trade' move, but a 'free-trader' move. Legislative history of the 1945 Congressional debate on the law that authorized the United States to join GATT is replete with congressional complaints of injury to domestic industry through concessions in trade treaties. These complaints were answered by pointing to the U.S. practice of including an 'escape clause' in each of its agreements.

9 Lochmann, Japanese Voluntary Restraint on Automobile Exports: An Abandonment of the Free Trade Principles of the GATT and the Free Market Principles of the United States Antitrust Laws, 27 HARV. INT'L L.J. 99, 119 (1986) (“The shift towards industries with a comparative advantage is absolutely necessary to achieve the gains from international trade, but it is painful for declining industries and displaced workers.”). Though such a shift cannot really be considered exceptional, and can rather be expected, it is still considered an “unforeseen development” under GATT, supra note 6, art. XIX: 1(a). See also infra note 14 and accompanying text.
11 WORLD TRADE AND THE LAW OF GATT, supra note 6, at 554.
12 GATT, supra note 6, art. XIX: 1(a).
The phrase "in such increased quantities" has been interpreted as including an "increase relative to domestic production." Therefore, imports could actually decrease in absolute terms but rise relative to domestic consumption of the goods. The requirement that the imports be a result of "unforeseen developments" has become so lenient that "one can almost conclude that an increase in imports itself can be an unforeseen development." In practice, this requirement, along with the rule that the imports result from the effect of obligations incurred under the GATT, have been of virtually no significance.

The necessity of "serious injury" implies that the injury must be more severe than that concerning dumping and subsidies. In 1951, a GATT Working Party in the Hatter's Fur case concluded that the United States was entitled to the benefit of the doubt as to whether its domestic industry had suffered injury. This greatly expanded the interpretation of Article XIX, widening it perhaps more than was originally intended by many of the contracting parties.

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14 World Trade and the Law of GATT, supra note 6, at 561 (discussing Report on the Withdrawal by the United States of a Tariff Concession Under Article XIX of the GATT, Geneva, Nov. 1951 (Sales No. GATT/1951-53) [hereinafter Hatter's Fur case]). See also Lowenfeld, Fair or Unfair Trade: Does It Matter?, 13 Cornell Int'l L.J. 205, 218 (1980). If such an increase in imports itself can be an unforeseen development, "there really is no requirement of concession at all other than the fact of an increase in imports; the only real condition for invoking Article XIX is the existence of injury." Id. at 218.

15 International Trade Regulation, supra note 13, at 291. It is worth noting that the unforeseen development requirement has never been given force in U.S. legislation, and the effect of obligations link was removed in the Trade Act of 1974. See text accompanying infra note 71.

16 International Trade Regulation, supra note 13, at 291. Article VI requires "material injury." See World Trade and the Law of GATT, supra note 6, at 407-38. It has, nevertheless, been said that fair and unfair trade have actually similar criteria which look to the importing and not the exporting country. Lowenfeld states, "I find it hard to believe that the word 'serious' before injury in Art. XIX is powerfully different from the word 'material' before injury in Article VI." Lowenfeld, supra note 14, at 218.

17 Although no single, definite dispute settlement procedure exists in GATT, this Working Party was once put together to deal with an Article XIX problem. World Trade and the Law of GATT, supra note 6, at 201-48. See also, Comment, The GATT Dispute Settlement Procedure in the 1980's: Where Do We Go From Here?, 5 Dick. J. Int'l L. 82 (1986).

18 In 1951, the U.S. Tariff Commission withdrew a concession (negotiated in 1951 in Geneva) pursuant to a successful invocation of the United States escape clause by the Hatter's Fur industry. The withdrawal was challenged by Czechoslovakia, and the GATT set up a Working Party to review the matter. See Hatter's Fur case, supra note 14.

19 International Trade Regulation, supra note 13, at 291.
The phrase "domestic producers in that territory of like or directly competitive products" is intended to be broader than the term "like products" alone.\textsuperscript{20} The definition is such that if imports can be said to truly cause injury, it seems "that in most cases that is evidence that they are 'directly competitive.'"\textsuperscript{21}

Upon fulfillment of the requirements outlined, the party invoking Article XIX may withdraw or modify a trade concession or impose a quantitative restriction on the product.\textsuperscript{22} In practice, the latter has been imposed about twice as often as raising tariffs.\textsuperscript{23} It is generally held that the invoking party's measures must not discriminate between exporting countries,\textsuperscript{24} in compliance with the most favored nation obligation found in Article I of the \textit{GATT}.\textsuperscript{25} When a contracting party takes escape clause action, it must give written notice to the other contracting parties, with an exception made for "critical circumstances where delay would cause damage."\textsuperscript{26} The contracting parties to the \textit{GATT} have no adjudicatory role in invoking the escape clause, although a Working Party was set up once with respect to the Hatter's Fur case.\textsuperscript{27}

Furthermore, there is general agreement that safeguard measures are not meant to protect domestic producers for an unlimited period of time.\textsuperscript{28} Instead, they "are emergency measures which should therefore be temporary by definition and progressively liberalized during the period of their application."\textsuperscript{29} Thus, Article XIX is designed only for temporary relief from competing imports, and is not meant to continually protect domestic industries from the consequences of international free trade.

Article XIX had been invoked more than one hundred times by the early 1980s.\textsuperscript{30} The United States has invoked the clause the most times, but more recently Canada\textsuperscript{31} and the European Economic

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\textsuperscript{20} \textit{World Trade and the Law of GATT}, supra note 6, at 561 n.16.

\textsuperscript{21} Id. See also infra note 66, for how these terms apply to U.S. statutory law.

\textsuperscript{22} Sauermilch, \textit{Market Safeguards Against Import Competition: Article XIX of the General Agreement on Tariffs and Trade}, 14 \textit{Case W. Res. J. Int'l L.} 83, 94-95 (1982) ("The imposition of a quantitative restriction must be understood as a departure from the general obligation to refrain from quantitative restrictions under Art. XI.").

\textsuperscript{23} \textit{International Trade Regulation}, supra note 13, at 292.

\textsuperscript{24} See generally M. Bronckers, \textit{Selective Safeguard Measures in Multilateral Trade Relations} (1985).

\textsuperscript{25} Art. XIX, although an escape clause, still requires that MFN treatment be maintained. \textit{World Trade and the Law of GATT}, supra note 6, at 564-65.

\textsuperscript{26} \textit{GATT}, supra note 6, art. XIX: 2. See also \textit{World Trade and the Law of GATT}, supra note 6, at 564.

\textsuperscript{27} \textit{International Trade Regulation}, supra note 13, at 293. See supra notes 17 & 18.

\textsuperscript{28} Nothing in \textit{GATT} makes this rule mandatory.

\textsuperscript{29} \textit{Report by the Chairman of the Council to the Fortieth Session of the Contracting Parties, Safeguards, GATT BISD,} 31st Supp. 196, 137 (1985).

\textsuperscript{30} See Sauermilch, supra note 22, at 96. See also M. Bronckers, supra note 24, at 31, for a table listing all actions taken with recourse to Article XIX up through 1978.

\textsuperscript{31} Although Canada's first manufacturing escape clause case did not come until 1971, recourse has picked up and recently been taken in the form of short term surtaxes on
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Community\(^{32}\) have been frequent users. Despite the presence of domestic safeguard statutes worldwide, criticism of Article XIX has risen in recent years.\(^{39}\) It has been argued that the GATT escape clause is fairly cumbersome to apply and easy to circumvent,\(^{34}\) reflected by its relatively minimal use during its forty year history. As a result of its failure to provide a solid basis for domestic short term protection, countries have alternately bypassed Article XIX altogether, and have instead looked towards voluntary export restraints (VERs) or other protectionist measures outside the realm of the GATT.\(^{35}\) Critics have asserted that the GATT escape clause needs more effective provisions on multilateral control, and also needs guarantees on the actual temporary character of the protectionist action.\(^{36}\)

There has been no real revision of Article XIX since its adoption,\(^{37}\) and a change may be necessary to achieve "trade liberalization, to prevent more serious protectionist legislation from being enacted, and to reduce pressure on countries to solve their economic problems outside the multilateral framework."\(^{38}\) Perhaps the current revisions of the U.S. escape clause reflect the inadequacies of both the U.S. statute and the provisions embodied in the GATT, and

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Section 8(2) of the Customs Tariff Act provides for relief where it appears to the Governor Council that, upon a report by the Minister of Finance, imports from any country cause or threaten to cause serious injury to Canadian producers of like or directly competitive goods. Customs Tariff Act, CAN. REV. STAT. ch. C-41, § 8(2) (1970).

\(^{32}\) The European Economic Community also has codified an escape clause. See Regulation 288/82, O.J. EUR. COMM. [No. L 35] 1 (1982). It provides for a formal investigation by the EEC Commission after consultations with an advisory committee of the Member States. The procedure consists of surveillance of imports, followed by safeguard action upon an affirmative finding of injury. See Lussenburg, New EEC Safeguard Measures: Regulation 288/82, 16 CASE W. RES. J. INT’L L. 337, 363 (1984). Lussenburg holds Regulation 288/82 changes the GATT standard of safeguard application, permits protective measures to be applied selectively, and fails to provide adequate consultation procedures before implementation of such measures. Id. at 363.

\(^{33}\) Art. XIX is one the most controversial clauses in the GATT, because unlike other provisions, the criteria are less defined and more subjective. Lussenburg, supra note 31, at 339.

\(^{34}\) Merciai, supra note 10, at 49.

\(^{35}\) Id.

\(^{36}\) Id. Thus, obligations under GATT must be strengthened, then extended to voluntary export restraints, and made effective by temporary application.

\(^{37}\) Lussenburg, supra note 32, at 338. Although revision has been on the GATT’s agenda, to date neither amendments nor a separate safeguard code has met with the approval of the contracting parties.

\(^{38}\) Meiers, Externality Law and Market Safeguards: Applications in the GATT Multilateral Trade Negotiations, 18 HARV. INT’L L.J. 491, 499-500 (1977). Meiers argues that determination of injury is too often based on political pressures instead of economic analysis and therefore that "some type of international commission or panel" should be in charge of reviewing national procedures of inquiry to determine injury. National procedures, moreover, are recommended to follow the U.S. International Trade Commission’s procedure of inquiry. Id. at 509-10.
affirm the fear that more protectionist legislation will result if Article XIX is not amended.

To understand the proposed revisions for the U.S. statute, a discussion of the history of the escape clause in U.S. trade policy is necessary. Since World War II Congress has regularly revised the escape clause, so the current proposals are certainly no exception to past precedent. It has been properly stated that these revisions are sort of a "bellwether" to congressional sentiments.39

The first time the escape clause appeared in U.S. trade relations was in the 1942 Reciprocal Trade Agreement with Mexico.40 The provision read much like the escape clause in Article XIX, and indeed the Trade Agreement served as the model for it.41 By the end of the war, the free trade ideology was at its peak and the Trade Agreements Act of 1945,42 which gave the President broad discretion regarding tariff reduction, was enacted. Nonetheless, the Act prompted congressional protectionist fears and lead to a compromise Executive Order in 1947 that required an escape clause to be included in all future trade agreements.43 The clause proved to be reasonably popular even at this time of free-trade idealism, and the Tariff Commission processed twenty-nine applications for relief before the safeguard provision was legislatively adopted.44

The escape clause was first codified in the Trade Agreements Extension Act of 1951.45 Section 7(a) of the Act provided that after a petition was filed, the Tariff Commission had one year to determine whether any product upon which a concession had been granted under a trade agreement is...being imported into the United States in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry purchasing like or directly competitive products.46

The Tariff Commission was allowed to recommend relief to the President if it found the industry met the specified criteria.47

40 See id. at 629.
46 Trade Agreement Extension Act, § 7(a), 65 Stat. at 74.
47 Id.
President, however, was not required to grant relief, though he was required to state his reasons for refusing to do so.\textsuperscript{48} There was no basis for congressional override of the President's determination until the Trade Agreement Extension Act of 1958, which required a two-thirds majority vote in both Houses to accomplish the task.\textsuperscript{49}

One hundred-thirteen escape clause investigations were brought between 1951 and 1962. The Tariff Commission recommended relief in forty-one of these cases, but the President granted relief in only fifteen.\textsuperscript{50} Despite a low thirteen percent success rate for domestic industries invoking the 1951 escape clause, Congress enacted an even more stringent provision in the Trade Expansion Act of 1962 (TEA).\textsuperscript{51} Under the TEA, a petition to the Commission required a showing that imports had \underline{actually} increased,\textsuperscript{52} that they resulted "in major part" from a trade concession,\textsuperscript{53} and that they were "the major factor" in causing or threatening serious injury.\textsuperscript{54}

The direct link to a prior trade concession as the major force in increasing imports greatly increased the burden of proof for a domestic industry.\textsuperscript{55} This provision actually went beyond the Article XIX criteria by requiring the extra proof that the imports be due in "major part" to a trade concession, rather than merely be due "to the effect of the obligations incurred by a contracting party."\textsuperscript{56}

The requirement that the increased imports be the "major factor" of injury became another hindrance to the petitioner, particularly because "major factor" was defined as a cause greater than all the other causes.\textsuperscript{57} The Tariff Commission developed nonstatutory indicia of injury and threat of injury.\textsuperscript{58}

With the heavy burden of proof established, it was very hard to obtain relief under the TEA escape clause, as evidenced by the fact that from 1962 to 1969 there was no determination of serious injury

\textsuperscript{48} Id. § 7(c), 65 Stat. at 74.
\textsuperscript{50} See Legal Problems of International Relations, supra note 39, at 633 (chart summary of Tariff Commission investigations from 1951-1977).
\textsuperscript{52} Id. § 301(b)(1), 76 Stat. at 884.
\textsuperscript{53} Id.
\textsuperscript{54} Id. § 301(b)(3), 76 Stat. at 884.
\textsuperscript{55} Comment, supra note 43, at 268.
\textsuperscript{56} GATT, supra note 6, art. XIX: 1(a).
\textsuperscript{57} "[I]ncreased imports shall be considered to cause, or threaten to cause serious injury . . . when the Tariff Commission finds that such increased imports have been the major factor in causing, or threatening to cause serious injury . . . ." Trade Expansion Act, supra note 51, § 301(c)(3), 76 Stat. at 884 (emphasis added). See Applebaum, Section 201 (The Escape Clause) and Section 406 of the Trade Act of 1974, in U.S. Import Relief Laws: Current Developments in Law and Policy 137, 140 (1985) [hereinafter Applebaum (1985)].
\textsuperscript{58} Applebaum (1985), supra note 57, at 140.
by the Tariff Commission. The Commission only found injury in three out of thirty-two cases, and split its vote evenly in six others. The President, who had the right to decide on all nine of the split votes and favorably determined cases, imposed import restraints only four times, making for an eleven percent success rate under the 1962 clause.

Under the TEA, the President did not have to state why he refused to order relief. Nor was there any provision for overriding his decision if Congress disagreed with his finding. Frustration over the rigid structure of the TEA aggravated by the deteriorating economy of the early 1970s led to what some called a "new protectionism." It was in the midst of such sentiment that Congress passed the Trade Act of 1974 and a new escape clause.

The Trade Act of 1974 arose out of the feeling that the TEA was inadequate in providing relief for domestic industries, and instead promoted ad hoc voluntary restraint agreements (VRAs) for injured industries without going through an independent fact finding body. The Congress thus felt there was a need to relax the criteria for determining injury. In passing the new statute, Congress expressly acknowledged that the escape clause had worked reasonably well under the 1951 provisions, and formulated a new clause that was in many ways reminiscent of the first statute.

There are four central issues in the current statutory version of the escape clause. First, the domestic industry seeking relief has to produce goods like, or directly competitive with, the imports under review.

60 See Legal Problems of International Relations, supra note 39, at 633.
63 According to the Report:
From 1951 through 1962 the escape clause worked reasonably well. The criteria were fair and equitable, and relief was occasionally granted. However, in 1962 the Administration proposed and the Congress adopted rigid and stringent tests of injury and causal relationships between tariff concessions, increased imports and serious injury. As a result, the provisions of the Trade Expansion Act of 1962 have proven to be an inadequate mechanism for providing relief to domestic industries injured by import competition.

64 Under section 201 of the Trade Act of 1974, it must be determined whether "an article is being imported into the U.S. in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." 19 U.S.C. § 2251(b)(1) (1982).
66 Trade Act of 1974, § 201(b)(1), 19 U.S.C. § 2251(b)(1) (1982). "Like" is defined as articles which are substantially identical in inherent or intrinsic characteristics with the imported articles.
Second, to obtain relief under section 201 the domestic industry must prove that there is an increase in imports, which can be either actual or relative to domestic production. This differs from the TEA requirement and is in accord with the interpretation given Article XIX of the GATT. The increased imports no longer need be due "in major part" to a trade concession. Rather, section 201 requires no causal connection with prior concessions at all. Congress removed the requirement because the old rule had "been very difficult to satisfy in the past" and had become "a major barrier to import relief." Thus, the United States backed away from even the lesser causal link to a concession as found in Article XIX. This move does not violate the GATT, however.

The third major change in the 1974 escape clause was that it, unlike the TEA, codified certain industry indicia to be used by the Tariff Commission (now called the International Trade Commission) to determine actual or threatened serious injury. "Serious injury" has been defined as an "important, crippling or mortal injury, one having permanent or lasting consequences." "Threat of serious injury" requires that the threat be "real, rather than speculative," and that serious injury be "highly probable in the foreseeable future." Article. "Directly competitive" articles are those which are substantially equivalent for commercial purposes to like articles. See S. Rep. No. 1298, supra note 62, at 121-22, 1974 U.S. Code Cong. & Admin. News at 7265-66.

The preparatory work clearly indicates that not only were tariff concessions intended by this phrase but the elimination or reduction of quantitative restrictions were also included. The language seems even broader. Since the obligation not to use quantitative restrictions applies to almost all products, and since other obligations of GATT do apply to all products, it appears that any product imported in "increased" quantities could occasion the use of Article XIX. That is to say coincidence of GATT obligation appears to be established for virtually all products.

Thus, section 201 of the Trade Act of 1974 and its lack of a causal link to a GATT obligation or trade concession would not violate the GATT escape clause.

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future.”

The most significant difference between the current escape clause and its predecessor, however, is that imports are no longer required to be "a major factor" of the injury, but rather only a "substantial cause." Substantial cause has been defined as "a cause which is important and not less than any other cause.”

Section 202 of the Trade Act of 1974 deals with the role of the President. It provides that he "shall" provide the import relief recommended by the Commission "unless he determines that provision of such relief is not in the national economic interest of the United States." If the President denies relief, he must state why. The strength of the terms of section 202 suggest that Congress intended escape clause relief to be more easily granted without actually upsetting the President's discretionary power.

Such a suggestion is given credibility in light of the statements by the Senate Finance Committee that this section would require the President to implement import relief... That relief ought not be denied for reasons that have nothing whatsoever to do with the merits of the case as determined by U.S. law. In particular, the Committee feels that no U.S. industry which has suffered serious injury should be cut off from relief for policy reasons.

For this reason, it was originally thought that the President was seemingly obligated to grant import relief if the criteria were met. Additionally, Congress was given the right to override the President "by a majority of the members of each House." Under section

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75 Applebaum (1987), supra note 65, at 203.
77 Id. § 2252(a)(1)(A). In deciding whether the relief is in the national interest the President must take into account several factors, including the probable effectiveness of import relief as a means to promote adjustment; the effect of relief on consumers; the effect on the international economic interests of the United States; the effect on U.S. industries that might be hurt by possible compensatory import restrictions; and the economic and social cost to the taxpayer, worker, and community. Id. § 2252(c).
78 Id. § 2252(b)(1).
79 Comment, supra note 43, at 271. The escape clause as codified under the Trade Act of 1974 does not provide for judicial review of either the ITC's decision or the President's determination. See Kennedy, Presidential Authority Under Section 337, Section 301, and the Escape Clause: The Case for Less Discretion, 20 CORNELL INT'L L.J. 127, 137 (1987).
80 S. REP. No. 1298, supra note 62, at 124, 1974 U.S. CODE CONG. & ADMIN. NEWS at 7268 (emphasis added).
82 Pub. L. No. 93-618, § 203(c)(1), 88 Stat. 2016 (codified as amended at 19 U.S.C. § 2253 (Supp. III 1985)). Because this provision denied the President's veto power and therefore could be considered unconstitutional, it was amended and now provides for a joint majority vote by both Houses that can be vetoed by the President. At any rate, Congress has never tried to override the President's decision. Kennedy, supra note 79, at 155.
203, relief can last up to five years for the injured industry, and may be terminated if the President at any time considers termination to be in the national interest.

Despite the apparent strengthening of the escape clause in favor of petitioning industries, only sixty investigations have been completed by the International Trade Commission (ITC) under section 201. A majority of ITC Commissioners found injury in twenty-nine of these cases, and the President received a total of thirty-three cases (four of them because the Commissioners were equally divided). The President granted some form of relief in twenty-one of those referred to him. Thus, relief was granted in twenty-one out of sixty cases, for about a thirty-five percent success rate for petitioning industries.

The Trade Act of 1974 has therefore proven to be a somewhat more effective escape clause for those American industries seeking relief than were its predecessors. Nonetheless, section 201 has not been a consistently reliable method for obtaining relief, particularly because of the discretionary control the President exercises under the clause. For example, of the twelve cases for which the President refused to provide any relief whatsoever, he justified his refusal in ten cases by saying that import relief would not be in the nation's economic interest. In the other two cases, which were split decisions by the ITC, the President simply agreed with the Commission.

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84 Id. at (h)(4). This procedure was followed in regards to the mushroom industry. See Proclamation No. 4904, 47 Fed. Reg. 8753 (1982).
86 Id. In cases where the Commissioners are equally divided, the President is required to render a decision. Congress, by enacting section 201, sought to avoid these split vote situations. See also S. Rep. No. 1298, supra note 62, at 121, 1974 U.S. CODE CONG. & ADMIN. NEWS at 7265 ("In all cases the Commission should seek to reach a majority vote on the matter before it. The effect of a 'no decision' tie vote in an escape clause case is to give the President complete discretion without much guidance about the case.").
87 These twenty-one cases included relief given in the form of adjustment assistance under Title II of the Trade Act of 1974, which can be given to workers in the form of cash benefits for readjustment allowances or service benefits for job relocation. Industries can also petition for and receive assistance in the form of trade adjustments grants. This is technically not an imposition on fairly traded imports.
88 GAO FACT SHEET, supra note 85, at 2. The President provided tariffs or tariff-rate quotas in eight cases, quotas in three cases, adjustment assistance in nine cases, and an income support program in one instance. In four cases out of the twenty-one, he instructed the USTR to seek orderly marketing agreements or voluntary restraint agreements.
89 The President granted actual import relief in only twelve of those cases (as opposed to including the nine adjustment assistance cases). See Applebaum (1987), supra note 65, at 220. This adjustment makes for a less impressive 20% success rate.
90 This can be compared with the 13% success rate under the Trade Agreements Extension Act of 1951, and the 11% rate under the Trade Expansion Act of 1962.
91 GAO FACT SHEET, supra note 85, at 3.
ers who had found no injury. 92

Even of the twenty-one cases in which the President found injury and granted relief, he gave less than that advised by the ITC in a majority of the cases. 93 This was accomplished by giving a lesser form of relief (e.g., by making adjustment assistance rather than imposing a quota or tariff on imports), or by simply granting the same kind recommended by the Commission at a reduced level. 94 In seven cases, the President gave relief at a lesser level than that recommended, and in only three cases did he grant the relief that he was advised to grant. 95

In summary, the statistics reveal that even with a favorable ruling by the ITC, which clearly found injury in forty-eight percent of petitioner’s requests, an industry has faced still closer executive scrutiny. Such scrutiny has usually taken the national interest into account, and consequently has eliminated roughly a third of those cases that survived the ITC. In addition, even if relief has been granted for the industry by the President, it has more often than not been less than that advised by the Commission.

The lack of success for petitioning industries, as evidenced by the preceding statistics, has led many to question the wisdom of bringing a petition for escape clause relief. 96 Indeed, Sen. Hollins of South Carolina once remarked that “going the 201 route is for suckers.” 97 Specifically, there has been distress over the fact that the success of a section 201 action depends not only on the petitioner's ability to prove his case before the ITC, but also on the political climate of the nation within the international marketplace. 98 Critics of section 201 have asserted that a strongly anti-protectionist President can make the escape clause virtually useless. 99 Moreover, they contend no clear pattern emerges from looking at the affirmative Presidential determinations for relief, 100 except that it appears the President is more likely to withhold relief when a large industry is involved because of the threat of more serious retaliation under the GATT. 101 Otherwise, the President seems to have responded in an ad hoc manner. 102

At any rate, the factors for a strong section 201 case remain a

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92 Id. at 4.
93 Id. at 3. This occurred eleven times.
94 Id. at 3.
95 Id.
97 Id. at 842 (quoting 131 Cong. Rec. S15,315 (daily ed. Nov. 13, 1985)).
98 See Comment, supra note 43, at 278.
99 E.g., Ris, supra note 44, at 322.
100 Kennedy, supra note 79, at 147.
101 Id. at 150.
102 Id. at 147.
mystery. The variability and uncertainty of receiving a Presidential grant of import relief can be illustrated by a tale of a meeting in the White House in the early 1960s. At the meeting, it was decided to grant two out of four petitions for escape clause relief, and the two favorable selections were determined by flipping a coin.\footnote{Perry, Administration of Import Trade Laws By The United States International Trade Commission, 3 B.U. Int’l L.J. 345, 375 (1985) (quoting Horlick, Trade Policy in a Presidential Election Year, 11 Trade Trends 5 (1984)).}

This seemingly arbitrary power in the discretion given the President under section 201 has been hotly criticized, most recently and heavily in the case of Non-Rubber Footwear.\footnote{Non-Rubber Footwear, 50 Fed. Reg. 35,205 (1985) [hereinafter Non-Rubber Footwear]. See Kennedy, supra note 79 (discussing the case).} In a situation that many, including the ITC, thought demanded relief, President Reagan refused to grant any, concluding it would not be in the nation’s economic interest.\footnote{Id.} First, the President said that relief would place “a costly and unjustifiable burden on U.S. consumers.”\footnote{Id.} Second, he stated that the United States would suffer as much as “$2.1 billion in trade damage through compensatory tariff reductions or retaliatory actions by foreign suppliers.”\footnote{Id.} The relief would have had a major impact on foreign suppliers (such as Brazil), who are highly dependent on footwear exports, in that it would have lessened their ability to import U.S. goods and “thus cause an additional decline in U.S. exports.” Third, the President did not believe that relief would promote industry adjustment to meet increased import competition.\footnote{Id.}

Whether the President was right or wrong, his statement and rationale for rejecting the petition and the subsequent ITC recommendation give an idea of what is actually at stake when enacting trade restrictions on fairly traded imports. Clearly, the repercussions go far beyond the industry itself. Political and diplomatic factors must therefore be taken into account,\footnote{Sandier, Primer on U.S. Trade Remedies, 19 Int’l Law. 761, 788 (1985).} especially in light of the right to retaliate under Article XIX(3) of the GATT.\footnote{GATT, supra note 6, Art. XIX:3(a) ("[i]f such action is taken or continued, the affected contracting parties shall then be free, . . . to suspend . . . the application to the trade of the contracting party taking such action . . . of such substantially equivalent obligations of concessions or other obligation under this agreement. . . .").} For example, if relief is granted, other countries may seek compensating tariff benefits from the United States on other products, or, as previously explained in President Reagan’s statement, may simply retaliate against U.S. goods.\footnote{Sandier, supra note 109, at 784.} Obviously, such a situation generates intense polit-
ical pressure on the President from numerous lobby groups.\textsuperscript{112}

Traditionally, the executive branch has pursued international trade from a free trade policy.\textsuperscript{113} This ideological stance can be seen in both Republican and Democratic presidential policy in dealing with section 201,\textsuperscript{114} and helps explain the low rate of recovery for petitioning industries under this highly protectionist statute.

Clearly, section 201 appears to promise more relief than it actually delivers due to the discretionary power it vests in the President.\textsuperscript{115} Nevertheless, the legislative intent seems to plainly require the President to implement relief after an affirmative finding of injury by the ITC.\textsuperscript{116} This has led some to argue that Presidential discretion should be eliminated under the statute.\textsuperscript{117} These critics assert that without such a change, section 201 lacks teeth and is prevented from being the depoliticized statute that it was intended to be,\textsuperscript{118} and that it unduly raises expectations on the part of the petitioning industry.\textsuperscript{119} Further, they contend that the granting of sweeping executive powers has abandoned the traditional rational for the escape clause,\textsuperscript{120} and allowed section 201 to become one of the most politically charged trade laws.\textsuperscript{121}

Proponents of section 201 as it now exists, however, claim that

\begin{itemize}
\item \textsuperscript{112}Id.
\item \textsuperscript{113}For example, in \textit{Carbon and Certain Alloy Steel Products}, President Reagan in denying relief stated, “In responding to this pressing import problem, we must do all we can to avoid protectionism, to keep our market open to free and fair competition, and to provide certainty of access for our trading partners.” \textit{Carbon and Alloy Steel Products}, 49 Fed. Reg. 36,813 (1984).
\item \textsuperscript{114}See GAO FACT SHEET, supra note 85, chart at 6-9.
\item President Ford received thirteen cases from the ITC. He granted actual import relief in three cases (in the form of OMAs or quotas), granted adjustment assistance six times, gave an income support program in one case, and ruled down all forms of relief as not being “in the national economic interest” in three cases.
\item President Carter, in the fourteen cases referred to him, imposed the recommended tariff or quota in six cases. Of the eight cases in which he refused to grant relief, he used the “national economic interest” rationale in seven of them.
\item Ronald Reagan has never refused to grant some form of relief after an affirmative finding of injury by the ITC. But of the six cases referred to him, he was recommended to grant a quota or tariff increase in each one, but did so only three times, and gave adjustment assistance in the other three.
\item \textsuperscript{115}See Kennedy, supra note 79, at 151.
\item \textsuperscript{116}“This section (202) would require the President to implement import relief...” S. REP. NO. 1298, supra note 62, at 124, 1974 U.S. CODE CONG. & ADMIN. NEWS at 7268.
\item \textsuperscript{117}See Kennedy, supra note 79, at 155; Note, supra note 96, at 843.
\item \textsuperscript{118}Kennedy, supra note 79, at 157.
\item \textsuperscript{119}Id. at 151.
\item \textsuperscript{120}Comment, supra note 43, at 284. If “protectionism were to suddenly become fashionable as our trade deficit increases, the President could easily justify relief to domestic markets and thereby subvert the original purpose of the escape clause.” Id.
\item The argument for removing such Presidential discretion thus works both ways; it may discourage protectionism, or conversely, may allow more petitioners to get more reliable relief. See Kennedy, supra note 79, at 154-58.
\item \textsuperscript{121}Kennedy, supra note 79, at 157. Kennedy suggests requiring the President to grant appropriate relief after a favorable ITC decision, and that he should never be allowed to refuse to do so. Furthermore, the President should be required to adopt the relief recom-
expanding the escape clause to give more certain relief to U.S. industries by the removal of Presidential discretion might result in relief going to industries simply because of a recession. The certain result, they contend, would be the wreck of the economy. Proponents also argue that the United States escape clause, with its roots in Article XIX of the GATT, is designed only for temporary relief. Furthermore, the escape clause by its very nature is designed to be “political,” because the granting of relief has both national and international economic consequences that transcend the concerns for the domestic industry.

The arguments for and against a major revision of section 201 underlie the Omnibus Trade and Competitiveness Legislation which is currently before conference on Capital Hill. Within this voluminous bill are both House proposals and Senate amendments that could effect some changes on the escape clause as embodied under the Trade Act of 1974.

Both legislative bodies propose that there be provisional import relief under the escape clause if “critical circumstances exist." According to the Senate amendment, such circumstances exist if a significant increase of imports (actual or relative) over a short period of time has led to circumstances in which a delay in import relief would cause damage to domestic industry that would be difficult to remedy at the time relief would normally be provided. The President would make the determination as to whether these critical circumstances exist. In the House version, the criteria are much the same, but the ITC would make the final determination. Relief available under the Senate provision would be any measures authorized normally under the escape clause. Under the House provision, the ITC could order immediate suspension of liquidation of all items of the merchandise under investigation, and could order the posting of a bond or cash deposit.

123 Id. at 71 (illustrating S. 1420, supra note 1, §§ 201-204; H.R. 3, supra note 1, §§ 201-204).
124 Id. at 73 (illustrating S. 1420, supra note 1, § 202(a)(1); H.R. 3, supra note 1, § 203(g)(2)(A)).
125 Id. at 157-58.
126 Id. (illustrating S. 1420, supra note 1, § 202(a)(2)).
127 Id.
128 Id. (illustrating H.R. 3, supra note 1, § 203(g)(2)(A)).
129 Id. (illustrating S. 1420, supra note 1, § 202(a)(2)).
130 Id. (illustrating H.R. 3, supra note 1, § 203(g)(2)(A)).
Another entirely new provision in the 1987 legislation is a measure for industry adjustment plans. The Senate plan proposes that the petitioner must submit in its petition a plan to promote adjustment to import competition. The House bill proposes the same, but merely says petitioner may submit such a plan.

The proposed legislation also makes some changes as to the promptness for determination of injury. The Trade Act of 1974 provided no statutory deadline for such determination, but instead required the ITC to report both the injury determination and the recommended relief within six months of petition. The Senate would require the injury determination within 150 days of petition, and the remedy recommendation within the next 30 days. The House would require the first decision within 120 days, and the second within 60 days.

Section 201 of the Trade Act of 1974 cited several factors to be considered with respect to serious injury and threat of serious injury. The proposed revisions keep the factors with regard to serious injury, and add additional factors to help determine the threat of serious injury. These include a decrease in domestic industry's market share and the extent to which foreign imports are being diverted to the U.S. market by reason of trade restraints.

The causation standard of the 1974 Act, which provides that imports must be a substantial cause of serious injury, is clarified under the current proposals. Both the Senate and the House propose that the ITC consider the condition of the industry over the course of its business cycle, and that it "shall not aggregate the causes of declining demand associated with a recession . . . into a single cause of serious injury." The Senate amendment goes even further in its cautions against undeserved relief by requiring the ITC to examine and report on factors other than imports that may be a cause of injury.

Most of the proposed changes listed above are not drastic, and seem to streamline the escape clause without making it any more protectionist. The House version of the trade legislation, however,
contains a proposal that purports to eliminate the President’s position in the process. According to the House plan, the entire petition for relief would never come under Presidential scrutiny, but instead the U.S. Trade Representative (USTR) would totally replace the President in the process for provision of import relief. The House bill would require that within thirty days of an affirmative decision from the ITC, the USTR must either (1) provide relief, to the extent that, and for such time as, the USTR determines necessary; or (2) not provide import relief because the provision of any relief would threaten U.S. national security, or because the economic costs are so great that they outweigh the economic and social benefits of providing import relief.

The House provision is seemingly severe in its removal of the President, but it nonetheless leaves a large amount of discretion in the hands of an executive officer (the USTR). Thus, there appears to be no real significance to this proposal.

The Senate version does not remove the President from the process, but provides that within sixty days of the ITC’s determination he must take the actions recommended by the ITC or substantially equivalent actions unless the President determines such action would: (1) endanger U.S. national security, (2) disproportionately burden U.S. agriculture, (3) result in a loss of jobs greater than the number of jobs preserved or created, (4) result in substantially serious injury to any domestic industry, or (5) disproportionately burden the poor.

Thus, the Senate provision may serve to curb Presidential discretion by more narrowly defining the grounds for refusal of import relief. This compares with the broader right to refuse under the 1974 Act if the granting of such relief was not in “the national interest.” While the current areas left to the discretion of the President could prove to be very extensive, it is questionable as to whether these discretionary provisions will even survive in conference.

The proposals found within the Omnibus Trade and Competitiveness Legislation could serve to make the escape clause more efficient and beneficial to petitioning industries without providing a means for relief to industries merely bogged down in a recessionary cycle. However, as the proposed legislation now exists, it cannot be seen as an extreme step away from free-trade or GATT principles.

143 Id. at 82 (illustrating H.R. 3, supra note 1, § 204).
144 Id. (illustrating H.R. 3, supra note 1, § 204(a)(1)(A)).
145 Id. (illustrating H.R. 3, supra note 1, § 204(a)(1)(B)).
146 Id. at 82 (illustrating S. 1420, supra note 1, § 204(a)(1)).
147 Id. at 82 (illustrating S. 1420, supra note 1, § 204(a)(2)).
148 See supra note 77 and accompanying text.
nor can it be viewed as a protectionist revision. The "revamping" of section 201, at this point, has simply not brought any tremendous changes. Nonetheless, the capacity exists for the 1987 revisions to leave conference stripped of any provisions for executive discretion. This could lead the new escape clause to operate (or at least be seen) as a protectionist measure, and therefore be harmful to U.S. trade policy.

Though the final result of the 1987 trade legislation must be left to speculation, it appears once again that Congress is sending the signal that the escape clause should provide a better chance of success when invoked. Such congressional reaction appears justified in light of the escape clause's history and its limited ability to provide relief. The reaction can further be explained when this country's tremendous trade deficit and its corresponding "buy American" campaign are taken into consideration.

The desire to free up the escape clause mechanism, however, may not be consistent with the original GATT clause that provided for escape from a trade concession when imports as a result of such a concession were injuring domestic industry. At any rate, the Omnibus Trade and Competitiveness Legislation is testimony to the fact that Article XIX, and the U.S. statutes that implemented it, have not been truly adequate in their provision of relief from fairly traded imports, at least in the mind of Congress.

Christopher W. Derrick
### Appendix

#### Summary of Section 201 Cases

**January 1975 Through January 1987**

<table>
<thead>
<tr>
<th>Investigation number</th>
<th>Product</th>
<th>Date filed</th>
<th>ITC finding/recommendation (a)</th>
<th>Presidential action</th>
</tr>
</thead>
<tbody>
<tr>
<td>TA-201-1</td>
<td>Birch plywood door skins</td>
<td>04-18-75</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-2</td>
<td>Bolts, nuts, and screws of iron or steel</td>
<td>05-22-75</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-3</td>
<td>Wrapper tobacco</td>
<td>05-05-75</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-4</td>
<td>Asparagus</td>
<td>07-10-75</td>
<td>Equally divided. Those voting affirmative recommended import quotas.</td>
<td>Import relief through an orderly marketing agreement with Japan, 3-year quotas on other suppliers, adjustment assistance for workers.</td>
</tr>
<tr>
<td>TA-201-5</td>
<td>Stainless steel and alloy tool steel</td>
<td>07-16-75</td>
<td>Affirmative with respect to certain products. Recommended import quotas.</td>
<td>Import relief through an orderly marketing agreement with Japan, 3-year quotas on other suppliers, adjustment assistance for workers.</td>
</tr>
<tr>
<td>TA-201-6</td>
<td>Slide fasteners and parts</td>
<td>08-18-75</td>
<td>Equally divided. Those voting affirmative recommended adjustment assistance.</td>
<td>Expedited adjustment assistance.</td>
</tr>
<tr>
<td>TA-201-7</td>
<td>Footwear</td>
<td>08-20-75</td>
<td>Affirmative. Recommendations included tariff increase (3), tariff-rate quota (2), and adjustment assistance (1).</td>
<td>Adjustment assistance.</td>
</tr>
<tr>
<td>TA-201-8</td>
<td>Stainless steel table flatware</td>
<td>08-28-75</td>
<td>Affirmative. Recommendations included tariff-rate quotas (4) and adjustment assistance (2).</td>
<td>Adjustment assistance.</td>
</tr>
<tr>
<td>TA-201-9</td>
<td>Certain gloves</td>
<td>09-08-75</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-10</td>
<td>Mushrooms</td>
<td>09-17-75</td>
<td>Affirmative. Recommendations included adjustment assistance (3) and tariff-rate quotas (1).</td>
<td>Expedited adjustment assistance for growers, canners, and their employees.</td>
</tr>
<tr>
<td>TA-201-11</td>
<td>Ferricyanide and ferrocyanide blue pigments</td>
<td>10-02-75</td>
<td>Affirmative. Recommended tariff increase.</td>
<td>No relief due to national economic interest.</td>
</tr>
<tr>
<td>TA-201-12</td>
<td>Shrimp</td>
<td>11-17-75</td>
<td>Equally divided. Those voting affirmative recommended adjustment assistance.</td>
<td>Expedited trade adjustment assistance.</td>
</tr>
<tr>
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<tr>
<td>TA-201-13</td>
<td>Round stainless steel wire</td>
<td>12-12-75</td>
<td>Negative. No relief.</td>
<td>(b)</td>
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<tr>
<td>TA-201-14</td>
<td>Honey</td>
<td>12-29-75</td>
<td>Affirmative. Recommended tariff-rate quotas.</td>
<td>No relief due to national economic interest.</td>
</tr>
<tr>
<td>TA-201-15</td>
<td>Plant hangers</td>
<td>06-22-76</td>
<td>Negative. No relief</td>
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<tr>
<td>TA-201-16</td>
<td>Sugar</td>
<td>09-17-76</td>
<td>Affirmative. Recommended reduced import quotas.</td>
<td>Instituted income support program for domestic sugar producers.</td>
</tr>
<tr>
<td>TA-201-17</td>
<td>Mushrooms</td>
<td>09-20-76</td>
<td>Affirmative. Recommendations included 5-year tariff-rate quota (3) and adjustment assistance (2).</td>
<td>No relief due to national economic interest.</td>
</tr>
<tr>
<td>TA-201-18</td>
<td>Footwear</td>
<td>09-28-76</td>
<td>Affirmative. Recommendations include quotas (4), tariff increase (1) and adjustment assistance (1).</td>
<td>Expedited and expanded trade adjustment assistance; negotiated orderly marketing agreements with Republic of Korea and Taiwan.</td>
</tr>
<tr>
<td>TA-201-19</td>
<td>Television receivers</td>
<td>09-22-76</td>
<td>Affirmative with respect to color receivers. Recommended increased import duties.</td>
<td>Negotiated orderly marketing agreement with Japan.</td>
</tr>
<tr>
<td>TA-201-20</td>
<td>Low-carbon ferrochromium</td>
<td>01-10-77</td>
<td>Negative. No relief</td>
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</tr>
<tr>
<td>TA-201-21</td>
<td>Cast-iron cooking ware</td>
<td>01-21-77</td>
<td>Negative. No relief</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-22</td>
<td>Fresh-cut flowers</td>
<td>01-31-77</td>
<td>Negative. No relief</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-23</td>
<td>Certain headwear</td>
<td>02-18-77</td>
<td>Negative. No relief</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-24</td>
<td>Cast-iron stoves</td>
<td>03-09-77</td>
<td>Equally divided. Those voting affirmative recommended import duties</td>
<td>No relief. Agreed with those commissioners who found no serious injury to domestic industry.</td>
</tr>
<tr>
<td>TA-201-25</td>
<td>Live cattle and certain edible meat products of cattle</td>
<td>03-17-77</td>
<td>Negative. No relief</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-26</td>
<td>Malleable cast-iron pipe and tube fittings</td>
<td>03-29-77</td>
<td>Negative. No relief</td>
<td>(b)</td>
</tr>
<tr>
<td>Investigation number</td>
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<tr>
<td>TA-201-27</td>
<td>Bolts, nuts, and large screws of iron or steel</td>
<td>06-10-77</td>
<td>Affirmative. Recommended import duties.</td>
<td>No relief due to national economic interest.</td>
</tr>
<tr>
<td>TA-201-28</td>
<td>High-carbon ferrochromium</td>
<td>07-01-77</td>
<td>Affirmative. Recommended import duties.</td>
<td>No relief due to national economic interest.</td>
</tr>
<tr>
<td>TA-201-29</td>
<td>Citizens band (CB) radio transceivers</td>
<td>08-02-77</td>
<td>Affirmative. Recommendations included import duties (36% in first year with 5% reductions in 4 subsequent years) (3), and adjustment assistance (3).</td>
<td>Modified Commission’s recommendation due to national economic interest. Proclaimed tariff increase of 15% in first year with 3% reductions in 2 subsequent years, after which it will revert to the current rate of 6%.</td>
</tr>
<tr>
<td>TA-201-30</td>
<td>Certain stainless steel flatware</td>
<td>12-08-77</td>
<td>Affirmative. Recommendations included import duties (4) and tariff-rate quotas (1).</td>
<td>No relief due to national economic interest.</td>
</tr>
<tr>
<td>TA-201-31</td>
<td>Unalloyed, unwrought zinc</td>
<td>12-20-77</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-32</td>
<td>Unalloyed, unwrought copper</td>
<td>02-23-78</td>
<td>Affirmative. Recommended import quotas for 5 years.</td>
<td>No relief due to national economic interest.</td>
</tr>
<tr>
<td>TA-201-33</td>
<td>Bicycle tires and tubes</td>
<td>03-02-78</td>
<td>Affirmative. Recommendations included increased import duties for 5 years (3) and adjustment assistance (1).</td>
<td>No relief due to national economic interest.</td>
</tr>
<tr>
<td>TA-201-34</td>
<td>Certain fishing tackle</td>
<td>03-21-78</td>
<td>Affirmative with respect to artificial baits and flies. Recommended suspending eligibility for duty-free treatment under Generalized System of Preferences (GSP) for 5 years.</td>
<td>No relief due to national economic interest.</td>
</tr>
</tbody>
</table>
### Appendix
#### Summary of Section 201 Cases
January 1975 Through January 1987

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<thead>
<tr>
<th>Investigation number</th>
<th>Product Description</th>
<th>Date filed</th>
<th>ITC finding/recommendation (a)</th>
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<tbody>
<tr>
<td>TA-201-35</td>
<td>High-carbon ferrochromium</td>
<td>06-12-78</td>
<td>Affirmative. Recommendations included 5-year graduated quota (1) and increased import duties (3). Majority recommended increase of 30% to existing rate for 2 years with gradual reductions in subsequent years.</td>
<td>Commission’s recommendation due to national economic interest. Proclaimed duties (3). Majority recommended increase of 30% to existing rate for 2 years with gradual reductions in subsequent years. Proclaimed duties.</td>
</tr>
<tr>
<td>TA-201-36</td>
<td>Clothespins</td>
<td>Initiated by ITC on 07-27-78</td>
<td>Affirmative. Recommended 5-year quota of 3.2 million gross on wood and plastic spring clothespins.</td>
<td>Established 3-year quota of 2 million gross on clothespins valued at no more than $1.70/gross.</td>
</tr>
<tr>
<td>TA-201-37</td>
<td>Bolts, nuts, and large screws of iron or steel</td>
<td>06-09-78</td>
<td>Affirmative. Recommended import duties of about 20% during first 2 years, 15, 10, and 10 for next 3 years.</td>
<td>Modified Commission’s recommendation. Granted 15% tariff on large screws, and 15% plus current tariffs of 0.2 and 0.1 cents/lb. for bolts and nuts, respectively, for 3 years.</td>
</tr>
<tr>
<td>TA-201-38</td>
<td>Certain machine needles</td>
<td>08-07-78</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-39</td>
<td>Non-electric cookware</td>
<td>05-04-79</td>
<td>Affirmative. Recommended tariff increase to be phased down over 5 years, from 25 cents/lb. in the first year to 10 cents/lb. in fifth year.</td>
<td>Granted tariff increase to be phased down over 4 years, from 20 cents/lb. in the first year to 10 cents/lb. in fourth year.</td>
</tr>
<tr>
<td>TA-201-40</td>
<td>Leather wearing apparel</td>
<td>07-24-79</td>
<td>Affirmative with respect to coats and jackets. Recommended 3-year graduated tariff increase for coats not over $150.</td>
<td>No relief due to national economic interest.</td>
</tr>
<tr>
<td>TA-201-41</td>
<td>Certain fish.</td>
<td>08-20-79</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-42</td>
<td>Fresh cut roses</td>
<td>11-15-79</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>Investigation number</td>
<td>Product</td>
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</tr>
<tr>
<td>TA-201-43</td>
<td>Mushrooms</td>
<td>03-14-80</td>
<td>Affirmative. Recommended quotas of 86M lbs. in first year, 94M lbs. in second year and 108M lbs. in third and final year. Quotas to be allocated on a per country basis at President's discretion.</td>
<td>Granted tariff increase to be phased down over 3 years, from 20% in first year to 10% in the third year.</td>
</tr>
<tr>
<td>TA-201-44</td>
<td>Certain motor vehicles and certain chassis and bodies</td>
<td>06-12-80</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-45</td>
<td>Fishing rods and parts</td>
<td>07-15-81</td>
<td>Negative. No relief</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-46</td>
<td>Tubeless-tire valves</td>
<td>04-16-82</td>
<td>Negative. No relief</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-47</td>
<td>Heavyweight motorcycles and engines and power train subassemblies</td>
<td>09-01-82</td>
<td>Affirmative with respect to heavyweight motorcycles. Recommended tariff increase to be phased down over 5 years from 45% in first year to 10% in fifth year.</td>
<td>Granted tariff increases recommended by ITC, but for certain countries also imposed tariff-rate quotas (increasing yearly for 5 years.) Additional duties would be applied only to quantities over quotas.</td>
</tr>
<tr>
<td>TA-201-48</td>
<td>Stainless steel and alloy tool steel</td>
<td>11-25-82</td>
<td>Affirmative. Recommended 3-year market share quotas on stainless steel and certain alloy tool steel products.</td>
<td>Granted 4 years of relief to specialty steel in form of digressive tariffs for stainless steel sheet, strip, and plate and quotas based on ITC-recommended minimum import tonnages for stainless steel bar, rod, and alloy steel.</td>
</tr>
<tr>
<td>TA-201-49</td>
<td>Stainless steel table flatware</td>
<td>12-13-83</td>
<td>Negative. No relief</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-50</td>
<td>Non-rubber footwear</td>
<td>01-23-84</td>
<td>Negative. No relief</td>
<td>(b)</td>
</tr>
</tbody>
</table>
### Summary of Section 201 Cases
January 1975 Through January 1987

<table>
<thead>
<tr>
<th>Investigation number</th>
<th>Product Description</th>
<th>Date filed</th>
<th>ITC finding/ recommendation (a)</th>
<th>Presidential action</th>
</tr>
</thead>
<tbody>
<tr>
<td>TA-201-51</td>
<td>Carbon and certain alloy steel products</td>
<td>01-24-84</td>
<td>Affirmative with respect to certain products. Recommendations included tariffs and quotas (3) and no relief (2).</td>
<td>'Outlined administrative program to promote steel industry adjustment directing USTR to negotiate voluntary restraint agreements. As of February 1986, 18 VRAs have been negotiated.</td>
</tr>
<tr>
<td>TA-201-52</td>
<td>Unwrought copper</td>
<td>01-26-84</td>
<td>Affirmative. Recommendations included tariff increase of 5 cents/lb. for 5 years on refined copper and blister copper (2), quotas in aggregate amount of 425,000 short tons/yr for 5 years (2) and no relief (1).</td>
<td>Directed the Dept. of Labor to coordinate retraining and relocation of workers in industry and directed the Dept. of Commerce to monitor copper imports and conditions in the industry.</td>
</tr>
<tr>
<td>TA-201-53</td>
<td>Certain canned tuna fish</td>
<td>02-14-84</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-54</td>
<td>Potassium permanganate</td>
<td>11-50-84</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-55</td>
<td>Non-rubber footwear</td>
<td>12-31-84</td>
<td>Affirmative. Recommendations included overall import quotas for 5 years of 474M pairs for shoes valued over $2.50 and auctioning of import licenses (4) and adjustment assistance with a quota auctioned to the public if a quota is imposed (1).</td>
<td>President directed Sec. of Labor to work with state and local officials to facilitate footwear industry adjustment.</td>
</tr>
<tr>
<td>TA-201-56</td>
<td>Wood shakes and shingles</td>
<td>09-25-85</td>
<td>Affirmative. Recommendations included tariff of 35% for 5 years on wood shingles and shakes of western red cedar (3) and adjustment assistance (1).</td>
<td>Imposed tariff of 35% during first 30 months, 20% during months 31-54 and 8% during months 55-60.</td>
</tr>
<tr>
<td>TA-201-57</td>
<td>Electric shavers and parts</td>
<td>09-27-85</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-58</td>
<td>Certain metal castings</td>
<td>12-03-85</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
<tr>
<td>TA-201-59</td>
<td>Apple juice</td>
<td>12-27-85</td>
<td>Negative. No relief.</td>
<td>(b)</td>
</tr>
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</table>
Appendix
Summary of Section 201 Cases
January 1975 Through January 1987

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<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>TA-201-60</td>
<td>Steel fork arms</td>
<td>01-17-86</td>
<td>Negative, No relief</td>
<td>(b)</td>
</tr>
</tbody>
</table>

Numbers in parentheses represent the number of commissioners recommending each type of relief.

Since the ITC found no injury, it did not forward this case to the President for action.

Source: ITC: Annual Reports for 1975 through 1985 and Operation of the Trade Agreements Program (Reports 27 through 37)