
Section 232 of the Trade Expansion Act of 1962

Section 232 of the Trade Expansion Act of 1962 empowers the President to take action to remove the threat to U.S. national security resulting from mass imports of certain products. For instance, in 1994, the Independent Petroleum Association of America filed a petition with the U.S. Department of Commerce (DOC) seeking to curb oil imports for national security reasons. In December 1994, President Clinton accepted DOC's recommendation that, while over-reliance on imported oil posed a national security threat, the cost of an import tariff would outweigh the benefits of trade action. Even if the United States had pursued oil import restrictions, Canada's position is that NAFTA Article 607 severely constrains the ability of the United States to use national security exceptions in NAFTA Article 2102 and GATT Article XXI against Canadian energy exports.

Section 332 of the Tariff Act of 1930

Section 332 of the Tariff Act of 1930 provides general authority for the U.S. International Trade Commission (ITC), on request from the Administration or Congress, to conduct fact-finding investigations of the foreign trade practices of other countries and their effect on U.S. industry. While import action is not authorized under this section, such investigations can develop information that may be used in a countervailing duty investigation. This is in addition to the burden sometimes placed on foreign industries and government to supply information. Along similar lines, Section 409 (B) of the U.S. Free Trade Agreement Implementation Act of 1988 allows U.S. industry to request that the U.S. Trade Representative provide information on the subsidy practices of countries with which the United States has entered into free trade agreements. If used, the provision can create uncertainty and possibly disrupt trade and investment decisions.

Section 301 of the Trade Act of 1974

Section 301 of the Trade Act of 1974 gives the United States Trade Representative (USTR) authority, on his own initiative, or as a result of a petition from a private party, to conduct investigations into another country's trade practices. If those practices are found to be "unfair", the United States is authorized by this legislation to retaliate unilaterally by imposing sanctions against the offending country, after following a prescribed timetable.

"Super 301" was first introduced in 1988 and enabled the United States government to cite "broad and consistent patterns of unfair trade practices" by certain countries, and mandated the USTR to retaliate unilaterally against foreign countries for such unfair trade practices. It provided strict time limits for consultations with foreign countries and for the determination of retaliation measures. After lapsing, it was reinstated by Executive Order of President Clinton in March 1994.

Special 301 directs the USTR to identify those countries which deny adequate and effective protection of intellectual property rights. In 1994, Canada was cited in a new "Special Mention" category for current and proposed policies relating to magazine publishing. This category does not trigger a statutory requirement for an investigation and subsequent determination by USTR.

The United States has indicated that it intends to use its Section 301 authority in a manner consistent with its international trade obligations, including using the WTO dispute settlement process, in making determinations of whether foreign practices violate WTO obligations.