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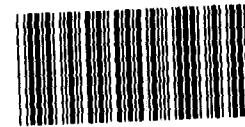
United States General Accounting Office

Report to the Chairwoman,  
Subcommittee on Commerce, Consumer  
Protection, and Competitiveness,  
Committee on Energy and Commerce,  
House of Representatives

September 1991

# INTERNATIONAL TRADE

## Priority Trade Damage Estimates Could Have Been Developed



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**National Security and  
International Affairs Division**

B-244264

September 10, 1991

The Honorable Cardiss R. Collins  
Chairwoman, Subcommittee on Commerce,  
Consumer Protection, and Competitiveness  
Committee on Energy and Commerce  
House of Representatives

Dear Madam Chairwoman:

As you requested, we determined what steps the U.S. Trade Representative (USTR) has taken to implement section 310, "Identification of Trade Liberalization Priorities," of the Trade Act of 1974, as amended, often called the "super-301" legislation. In this report, we discuss USTR's criteria for designating priority unfair trade practices in 1989 and 1990 and identify and assess the reasons why USTR did not provide "trade damage" estimates<sup>1</sup> of those practices as required by the super-301 legislation.

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**Background**

In 1988 the Trade Act of 1974 was amended, adding "super-301" requirements. Super-301 required USTR to identify those trade barriers whose elimination would have the most significant potential to increase U.S. exports. More specifically, it required USTR to identify its trade liberalization priorities for 1989 and 1990 by (1) identifying priority trade-distorting practices; (2) identifying priority countries engaging in priority trade-distorting practices; and (3) estimating the trade damage of the priority practices during the preceding calendar year. After USTR had completed these actions, negotiations were to proceed with foreign governments to eliminate the "priority" practices according to the process set forth in the Trade Act of 1974, as amended. The "super-301" legislation did not call for identifying new priority practices and countries beyond 1990.

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**Results in Brief**

USTR chose trade liberalization priorities to support U.S. goals in the Uruguay Round negotiations of the General Agreement on Tariffs and

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<sup>1</sup>Trade damage estimates measure the value of U.S. exports that do not occur because of other countries' trade barriers and other trade-distorting practices.

Trade (GATT).<sup>2</sup> USTR had established the successful conclusion of those negotiations as its primary objective in 1989 and 1990. In 1989 USTR designated six priority trade-distorting practices in three countries as representative of its concerns about the global trading system. In 1990 it continued super-301 identification of two priority practices in one country but named no other priority practices.

USTR officials told us they did not develop the required trade damage estimates for the designated priority practices because they believed that methodological obstacles made development of such estimates "not feasible." However, the economics literature has many examples of how to estimate damage from trade barriers and how to address equivalent methodological problems. Moreover, USTR has developed such estimates during the retaliation phase of some section 301 cases in order to determine the size of the penalties to assess the trading partner. USTR should have been able to develop estimates, expressed as a range of values, if appropriate, that provided at least an order of magnitude for each practice's impact on U.S. exports. Although the estimates may not achieve a high level of precision, they can nevertheless be useful at various points during negotiations.

## USTR Named Priority Practices in 1989 But No New Ones in 1990

In 1989 USTR named six priority practices it considered representative of broader areas of concern to the global trading system. It also identified three priority countries—Japan, India, and Brazil. (See table 1.)

**Table 1: Super-301 Priority Countries and Practices, 1989**

Country	Specific practice
Japan	Exclusionary government procurement practices in (1) the satellite sector and (2) the supercomputer sector; technical barriers to trade in the forest products sector
Brazil	Quantitative import restrictions, including restrictive licensing and import bans
India	Trade-related investment measures that impose obstacles to imports; closure of India's insurance market to foreign insurance companies

<sup>2</sup>The GATT is an organization of more than 100 participating nations. Its goal is to raise standards of living, ensure full employment, and expand real income and effective demand through nondiscriminatory reductions of barriers to trade. The Uruguay Round of the GATT is a series of negotiations to remove some remaining trade barriers. It began in September 1986.

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In 1990 USTR reported that it had made substantial progress in eliminating the four priority practices identified in 1989 in Japan and Brazil but would continue its super-301 designation of the remaining two practices in India. Stating that it believed the most effective way to resolve trade problems in the Uruguay Round was through cooperation, not confrontation, USTR named no other super-301 practices in 1990.

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## Quantified Estimates Not Developed for Either 1989 or 1990

USTR did not develop trade damage estimates for the priority practices named in 1989 and thus had no basis for reporting revised estimates in subsequent reports to Congress.

USTR told us that super-301 called for essentially the same trade damage estimates required for the annual National Trade Estimate (NTE) report and that USTR had determined that developing them was not feasible. USTR stated that Congress recognized the difficulty of developing trade damage estimates by imposing the NTE requirement on an "if feasible" basis. Other federal officials whom USTR consulted told us that they agreed that estimating trade damage was not feasible due to the many economic variables affecting the markets and the lack of some needed foreign economic data.

A number of sources in the economics literature, however, demonstrate various methodological approaches to estimating the damage from trade barriers. In addition, USTR already develops such estimates in consultation with the interagency section 301 committee during the retaliation phase of some section 301 cases. It does this to determine the penalties it will assess trading partners who do not agree to remove the offending trade barrier.

We believe that USTR could have developed the trade damage estimates for the priority practices identified in 1989. USTR economists could have tailored a specific analytical approach to each of the six cases based on the availability of data, the industries affected by the priority practice, and the particular category of trade barrier involved. In doing this, USTR should have been able to develop estimates, expressed as a range of values, if appropriate, that provided an order of magnitude for each practice's trade impact. USTR likely would have encountered varying degrees of difficulty in completing this task, depending on the nature of the specific barrier and its complexity. Such estimates can serve as (1) components in negotiations to indicate to trading partners the severity of the priority practice, (2) criteria for judging the success of the negotiated results, and (3) the basis for a recommendation to the

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President of the amount of the retaliation or compensation to seek if the President decides that such action is appropriate.

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## Scope and Methodology

We interviewed officials and reviewed documents of the Office of the U.S. Trade Representative; the Departments of Commerce, the Treasury, and Agriculture; the International Trade Commission; the Council of Economic Advisers; and the Office of Management and Budget. We examined the relevant legislation, reviewed the economic literature on estimation methodologies, consulted private sector economists with expertise in estimating trade effects, and discussed with some trade association officials the methodology they used to estimate trade effects.

We conducted our work from August 1990 to May 1991 in accordance with generally accepted government auditing standards.

As requested, we did not obtain official agency comments on this report; however, we discussed our findings with USTR officials and have incorporated their comments where appropriate.

Appendix I discusses in greater detail the super-301 requirements and USTR's implementation.

We plan no further distribution of this report until 30 days from the date of this letter unless you publicly announce its contents earlier. At that time, we will send copies to the agencies mentioned above and other interested parties. Copies will also be made available to others on request.

Please contact me on (202) 275-4812 if you or your staff have any questions concerning this report. The major contributors to this report are listed in appendix II.

Sincerely yours,



Allan I. Mendelowitz, Director  
International Trade, Energy,  
and Finance Issues



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## Abbreviations

GATT	General Agreement on Tariffs and Trade
NTE	National Trade Estimate
USTR	U.S. Trade Representative





# Super-301 Requirements and Implementation

## Background

During the mid- to late 1980s, congressional concerns grew about the U.S. trade deficit, with particular concern focused on the U.S. trade deficit with Japan. There was also increasing concern in Congress that certain foreign countries were engaging in broad and consistent patterns of unfair trade practices that prevented the importing of U.S. and other foreign goods and services. At the same time, it appeared that the United States was relatively open and provided a ready market for exports from these same so-called "unfair traders."

Congress has required the U.S. Trade Representative (USTR) to develop information about trade barriers facing U.S. exporters. In its annual National Trade Estimate (NTE) report, USTR lists foreign trade barriers by country. The NTE requirements, which were passed in 1984, are set out in section 181 of the Trade Act of 1974 (19 U.S.C. 2241), as amended, which directs USTR to

- identify and analyze acts, policies, or practices that constitute significant barriers to, or distortions of, U.S. exports of goods and services and foreign direct investment by U.S. citizens;
- make an estimate of the trade-distorting impact on U.S. commerce of any act, policy, or practice identified; and
- make an estimate, if feasible, of the value of additional goods and services of the United States that would have been exported to each foreign country during the specified calendar year if each of the trade-distorting acts, policies, and practices of that country did not exist.

Exporters facing unfair trade barriers can secure the backing of the U.S. government by petitioning USTR under section 301 of the Trade Act of 1974 (19 U.S.C. 2411), as amended, to initiate government-to-government negotiations.<sup>1</sup> Section 301 gives the President broad powers to enforce U.S. rights granted by trade agreements and to attempt to eliminate acts, policies, or practices of a foreign government that are unjustifiable, discriminatory, or unreasonable and that restrict U.S. trade or violate international trade agreements. Section 301 thus creates a unique relationship between U.S. law and the General Agreement on Tariffs and Trade (GATT) dispute settlement process—allowing private parties to enlist the aid of the government to combat an unfair foreign trade practice.

However, some in Congress believed that section 301's emphasis on an industry-by-industry analysis did not address the broader patterns of

<sup>1</sup>USTR can also self-initiate such negotiations.

unfair trade practices of some countries. Moreover, some believed that, despite its self-initiation of four section 301 cases in 1985, the executive branch was not using section 301 provisions aggressively enough. As a result of these concerns, the 1988 Omnibus Trade and Competitiveness Act included the super-301 legislation.<sup>2</sup>

The 1988 super-301 amendments (19 U.S.C. 2420) added requirements for USTR to identify U.S. "trade liberalization priorities," including (1) unfair trade practices whose elimination would have the most significant impact on increasing U.S. exports (thus establishing those practices as "priority" practices); (2) the "priority" countries whose unfair trading practices were the most trade-distorting; and (3) an estimate of the trade damage, i.e., the amount by which U.S. exports to the priority countries would have increased if the priority practices had been eliminated.

Prior to identifying super-301 priorities, USTR developed the NTE report of foreign trade barriers in consultation with the Departments of Commerce, the Treasury, and Agriculture as well as the Office of Management and Budget, the Council of Economic Advisers, and the U.S. International Trade Commission. It also requested information from U.S. embassies abroad and private sector advisory committees. After collecting all available data, it compiled the NTE listing of significant foreign barriers to U.S. exports<sup>3</sup> and then developed its trade liberalization priorities.

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## USTR Identified Super-301 Practices and Countries for 1989

USTR identified as its primary objective in 1989 and 1990 the successful conclusion by December 1990 of the Uruguay Round of multilateral trade talks conducted under the auspices of the GATT. In choosing its trade liberalization priorities, USTR sought to support and complement its Uruguay Round goals. Thus, it identified three priority countries and six specific priority practices it considered "emblematic" of broader areas of concern to the world trading community. The practices and countries were

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<sup>2</sup>We note that a super-301 action simply triggered a particular application of other 301 provisions (e.g., trading partner notification, bilateral consultation, multilateral consultation, etc.). It was called super-301 due to its focus on trade barriers affecting multiple sectors in a single country, not just one specific sector, as is generally the case with other 301 cases. One USTR official pointed out that the super-301 legislation, as currently formulated, does not specifically address systemic patterns of unfair trade practices.

<sup>3</sup>The 1990 NTE report to Congress covers 35 countries and two trading blocks and identifies hundreds of fair and unfair trade practices.

- exclusionary government procurement practices in the satellite sector in Japan;
- exclusionary government procurement practices in the supercomputer sector in Japan;
- technical barriers to trade in the forest products sector in Japan;
- quantitative import restrictions, including import bans and restrictive licensing, imposed in Brazil;
- trade-related investment measures that impose unnecessary obstacles to imports in India; and
- barriers to trade in services, specifically, the closure of India's insurance market to foreign insurance companies.

The President also announced in his 1989 press release identifying his super-301 priorities that the Structural Impediments Initiative would be negotiated with Japan apart from the super-301 negotiations. He directed the Secretaries of State and the Treasury to form an inter-agency committee to propose negotiations with Japan on broad issues related to structural impediments to imports. This action had the effect of removing certain broad trade concerns from the strictures of the super-301 process. It should be noted that in early 1990, a senior Japanese trade official said that the U.S. administration was unlikely to designate any structural issues discussed under the Structural Impediments Initiative for super-301 action "because such action would automatically put a halt to the ongoing process of negotiation."

## No New Priority Practices Identified in 1990

In 1990 USTR again identified as its primary objective the successful completion of the Uruguay Round of multilateral trade negotiations. In those negotiations, USTR stated that it was seeking (1) increased market access for goods, looking toward a tariff-free world; (2) fundamental agricultural trade reform; (3) agreed rules of fair play for services, investment, and intellectual property; (4) curbs on trade-distorting subsidies; and (5) integration of the developing world into the global trading system.

USTR explained that achievement of these goals would be the most effective way to increase U.S. exports; that it believed the most effective way to achieve results is through cooperation, not confrontation; and that it was not naming any new priority practices or priority countries for 1990.

USTR reported that Japan had made substantial progress in eliminating the priority practices identified in 1989. USTR also stated that Japan had

agreed to open its market to U.S. supercomputer manufacturers; to implement a new government procurement policy; and to open its market further to U.S. wood products. USTR indicated that Japan had also agreed to open further its telecommunications market, to provide greater protection for foreign sound recordings, and as a result of the Structural Impediments Initiative, to dismantle a broad array of structural barriers to trade.

USTR also announced that Brazil had enacted legislation in April 1990 to dismantle its restrictive import licensing practices. USTR noted its satisfaction that this action would resolve U.S. concerns. With regard to the insurance and investment barriers cited in 1989 as priority practices in India, USTR stated that India had been unresponsive and that USTR was continuing its identification of India and these trade practices as super-301 priorities in 1990.

## USTR Stated That Trade Damage Estimates Were Not Feasible

USTR did not report estimates of the trade damage associated with the super-301 priority practices named in 1989 and therefore had no basis for filing revised estimates in subsequent reports to the Congress.

USTR stated that super-301 calls for the same estimates that the USTR had already determined, in preparing the NTE report, were not feasible. Other federal officials whom USTR consulted in the interagency process told us that they agreed with USTR's position that developing quantified estimates for the trade barriers identified in the NTE report was not feasible. They stated that much of the needed foreign economic data is unavailable and that methodological problems make trade damage estimates virtually impossible to develop. USTR told us that it classifies trade barriers into eight general categories,<sup>4</sup> which may encompass multiple trade practices. The trade barriers cited in super-301 actions denote the category of trade barrier and may involve several separate trade practices. For example, one super-301 action cited in 1989 was Brazil's quantitative import restrictions, including the separate trade practices of import bans and restrictive licensing. As a result, developing a single trade damage estimate can be a complex task with no accepted methodology for measuring the overall economic impact on U.S. exports of all the trade practices cited in a single super-301 action.

<sup>4</sup>USTR's trade barrier categories include the following: (1) import policies (tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers); (2) standards, testing, labeling, and certification; (3) government procurement; (4) export subsidies; (5) lack of intellectual property protection; (6) services barriers; (7) investment barriers; and (8) other barriers (e.g., barriers encompassing more than one category or barriers affecting a single sector).

Both USTR and the Department of Commerce attempted to verify the accuracy of trade damage estimates submitted by trade associations. In some cases, they found that the methodology used was neither reliable nor credible. Where industry-generated estimates are used in the NTE report, USTR cautions that their use should not be construed as a U.S. government endorsement.

USTR stated that Congress recognized the difficulties in estimating trade damage by imposing the estimate requirement for the NTE report on an "if feasible" basis. USTR also directed our attention to the preface of the 1990 NTE report, which states in part that

...[t]rade barriers or other distortive practices in a...country affect imports because these measures effectively impose costs on imports that are not imposed on domestically produced goods. . . In theory, estimating the impact upon U.S. exports of goods affected by the foreign measure requires knowledge of the [extra] cost these measures impose upon imports as well as demand and supply conditions in the United States, in other nations that trade these products, and in the country imposing the measure. In practice, such information often is not available.

Our review indicates that it is methodologically possible, even if difficult, for USTR to produce at least order of magnitude estimates that could provide an economic context for judging the severity of particular practices. Once USTR identified its super-301 priority practices, it could have developed the estimates called for in the super-301 legislation. The economics literature includes a number of methodologies that can be used to estimate the damage from trade barriers and to overcome other equivalent methodological problems. Moreover, USTR develops such estimates during the retaliation phase of some section 301 cases. For example, in 1988 USTR developed trade damage estimates that served as the basis for recommending to the President the amount of retaliation against Brazil in the section 301 case involving the pharmaceutical sector.

We recognize the limitations of trade damage estimates. As we stated in a prior report, the econometric models often used to quantify the effect of nontariff measures on an industry have significant drawbacks. The econometric modeling approach places a tremendous burden on the models because all departures of trade flows from what the models can explain are attributed to nontariff measures. The worse the model is at

explaining trade flows, the greater will be the estimated effects attributed to nontariff measures.<sup>5</sup>

We also recognize that at least three factors would prevent USTR from establishing reliable point-estimates. First, USTR's estimation of trade damage necessarily would be based on a partial equilibrium analysis, meaning that not all factors affecting trade damage can be captured in a model. Second, some needed data will be unavailable. And third, given the limitations of the data and analytical techniques, USTR probably cannot develop a standard approach to estimate effects in the specific cases identified as super-301 priority practices. Each case may require a specific analytical approach, tailored to the availability of data and the industries affected by the priority practice. These factors, taken together, suggest that a precise estimate may not be able to be developed, and comparisons between the estimates for specific practices may not be appropriate. However, trade damage estimates could have been developed and expressed at least as a range of values that provides an order of magnitude for each priority practice's likely impact on U.S. exports.

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<sup>5</sup>See *The Difficulty of Quantifying Non-Tariff Measures Affecting Trade*, (GAO/NSIAD-85-133, Sept. 30, 1985). For a discussion on estimating tariff equivalents, see Alan V. Deardorff and Robert M. Stern, *Methods of Measurement of Nontariff Barriers*, United Nations, UNCTAD/ST/MD/28 (Geneva: Jan. 1985).

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