

U.S. INTERNATIONAL TRADE COMMISSION
Factfinding Investigation Protocols

November 2009



U.S. International Trade Commission

Factfinding Investigation Protocols

The U.S. International Trade Commission is an independent federal agency that determines import injury to U.S. industries in antidumping, countervailing duty, and global and China safeguard investigations; directs actions against unfair trade practices involving patent, trademark, and copyright infringement; supports policymakers through factfinding investigations and research on matters relating to international trade and the global competitiveness of U.S. industries; and maintains the U.S. Harmonized Tariff Schedule.



The Commission's factfinding investigations are requested by the President, who has delegated his authority to the U.S. Trade Representative, or by the Congress. This document explains the protocols governing these investigations.



The Commission has broad statutory authority under section 332 of the Tariff Act of 1930 to investigate matters involving U.S. international trade and competitiveness. In addition, the Congress has directed the Commission to conduct trade-related investigations under several other statutes.



Mission

The mission of the U.S. International Trade Commission is to: (1) administer U.S. trade remedy laws within its mandate in a fair and objective manner; (2) provide the President, the United States Trade Representative, and Congress with independent, quality analysis, information, and support on matters relating to tariffs and international trade and competitiveness; and (3) maintain the Harmonized Tariff Schedule of the United States. In so doing, the Commission serves the public by implementing U.S. law and contributing to the development of sound and informed U.S. trade policy.



Strategic Vision

Since the Commission's inception over 90 years ago, the role of international trade in the U.S. economy has expanded and the work of the Commission has broadened as well. International trade increasingly involves service sectors, accounts for a higher share of U.S. gross domestic product, and is conducted across a broad array of countries. International trade policy frequently extends beyond trade in goods to cover topics such as intellectual property rights and direct investment. The Commission recognizes the importance of striving for excellence in all aspects of its mission. We are dedicated to objectivity, timeliness, and continual improvement in support of our statutory customers and the public.



Objectivity

The Commission is a recognized leader in independent research and analysis through its objective and timely studies on matters related to international trade. The Commission is committed to providing accurate, complete, and unbiased information and analysis using sound statistical and research methods.

CHAIRMAN



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

November 5, 2009

This document contains updated protocols governing the Commission's factfinding investigations and related research conducted for the President, the U.S. Trade Representative, and the Congress. Our goal in this document is to make the Commission's procedures transparent and to facilitate communication with the agency's statutory customers. The protocols explained in this document govern the Commission's mandate to provide our statutory customers and the general public with independent analysis, information, and support on matters of tariffs, international trade, and the global competitiveness of U.S. industry.

Along with all Commissioners and staff, I look forward to continuing to support the President and Congress in meeting their constitutional responsibilities, including their formulation and review of U.S. trade policy. An important part of this mission involves helping improve the performance and ensure the accountability of the federal government for the benefit of the American people. With these objectives in mind, we will continue to monitor the application of these protocols and will consider what, if any, additional refinements should be made in the future. I encourage you to contact our Office of External Relations (202-205-3141) if you have any questions regarding these protocols.

A handwritten signature in black ink that reads "Shara L. Aranoff". The signature is written in a cursive, flowing style.

Shara L. Aranoff
Chairman of the United States International Trade Commission

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Highlights of the Commission's Factfinding Investigation Protocols

1.

The Commission has a statutory mandate to

- Conduct factfinding investigations on international trade and competitiveness as requested by the President or the Congress

2.

The protocols for factfinding investigations cover

- How to request a factfinding investigation
- How an investigation is conducted
- Report delivery and release

3.

The Commission makes the following commitments to requestors

- To conduct investigations in a timely manner
- To collect information from a wide range of sources
- To perform objective and transparent analysis based on sound research methods and state-of-the-art analytical techniques

USITC's Factfinding Investigation Protocols

Approach

To effectively respond to requests for factfinding investigations, the Commission must be objective, fact-based, nonpartisan, and nonideological in all its work.

Statutory Authority and Responsibilities

Section 332(g) of the Tariff Act of 1930 ("section 332") mandates that the Commission "shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress."

General factfinding reports convey the Commission's objective findings and independent analysis. The Commission does not make policy recommendations in these reports. Many of these investigations are requested under section 332. Others are conducted, as directed by Congress, under various statutes (see appendix).

Expertise and Resources

The Commission has the staff expertise and information resources needed to address a wide variety of questions on trade and competitiveness. Teams for general factfinding investigations typically include analysts, economists, and attorneys. Collectively, these individuals have country and regional expertise; an in-depth

understanding of the structure, dynamics, and specific challenges facing a wide range of U.S. industries; advanced economic modeling capabilities; and extensive knowledge of foreign investment, finance, engineering and science, international trade law, intellectual property rights, and tariff nomenclature. Commission staff also draws on a wide range of contacts with experts in trade-related fields in the public and private sectors.

In conducting Commission investigations, our staff uses a variety of research and factfinding techniques, including access to government, academic and private sector databases, and can collect and develop primary databases where existing information is not sufficient. Besides Commission public hearings, our staff is able to draw on the results of its own domestic and international travel; surveys of U.S. producers, importers, and consumers; interviews with domestic and foreign industry, government, and academic experts; and literature reviews.

Request Protocols

The Commission can provide a broad range of products tailored to suit requestors' needs for trade- and competitiveness-related information and analyses. Section 332 is drafted broadly, and requests may involve a wide range of topics relating to trade, competitiveness and tariff matters. Requests may be narrowly or broadly focused. For example, some requests may involve a report on trade in a single product or with a single country, while others may involve a large number of products and/or many countries, several regions, or the world. Generally, the requestor specifies the delivery date for the report, which is typically 6 to 12 months after the Commission receives the request. However, the delivery date can be earlier or later depending on time sensitivity, availability of information, and the complexity of the request. Requestors are encouraged to contact our Office of External Relations (202-205-3141) to discuss research interests and assistance that the Commission can provide.

Typical Areas of Investigation

The Commission actively works with its requestors to identify specific information and analysis needs. Recent investigations have focused on:

- Impacts of trade agreements, trade preference programs, and other trade policy changes on the economies of the United States and its trading partners, including effects on trade levels, specific sectors or industries, and employment
- Effects of U.S. or foreign economic and trade policies on trade and investment flows
- Analysis of the competitiveness of U.S. industries in the global market, including industry profiles, trade levels and trends, U.S. and foreign government policies affecting the industry, the identification of export opportunities for U.S. firms, and sensitivity to import competition
- Information to assist U.S. trade negotiators, including facts about domestic production and trade in specific products, economic modeling and analysis identifying products for which imports or exports are likely to increase should duties here or abroad be eliminated, and nontariff measures and other trade barriers identified to the Commission
- Ongoing monitoring of industry and bilateral trade trends of particular interest to requestors

Requestors

Investigations under section 332 may be requested by the President, who has delegated his authority to the U.S. Trade Representative; by

the House Committee on Ways and Means; the Senate Committee on Finance; or by either branch of Congress. Congress also directs the Commission to conduct a variety of investigations under various statutes.

Development of Request Language

Generally, the scope of a factfinding investigation is embodied in a request letter addressed to the Chairman of the Commission. Our staff is available to assist requestors in drafting such letters, including clarifying the scope of the request, judging whether the requested work product is within the Commission's ability, and assessing the amount of time needed to prepare the report.

Once the request letter is finalized, the requestor signs it and sends it to the Chairman of the Commission. The letter should describe the nature of the information and analysis to be included in the Commission's report, provide any helpful background information about the request, and indicate the date by which the report should be provided. Although the Commission makes the decision with respect to the procedures to be followed during the course of the investigation, if the requestor believes that a public hearing during the investigation would be useful, the requestor may ask the Commission to consider holding one.

The letter should also specify whether the requestor wishes to receive a report that can be released to the public in its entirety, or a report that contains confidential business information. Under current practice, request letters from Congress uniformly direct that the Commission provide only reports that can be released to the public in their entirety (that is, they do not include any confidential business information). In addition, if the U.S. Trade Representative intends that the requested report, or a portion thereof, will be classified as confidential under national security guidelines, the request letter should so state.

Consultative Meetings

The Commission is committed to constructive communication and engagement with requestors in order to consistently provide high-quality, policy-relevant reports. After receipt of a request letter, our staff is available to meet with requestors to ensure that we clearly understand the requestor's needs and objectives and that the requestor clearly understands our capabilities and available resources.

Commission staff offers to brief the requestor on the scope of the work to be undertaken. The scheduling of the briefing depends on the overall timeline of the investigation, but occurs at a point early in the investigation.

In order to maintain the Commission's objectivity and independence, our staff does not communicate with the requestor on the findings of the Commission's report until after it is delivered.

Changes to Request

If a requestor wishes to alter any facet of its request after the Commission has instituted the investigation, the requestor must send a new letter that reflects the changed terms. Commission staff works with the requestor on such modifications.

If the requestor determines that it no longer wishes the Commission to proceed with an investigation, the requestor may terminate the study before the Commission formally approves its report. In this situation, the requestor notifies the Commission of its desire to terminate in a letter signed by the requestor. The requestor is not required to specify a reason for termination.

The Commission notifies the requestor in the event that resource constraints change in a way that would prevent the agency from transmitting its report by the date requested. Any such modification is undertaken in consultation with the requestor.

Report Delivery and Release

After internal review, all factfinding studies are formally approved by vote of the Commissioners, at which point the report is considered a final Commission product and not eligible for termination by the requestor. Upon completion of each investigation, the Commission submits its report to the requestor. General factfinding reports are subsequently released to the public, unless they are classified by the requestor for national security reasons. Because they are reviewed and formally approved by the Commission, factfinding reports may be cited as the analyses, advice, or views of the Commission.

Consistent with its longstanding practice, as a courtesy, the Commission gives the requestor time to become familiar with the report before releasing it to the public. In the absence of a request for an earlier release date, the Commission releases a public version of its report to the public 30 days after it has been delivered to the requestor.

When internal requirements have been met, the Commission posts the public version of its report (with any confidential business or national security information deleted) on its Internet site (www.usitc.gov). Immediately thereafter, our Office of External Relations issues a news release that recaps the investigation's objectives and scope, highlights the report's findings, and explains how to electronically access or order the report.

After delivery of the report to the requestor, the Commission offers to provide a briefing for the requestor. These briefings are tailored to the requestor's needs and typically include an overview of the report,

major findings, outstanding questions, and ideas for related research. Commission staff is available for testimony at Congressional hearings.

After the public release of reports, Commission staff may respond to questions from the media regarding the study and its findings. Questions about the purpose of the investigation or how the requestor might use the information are directed to the requestor. Likewise, all questions about classified reports are directed to the requestor. The Commission does not hold press conferences in connection with its statutory reports.

Investigative Procedures

Public Disclosure

The Commission provides information to the public on all investigations. When an investigation is officially instituted, our Office of External Relations issues a news release and a *Federal Register* notice. These announcements identify the requestor and describe the objectives and scope of the investigation. The announcements also give details about opportunities for public participation and input including hearing date and location, deadlines for filing a request to appear at a hearing, and deadlines for written submissions. Concurrently, these documents, along with the request letter, are posted on our Internet site, and we inform the requestor by letter that the study has been initiated.

The Commission does not disclose information that has been designated as confidential business or national security information. Handling of national security information complies with all pertinent information security oversight directives and related Executive Orders.

Information Collection and Analysis

The Commission gathers and analyzes information from primary and secondary sources for its statutory investigations. Our staff assesses all information to ensure that it meets quality, timeliness, and applicability standards. Commission investigations integrate information from these varied sources to provide requestors with unbiased and objective analysis.

Public Hearings and Written Submissions

For most investigations, the Commission conducts public hearings to solicit information and opinions from a wide variety of interested parties regarding the issues and questions before us.

Commission hearings typically are held in Washington, DC, although on occasion the Commission has held hearings in other parts of the country when warranted.

As noted earlier, to ensure a broad representation of interests and perspectives, the Commission uses various methods to inform the public of the investigation and the opportunity to appear at the hearing. Primary among these are the *Federal Register* notice and press release. The Chairman of the Commission may send letters to embassies of relevant countries, regional organizations, and international institutions. Members of Congress may testify at Commission hearings during general factfinding investigations to share the views and concerns of their constituents.

Our staff identifies industry associations and experts, importers and exporters, foreign and domestic companies, academic researchers, and other potentially interested parties and may notify them of the investigation and the hearing. As an alternative to appearing in person at the hearing, the Commission invites interested parties to provide

written submissions addressing issues and questions relevant to the investigation. Information from witness testimony and written submissions is reflected in the Commission's reports. All public hearing testimony and written public submissions are made available on our electronic docket system, known as EDIS (www.usitc.gov).

Interviews

During an investigation, Commission personnel may conduct interviews with individuals who are able to share important facts and viewpoints on the investigation. Commission staff may also travel to domestic and foreign locations to meet with U.S. and foreign industry representatives, foreign government officials, representatives of non-governmental organizations, U.S. embassy staff, trade associations, research organizations, academic experts, and others.

Questionnaires

Under its investigative authority, the Commission may use questionnaires to gather relevant information from industry and market stakeholders. These questionnaires are a powerful tool for generating primary research information on issues that have not been widely examined in the literature. The detailed firm-level data often add considerable breadth and precision to an investigation's findings.

This is not a procedure we undertake lightly. U.S. companies are required by law to answer our questionnaires, which must be approved by the U.S. Office of Management and Budget under provisions of the Paperwork Reduction Act. Moreover, the questionnaire process may lengthen the time needed for our investigation. Our staff therefore employs questionnaires only as needed, and we tailor the questions asked and target the respondent list carefully to minimize time and effort for all participants.

U.S. Government Agencies

Commission staff works with and obtains information from numerous U.S. government agencies, such as the Departments of Agriculture, Commerce, Energy, Homeland Security, Labor, State, and Transportation, as well as the Government Accountability Office and Library of Congress.

Industry and Economic Analysis

The Commission uses a variety of sound statistical and research methods, such as case studies and economic analyses employing econometric and simulation models. The type of simulation models used depends on the nature of the investigation, ranging from single sector partial equilibrium models to multisector and multicountry general equilibrium models. To support our general equilibrium modeling capabilities, the Commission uses both a global database and a more detailed (500 sector) database of the U.S. economy.

Other Information Sources

Commission staff accesses information available from a wide variety of sources, including international organizations such as the Organisation for Economic Cooperation and Development, the World Bank, and regional development banks; academic literature; reports published by consulting groups, think tanks, trade associations, and foreign government agencies; news agencies; and commercial information and database providers.

Other Forms of Assistance

Informal Technical Assistance

The Commission provides informal technical assistance upon receipt of a request from the House Committee on Ways and Means, the Senate Committee on Finance, or individual Members of Congress. The Commission also responds to requests for informal technical assistance from executive branch agencies. Such assistance is typically in the form of short reviews of economic literature on a trade-related matter, topical briefings, one-time data compilations, and providing limited information on trade-related issues. This information, however, shall not be cited as the views, analysis, or advice of the Commission. Our ability to respond to a request for informal technical assistance depends on available Commission resources and the time sensitivity of the information requested. The Commission makes every effort to meet a requestor's needs. For further information, requestors should contact our Office of External Relations (202-205-3141).

Miscellaneous Tariff Bills

The Commission prepares factual reports on each miscellaneous tariff bill introduced in Congress, including a revenue-loss estimate and a technical review. These memoranda are sent to the House Committee on Ways and Means and the Senate Committee on Finance, as well as to the Administration. In addition, they are publicly available on our Internet site, as they do not contain confidential business information.

External Staff Assignments

When requested by the U.S. Trade Representative, House Committee on Ways and Means, or Senate Committee on Finance, Commission

staff may participate in detail assignments for a limited period of time. Customers interested in requesting a USITC staff detail should contact our Office of External Relations (202-205-3141). In consultation with the requesting entity, the Commission determines the appropriate staff member for each assignment. The Commission makes every effort to respond to such requests, given available resources.

The Commission also makes staff expertise available to assist in interagency activities, such as international negotiations and disputes, and to cooperative efforts with multilateral institutions and academic researchers.

Appendix

Abbreviations and Acronyms

CBI	Confidential Business Information
FOIA	Freedom of Information Act
NSI	National Security Information
USITC	U.S. International Trade Commission
USTR	U.S. Trade Representative

Statutes Governing Factfinding and Other Research Investigations

Section 332, Tariff Act of 1930. The USITC conducts general factfinding investigations on any matter involving tariffs or international trade, including conditions of competition between U.S. and foreign industries.

Section 131, Trade Act of 1974. The USITC advises the President as to the probable economic effect on domestic industries and consumers of a modification of duties or other barriers to trade that may be considered for inclusion in any proposed trade agreement with foreign countries.

Section 2104(b), Trade Act of 2002. The USITC advises the USTR as to the probable economic effects of a tariff reduction on import-sensitive agricultural products on the U.S. industry producing the product concerned and on the U.S. economy as a whole.

Section 2104(f), Trade Act of 2002. The USITC provides the President and the Congress with a report that assesses the likely impact of proposed free trade agreements with foreign countries on the U.S. economy as a whole and on specific sectors and the interests of U.S. consumers.

Section 503, Trade Act of 1974. The USITC advises the President as to the probable economic effect on domestic industries and consumers of the removal of a duty with respect to a particular article under the Generalized System of Preferences.

Section 163, Trade Act of 1974. The USITC annually prepares a factual report on the operation of the trade agreements program, known as The Year in Trade, for Congress and the interested public.

Section 215, Caribbean Basin Economic Recovery Act. The Commission prepares biennial reports to the Congress and the President of the effect of the Act on the U.S. economy and domestic industries.

Section 206, Andean Trade Preference Act. The Commission prepares biennial reports to the Congress and the President on the economic impact of the Act on U.S. industries and consumers and, in conjunction with other agencies, the effectiveness of the Act in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries.

Section 103 investigations. Under similar consultation and layover provisions in section 103 (or section 104) of U.S. statutes that implement free trade agreements, the Commission provides advice to the President on the effect of a proposed modification to the agreement on U.S. trade and U.S. producers. Requests are made by the USTR and typically involve proposed changes to the rules of origin in an agreement.

Specific statutory requests. Congress also from time to time directs the Commission, by statute, to prepare one-time reports on specific subjects and to submit the completed report to the House Committee on Ways and Means and Senate Committee on Finance. Two recent examples include *Sub-Saharan Textile and Apparel Inputs: Potential for Competitive Production* and *Use of the 'First Sale' Rule for Customs Valuation of U.S. Imports*.

