

**WRITTEN TESTIMONY OF CHAIRMAN DAVID S. JOHANSON**  
**U.S. INTERNATIONAL TRADE COMMISSION**  
**BEFORE THE SENATE COMMITTEE ON APPROPRIATIONS**  
**SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES**  
**SEPTEMBER 6, 2018**

The U.S. International Trade Commission (USITC or Commission) is an independent, quasi-judicial, nonpartisan federal agency with a wide range of trade-related mandates. The Commission provides tariff, trade, and competitiveness-related analysis and information to the Senate Committee on Finance, the House Committee on Ways and Means, the President, and the U.S. Trade Representative (USTR). The USITC maintains the U.S. Harmonized Tariff Schedule (HTS). The USITC also administers certain trade remedies; specifically, the USITC investigates whether imports have injured a domestic industry in the context of antidumping and countervailing duty and safeguard investigations and whether there are unfair practices or unfair methods of competition in import trade in the context of unfair import injury investigations. The Commission does not make trade policy; however, it does provide trade policy support to the Senate Committee on Finance, the House Committee on Ways and Means, the President, and the USTR.

**Budget Highlights**

The Commission would like to thank the subcommittee for its continued support for the USITC and our mission. While the Commission has requested \$97.5 million for FY 2019, both the Senate and House FY 2019 Commerce, Justice, and Science Appropriations bills have the Commission marked at \$95.0 million. The Commission received its full request of \$93.7 million in FY 2018. Our FY 2019 request represents an increase of \$3.8 million, or 4.1 percent, over our FY 2018 request.

The increased request level reflects a \$2.0 million increase in personnel costs over FY 2018. This increased level of funding will allow the Commission to staff fully the Commission's Offices of Operations and the General Counsel, which are heavily impacted by historically high investigative caseloads.

The requested budget also supports several information technology initiatives and system improvements and upgrades. These include our continuous efforts to improve our cybersecurity posture and support data migration to the cloud; improve the Miscellaneous Tariff Bill Petition System (MTBPS), which is the web portal required by the American

Manufacturing Competitiveness Act of 2016 for public submission of petitions and comments concerning temporary duty suspensions and/or reductions; and make significant upgrades to several of our public-facing systems, including our Electronic Document Information System (EDIS), DataWeb trade data website, HTS Data Management System, and creation of a data system to track the status of all trade remedy investigations.

## **Increased Workload**

The recent growth in trade-related actions has increased the Commission's workload in several ways. Below, this statement discusses the different types of trade policy actions and the role of the Commission in them, emphasizing the impact of each of them on the Commission's workload.

The Commission conducts formal fact-finding investigations on a variety of tariff, trade, and competitiveness matters and provides trade policy support in response to formal and informal requests from the Senate Committee on Finance, the House Committee on Ways and Means, the President, and, by delegation from the President, to the USTR. This support assists these recipients with decisions related to trade negotiations, the enactment of legislation, or other policy actions that affect the competitiveness of U.S. industries and the overall economy. Staff resources devoted to trade policy support have increased significantly this year over previous years.

The Commission is also charged with maintaining the Harmonized Tariff Schedule of the United States (HTS), which lists tariffs applied to imports into the United States. The staff of the Commission assist Congress and the Executive Branch to make all legal and statistical changes to the classification of goods in the HTS. Over the last year, over 1.9 million people conducted almost 7.3 million searches of the HTS, with a 26 percent increase in searches over the last six months. As the Subcommittee is aware, the Trump administration has initiated section 232 investigations into national security-related tariffs imposed on U.S. imports of steel, aluminum, autos and auto parts, and uranium, and section 301 investigations into whether to impose additional tariffs on U.S. imports of products from China due to violations of intellectual property rights. Although the Commission has no role in investigating or making determinations for investigations under section 232 or section 301, every time there is a change to a tariff level, Commission resources are required to update the HTS to reflect that change. The recent section 232 and section 301 actions and other changes in the tariffs have resulted in eleven revisions to the HTS this year, compared to three revisions in 2017. This is a 400 percent increase to date. Accordingly, Commission staff hours in this area have increased from 4,700 hours in 2017 to over 5,800 hours during the same period in 2018.

The Commission also provides USITC DataWeb, a valuable online trade service tool used by Commission staff, external customers, and the public to organize U.S. import and export data for analysis. This year over 465,000 users conducted more than 726,000 sessions on DataWeb.

The Commission does have a substantial role in section 201 global safeguard investigations, as described in more detail below. USITC Commissioners and staff devoted 11,270 hours to conducting investigations for last year's section 201 investigations into solar panels and large residential washing machines, the first such safeguard investigations since 2001. In FY2019, the Commission will begin the required mid-term assessment reports for both actions.

The number of import injury investigations completed by the USITC under Title VII of the Tariff Act of 1930 has more than doubled since FY2013, increasing to 68 in FY2018 from 30 in FY2013. Section 337 caseloads have remained at historically high levels in the current fiscal year, with no indication of slowing down. The Department of Commerce (Commerce) has self-initiated one Title VII case and received funding to initiate more such investigations. Self-initiated investigations not only increase the quantity of investigations the Commission reviews, but they also require additional resources as compared to investigations that begin with petitions from industry. Finally, the Commission recently completed one cycle of the Miscellaneous Tariff Bill (MTB) under the American Manufacturing Competitiveness Act of 2016 (AMCA). With regard to miscellaneous tariff bills passed in prior years, the number of individual MTBs presented to the USITC never exceeded 1,350 in any given year. As a result of the AMCA, the USITC received a total of 3,162 petitions and 2,491 comments. The USITC delivered its final MTB report on August 8, 2017. The USITC is preparing to start the next cycle of MTBs in the fall of 2019.

### **Role of the U.S. International Trade Commission in Selected Trade Actions**

The following table briefly summarizes the Commission's role, or lack of role, with regard to various trade actions. The remainder of this statement provides more detail and clarifies responsibilities of the Commission with regard to such actions.

**Table: Summary of U.S. International Trade Commission’s Role in Selected Trade Actions**

Trade Action	Role of USITC	Relevant Statute
Title VII investigations (Antidumping/ Countervailing Duty or AD/CVD)	<p>The Department of Commerce makes determinations as to whether dumping or countervailable subsidies exist.</p> <p>The USITC makes determinations as to whether the domestic industry is materially injured (or threatened with material injury) by reason of subject imports.</p> <p>Implementation of AD/CVD tariffs requires affirmative determinations by both the USITC and Commerce.</p>	<p>19 USC 1671 et seq.</p> <p>Section 701 et seq. of the Tariff Act of 1930</p>
Unfair Import Injury investigations (Section 337)	<p>Section 337 investigations examine unfair practices in import trade. Most often, the USITC investigates and rules on allegations that imported goods infringe the rights of a U.S. intellectual property rights holder. If a violation is found, the USITC issues remedial relief, provided that the public interest does not preclude the issuance of such relief. Relief may take the form of exclusion orders barring entry of unfairly traded imports or “cease and desist” orders prohibiting unfair acts in the United States.</p>	<p>19 USC 1337</p> <p>Section 337 of the Tariff Act of 1930</p>
Global Safeguard (Section 201)	<p>The USITC makes determinations as to whether the domestic industry is seriously injured (or threatened with serious injury) by reason of subject imports. If the USITC makes an affirmative injury determination, the USITC reports to the President a recommendation to remedy the serious injury.</p> <p>The President makes the final decision on whether to provide a remedy to the U.S. industry, and if so, the type and duration of the remedy. If the President puts a remedy in place, the USITC must revise the HTS to reflect the remedy and the USITC conducts a mid-point review investigation.</p>	<p>19 USC 2251-2254</p> <p>Sections 201-204 of the Trade Act of 1974</p>
Factfinding investigations		

<ul style="list-style-type: none"> <li>Industry and economic analysis</li> </ul>	<p>Upon request from the Senate Committee on Finance; the House Committee on Ways and Means; or the President, and, by delegation, the U.S. Trade Representative (USTR); or upon its own motion, the USITC conducts fact-finding investigations and prepares reports on a wide variety of matters involving international trade and competitiveness.</p>	<p>19 USC 1332 Section 332 of the Tariff Act of 1930</p>
<ul style="list-style-type: none"> <li>Probable economic effects (trade agreement)</li> </ul>	<p>The USITC advises the President as to the probable economic effect on domestic industries and consumers of modification of duties and other barriers to trade that may be considered for inclusion in any proposed trade agreement.</p>	<p>19 USC 2151 Section 131 of the Trade Act of 1974</p>
	<p>Once the President enters into a trade agreement, the Commission has up to 105 days to provide its report assessing the agreement's probable economic effects on the U.S. economy as a whole, on specific sectors of the economy, and on the interests of U.S. consumers.</p>	<p>19 USC 4201 note Section 105(c)(1) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015</p>
<ul style="list-style-type: none"> <li>Generalized System of Preferences</li> </ul>	<p>At times, certain articles may be designated as eligible for duty-free treatment when imported from designated developing countries. The USITC advises the President as to the probable economic effect on the domestic industry and on consumers of such designations.</p>	<p>19 U.S.C. 2151, 2163 Sections 131 and 503, Trade Act of 1974</p>
<ul style="list-style-type: none"> <li>Sec. 1205</li> </ul>	<p>The USITC is responsible for recommending to the President modifications it considers necessary or appropriate to conform the HTS with amendments to the Harmonized System Convention (maintained by the World Customs Organization), to ensure that the HTS is kept up to date, and to relieve unnecessary administrative burdens.</p>	<p>19 U.S.C. 3005 Section 1205, Omnibus Trade and Competitiveness Act of 1988</p>

<ul style="list-style-type: none"> <li>Other</li> </ul>	<p>The USITC conducts other factfinding investigations under various statutes. Examples include analyses of trade preference programs that provide duty-free entry of imports of textile and apparel products from Nepal and of imports from countries covered by the Caribbean Basin Initiative.</p>	
<p>American Manufacturing Competitiveness Act (MTBs)</p>	<p>Under a process for the consideration of miscellaneous tariff bills (MTBs) instituted in 2016, the USITC accepts and analyzes petitions and public comments regarding the temporary suspension or reduction of duties on specific products. In accordance with specific statutory deadlines, the USITC submits preliminary and final reports on received petitions to the Senate Committee on Finance and the House Committee on Ways and Means for their use in developing a comprehensive MTB for consideration by Congress.</p>	<p>19 USC 1332 note</p> <p>American Manufacturing Competitiveness Act of 2016</p>
<p>Trade Policy Support</p>	<p>The USITC responds to rapid-response requests for technical expertise and information that trade policymakers can use to inform the development of U.S. international trade policy.</p>	<p>19 USC 1332</p> <p>Section 332 of the Tariff Act of 1930</p>
<p>Section 232 investigations into trade impact on national security</p>	<p>The USITC has no role in investigating or making determinations for investigations under section 232. If the President takes action under section 232 (based on a report from the Secretary of Commerce), USITC staff will revise the HTS to reflect the actions of the President.</p>	<p>19 USC 1862</p> <p>Section 232 of the Trade Expansion Act of 1962</p>
<p>Section 301 investigations into trade impacts of violations of intellectual property rights</p>	<p>The USITC has no role in investigating or making determinations for investigations under section 301. If the President chooses to take action under section 301 (based on a report from the US Trade Representative), USITC staff will revise the HTS to reflect the actions of the President.</p> <p>Under the Commission’s trade policy support role, USTR can request the USITC to assist with the section 301 process.</p>	<p>19 USC 2411</p> <p>Section 301 of the Trade Act of 1974</p>

**Antidumping/Countervailing Duty (AD/CVD) Investigations and Reviews**

By statute, the Commission makes determinations as to whether the domestic industry is materially injured (or threatened with material injury) by reason of subject imports. The Commission conducts investigations to gather data to create a record which is used to make determinations.

The Commission conducts reviews of existing AD and/or CVD orders every 5 years that an order remains in place. Within these reviews, the Commission determines whether an order can be revoked without resulting in continued or recurrent injury to a domestic industry. If Commerce (or the USITC) determines that revocation is appropriate, Commerce will revoke the order.

Commerce also plays a role in AD/CVD cases. Commerce is the administering authority and initiates the investigations. Commerce makes determinations on whether the subject product is sold in the United States at a price that is below that producer's sales price in the country of origin (home market), or at a price that is lower than the cost of production (AD) or is unfairly subsidized by the foreign government (CVD). Commerce can also self-initiate a case (i.e., there is no petition filed by a U.S. manufacturer(s) or union). We saw a recent instance of this in December 2017, the first since 1991, with a case on common alloy aluminum sheet from China self-initiated by Commerce. Such self-initiated cases have a particular impact on the USITC because we have less information to begin our processes than we would usually receive from a petitioner.

In the event of an affirmative determination by both Commerce and the USITC, Customs and Border Patrol (CBP) enforces these decisions and collects the AD/CVD duties due on imported goods.

Another significant portion of our workload in this area is defending our AD/CVD determinations in litigation challenging these determinations. Unlike many federal agencies, the Commission has independent litigation authority and therefore employs its own attorneys to conduct its litigation. Trade remedy litigation is conducted at the U.S. Court of International Trade, the U.S. Court of Appeals for the Federal Circuit, and binational review panels under NAFTA. In addition, our staff assists the USTR in World Trade Organization (WTO) disputes involving either our import injury determinations or injury determinations by other WTO members that affect U.S. exports.

### **Global Safeguard (Section 201) Investigations**

By statute, the Commission makes determinations as to whether the domestic industry is seriously injured (or threatened with serious injury) by reason of subject imports. The Commission conducts investigations to gather data to create a record which is used to make determinations. Global safeguards involve imports from all countries. The standard for injury in a global safeguard is higher (serious injury) than for AD/CVD cases (material injury), and imports must be the most important cause of injury (i.e., no other cause can be greater).

If the Commission makes an affirmative injury determination, the Commission will formulate and report to the President a recommendation to remedy the serious injury (e.g., tariffs, quota,

tariff-rate quota). The President makes the final decision on whether to provide a remedy to the U.S. industry, and if so, the type and duration of the remedy. In determining whether to take action, the President takes into account the potential effects on downstream industries, consumers, and the U.S. economy.

If the President puts a remedy in place, the Commission must revise the HTS to reflect the remedy. The Commission then conducts a mid-point review investigation. (The mid-point depends on the imposed remedy – if the President imposes tariffs for 4 years, the mid-point would come after 2 years.) For the recent safeguard investigations involving washing machines and solar panels, the Commission will begin our mid-point reviews in February 2019 and July 2019, respectively.

Unlike AD/CVD investigations, Commerce does not play a role in investigating (or making determinations) in global safeguard investigations; the Commission is the sole administering authority.

### **Unfair Import Injury Investigations (Section 337)**

The USITC is responsible for investigating alleged violations of section 337 of the Tariff Act of 1930, as amended. Section 337 prohibits certain unfair practices in the import trade. The unfair practice most frequently investigated by the Commission is patent infringement. In this context, section 337 prohibits the importation into the United States, the sale for importation, and the sale within the United States after importation of articles that infringe a valid and enforceable United States patent, provided that an industry in the United States, relating to articles protected by the patent concerned, exists or is in the process of being established. Similar requirements govern investigations involving infringement of other federally registered intellectual property rights, including registered trademarks and registered copyrights. In addition, under section 337, the Commission has general authority to investigate other unfair methods of competition and unfair acts in the importation and sale of products in the United States (such as products manufactured abroad using stolen U.S. trade secrets), the threat or effect of which is to destroy or injure a U.S. industry, to prevent the establishment of a U.S. industry, or to restrain or monopolize trade and commerce in the United States. The Commission may institute an investigation on the basis of a complaint or on its own initiative.

Section 337 complaints are typically brought by private parties alleging that certain articles are sold for importation, imported, or sold after importation into the United States by means of an unfair act or an unfair method of competition.

As set forth in the statute, the Commission, in accordance with the Administrative Procedure Act (APA), conducts proceedings to determine whether there has been a violation of section



337. The APA gives the parties the opportunity to make legal arguments before an administrative law judge (ALJ). The ALJ conducts a public hearing on the record. At the end of the evidentiary hearing, the ALJ will issue a final initial determination.

If the ALJ's determination is appealed by one of the parties, or if the Commission on its own decides to review the ALJ's determination, the Commission will issue its own decision. If the Commission believes that a remedy may be appropriate, the Commission will request submissions from the parties, interested federal agencies, and the public concerning the remedy in general and the public interest factors specifically. Finally, if a violation of section 337 is found, the Commission will make a finding on whether the statutory public interest factors bar relief or whether relief should be tailored to accommodate public interest concerns. While many investigations are ended by agreement of the parties or withdrawal of the complaint, those that are concluded on the merits are currently decided, on average, in 16.3 months.

If the Commission determines that a violation exists and that a remedy is appropriate, it issues an exclusion order directing CBP to block the subject imports from entry into the United States, and it can also issue cease and desist orders that direct the violating parties to stop engaging in the unlawful practices. The Commission's remedial orders enter into force unless disapproved for policy reasons by the USTR.

Appeals of the Commission decisions in section 337 investigations are made directly to the U.S. Court of Appeals for the Federal Circuit. As mentioned above, the Commission's litigation activities are conducted by its own legal counsel.

### **Factfinding Investigations**

Under section 332, the Commission investigates a wide variety of trade matters. Upon request from the Senate Committee on Finance; the House Committee on Ways and Means; or the President, and, by delegation, the USTR; or upon its own motion, the Commission conducts fact-finding investigations and prepares reports on matters involving tariffs or international trade.

When the President commences negotiations on a new trade agreement, or substantial revisions to an existing trade agreement, the Commission also advises the President as to the probable economic effect on domestic industries and consumers of modification of duties and other barriers to trade being considered.

Once the President has notified Congress of his intent to enter into a trade agreement, section 105(c) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA) requires the President to request that the Commission provide a report to Congress and the President that assesses the likely impact of the agreement on the U.S. economy, specific industry sectors, and consumers. The Commission has up to 105 days to provide its report once the President enters into the agreement. In the case of a comprehensive trade agreement, this is an extensive report detailing all aspects of the agreement and providing estimates of the economic effects, an undertaking that requires significant Commission resources. On August 31, 2018, the USTR requested the Commission to prepare such a report after “the President notified Congress of his intent to enter into a trade agreement with Mexico – and with Canada if it is willing....”

The Commission will base its report on the details of the agreement as made available. We note that section 106(a)(1) of the TPA requires that the President, at least 60 days before the President enters into the agreement, must publish the text of the agreement on a publicly available internet website of the USTR.

The Commission also conducts a wide variety of other factfinding investigations, as shown in the table above. Recent reports that have garnered public attention include investigations on business jets; aluminum; digital trade; exports by small and medium size enterprises; rice; agricultural trade with Brazil, China, and India; and U.S. exports to Cuba.

### **American Manufacturing Competitiveness Act (Miscellaneous Tariff Bills)**

In May 2016, the American Manufacturing Competitiveness Act (AMCA) introduced a new process for the consideration of miscellaneous tariff bills (MTBs). The Commission is now responsible for accepting and analyzing petitions and comments regarding the temporary suspension or reduction of duties for specific products. U.S. firms typically seek this relief for imported materials that are not available from domestic manufacturers. In accordance with specific statutory deadlines, the Commission submits preliminary and final reports on received petitions to the Senate Committee on Finance and the House Committee on Ways and Means for their use in developing a comprehensive miscellaneous tariff bill for Congress to consider.

The Commission’s report included certain information and determinations with respect to each petition and also categorized each petition based on whether it met the requirements of the Act without modification, met the requirements of the Act with certain types of modifications, or did not meet the requirements of the Act. It also included, with respect to each petition, the Commission’s determination: (1) whether the duty suspension or reduction was available to any person that imported the article; (2) whether the duty suspension or reduction was likely

able to be administered by CBP; and (3) whether the estimated loss in revenue to the United States from the duty suspension or reduction did not exceed \$500,000 in a calendar year during which it would be in effect.

The first cycle of the Commission's MTB reporting process was from October, 15, 2016, to August 7, 2017, and the second round will begin no later than October 15, 2019. The final report for the first cycle was submitted to Congress on August 8, 2017.

If MTB legislation is passed by Congress and enacted by the President, Commission staff will need to modify the HTS to reflect the changes to those products for which a tariff reduction or suspension was granted.

Commerce and CBP also have roles defined by the AMCA statute. Commerce issues a report that provides its determinations on whether there are domestic producers and whether any domestic producer objects to the petition for reduction or suspension of the duties. CBP makes determinations on whether any technical changes to the article description are necessary for purposes of administration when articles are presented to CBP for importation.

### **Trade Policy Support**

The Commission responds to rapid-response requests for technical expertise and information that trade policymakers (the Senate Committee on Finance, the House Committee on Ways and Means, and the USTR) can use to inform the development of U.S. international trade policy. This trade policy support, provided under section 332 of the Tariff Act of 1930, includes (1) providing information and analysis on current issues related to trade and competitiveness, (2) providing technical comments on draft legislation, (3) preparing draft tariff legislation and annexes for presidential proclamations, memoranda, executive orders, and final decisions by various agencies, (4) providing information and analysis in briefings and meetings, (5) temporarily detailing staff to our oversight committees and the USTR, and (6) assisting trade delegations, negotiating teams, and Administration-led litigation teams in international dispute settlement forums.

### **Section 232 Investigations**

The Commission does not have any role in investigating or making determinations for investigations under section 232. Under section 232, the Administration determines the effects of imports on national security. If the President chooses to take action (based on a report from the Secretary of Commerce) under section 232, Commission staff will revise the HTS to reflect the actions of the President.

### **Section 301 investigations**

The Commission does not have any role in investigating or making determinations for investigations under section 301. Under section 301, the President may take action, including retaliation to obtain the removal of any act, policy, or practice of a foreign government that violates an international trade agreement or is unjustified, unreasonable, or discriminatory, and that burdens or restricts U.S. commerce.

The Commission does not have any role in investigating or making determinations for investigations under section 301. If the President chooses to take action under section 301 (based on a report from the USTR), Commission staff will revise the HTS to reflect the actions of the President. At its discretion, USTR can request the Commission to provide trade policy advice to assist with the section 301 process.

### **Conclusion**

In conclusion, the Commission would like once again to thank this subcommittee for its continued support of the USITC. To meet its mission, the Commission must maintain the staff, technological tools, and other resources needed to conduct fair and efficient investigations, as well as provide high-quality and objective information and analysis on a wide array of trade issues impacting millions of domestic workers.