United States General Accounting Office

GAO

Report to the Chairman, Committee on Finance, U. S. Senate

March 1987

INTERNATIONAL TRADE

Combating Unfair Foreign Trade Practices

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GAO/NSIAD-87-100

GAO

United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-226319

March 17, 1987

The Honorable Lloyd M. Bentsen
Chairman, Committee on Finance
United States Senate

Dear Mr. Chairman:

As you requested, we are forwarding our analysis of section 301 of the Trade Act of 1974, as amended. This report addresses section 301's usefulness in combating unfair foreign trade practices, particularly by providing information on the overall 301 process and by documenting the experiences of 301 petitioners.

As arranged with your office, unless you publicly announce its contents earlier, no further distribution of this report will be made until 10 days from its issue date. At that time, we will send copies of the report to the House Committee on Ways and Means, various other congressional committees, the U.S. Trade Representative, and other interested parties. Copies will be made available to others upon request.

Sincerely,

for Bill W. Thurman

Frank C. Conahan
Assistant Comptroller General

regarding this issue. A uniform mechanism is needed to limit U.S. participation in GATT dispute settlement

The administration has taken steps, beginning in September 1985, to emphasize the strength of section 301. The administration's self-initiation of cases and a variety of other 301-related actions produced a number of successful results in fiscal year 1986. A credible threat of action, such as retaliation or even the initiation of a 301 complaint, may provide political leverage and serve as an important negotiating tool. However, since Presidential discretion involves the balancing of conflicting trade, foreign policy, and national security concerns, action based on a 301 petition may not always be appropriate. Therefore, despite the potential strength of this provision, it cannot be a panacea for all international trade problems.

GAO's Analysis

Length of Process

The actual length of the 301 cases analyzed varied dramatically, with GATT cases averaging much longer than bilaterally negotiated cases. Overall, cases averaged 34 months in duration, with GATT cases averaging 45 months and non-GATT cases 13 months. These averages will ultimately be longer because they include cases that were not terminated as of June 1, 1986, which was the cutoff date for the analysis of cases

Despite the fact that the GATT dispute settlement process lacks binding deadlines, U.S. practice has generally been to allow this process to formally conclude before any retaliatory Presidential action is taken. The one exception to this was the citrus dispute with the European Community, which prompted unilateral action by the United States

Petitioners' Experiences

Petitioners expressed dissatisfaction with the 301 process, citing specifically the length of time involved in most cases. Those involved in GATT cases generally voiced the most dissatisfaction with the process; several stated that they would not attempt to use this provision again, especially if it entailed going through the GATT dispute settlement process. Petitioners generally advocated stricter domestic and international time frames for the settlement of cases. Further, petitioners expressed concern regarding the development of evidence, the amount of "political

will" to resolve 301 cases, and the long-range impact of negotiated agreements.

Section 301 provides a means for private industry to gain the support of the U.S. government in eliminating unfair foreign trade practices. The U.S. government generally views success as the removal of the unfair trade practice. However, during the period of GAO's study relatively few cases resulted in the elimination of specified unfair foreign trade practices. Three petitioners told GAO that the section 301 process had remedied the unfair foreign trade practice completely; 20 petitioners reported that the process had had no net effect on the practice or that the foreign country had replaced the practice with another restrictive practice, and 12 petitioners stated that it had remedied the practice partially.

Petitioners want the 301 process to eliminate not only the unfair trade practices but also the injuries they believe resulted from the unfair trading practice. Eleven out of the 35 petitioners reported that the trade injuries cited in their complaints were remedied either completely or partially by the disposition of the cases, but two thirds (23 petitioners) felt that there was no net effect on the injuries cited. One petitioner said that the 301 process had made the injuries more severe. Of those reporting that the unfair practices were partially remedied, half also indicated that the injuries remained unchanged or became more severe.

Improvements to Dispute Settlement Sought

Trade experts, administration officials, and petitioners alike advocate the need for a more effective dispute settlement mechanism The administration has set improvement of the GATT dispute settlement process as a primary objective in multilateral trade negotiations. GAO agrees that only in this forum can the dispute settlement process be improved and its potential value realized. However, because the anticipated negotiations will be protracted, a uniform mechanism is needed now to limit the length of U.S participation in dispute settlement for section 301 cases.

Recommendations

GAO recommends that the Congress amend section 301 of the Trade Act of 1974 to require that OUSTR set a date for each section 301 case involving the GATT, at which time the United States would be expected to withdraw from the GATT dispute settlement process if it is not completed. The statute should give OUSTR some flexibility in setting the required limit on participation, based on the complexity and sensitivity of each case.

GAO is prepared to work with the appropriate committees of the Congress to devise legislative language for this recommendation.

Agency Comments and Our Evaluation

OUSTR raised concerns that GAO's recommendation would require the United States to withdraw from GATT dispute settlement and that it might be unwise to preclude continuation of these proceedings. OUSTR advised that the administration has proposed that a 24-month deadline be set for the Trade Representative's recommendation to the President in dispute settlement cases. GAO maintains that since such recommendations often simply continue the GATT process, this proposal still lacks a definitive deadline for Presidential action to limit the time a section 301 case could be subject to a lengthy GATT proceeding.

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Abbreviations

EC	European Community
GAO	General Accounting Office
GATT	General Agreement on Tariffs and Trade
OUSTR	Office of the U.S. Trade Representative
USITC	U.S. International Trade Commission

Chapter 1

Introduction

Section 301 of the Trade Act of 1974, as amended, 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. It is the primary provision of U.S. trade law that authorizes the U.S. government to act against unfair trade practices that restrict U.S. export access to foreign markets (as opposed to several U.S. trade laws covering unfair imports into the U.S. market).[1] Section 301 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 U.S government, through the 301 petition process, to combat an unfair foreign trade practice.

Action to remove an unfair trade practice may be taken by the Office of the U.S. Trade Representative (OUSTR) on its own initiative or in response to the filing of a petition by any interested person, firm, or association, including business or labor. If negotiations with a foreign government to remove the objectionable practice are unsuccessful, section 301 authorizes the President to take all appropriate and feasible action, including invoking the dispute resolution procedures in international trade agreements or retaliating against the foreign government's practice. Specifically, he may impose duties, fees, or restrictions on any imported goods and services of the offending country; i.e., he is not limited in his choice of products to those related to the subject of the 301 complaint. However, since Presidential discretion involves the balancing of conflicting trade, foreign policy, and national security concerns, action based on a 301 petition may not always be considered appropriate.

Section 301 has been used relatively infrequently when compared with other sections of U.S. trade law dealing with unfair foreign trade practices. During fiscal year 1985, for example, only 5 new section 301 cases were initiated while 82 petitions were filed with the Department of Commerce and the U.S. International Trade Commission (USITC) under antidumping and countervailing duty laws.[2] Some of the reasons why section 301 has not been actively used include the perceptions among the business and legal communities that (1) the 301 process has been

[1]Section 307 of the Trade and Tariff Act of 1984 also authorizes U S action in cases involving foreign export performance requirements

[2]These laws provide U S industries with remedies against the importation of merchandise sold at below market value (i e dumped) and the importation of subsidized merchandise

very lengthy and has had a poor record of success in remedying trade complaints, (2) the administration has been reluctant to actively pursue trade complaints or to exercise its discretionary retaliatory authority, and (3) a firm or industry may incur a foreign government's hostility by filing a 301 petition.

At least partly in response to intensified congressional concern over the need for a more aggressive U.S. response to unfair foreign trade practices, the administration, since September 1985, emphasized section 301 as its main weapon to combat such practices. In September and November 1985 it self-initiated four section 301 investigations, marking the first time a President has exercised this authority. Since September 1985, the administration has publicly stated its intention to use section 301 actively and has noted that it is continuing to consider self-initiating further 301 actions.

Legislative Background

In the Trade Act of 1974, which contains section 301, the President is authorized to respond to unjustifiable, unreasonable, or discriminatory acts of a foreign government or instrumentality which restricts or burdens U.S. commerce. The law's definition of "commerce" includes foreign restrictions against U.S. services as well as products. In the Trade Agreements Act of 1979, amendments to section 301 authorized the President to act to enforce U.S. rights under trade agreements or to respond to government practices inconsistent with trade agreement obligations. The definition of "commerce" was further clarified to specify that services need not be associated with international trade in specific products.

Later amendments to section 301 contained in the Trade and Tariff Act of 1984 specifically authorized OUSTR to undertake 301 investigations on its own initiative and emphasized congressional intent that section 301 be used to deal with a variety of "new" trade issues, such as investment barriers and inadequate protection of intellectual property rights. The term "unreasonable" was defined as "any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable." Thus, the President is given broad latitude in determining that an act, policy or practice is unreasonable.

Variety of Section 301 Cases

The law's broad scope is reflected in the variety of cases investigated so far A wide range of unfair practices has been addressed—production and export subsidies; import preferences; quota restrictions; customs duties rebates; Standards Code issues; restrictions on trade in such services as insurance, advertising, air couriers, and satellite launching; and such other trade issues as intellectual property, industrial targeting, and investment.

Of the four cases self-initiated by OUSTR in 1985, one dealt with the issue of intellectual property rights (Korea); another covered a broad range of investment restrictions on data processing products and services and insufficient protection of computer software (Brazil); another involved cigarette marketing and distribution restrictions practiced by a monopoly on tobacco—while the monopoly is no longer a government agency, the Ministry of Finance is the sole shareholder (Japan); and the fourth revived an earlier insurance case involving the provision of services where a 1980 government-to-government agreement was not carried out (Korea).

Objectives, Scope, and Methodology

The Chairman of the Senate Committee on Finance asked us to provide information on the enforcement of section 301 and its record of success in remedying U.S. trade complaints. To assess the strengths and weaknesses of section 301 as a means of combating unfair foreign trade practices, we focused on the overall 301 process and documented the experiences of section 301 petitioners. Chapter 2 describes the general concern raised by industry and government leaders regarding the lengthiness of the 301 process and the international dispute settlement mechanism and analyzes the reasons for the substantial amount of time involved in many 301 cases. Chapter 3 examines the experience of 301 petitioners and discusses their views regarding section 301's successes and failings in remedying trade problems. Chapter 4 provides an overview of recent U.S. policy developments involving the administration's increased emphasis on section 301 and an update on recent section 301 case actions.

We analyzed all petitioner-initiated section 301 cases that were pending or initiated from January 1, 1980, through December 31, 1985. The cutoff date for our analysis of these cases was June 1, 1986. For the purposes of this study we considered the total to be 35 cases.[3] While there were

[3]This total does not include petitions that may have been filed but withdrawn prior to formal acceptance by OUSTR

actually 41 cases, we grouped 6 steel industry petitions together because they were filed at the same time and dealt with similar issues; we also considered separate cigar and pipe tobacco cases as one since OUSTR combined them for negotiation purposes. Of the total, 23 may be characterized as "GATT" cases because they have been brought before the GATT for dispute settlement, while 12 cases are "non-GATT" since they involved countries that are not members of the GATT or issues (e.g., services or intellectual property) not covered by GATT. We also reviewed the four cases self-initiated by OUSTR in 1985. (See app. I for a descriptive list of these cases.)

For all of these cases, we examined agency files and held discussions with OUSTR staff administering section 301 and with staff from other agencies participating in the interagency 301 process. We also contacted representatives of the 35 petitioners to obtain their views on the 301 process and the results achieved in their cases. We did this through interviews and a formal questionnaire (see app. II); the response rate to the questionnaire was 100 percent (although not all respondents could answer every question). We conducted interviews between March and June 1986, and therefore, our discussions with petitioners did not cover any developments occurring after this period. Our review was performed in accordance with generally accepted government auditing standards.

Concern With Length of 301 Process

Numerous factors affect the length and efficiency of the 301 process, many of which OUSTR has no power to control. The 301 process necessitates detailed negotiations with another sovereign nation, which cannot be forced to mitigate, or even acknowledge, a trade practice deemed unfair by the United States. Hence, in even the most clear-cut case, the process can be complex and is often lengthy—primarily due to the international and domestic legal and political issues to be resolved. Indeed, on average, it has taken 3 years to conclude cases, although some have lingered for nearly a decade without resolution.

One of the key factors determining the length of a specific 301 case is whether it must be directed to the GATT for dispute settlement, since this generally leads to protracted negotiations, which could essentially hold the case in the dispute settlement system indefinitely. Although current law establishes procedures for the 301 process on both domestic and international levels—to which time frames are generally attached—the ability to prolong resolution has also been built into the process.[1]

The 301 Process

The 301 process usually begins with the submission of a petition by a domestic industry alleging an "unjustifiable," "unreasonable," or "discriminatory" foreign trade action which oppresses, restricts, or burdens U.S. commerce or which violates a trade agreement. (Any "interested party" may file a petition or OUSTR may self-initiate a 301 case.) In many cases there is an ongoing informal pre-petition process during which the petitioner and OUSTR consult in order to acquaint OUSTR with the issues of the case and to allow the petitioner to seek advice from OUSTR regarding the adequacy of the information to be presented in the petition.

Once a petition is formally filed, OUSTR is required to review it and determine within 45 days whether to initiate an investigation of the alleged trade complaint. Current law does not specify under what conditions a petition must be accepted; OUSTR has the authority to decide whether or not to formally initiate a 301 case. However, OUSTR consults with the interagency 301 Committee which, in conjunction with OUSTR staff,

[1]See both Jeanne Archibald, "Section 301 of the Trade Act of 1974," Manual for the Practices of International Law, ed by William Kitchell Ince and Leslie Alan Glick, Federal Bar Association, 1984, and Bart S. Fisher and Ralph G Steinhardt, III, "Section 301 of the Trade Act of 1974 Protection for U S Exporters of Goods, Services, and Capital," Law and Policy in International Business, Vol 14, 1982

reviews the petition.[2] A former chairperson of the 301 Committee characterizes this review by saying that

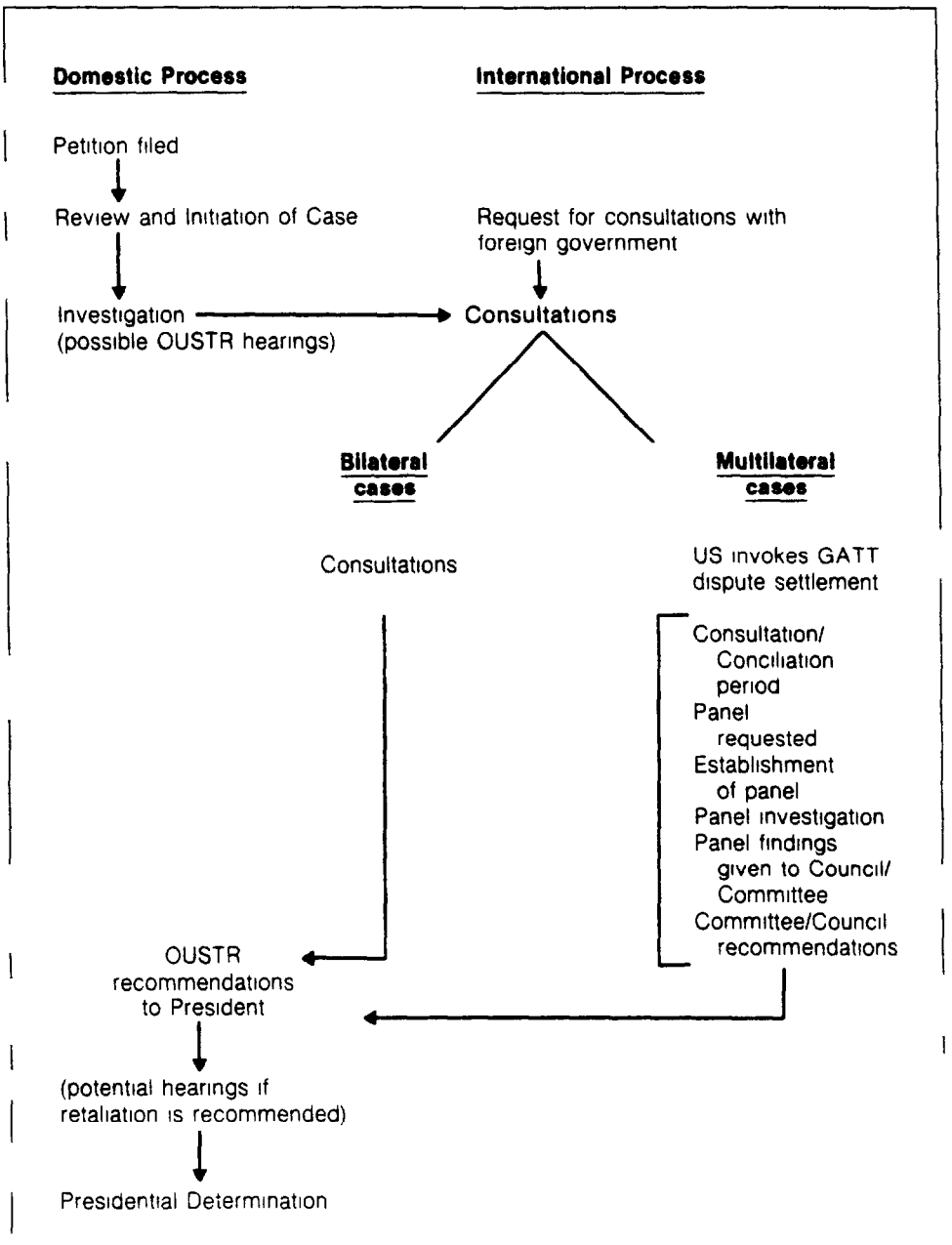
> " the petition is examined in terms of its conformity with the technical filing requirements, its substantive merit, including a consideration of the likelihood of success in the international dispute settlement process, and the policy implications of initiating or not initiating an investigation It is not uncommon for USTR to request additional information from, or to hold ex parte meetings with, the petitioner during this period "[3]

Once OUSTR elects to accept a petition, the subsequent domestic investigation is based on overall U.S. policy and national concerns rather than just the petitioner's interests. If OUSTR declines to initiate an investigation, the petitioner must be informed of the specific reasons behind the decision, which is then published in the Federal Register. However, the petitioner is generally given the opportunity to withdraw a petition prior to OUSTR's formal denial. Also, the foreign government involved generally receives a copy of a petition prior to initiation, to allow the possibility of a settlement of the trade issue before formal consultations are begun. Figure 2.1 outlines the flow of the 301 process.

[2]This Committee, chaired by OUSTR, is made up of agency representatives, usually from the Departments of State, Commerce, Treasury, Agriculture, Labor, and Justice as well as the Office of Management and Budget and the Council of Economic Advisors (although other "interested agencies," such as the Environmental Protection Agency, participate in special instances)

[3]Archibald, p 5

Figure 2.1: Outline of the 301 Process



The 301 Investigation

OUSTR publishes a notice in the Federal Register as soon as the investigation is formally initiated. The notice always requests public comment and may contain an announcement for a public hearing. OUSTR has up to

30 days after initiation to hold a public hearing if so requested by the 301 petitioner.

At this stage the domestic and international segments of the 301 investigation run concurrently. Domestically, each aspect of the investigation is subject to an interagency review process as overseen by the 301 Committee. The Committee's major responsibility is to oversee the entire 301 investigation, which entails defining issues, marshalling evidence, pursuing international consultations and dispute settlement, and making formal recommendations to the President. Consensus is generally sought on all issues. Any disagreement must be taken to the next higher policy-making level, the Trade Policy Review Group, or even up to the cabinet-level Economic Policy Council for resolution.

When a case does not involve a violation of an international agreement, such as a GATT code, the dispute must be resolved through bilateral consultations and OUSTR has a 12-month time frame to develop its recommendations to the President. In other cases, OUSTR must invoke the GATT dispute settlement provisions, which currently allow essentially an indefinite time period to resolve the trade dispute.

GATT Dispute Settlement Process

Currently, the overall GATT dispute settlement process operates in five main stages. (1) consultation and conciliation, (2) establishment of panels, (3) deliberation of panels, (4) consideration of panel findings and recommendations, and (5) follow-up and implementation.

1. Consultation and conciliation: When the petition contains allegations involving a GATT violation, the consultation clause of the appropriate agreement is invoked. If consultation efforts fail to produce a solution, the parties may then seek to use the "good offices" of the GATT Director-General or other parties for conciliation.

2. Establishment of panels: If conciliation fails to produce an acceptable result, a complaining party can then request the establishment of a panel Authorization of a panel is done by consensus and, if authorized, the parties must then reach agreement on such specifics as the panel's membership and terms of reference (a panel is usually composed of three to five persons generally selected from the pool of individuals serving on official delegations to the GATT).

3. Deliberation of panels: The panel serves as a forum to review the facts and hear disputants' arguments while continuing to allow adequate opportunity for potential bilateral consultations. If no settlement is reached, the panel writes a report outlining the facts of the case and the conclusions and recommendations reached. The report is given to the disputing parties, who can then negotiate a settlement.

4. Consideration of findings and recommendations: If there is no bilateral settlement, the panel report is submitted to the GATT Council (which is made up of all Contracting Parties to the GATT itself) or the appropriate Code Committee[4] for consideration. The Council or Committee then decides whether or not to adopt the panel's findings. This Council or Committee decision must be based on consensus (which would currently include the disputing parties), and since the panel plays merely an advisory role, the Council or Committee can accept or reject any or all of the panel report's recommendations.

5. Follow-up and implementation: If the panel report is adopted, it is then up to the offending party to decide how to comply with the recommendations. However, if the complaining party is not satisfied with these actions it can raise the matter again with the Council or Committee which, as a last resort, could then authorize some form of retaliation.

The dispute settlement process essentially has no binding deadlines. However, the process entails a set of procedures for which there are some time "guidelines," at least for that part of the process up to the final consideration of a panel's report by the Council or Committee. This potential maximum guideline for dispute settlement is 13 months, using (1) the longest specified time for each step of the process up to the time taken for final consideration by the Council or Committee, which is unspecified and can be lengthy, and (2) the specified times of the Subsidies Code for the consultation and conciliation parts of the process where there are no timelines set by the General Agreement. Table 2 1 gives an overview of these GATT guidelines.

[4]At the last round of multilateral trade negotiations, the Tokyo Round, certain codes of behavior were negotiated to reduce non-tariff trade barriers They cover subsidies and countervailing duties, dumping, government procurement, technical barriers to trade (standards), import licensing procedures, and customs valuation Each code establishes a basic framework and defines acceptable and unacceptable practices A Code Committee essentially serves a like function to the GATT Council in dispute resolution regarding cases invoking specific codes

Table 2.1: GATT Time Guidelines for Dispute Settlement[a]

Dispute settlement stages	Timelines set by General Agreement	Timelines set by Subsidies Code	Total Maximum Possible Time
Consultations	Unspecified	30 days for export subsidies 60 days for other subsidies	60 days
Conciliation	Unspecified	30 days	30 days
Panel formation	30 days	30 days	30 days
Panel consideration and report	3-9 mo	60 days (to present findings to Code Committee)	9 months
GATT Council/ Code Committee consideration	Unspecified	Unspecified	Unspecified
Total[b]	**10 months**	**6 months**	**13 months**

[a]These are suggested time frames and are not binding

[b]These totals do not include time necessary to conclude Council or Committee deliberations

OUSTR's Recommendation to the President and Presidential Action

The Trade Act of 1974, as amended, establishes deadlines within which the OUSTR must make its recommendations to the President regarding what actions, if any, he should take under section 301. OUSTR is required to make a recommendation to the President

- within 7 months after an investigation has been initiated when the complaint involves an export subsidy governed by the Subsidies Code;
- within 8 months after an investigation has been initiated if the complaint involves a non-export subsidies issue governed by the Subsidies Code (i.e., a production subsidy);
- within 30 days after the dispute settlement procedure of a trade agreement (approved under 19 U.S.C. s2503) is completed (except the Subsidies Code); or
- within 12 months of the start of any other investigation.

Even if the GATT dispute settlement process has not been completed, OUSTR must still make a recommendation to the President within these stipulated time frames. The President is not precluded from acting prior to the end of the formal settlement process. However, the President has historically chosen to postpone alternative actions until the resolution of the GATT settlement process by directing OUSTR to simply continue to pursue dispute settlement and bilateral negotiations.[5]

[5]The sole exception occurred in the citrus case (301-11) when the President decided in July 1985 that the dispute settlement process had run its full course, choosing retaliation as a necessary course of action, (although action was postponed until November 1985) (See app I) A draft agreement was subsequently reached in August 1986

OUSTR must hold public hearings and request private sector views before recommending the imposition of trade restrictions or other retaliation to the President. The law then requires that the President respond to the recommendations within 21 days and publish his decision (and the reasons for specific actions) in the Federal Register.

Reasons for Lengthy 301 Process

The 301 process is often lengthy, especially for cases involving GATT dispute settlement. In these cases delays may result from the virtually unlimited time allowed for consultation and conciliation, along with the ability of any party to prolong the settlement process without penalty to the party causing a delay.

The actual length of the 301 cases we analyzed varied dramatically, with GATT cases averaging much longer than non-GATT cases. Overall, petitioner-initiated cases averaged 34 months in duration, with GATT cases averaging 45 months and non-GATT cases 13 months.[6] The dispute settlement phase for GATT cases averaged 36 months. Sixteen of these GATT cases lasted over 3 years before the conclusion of the GATT process (a number are still pending), and two of them, involving wheat flour (OUSTR docket 301-6) and citrus (OUSTR docket 301-11), are each approximately a decade old and have yet to be fully resolved (although a provisional agreement was announced in the citrus case in August 1986). Table 2.2 outlines the length of the 301 process for the cases we reviewed.

[6]These averages will ultimately be longer because they include cases that were pending as of June 1, 1986, which was our cutoff date

Table 2.2: Length of Petitioner-Initiated Section 301 Cases[a] (as of June 1, 1986)

Length of time[b]	GATT cases	Non-GATT cases
10 years +	1	0
9-10 years	1	0
8-9 years	1	0
7-8 years	0	0
6-7 years	0	0
5-6 years	0	0
4-5 years	6	0
3-4 years	7	0
2-3 years	0	0
1-2 years	4	8
less than 1 year[c]	3	4
Total Cases	**23**	**12**

[a]Includes all 35 petitioner-initiated cases we reviewed Jan 1980 through Dec 1985

[b]Period from formal initiation of case (or date petition was filed if initiation date is unavailable) and ending with the relevant Presidential determination (i e , date of suspension, termination, etc)

[c]Includes six cases initiated and then withdrawn or terminated

Domestically, statutorily defined deadlines are generally met, yet often without actual progress or resolution of the complaint. For instance, although the President consistently meets the legal criterion for action within 21 days of OUSTR recommendations, a "Presidential Determination" in many cases is not dispositive (i.e. does not fully resolve the case), and often simply directs OUSTR to pursue dispute settlement or continue with bilateral discussions.

Length of GATT Dispute Settlement Process

The specific factors leading to protracted dispute settlement vary in each case. One of the most frequently cited problems is that virtually anything can serve as a reason to prolong resolution of a case, without penalty to the party causing a delay. Indeed, it has been suggested that it is to the distinct advantage of the party accused of an unfair trade practice to delay the process as long as possible if the practice can continue to be used advantageously.[7]

[7]For further discussion of the dispute settlement process and its problems, see Review of the Effectiveness of Trade Dispute Settlement Under the GATT and Tokyo Round Agreements, USITC Pub No 1793, Dec 1985, pp vi-vii and 67-85

Consultation and Conciliation Phase

The United States cannot force another sovereign nation to agree to specific time frames for consultations.[8] Delays and postponements of 301 cases have ensued for reasons such as conflicting national holiday schedules, time conflicts between negotiators, and sheer reluctance to proceed. For instance, in the citrus case (OUSTR docket 301-11), which was initiated in November 1976, consultations were held for years before the European Community (EC) and the United States reached an agreement in August 1986. The U.S. government tried to address this issue within the GATT despite an apparent reluctance on the part of the EC to address the politically sensitive issue of citrus tariff preferences extended to certain Mediterranean trading partners. Even the U.S. initial request for the formation of a panel (June 1982) was blocked due to EC opposition, leading to a disagreement in the GATT Council regarding the "propriety" of the U.S. request.

The National Broiler Council case (OUSTR docket 301-23) is another case that had a lengthy consultation phase. The original U.S. petition against the EC, alleging GATT-illegal export subsidies, was filed in September 1981. However, the parties soon found that resolution of the complaint would be impossible without including Brazil in the deliberations, since the EC claimed its subsidies were necessary to compete with Brazilian subsidies. Two sets of bilateral negotiations ensued, yielding no progress. The necessity for trilateral meetings was finally acknowledged by all parties, and these began in May 1984, nearly 3 years after the initiation of the 301 petition.

In a technically complex case involving a Standards Code issue, the Fertilizer Institute case (OUSTR docket 301-47), informal and formal consultations were held on the technical water solubility standard for triple superphosphate from late 1984 through 1985 without completely resolving the original standards issue or reconciling the two differing sets of trade statistics presented by each party. The case is still pending.

Panel Formation Phase

Although both the General Agreement and the Subsidies Code allow 30 days for panel formation, this phase averaged 5 months for the cases that had panels. Since each party involved in a given trade dispute must be satisfied with the formation of the panel (different candidates for the

[8]Although the Subsidies Code does provide a 30-day guideline for export subsidies and 60 days for other subsidies, the General Agreement does not specify any time limit for this phase of the dispute settlement process (see table 2.1)

panel are discussed and either accepted or rejected by each party), the process is delayed until a mutually satisfactory panel is established.

For example, the GATT Council agreed to establish a panel in the citrus case on November 2, 1982, but the panel did not form and hold its first meeting until nearly a year later (October 31, 1983), due to disagreement over the panel's composition.

Panel Consideration of Cases

In some instances, the technical complexity of a case leads to prolonged negotiations regarding the establishment of specific facts. GATT guidelines specify that a panel should take anywhere from 60 days (for subsidies) to 9 months to complete its work and submit its report to the GATT Council or Code Committee. However, in the five cases for which formal panel reports were submitted, this phase of the process averaged 14 months.

For example, in the wheat flour case (OUSTR docket 301-6), technical discussion regarding the EC's subsidy mechanisms lasted nearly 12 months prior to the panel's establishment. The panel itself, which met from January 1982 through February 1983 (roughly 13 months), had difficulties determining factors such as the meaning of "more than equitable share" of the world market—in fact, no final determination was ever achieved on this issue, and the case has never been formally settled.

In a different set of circumstances, the canned fruit case (OUSTR docket 301-26) was delayed for months because a panel member had to be replaced in the middle of panel deliberations. This phase took a total of 14 months even though, if the suggested Subsidies Code guidelines had been followed, it would have been completed within 60 days.

Council/Committee's Consideration of Panel Report

Even after a panel is established and agrees on the recommendations to be presented in the formal panel report, delays can still occur during the full Council (or Code Committee) review of that report. In the National Pasta Association case (OUSTR docket 301-25), the panel report was finally concluded in May 1983, after almost a full year of deliberations. The Subsidies Code Committee considered the report throughout the remainder of 1983 but, to date, has deferred a decision on adopting the report, which was opposed by the EC.

In the canned fruit case, the panel report was initially completed in November 1983. However, when one of the parties requested that the

panel reconsider the case, the panel assented, leading to a revised panel report in April 1984 (which reversed a portion of the initial report's findings). The final report was actually completed in July 1984 and finally adopted in December 1985, over 2 years after the initial panel report had been issued.

Improvements to Dispute Settlement Sought

Trade experts believe that a more effective dispute settlement mechanism is needed to strengthen the multilateral trading system and resolve disputes more expeditiously. Participants in the 301 process—petitioners as well as business and government officials—stressed that the dispute settlement mechanism must be improved.

Internationally, the Contracting Parties (to the GATT) admit concern over the lengthiness of the dispute settlement process, as acknowledged in the following statement.

"A number of procedural problems related to the panel process have been encountered Such problems include the formation of panels in a timely manner, and the timely completion of panel work Although the 'Understanding' provides guidelines for these procedures (thirty days for the formation of a panel and three to nine months to complete the panel's work), experience has shown these time targets are seldom met "[9]

The administration has voiced support for strengthening the dispute settlement process as shown in a statement prepared for the Quadrilateral Trade Ministers Meeting held January 16-18, 1986.

"The most obvious problem [with dispute settlement procedures] is that some disputes have not been resolved, partly because of inadequate panel reports in a few cases, but more often because one or more parties have been unwilling to allow a resolution In addition, the process takes too much time The failure to resolve disputes expeditiously (or in some cases to act at all) leads to frustration, and diminishes respect not only for dispute settlement but for rights and obligations under the GATT

"Improvement of the GATT dispute mechanism, therefore, deserves high priority "

Further, the U.S. Trade Representative commented in congressional testimony in April 1986 that "...We cannot allow multilateral dispute settlement to drag on as it has too often in the past."

[9]Dispute Settlement Procedures Action Taken on 30 November 1984 at the Fortieth Section of the Contracting Parties

Petitioners generally agree that a reasonable limit on the maximum length of the dispute settlement process could make it more efficient, while providing them with a known time limit for this GATT process (see ch. 3 for petitioners' views).

Conclusions

The 301 process is often lengthy, resulting in cases that average 34 months and some that have taken about a decade to complete. Whether or not a specific case must be directed to GATT dispute settlement determines, to a large extent, how long resolution will take. Although some recommended time frames exist, these are not often met. The GATT settlement process can be prolonged, and indeed delayed, by any disputing party for virtually any reason.

General agreement exists that the dispute settlement process is too lengthy and needs improvement. GATT officials acknowledge the shortcomings of the process, stating that unacceptable delays too often occur. Administration officials, too, are concerned about the inability to control the amount of time spent in multilateral negotiations and view improvement of the GATT dispute settlement process as an important goal. Also, the 301 petitioners themselves have expressed disappointment in the process.

The administration has set improvement in the dispute settlement process as a primary objective for the forthcoming round of multilateral trade negotiations. We agree that only in this forum can the dispute settlement process be improved. However, because the anticipated negotiations will be protracted, we believe a uniform mechanism should be established now to limit the length of U.S. participation in dispute settlement for section 301 cases. A limit on U.S. participation could alter the climate of pervasive, unlimited delays, which often impede the resolution of legitimate U S. trade complaints. In order not to undermine the GATT process, any such limits should not be shorter than the GATT guidelines

Recommendation

We recommend that Congress amend section 301 of the Trade Act of 1974 to require that OUSTR set a date for each section 301 case involving the GATT, at which time the United States would be expected to withdraw from the GATT dispute settlement process if it is not completed The statute should give OUSTR some flexibility in setting the required limit on participation based on the complexity and sensitivity of each case.

GAO is prepared to work with the appropriate committees of the Congress to devise legislative language for this recommendation.

Agency Comments and Our Evaluation

OUSTR raised concerns about our recommendation because it believes it might be unwise to preclude continuation of GATT dispute settlement proceedings. OUSTR noted that it instead favors establishing a 24-month deadline for OUSTR's recommendation to President in such GATT cases; this would allow international dispute settlement proceedings to continue even if the President were to take some action, which could later be modified in light of the outcome of such proceedings.

We do not believe that the administration's proposal would necessarily add a more definitive time limit to the process. Although certain deadlines currently exist for OUSTR's recommendations to the President (as discussed on pp. 17 and 18), OUSTR's recommendation in subsidies cases is often to continue the GATT dispute settlement process. Historically, these recommendations have been followed by Presidential Determinations which continue U.S. participation in the GATT process, and cases have gone on for years without resolution. We therefore believe that it would be prudent to establish a deadline on U.S. participation in the GATT dispute settlement process.

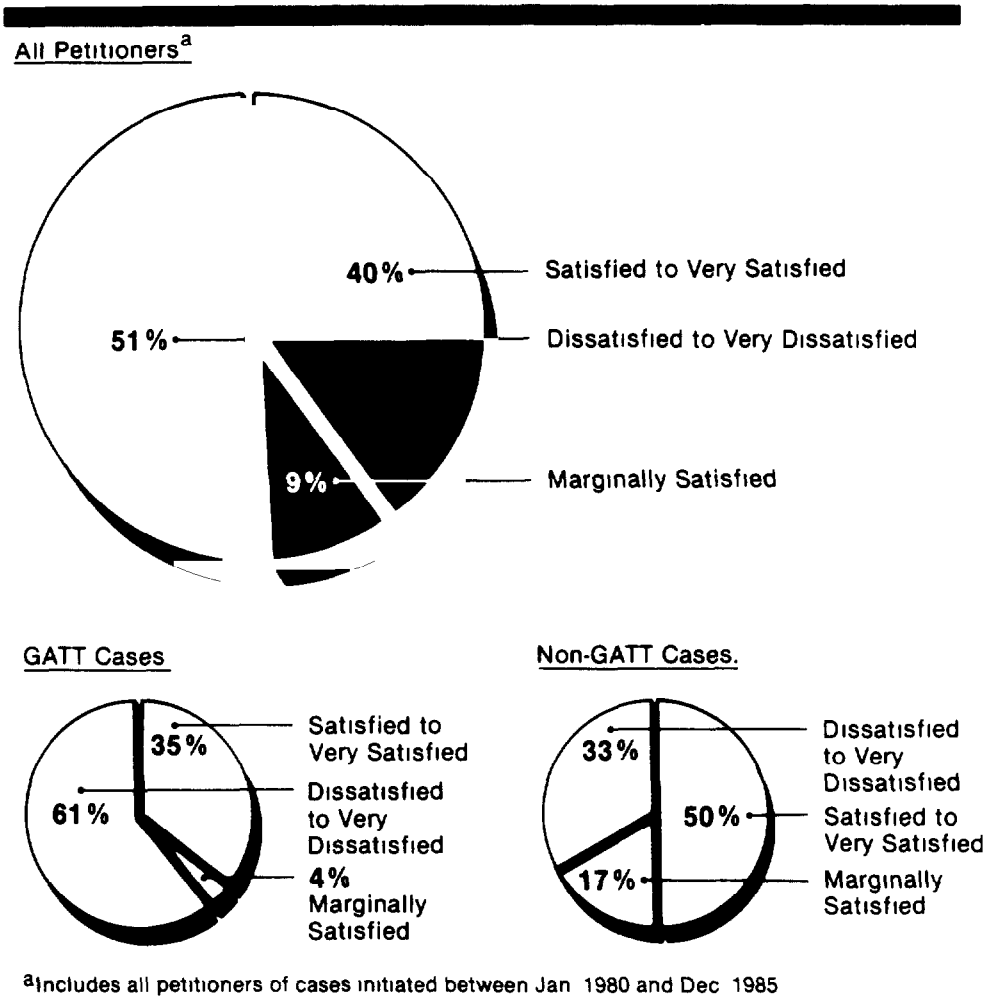
OUSTR also questioned our analysis of section 301 cases, stating that some of the case information we used and our categorization of certain cases (as shown in app. I) was incorrect. Although we had originally categorized any case that was not formally terminated as "pending," a OUSTR official subsequently told us that no standardized categorization system exists for certain of these section 301 cases. This uncertainty regarding categorization of cases does not affect any of our statistical analysis, however, since we consistently used the most conservative cut-off point for each case (i.e. we used the relevant "Presidential Determination" in specific cases and not the date of actual case "resolution"). We have revised our report to reflect OUSTR's comments on case status and the most current data available as published in OUSTR's semiannual report to Congress. We also made changes in the report to address USTR suggested technical corrections.

Petitioners' Experiences With Section 301

Based on the results of our questionnaire, we found that a slight majority of petitioners (51%) was dissatisfied with the overall handling of their section 301 complaints. Dissatisfaction was particularly significant among petitioners whose complaints were referred to the GATT; nearly two-thirds of these petitioners expressed dissatisfaction, while only one-third of petitioners with non-GATT cases expressed dissatisfaction (see fig. 3.1).

During our interviews with the 301 petitioners, we found a general sense of discouragement with the evidence requirements of the domestic process and the disproportionate amount of effort needed to develop the petition compared with the remedy obtained. Petitioners were also discouraged by the uncertainty introduced into the process by the political nature of international negotiations and the lengthy GATT dispute settlement phase of the multilateral process. Some petitioners criticized the lack of "political will" prior to September 1985 to resolve difficult trade issues, and others identified the lack of follow-up on negotiated agreements as an important problem to address. Overall, there was a general sense of dismay with the length of the process and a general advocacy of more rigid domestic and international time frames (see app. II for entire questionnaire).

Figure 3.1: Petitioners' Satisfaction With Handling of 301 Cases



[a]Includes all petitioners of cases initiated between Jan 1980 and Dec 1985

Petitioners Have Major Responsibility for Developing Evidence

Eighteen petitioners stated that OUSTR had been initially satisfied with the evidence supporting their cases. Petitioners in 8 of the 23 GATT cases and 3 of the 12 non-GATT cases reported that OUSTR had not been satisfied initially with the evidence they presented in support of their complaints. (The remaining petitioners were uncertain whether OUSTR had been satisfied.) Of the 11 petitioners who reported that OUSTR was initially not satisfied with the evidence, 6 said that OUSTR indicated it was the petitioner's responsibility to develop new evidence to strengthen the trade complaints. (Four petitioners said the petitioner took primary responsibility and one said the petitioner and OUSTR equally shared the responsibility.)

Some petitioners were critical of the fact that OUSTR's investigation often does not include independent development of evidence. Some were also disappointed with the amount of information OUSTR had been able to obtain independently regarding the foreign practice and the time required to document this information. Some interviewees felt that OUSTR should require a lower threshold of evidence to initiate a case, reasoning that the investigation process is meaningless if all the evidence must be developed before the investigation is even initiated. Several complained that they continuously had to "jump through hoops" as the investigation progressed, in terms of answering ongoing requests for more data to support the already-initiated complaints. On the other hand, any facts or data presented by the foreign negotiators seemed to be readily accepted, according to some petitioners. OUSTR disputed this contention and told us that successful negotiations, especially for GATT cases, depend upon strong evidence and stressed that its evidence requirements are reasonable.[1]

A petitioner must demonstrate that the unfair foreign trade practice cited in the complaint

" (i) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce "[2]

Some petitioners maintained that, where condition (i) is met, no further evidence supporting a claim of "injury" or "burden" is necessary. They objected to OUSTR's requirement that they supply such evidence in order for the case to be initiated and said they believed that OUSTR should initiate all cases alleging a "per se" violation of a trade agreement.

The requirement in condition (ii) is less exacting than the legal requirement to prove material injury used in other trade provisions (e.g., countervailing duty and antidumping laws). Nonetheless, several petitioners complained that the OUSTR's evidence requirements were substantially similar to those required for proof of material injury and therefore were too stringent. Some suggested that a less stringent evidence standard to initiate a petition would make the investigation phase of the domestic process more meaningful

[1]Requirements for additional evidence can also be precipitated by the request of the foreign government (not OUSTR) for additional proof/information regarding the U S 301 complaint

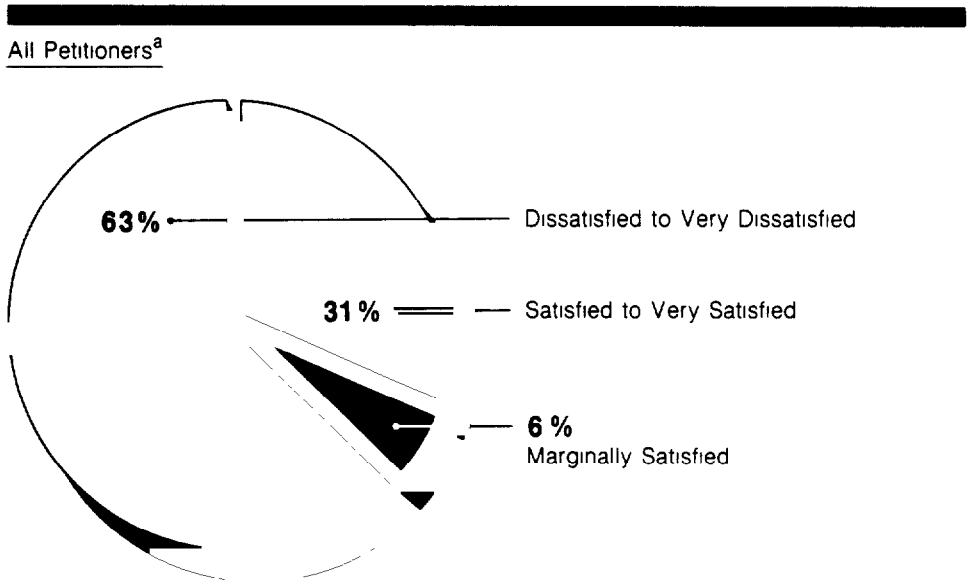
[2]19 U S C 2411 (a)(1)(B)

Petitioners Say Process Is Too Lengthy

Petitioners think that the process takes far too much time to resolve their complaints. A number of petitioners told us that during the time their 301 cases were being negotiated, whole marketing patterns had shifted, changing the entire trading environment from that surrounding the original complaints. Some international markets were considered permanently lost. Petitioners reported that they recognized the constraints imposed by the multilateral negotiating process, specifically by the GATT dispute settlement process. Petitioners said they were well aware that resolution of a 301 case is often more political than legal in nature and that this contributes to the lengthiness of cases. Nevertheless, they asserted that the process was too slow. In fact, several petitioners said they would avoid filing a 301 petition if it was potentially a GATT case.

Of the 32 petitioners responding to our question on the length of the process, 20 (about 63%) reported dissatisfaction with the time it took to resolve their trade complaints (9 were dissatisfied while 11 were very dissatisfied). (See fig. 3.2.)

Figure 3.2: Petitioners' Satisfaction With Length of Process



[a]Includes all responding petitioners of cases initiated between Jan 1980 and Dec 1985

Petitioners Believe That "Political Will" Has Been Lacking

Petitioners told us that for the 301 process to work, the United States must have "the political will" to push for a U.S. industry's trade rights and be willing to "fight fire with fire" and that too often this will has been lacking. A number of petitioners felt that more could have been done to support their cases. Some complained that OUSTR acts "more like an arbiter than an advocate" of U.S. industry, whereas they believed that other nations stood behind their industries.

Political and foreign policy considerations limit the ability of OUSTR to succeed in resolving 301 petitions and contribute to the frustration petitioners experienced in the 301 process. For example, negotiations in the Argentine air couriers case (OUSTR docket 301-44) and the Argentine leather hides case (OUSTR docket 301-24) were made more difficult due to the change of government there. Political difficulties have also arisen in those cases that challenge the practices formalized in the EC under the Common Agricultural Policy. The wheat case (OUSTR docket 301-6) has remained unresolved for more than 10 years due, in part, to the fact that it challenged the EC practice of subsidizing agricultural products, a politically sensitive issue in the EC.

Some petitioners were concerned that OUSTR may be too hesitant to pursue a specific 301 case (especially if it may have to go to the GATT) unless it is certain about the potential for success and the definite avoidance of embarrassment (especially in precedent-setting cases). Petitioners told us that often the only way to move through the stalled process is to gain adequate political support.

The administration, however, has stated that it has changed the emphasis of its trade policy to increasingly take aggressive action. The President instructed OUSTR to accelerate negotiations in the leather and leather footwear and canned fruit cases. OUSTR settled these cases in late 1985. In addition, for the first time in the history of section 301, the administration self-initiated four 301 cases during late summer and fall 1985 and retaliated in two other cases (see ch. 4 for discussion).

Petitioners Voice Concern Over Long-Range Impact of Agreements

In some cases, trading partners have not fully complied with agreements resulting from 301 negotiations. For example, after a 301 filing (OUSTR docket 301-20) in 1979, the Korean government formally agreed to issue a full marine insurance license to the U.S. petitioner by May 1981, to abolish the monopoly on non-compulsory fire insurance by May 1984, and to establish an equitable sharing arrangement to be implemented

during 1981.[3] The U.S. petitioner withdrew the 301 petition in December 1980 in recognition of the Korean government's commitment

The Korean government granted the full marine insurance license in 1981, but it did not enforce Korean compliance with the other two parts of the agreement. OUSTR self-initiated a renewal of the 301 complaint (as OUSTR docket 301-51) in September 1985, just as the U.S. industry was preparing its own 301 filing. The petitioner observed that, prior to the settlement announcement in July 1986, OUSTR had been actively pursuing this case because it recognized the need to assert the legitimacy of section 301 by ensuring that agreements reached are in fact implemented.

In February 1979 and again in 1984, the United States and Japan reached an accord liberalizing restrictions on U.S. leather imported into Japan. Japan breached the 1984 agreement, but it was not until political pressure mounted in Congress that the United States acted by threatening to retaliate by December 1, 1985 (a date later extended to mid-December), spurring a settlement in mid-December 1985. (See ch 4 for discussion of the agreement.)

Although OUSTR has monitored some agreements in the past (when directed by the President or requested by a petitioner), it currently has no systematic mechanism for evaluating the results of negotiated agreements. OUSTR tends to rely on the petitioners to inform it of any problems with the implementation of the understanding

Some petitioners believe that more should be done to monitor agreements. For example, the industry association and some members of Congress have voiced concerns regarding implementation of the semiconductor settlement negotiated in July 1986 with Japan. This 5-year agreement provided that Japan would increase market access to U.S. manufacturers by "encouraging" Japanese producers and users to buy more U.S. semiconductors; establish an organization to help U S. producers increase sales; take measures to prevent dumping in the United States and third countries of Japanese semiconductors below company-specific fair value; and monitor, along with the United States, the costs and prices of Japanese semiconductor exports to the United States and third countries. Industry representatives complain that

[3]This arrangement provided for an equitable distribution of the aggregate volume of insurance business ceded to the Korean Reinsurance Corporation by all insurers in the Korean market For a more complete discussion of Korean insurance practices, see Fisher and Steinhardt, pp 590-91

Japan is already in non-compliance. In a letter to the Department of Commerce, an industry spokesman stated that, as of late October 1986, the Japanese semiconductor companies have ignored the antidumping elements of the agreement in third country markets and in Japan. (OUSTR disagreed with the petitioners' monitoring concerns, stating that it regularly and carefully monitored the agreement.)

Petitioners and OUSTR Use Different Measures of Success

The U.S. government regards a successful case as one in which it has secured an agreement with the foreign country either to eliminate the alleged unfair practice or to liberalize access by U.S. firms to markets in the foreign country. Often negotiating on a broad range of issues, the United States may not fully achieve its objective of eliminating the specific practice cited in the 301 complaint, but it nevertheless regards as successful those agreements that improve overall trade relations.

Although petitioners we interviewed share with the U.S. government the objective of eliminating unfair trade practices, they also seek to eliminate the injuries documented in their complaints. They view the removal of unfair practices as a means to an end, not the end itself. We therefore sought the petitioners' views regarding the changes in the alleged unfair foreign practices and injuries claimed in their petitions.

In our interviews, 18 petitioners reported that the section 301 process had no net effect on the unfair foreign trade practices and twelve petitioners stated that section 301 had remedied the practice partially. Five petitioners said that the section 301 process had remedied the unfair foreign trade practices, but two of these stated that the foreign countries had replaced the practices with other restrictive practices.

With respect to the removal of trade injury, about one-third reported that the trade injuries cited in their complaints had been remedied either completely or partially by the disposition of the cases, but two-thirds (23 petitioners) felt that there had been no net effect on the injuries cited. One petitioner believed the injury had become more severe. All three petitioners who reported the complete removal of the trade practice also reported the complete removal of injury.

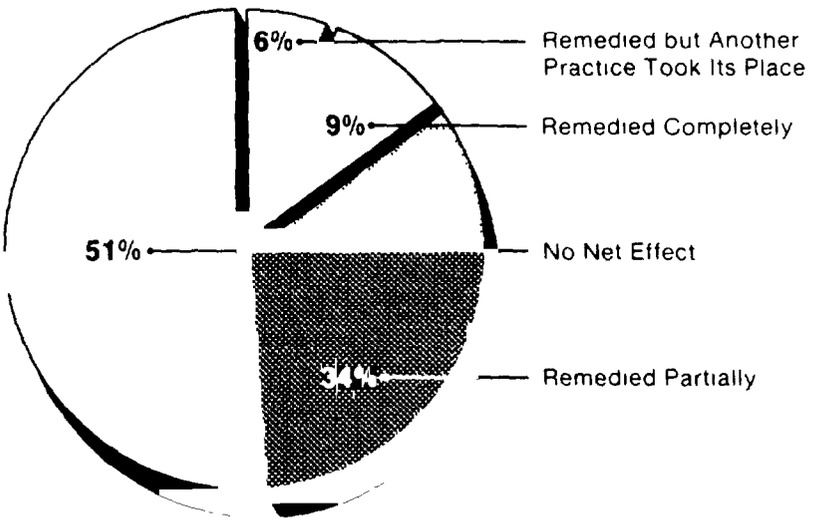
Of the 12 petitioners who reported that the unfair practices had been partially remedied, 6 indicated that the injuries had remained unchanged or became more severe (see fig. 3.3). Several of these petitioners said the injuries had remained unchanged because the foreign countries involved in the dispute had eliminated the specific practices

but added other trade restrictions. In another case, the petitioner asserted that the foreign country had implemented only part of an agreement.

etitioners' Views on Effect 01 on Unfair Trade id Injuries

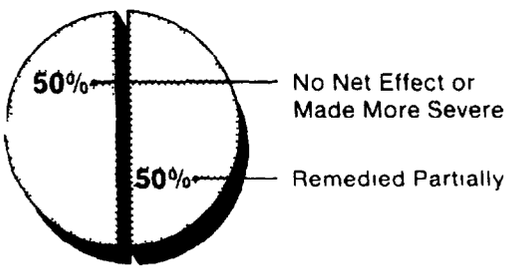
All Petitioners

Effect of Sec 301 on Unfair Trade Practice



Petitioners Reporting That Trade Practice Was Partially Remedied

Effect of Sec 301 on Trade Injury



OUSTR and some petitioners had different perspectives about the success of the 301 process. OUSTR, for example, characterized the outcome of the Japanese leather case as positive since it produced some trade liberalization for U.S. exporters, even though, as noted by OUSTR in its comments, it was not the "preferred" outcome of eliminating the specific unfair

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trade practice. However, the leather and footwear industries were disappointed with the ultimate disposition of their petitions. From the U.S. government's point of view, the case's disposition included liberalization of Japanese markets for many U.S. products as well as retaliation in the form of increased U.S. tariffs on two categories of Japanese leather products in response to the restrictive Japanese import quotas on leather and leather footwear products. The leather industry, however, notes that the amount of the retaliation against Japanese leather included only $14 million for the U.S. leather industry, or roughly 2 percent of the documented domestic injury of approximately $600 million. The footwear industry was similarly disappointed with the settlement, which did not include Japanese import liberalization on U.S. leather footwear.

A few 301 petitioners viewed the 301 process as useful even though OUSTR took no direct action to remedy the trade complaints cited in their petitions. For example, two industry petitioners had sought to develop political support for their trade problems and noted their success in using section 301 as a "preliminary to a different kind of case." One petitioner believes that the political support created during the 301 process led to the subsequent decision by the President to initiate a remedy under section 201.[4] These petitioners' cases were subsequently handled together under section 201, and both petitioners believe that, while the section 301 process did not directly provide a solution to their particular trade concerns, it served as a necessary prelude to achieving success under section 201.

Another 301 petitioner was successful in getting a foreign government's attention and opening bilateral trade discussions. Although the President decided to terminate the investigation, the petitioner was not entirely dissatisfied because the 301 process had enabled a meaningful dialogue to take place on the trade issue.

Conclusions

Petitioners were generally dissatisfied with the extent of evidence required by OUSTR, the uncertainty due to the political aspects of section 301, the time required to resolve section 301 cases, and a lack of U.S. "political will" prior to late 1985. In addition, some petitioners noted the

[4]Section 201 (19 U S C 2251) provides a remedy to U.S businesses seriously injured by increased imports of specific products from foreign countries It is generally not applicable to trade issues subject to a section 301 remedy, and thus the situation described above is fairly unique

importance of follow up by OUSTR on the implementation of negotiated settlements.

Petitioners and the U.S. government evaluated the success of section 301 differently. The U.S. government seeks to eliminate the unfair trade practice but also works to improve overall trade relations with the specific foreign country. Thus, even when an agreement does not include the elimination of the specific unfair practice cited in the 301 petition, the government may regard the resolution as a success. Petitioners consider the elimination of the specific unfair trade practice and the trade injury cited in the complaints as crucial elements in judging the success of a 301 case.

Chapter 4

Recent Changes in U.S. Polic

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Self-Initiation and Firm Deadlines

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Further, a variety of other 301-related actions have produced successful results and illustrate the value of such actions as leverage in international negotiations to secure more open foreign markets.

- In September 1985, the Motion Picture Exporters Association filed a 301 petition alleging that Korea unfairly restricted foreign motion picture distribution. Shortly thereafter, Korea responded by easing the restrictions and the Association withdrew its petition.
- After the United States indicated its intent to retaliate, the EC agreed to eliminate production subsidies on canned peaches and to reduce similar subsidies on canned pears (OUSTR docket 301-26).
- Taiwan changed its rice export subsidy practices in response to a 301 petition (OUSTR docket 301-43). The Taiwanese were concerned about the possibility that the United States might withdraw special lower tariffs available to Taiwanese goods under the Generalized System of Preferences.
- OUSTR believes that in the Japanese leather and footwear cases (OUSTR docket 301-13 and 301-36), the announcement by the President of impending retaliation was influential in bringing about Japan's agreement to reduce tariffs on 137 U.S. products, to bind permanently previously reduced tariffs on another 242 U.S. products that were under temporary reductions, and to accept increases in U.S. tariffs on two categories of Japanese leather and footwear products.

Retaliation as a Means of Removing Trade Barriers

The United States has retaliated seven times since the passage of section 301 in 1974. Two of these involved cases occurring in 1986 and are not included in our analysis due to the time frame of our study. EC enlargement to include Spain and Portugal (301-54) and Canadian lumber (301-58). The remaining five cases are Canadian border broadcasting, Argentine hides, EC citrus, Japanese leather, and Japanese leather footwear. In the Canadian border broadcasting and the Argentine hides cases, U S retaliation involved closing U.S. markets to these foreign firms. In the citrus, leather, and leather footwear cases, although U.S. retaliatory actions led to some opening of foreign markets to U.S. producers, the unfair foreign trading practices were not fully eliminated—the resulting market liberalization actually benefited U.S. businesses other than the original petitioners, who claim they received very little benefit from these actions.

In the citrus case, the first instance of retaliation, the EC had twice blocked GATT consideration of a panel report sustaining U.S. allegations of unfair preferential tariffs on citrus extended by the EC to certain

Mediterranean countries to the detriment of U.S. citrus exports (OUSTR docket 301-11) The United States, which had initiated the investigation in 1976, retaliated in November 1985 by imposing additional duties on EC pasta products. The EC responded by increasing tariffs on U.S. lemons and walnuts In both cases of retaliation, the effects were moderated somewhat by the stockpiling of pasta and walnuts just prior to retaliation. The United States and the EC announced in August 1986 a provisional agreement subject to approval by their respective governments, under which the EC and the United States agreed to roll back tariffs on lemons, walnuts, and pasta to pre-November 1985 levels. In settlement of the citrus dispute, the EC agreed to tariff concessions on various citrus products (oranges, lemons, grapefruit, etc.). The EC also agreed to lower its tariff on almonds in return for a larger cheese quota and reduced U.S. tariffs on anchovies, satsuma oranges, capers, cider, paprika, olive oil, and certain green olives. Both countries agreed to settle the pasta dispute through prompt and good faith negotiations. Retaliation in this case did not result in the removal of the unfair trade practice cited in the original complaint; in fact, the United States explicitly acknowledged the right of the EC to offer the preferential tariffs to designated Mediterranean countries and agreed not to challenge future EC preferential tariffs. The citrus industry told us it regards this agreement as "a step backwards" and had hoped for a better outcome.

The second and third retaliations were against Japan for its quotas on leather and leather footwear (OUSTR docket 301-13 and 301-36). The President announced a deadline of December 1, 1985, for settlement of these cases, with formal consideration of retaliation to follow after that date. After an extension of the deadline to mid-December, Japan agreed to a trade package of compensation and retaliation worth a total of $260 million. It agreed to compensate the United States in the amount of $236 million for the unfair trade practices by permanently reducing tariffs on 379 products (none of which are leather or leather footwear) and to accept the U.S. retaliation of $24 million against certain Japanese leather and leather footwear products.

While the use of retaliation has not been successful in removing the specific trade barriers cited in the relevant 301 complaints, trade experts believe its use may alter the views of U.S. trading partners by making the potential for future 301 actions more credible. A citrus industry representative told us that, despite not benefiting directly from the citrus retaliation against the EC, it is making slow, steady progress with Japan on its citrus quotas, which restrict imports. The spokesman attributes

this progress partly to the U.S. use of retaliation against the EC in that citrus case.

Conclusions

The United States moved aggressively on section 301 trade issues in late 1985 by self-initiating four cases, placing deadlines on those cases as well as on two pending cases, and retaliating in three cases. The U S. government also put its trading partners on notice that the United States places a high priority on trade issues by using its intention to self-initiate and to retaliate as leverage in negotiations. Notwithstanding the recent progress, the long-lasting success and trade impact of the recent settlements remain uncertain.

Agency Comments and Our Evaluation

OUSTR noted that our report does not reflect self-initiated activity under Section 301 undertaken in 1986. The agency points out that these recent self-initiations "demonstrate the Administration's continuing commitment to a vigorous and effective use of Section 301." As noted in chapter 1, we reviewed cases which were either filed or initiated between January 1, 1980, and December 31, 1985. Although we have updated the cases included in our study to reflect recent developments, the 1986 self-initiations cited by the agency were outside the scope of our review. In any case, we have recognized that the administration has taken steps to emphasize the use of section 301 in dealing with unfair trade practices.

Summary and Timeframes for Section 301 Cases (Selected Cases)[a]

Case Docket # (GATT/Non-GATT)[b] Country and Product/ Service Involved	Date Petition Initiated	Dispute Settlement Phase[c]	Disposition/Present Status
Filed by Petitioners			
301-3 (GATT) EC Supplementary Levies on Egg Imports	8/7/75[d]	Terminated prior to formal consultations increased import charges Investigation terminated 7/21/80	Informal consultations held, supplementary levies replaced by increased import charges Investigation terminated 7/21/80
301-5 (GATT) EC Subsidies of Malt Exports	11/13/75[d]	Terminated prior to formal consultations	In 1976, EC agreed to reduce subsidy OUSTR terminated investigation 6/19/80
301-6 (GATT) EC Export Subsidies on Wheat Flour	12/8/75	Presidential directive to OUSTR 8/1/80 to begin dispute settlement Subsidies Code process initiated 9/29/81 Panel established 1/22/82 Panel report issued 2/24/83 Code Committee considered the report on 4/22/83, 5/19/83, 6/10/83, and 11/17/83	Pending
301-7 (GATT) EC Variable Levy on Sugar Added to Canned Fruits and Juices	3/30/76[d]	Terminated prior to formal consultations	Following consultations during MTN, parties reached agreement on 7/11/79, which changed the variable levy to a fixed 2% levy on sugar added OUSTR terminated investigation 6/18/80
301-11 (GATT) EC Citrus Tariff Preferences for Certain Mediterranean Countries	11/30/76	GATT Council established a panel 11/2/82 Panel met 10/31/83, 11/29/83, 2/13/84, and 3/12/84 Full panel report submitted 12/14/84 GATT Council considered panel findings and recommendations on 3/12/85 and 4/30/85, but EC blocked any action On 4/30/85, U S considered dispute settlement concluded	President determined that EC practices deny GATT benefits and, effective 7/6/85, imposed 40% ad valorem duty on pasta products not containing egg and 25% ad valorem duty on those containing egg EC reacted by raising duties on lemons and walnuts imported from U S , effective 7/8/85 On 7/19/85, OUSTR announced that in return for U S suspension of increased duties on imported pasta, EC would drop proposed duty increases, reduce EC pasta export subsidies by 45%, and take steps to increase access to EC market for U S citrus exports by 10/31/85 EC did not increase U S access to its citrus market, however, so President reimposed the higher duties on EC pasta on 11/1/85 EC counter-retaliated and imposed higher duties on U S lemons and walnuts U S held consultations with EC on 11/18-19/85, 1/27-28/85, and 2/19-21/86 EC and U S agreed 8/86 to roll back tariffs on lemons, walnuts, and pasta to pre-November levels In settlement of the citrus dispute, EC made concessions on various citrus products EC also agreed to lower its tariff on almonds in return for a larger cheese quota and reduced U S tariffs on anchovies,satsuma oranges, capers, cider, paprika, olive oil and certain green olives U S agreed not to challenge future EC preferential tariffs between the EC and Mediterranean countries Both agreed to settle pasta dispute by 7/87

Case Docket # (GATT/Non-GATT)[b] Country and Product/ Service Involved	Date Petition Initiated	Dispute Settlement Phase[c]	Disposition/Present Status
Filed by Petitioners			
301-13 (GATT) Japan Leather	8/23/77	Dispute settlement panel authorized 4/20/83 In 2/84, panel found that Japan's leather quotas violated GATT art XI, thus impairing or nullifying U S GATT benefits GATT Council adopted panel report on 5/16/84	U S rejected Japan's mid-1985 proposal to replace quota by high tariff as inadequate On 9/7/85, President directed OUSTR to recommend retaliation unless it resolved leather and leather footwear restrictions satisfactorily by 12/1/85 Japan agreed 12/85 to provide about $236 million in compensation through reduced (or bound) Japanese tariffs U S raised tariffs on about $24 million in imports into U S of leather and leather goods from Japan effective 3/31/86
301-14 (Non-GATT) USSR Marine Insurance	11/10/77[d]	(e)	In 6/78, President determined that Soviet practice was unreasonable On 7/12/79, OUSTR suspended investigation pending review during 1980 of operation of U S -Soviet agreement Suspension extended indefinitely due to 1980 Soviet invasion of Afghanistan
301-15 (Non-GATT) Canada Border Broadcasting	8/29/78[d]	(e)	U S held public hearings in 11/78 and 7/80 President determined on 8/1/80 that most appropriate response was legislation to mirror in U S law the Canadian practice Proposal sent to Congress on 9/9/80 and again in 11/81 Legislation enacted 10/30/84
301-16 (GATT) EC Wheat Export Subsidies	11/2/78[d]	(e)	U S held public hearing in 2/79 and consulted with EC in 7/79 Both parties agreed to monitor developments in the wheat trade, exchange information, and consult further to address any problems that might arise OUSTR terminated investigation on 8/1/80
301-17 (GATT) Japan Cigars & 301-19 (GATT) Japan Pipe Tobacco	3/14/79[d] 10/22/79	Consolidated cases 301-17 and 301-19 in 11/79 During 3/80 panel deliberations under GATT Art XXIII 2 Japan repealed internal tax on imported cigars and applied import duty of 60% ad valorem Before panel action was completed, U S and Japan agreed on liberalized market restrictions and reduced import duty GATT proceedings terminated 4/81	OUSTR terminated investigation on 1/6/81
301-18 (Non-GATT) Argentina Marine Insurance	7/2/79	(e)	Hearing held 8/29/79 Upon Argentina's commitment to participate in multilateral negotiations, a goal of which was to eliminate restrictive practices in insurance sector, OUSTR suspended investigation on 7/5/80
301-20 (Non-GATT) Korea Insurance	12/19/79	(e)	On 11/26/80, OUSTR invited comments on, inter alia, proposals for retaliation Beginning 6/80, OUSTR held consultations, resulting in Korea's commitment to promote more open competition in insurance market Upon withdrawal of petition on 12/19/80, OUSTR terminated investigation 12/29/80 See OUSTR Docket 301-51

Case Docket # (GATT/Non-GATT)[b] Country and Product/ Service Involved	Date Petition Initiated	Dispute Settlement Phase[c]	Disposition/Present Status
Filed by Petitioners			
301-21 (Non-GATT) Switzerland Eyeglass Frames	12/6/79[d]	(e)	Petitioner withdrew petition on 11/10/80 OUSTR terminated investigation 12/11/80
301-22 (GATT) EC Sugar Export Subsidies	10/5/81	U S consulted with EC 2/16/82 Conciliation phase completed 4/30/82	On 6/28/82, President directed OUSTR to continue international efforts to eliminate or reduce EC subsidies
301-23 (GATT) EC and Brazil Poultry Export Subsidies	10/28/81	U S consulted with EC and Brazil between 2/16/82 and 6/23/83 Since these consultations did not resolve problem, U S requested conciliation Subsidies Code Committee held first conciliation meeting on 11/18/83 Conciliation continued on 4/4/84, 5/4/84, 6/20/84, and 10/16/84	Pending
301-24 (Non-GATT) Argentina Hides	11/24/81	(e)	U S consulted with Argentina on 2/23/82 and 4/15/82 OUSTR held public hearing on 10/6/82 on proposed recommendation to President concerning termination of 1979 U S -Argentina hides Agreement U S terminated it effective 10/29/82, and President increased U S tariff on leather imports effective 10/30/82 Petitioner withdrew petition on 11/9/82 OUSTR terminated investigation on 11/16/82
301-25 (GATT) EC Pasta Export Subsidies	11/30/81	Beginning 12/2/81, U S consulted with EC several times On 3/1/82, U S referred matter to Subsidies Code Committee for conciliation Committee authorized panel, which began work on 7/12/82 On 7/21/82 President directed OUSTR to expedite dispute settlement Panel met 10/8/82 and issued factual finding 1/20/83 At EC request, additional panel meeting held 3/29/83 Panel report (3-1 in favor of U S) submitted to Subsidies Code committee 5/19/83 Committee considered report 6/9/83 and 11/18/83 but deferred decision on adoption See docket no 301-11 for Presidential action affecting pasta in 1985 and 1986	Pending After U S retaliation against EC pasta and EC counter-retaliation against lemons and walnuts, U S and EC agreed 8/86 to settle citrus dispute, including an agreement to settle pasta by 7/87 See Docket No 301-11
301-26 (GATT) EC Canned Fruit Production Subsidies	12/10/81	U S consulted with the EC on 2/25/82 and requested a dispute settlement panel on 3/31/82 On 8/17/82, President directed OUSTR to expedite dispute settlement Panel met on 9/29/82 and 10/29/82 and submitted report to U S and EC on 11/21/83 Panel met again with the parties on 2/27/84 and submitted a revised report to both parties on 4/27/84 Additional panel meeting held on 6/28/84 and a final report issued on 7/20/84 U S requested adoption of report in GATT Council meetings of 4/30/84, 5/29/84, 6/5/84, and 7/16/84, but Council action deferred because EC was not ready to act on report	On 9/7/85, President directed OUSTR to recommend retaliation unless case resolved by 12/1/85 EC agreed 12/85 to eliminate the canning subsidies for canned peaches

Case Docket # (GATT/Non-GATT)[b] Country and Product/ Service Involved	Date Petition Initiated	Dispute Settlement Phase[c]	Disposition/Present Status
Filed by Petitioners			
301-27-31 & 33 (GATT) Specialty Steel Domestic Subsidies (Austria, France, Italy, Sweden, U K , & Belgium)	2/26/82 & 8/9/82	U S consulted under Subsidies Code in 10/82	On 11/16/82, President directed OUSTR to (1) request ITC to conduct expedited investigation under sec 201 of the 1974 Trade Act, (2) initiate multilateral and/or bilateral discussions aimed at eliminating trade distortive practices in specialty steel sector, and (3) monitor U S imports of specialty steel products subject to sec 201 investigation ITC found injury, and the President imposed combination of tariffs and quotas effective 7/20/83
301-32 (GATT) Canada Railcar Export Subsidies	7/19/82	U S consulted with Canada under Subsidies Code on 7/5/82	OUSTR terminated investigation on 9/23/82 because same allegations were subject of CVD investigation
301-34 (GATT) Canada Front-End Loaders Duty Remissions	10/28/82	U S consulted under GATT art XXII on 12/21/82 OUSTR must submit recommendations to President within 30 days of conclusion of dispute settlement	Pending
301-35 (GATT) Brazil Non-rubber Footwear Import Restrictions	12/8/82	U S consulted with Brazil, Japan, Korea, and Taiwan under GATT art XXII on 4/4/83 Brazil offered 11/85 to liberalize its import surcharge and to reduce tariffs	Pending
301-36 (GATT) Japan Non-rubber Footwear Import Restrictions	12/8/82	U S consulted on 1/27/83 and requested GATT art XXIII consultations in 2/84 Consulted under art XXIII 1 in 4/85, decided 7/85 to proceed under art XXIII 2, and requested that conclusions reached by a dispute settlement panel in 1984 on the leather quota be applied to the Japanese leather footwear quota as well (see 301-13)	On 9/7/85, President directed OUSTR to recommend retaliation unless OUSTR resolved the leather and leather footwear restrictions satisfactorily by 12/1/85 Japan agreed 12/85 to provide about $236 million in compensation through reduced (or bound) Japanese tariffs Also U S will raise tariffs on about $24 million in imports of leather and leather goods from Japan
301-37 (GATT) Korea Non-rubber Footwear Import Restrictions	12/8/82	U S consulted on 2/5/83 and 8/83 Korea reduced tariffs on footwear items and removed all leather items from import surveillance list	Pending
301-38 (Non-GATT) Taiwan Non-rubber Footwear Import Restrictions 0 D	12/8/82	(e) market	U S consulted with Taiwan on 1/17/83 On 12/19/83, the President determined that Taiwan does not impose unfair barriers on U S imports he nevertheless directed OUSTR to pursue offers regarding ing assistance for U S exporters
301-39 (GATT) Korea Steel Wire Rope Subsidies and Trademark Infringement	5/2/83	U S requested consultations under Subsidies Code	Petitioner withdrew petition on 11/29/83 and, effective 12/15/83, OUSTR terminated investigation
301-40 (GATT) Brazil Soybean Oil and Meal Subsidies	5/23/83	U S consulted with Brazil under art 12 of Subsidies Code on 11/21/83 OUSTR submitted a recommendation to President on 1/23/84, on 2/13/84, President directed OUSTR to pursue dispute settlement procedures under Subsidies Code OUSTR has requested additional consultations OUSTR must submit recommendations to the President within 30 days of the conclusion of dispute settlement	Pending

Case Docket # (GATT/Non-GATT)[b] Country and Product/ Service Involved	Date Petition Initiated	Dispute Settlement Phase[c]	Disposition/Present Status
Filed by Petitioners			
301-41 (GATT) Portugal Soybean Oil and Meal Subsidies	5/23/83	U S. consulted with Portugal under GATT art XXII on 11/29/83. Portugal began lifting restrictions 6/84 on soymeal imports OUSTR must submit recommendations to the President within 30 days of the conclusion of dispute settlement	Pending
301-42 (GATT) Spain Soybean Oil and Meal Subsidies	5/23/83	U S. consulted with Spain under GATT art XXII on 12/1/83. OUSTR must submit recommendations to the President within 30 days of the conclusion of dispute settlement	Pending
301-43 (Non-GATT) Taiwan Rice Export Subsidies	10/11/83	(e)	U S consulted 12/8-9/83, 1/17-18/84, and 2/20-22/84 Based on understanding reached which limited subsidized rice exports from Taiwan, petitioner withdrew petition on 3/9/84, and OUSTR terminated the investigation on 3/22/84
301-44 (Non-GATT) Argentina Air Couriers	11/7/83	(e)	U S consulted on 3/22/84 and held public hearing on proposals for action under sec 301 on 10/24/84 On 11/16/84, President determined that Argentine practices were unreasonable restriction on U S commerce He directed OUSTR to hold another consultation, as requested by Argentina, and to submit proposals for action within 30 days Prior to the 30-day period, Argentina lifted its prohibition for a 90-day period Restrictions lifted permanently 3/85
301-45 (Non-GATT) Taiwan Films	1/30/84	(e)	Petitioner withdrew petition on 4/17/84 OUSTR terminated investigation on 4/26/84
301-46 (Non-GATT) European Space Agency Satellite Launching Services	7/9/84	(e)	U S consulted with European Space Agency on 11/12-13/84, 12/17-18/84, 2/21-22/85, and 5/20-21/85 On 7/9/85, OUSTR submitted a recommendation to President On 7/17/85, President found that ESA practices were not unreasonable and terminated investigation
301-47 (GATT) EC Triple Superphosphate Water Solubility Standard	10/1/84	U.S. consulted under Standards Code on 12/5-6/84	Pending
301-48 (Non-GATT) Japan Semiconductors	7/11/85	(e)	Suspended. U S consulted in 8/85, 9/85, 11/85, and 12/85 It held technical discussions in 1/86 and 2/86.OUSTR was required to submit recommendations to the President on or before 7/10/86 Agreement reached 7/21/86 to open Japan markets to U.S producers and to take measures to prevent dumping in U S and third markets of Japanese semiconductors below company-specific fair value Agreement which also provided for the suspension of the antidumping cases at Dept of Commerce, was signed 9/2/86, remains in effect until 3/31/91

Case Docket # (GATT/Non-GATT)[b] Country and Product/ Service Involved	Date Petition Initiated	Dispute Settlement Phase[c]	Disposition/Present Status
Filed by Petitioners			
301-49 (Non-GATT) Brazil Informatics	9/16/85	(e)	U S consulted with Brazil 2/86, 7/86, 8/86, and 9/86 On 10/6/86, the President decided Brazilian informatics policy unreasonably burdens U S commerce and directed OUSTR to continue negotiations and to defer recommendations to 12/31/86 On 11/28/86, OUSTR advised GATT of its intention to suspend application of compensatory U S tariff concessions to Brazil On 12/30/86, the President suspended that part of the investigation relating to Brazilian administrative procedures due to Brizil's concessions and directed OUSTR to continue negotiations on protection of intellectual property rights He will make a decision by 6/30/87
301-50 (Non-GATT) Japan Tobacco Products	9/16/85	(e)	Suspended 10/86, pending implementation of the agreement U S requested consultations 2/3/86, presented lengthy questionnaire on 2/11/86, and held technical discussions 2/21/86 It consulted in Tokyo on 3/4/86, 4/16-17/86, and 5/27-28/86 Japan agreed 10/86 to provide increased access for U S firms to Japan's cigarette market
301-51 (Non-GATT) Korea Insurance	9/16/85	(e)	U S consulted with Korea in 11/85, 12/85, and 2/86 OUSTR was required to submit recommendation to President by 9/15/86 Korea agreed 7/86 to open insurance markets to U S firms President approved agreement and terminated the investigation 8/14/86
301-52 (Non-GATT) Korea Intellectual Property Rights	11/4/85	(e)	U S consulted with Korea in 11/85, 12/85, 2/86, 3/86, and 7/86 OUSTR was required to submit recommendation to President by 11/3/86 Korea agreed 7/21/86 to provide comprehensive protection of foreign patents, copyrights, and trademarks in Korea President approved the agreement and terminated the investigation 8/14/86

[a]Cases included those pending or initiated between January 1, 1980 and December 31, 1985 These cases were updated through January 1987

[b]GATT cases involve formally invoking consultation and/or dispute settlement

[c]Begins with formal consultation

[d]Date petition filed, no separate initiation date available

[e]Not applicable

Data was provided by the Office of the United States Trade Representative (OUSTR) and reflects information available as of January 1987

Survey of Petitioners Concerning Section 301 of the Trade Act of 1974, as Amended

Question 1

Consider both the amount of encouragement and discouragement you may have received from USTR when contemplating or filing your trade complaint. In your opinion, do you feel that USTR initially attempted to encourage or discourage your company from pursuing its trade complaint? (Check one.)

1. [ ] USTR encouraged our complaint (answer question 2 then skip to 4)

2. [ ] USTR discouraged our complaint (Skip to 3).

3. [ ] USTR neither encouraged nor discouraged our complaint (Skip to 4).

Question 2

Why, in your opinion did USTR encourage your company to pursue its trade complaint? (Check all that apply)

1. [ ] USTR encouraged the case because it supported a trade principle the United States has been seeking to pursue.

2. [ ] USTR encouraged the case because it could be handled expeditiously.

3. [ ] USTR encouraged the case because it provides a useful dialogue between the United States and the foreign country.

4 [ ] Other

Question 3

Why, in your opinion, did USTR discourage your company from pursuing its trade complaint? (Check all that apply.)

1. [ ] USTR discouraged the case because resolution of the trade complaint would be a lengthy process (because of the need to use GATT dispute settlement procedures).

2. [ ] USTR discouraged the case because the issue had been raised bilaterally with the foreign country before and no progress has been made to resolve it so far.

3. [ ] USTR discouraged the case because the issue has been a very sensitive one due to the foreign government's domestic political situation.

4. [Other

Question 4

Was USTR initially satisfied with the evidence supporting your company's trade complaint? (Check one.)

1. [ ] Yes (Skip to 6)

2. [ ] No

3. [ ] Don't know (Skip to 6)

Question 5

What role did USTR play in the development of new facts or evidence to strengthen your company's trade complaint? (Check one.)

1.[ ] USTR took responsibility.

2. [ ] USTR took primary responsibility with the company providing some assistance.

3. [ ] USTR and the company equally shared responsibility.

4. [ ] The company took primary responsibility with USTR providing some assistance.

5. [ ] USTR indicated that it was the company's responsibility.

Question 6

Overall, how satisfied or dissatisfied was your company with the opportunity provided by USTR for your company to present its case? (Check one.)

1. [ ] Very satisfied

2. [ ] Satisfied

3. [ ] Marginally satisfied

4. [ ] Dissatisfied

5. [ ] Very dissatisfied

Question 7

What effect did the 301 process have on the foreign trade practice that was the basis of your company's trade complaint? (Check one.)

1. [ ] Remedied the practice completely

2. [ ] Remedied the practice partially

3. [ ] Remedied the original practice, but another restrictive practice took its place

4. [ ] Made the practice more restrictive

5. [ ] Has had no net effect on the practice

Question 8

What effects did the 301 process have on foreign trade injury cited in your company's trade complaint? (Check one.)

1. [ ] Remedied the injury completely

2. [ ] Remedied the injury partially

3. [ ] Made the injury more severe

4. [ ] Has had no net effect on the injury

Question 9

How satisfied or dissatisfied were you with the amount of time it took USTR to resolve your company's trade complaint? (Check one.)

1. [ ] Very satisfied

2. [ ] Satisfied

3. [ ] Marginally satisfied

4. [ ] Dissatisfied

5. [ ] Very dissatisfied

Question 10

Overall, how satisfied or dissatisfied were you with USTR's handling of your company's trade practice complaint? (Check one.)

1 [ ] Very satisfied

2. [ ] Satisfied

3. [ ] Marginally satisfied

4. [ ] Dissatisfied

5. [ ] Very dissatisfied

Agency Comments From the Office of the United States Trade Representative

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

January 30, 1987

Mr. Frank C. Conahan
Assistant Comptroller General
General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

I am replying to your letter of January 8 to Ambassador Yeutter concerning your draft report, "International Trade: Combating Unfair Foreign Trade Practices" (Code 483410). Generally we believe this draft report is a significant improvement over an earlier version, which failed to distinguish recent developments under Section 301 of the Trade Act of 1974 from more dated activity. We appreciate the recognition reflected in this update that the Administration's Section 301 program over the last year and a half has been unprecedently vigorous and, more important, effective.

In this regard, this report notes the four investigations "self-initiated" in 1985. However, it does not reflect more recent "self-initiated" activity under Section 301. For the first time, the President last year acted under Section 301 without a preceding, formal investigation under Section 302. First, in May he established quotas and withdrew tariff commitments on various products in response to quotas and increased tariffs imposed by the European Community (EC) on agricultural products in Portugal and Spain, as a result of their accession to the EC. While the President did not increase any U.S. tariffs in response to the EC tariff actions in Spain last year (as a result of an interim agreement reached on July 2), on December 30 he announced that he would increase U.S. tariffs on canned hams, carrots, endives, certain cheeses, gin, brandy and certain white wine to 200 percent ad valorem by the end of January 1987 unless the EC satisfactorily compensates the U.S. beforehand for its tariff increases in Spain.

Second, in August the President determined that Taiwan's use of an administratively determined "duty paying list" system to value imports for customs purposes was inconsistent with a trade agreement or unreasonable and a burden or restriction on U.S.commerce. In 1978 and 1979 through exchanges of letters, Taiwan had agreed to apply to the U.S. obligations substantially equivalent to those applicable to developing countries under the

GATT Customs Valuation Code. Because the Code allowed developing countries to delay their implementation for five years following their adherence, Taiwan's failure generally to use "transaction value" (normally the invoice price of goods) to value imports for customs purposes was not in breach of its obligations until January 1, 1986 (five years following the Code's entry into force on January 1, 1981). Last January the United States gave Taiwan an additional six months in which to comply with its commitment, but Taiwan failed to do so. However, with the benefit of the President's determination under Section 301 and direction to the Trade Representative to propose retaliatory measures, we were able to resolve this dispute later in August. Taiwan agreed to introduce new regulations by September 1, to be effective by October 1. Taiwan did so, and accordingly the Office of the U.S. Trade Representative announced in October that it intended to take no further action under Section 301 in this matter.

Third, the President determined in October 1986 that Taiwan's failure to provide fair and equitable access to its beer, wine and tobacco markets was actionable under Section 301. Again, he directed the U.S. Trade Representative to propose appropriate and feasible countermeasures. As in the customs valuation case described above, this action by the President provided sufficient leverage in our negotiations with Taiwan to obtain a satisfactory resolution of the dispute. Taiwan agreed generally to open its market to U.S. exports of beer, wine and tobacco products, so it proved unnecessary for the U.S. Trade Representative to propose retaliation against Taiwan.

Fourth, the President used the authority of Section 301 to facilitate the conclusion of an agreement with Canada under which it will impose a charge of 15 percent ad valorem on exports of certain softwood lumber products to the United States. (This charge will offset subsidies on those products preliminarily found by the U.S. Department of Commerce in October in a countervailing duty investigation.) Because the Canadian Government was unable to impose and collect this charge immediately following its agreement to do so on December 30, 1986, the President relied upon Section 301 to impose a 15 percent ad valorem import duty on those products of Canada. This temporary measure avoids any harm to the U.S. industry pending imposition of the Canadian charge. Without the availability of this authority, it is doubtful whether the U.S.-Canada agreement on softwood lumber products could have been reached.

These four instances of "self-initiated" action under Section 301 demonstrate the Administration's continuing commitment to a vigorous and effective use of Section 301. It is not and cannot

possibly be a panacea for trade problems. However, provided it is invoked judiciously, it can be a valuable tool in our efforts to open foreign markets to U.S. exports and investment and to improve the protection of intellectual property rights.

I enclose a memorandum noting suggested corrections to the draft report in some detail. Also enclosed are recent semiannual reports under Section 306 of the Trade Act, to facilitate your description of recent developments under Section 301. Please let me know if I can be of any further assistance with respect to this draft report.

Sincerely,

Judith Hippler Bello

Judith Hippler Bello
Chairman, Section 301 Committee

SUGGESTED AMENDMENTS TO THE DRAFT REPORT ON SECTION 301

On page 2 of the summary, the report says Section 301 is the only trade remedy authorizing action against closed foreign markets. Section 307 of the Trade and Tariff Act of 1984 also could be used for this purpose in cases involving export performance requirements.

Now on pp 4 and 23

On pages 5 and 34, the report provides GAO's recommendation that, after a set date, USTR should be required to withdraw from GATT dispute settlement. We support setting a reasonable deadline for recommendations by the Trade Representative to the President in trade agreement dispute settlement cases. In fact, the Administration's competitiveness bill will propose such a 24-month deadline. However, we believe that it would be unwise to preclude continuation of dispute settlement proceedings. Even if the Trade Representative recommends and the President takes, action, international dispute settlement proceedings could continue. At their conclusion, the President could modify his action in light of that outcome if appropriate. We urge GAO to consider amending its recommendation to allow continued dispute settlement beyond the deadline for the Trade Representative's recommendations to the President.

Now on p 9

On page 12, the report refers to the Administration's consideration of "another set of self-initiated 301 actions." This is misleading, if not simply inaccurate. It would be more accurate to say that the Administration continues to use Section 301 where such use (including self-initiated action, if appropriate) is likely to be effective in particular circumstances.

Now on p 10.

On page 13, the report does not describe well the four self-initiated investigations. The Brazil informatics case involved investment restrictions and insufficient protection of computer software as well as trade restrictions. The Japan tobacco case involved (inter alia) a continuing government monopoly on manufacturing cigarettes in Japan. The former Japan tobacco and salt monopoly was not privatized, as the report suggests; while the monopoly no longer is a government agency, the Ministry of Finance is the sole shareholder. The Korea insurance case concerned the provision of services rather than restrictions on investment.

Now on p 12

On page 16, the report says that "most cases have taken roughly three years to conclude." We believe it would be more accurate to say that "on average, it has taken three years to conclude cases."

Now on p 13

On page 17, the criteria listed at the top of the page for a Section 301 petition are not comprehensive. In footnote 2, OMB is listed in the parenthetical as an agency that participates in

the Section 301 Committee in special circumstances. This is not accurate; OMB is a regular participant.

Now on p 15

On page 20, the last sentence in the first paragraph should read, "... if so requested by the 301 petitioner." Also in the first paragraph, you suggest that either public comment or a public hearing will be announced in the notice of initiation. This sentence should be revised to reflect that public comment is always solicited, and in addition a public hearing may be scheduled.

Now on p 15.

Also on page 20, paragraph 2 incorrectly indicates that disagreement among Section 301 Committee members requires review by the Trade Policy Staff Committee. The correct reference is to the Trade Policy Review Group. (The Section 301 Committee is effectively a TPSC committee.)

Now on p 16

On page 22, footnote 4, the list of GATT codes is not comprehensive; the GATT Antidumping Code has been left out.

Now on p 18.

On page 25, the President does not make "annual directives" to USTR to continue dispute settlement or negotiations. Section 301 requires Presidential action only once in any particular Section 301 matter. Once the President has made a determination, there is no further statutory requirement for Presidential action. The President may act further if he chooses to, but is not required to do so.

Now on p 17

On page 25, footnote 5, retaliation in the citrus case was decided upon in July 1985. Implementation was postponed until November while the U.S. and EC sought an agreement prior to October 31, 1985 (which did not materialize until August 1986).

We note that there are reasons in some cases for neither terminating the case nor actively pursuing it. However, the public disclosure of such reasons would be detrimental to U.S. interests. Therefore, the fact that a case has long remained pending does not mean per se that the Government has negligently failed to prosecute it vigorously. Inactivity in a particular matter may be a conscious, deliberate policy, pursued after consultation (and sometimes with the acquiescence of) petitioners.

Now on p 21

On page 31, the sentence just before the new heading is misleading. The Subsidies Code guidelines are just that. They are not binding, and so it is misleading to speak of when a dispute "should" have been completed. We would urge revision along the following lines: "This phase took a total of 14 months even though, if the suggested Subsidies Code guidelines had been followed, it would have been completed within 60 days."

Now on p 28.

On pages 37-38, the report notes that some pettioners said that facts and data presented by foreign governments were readily

accepted, while petitioners were said to have to "jump through hoops." USTR strongly disputes this contention.

Now on p 36

On page 42, I'm not sure what your source is for the statement that the Administration has changed its priorities and attitude about trade problems. The President's September 1985 trade policy action plan restates the Administration's free and fair trade policy, and is not a fundamentally new policy.

On page 43, you suggest that there is a legal difference between a "binding, legal document" and an exchange of letters. Agreements can take various forms--treaties, executive agreements, exchanges of letters or notes, aides memoires, etc.--and each form can be binding or nonbinding, depending upon its terms.

Now on p 32

On page 44, the report refers to allegations that the U.S.-Japan Agreement on Semiconductor Trade has been inadequately monitored. We believe those allegations to be unfounded, as we have regularly and quite carefully monitored that agreement.

Now on p 38

On page 48, you quote Ambassador Yeutter as referring to the outcome in the Japan leather and leather footwear cases as "a classic success story." I have been unable to locate this alleged quotation in his February 1986 testimony before the House Ways and Means Committee. In any event, neither case represents our preferred outcome in Section 301 cases, elimination of the unfair foreign trade practice. However, the leather and leather footwear outcome was preferable to retaliation, which simply closes the U.S. market to imports without opening a foreign market to U.S. exports. The Japan leather and leather footwear cases represent a "second best" outcome, since Japan agreed to compensate us through reduced and bound tariffs that increase opportuniteis for American producers (other than leather and leather footwear producers) to sell products in Japan. While we would have preferred to elminate the Japanese restrictions on imports of leather and leather footwear, we were unable to achieve this goal. As the President's determination noted, at least compensation "is far preferable to protectionist measures that would restrict imports without increasing U.S. exports."

Now on p 36

On page 52, any reference to the Brazil informatics case should note that it covered intellectual property as well as investment and trade issues. Moreover, the deadlines in the four cases self-initiated in the fall of 1985 were imposed by the statute, not simply by administrative decision.

On page 53, the reference to the Taiwan beer/wine/tobacco developments in 1985 should presumably be deleted, since Taiwan renegged on that early understanding, necessitating the President's determination under Section 301 in October 1986.

Now on pp 37-38

On pages 54-56, the description of retaliation by this Administration is quite incomplete. First, the record shows that

no prior Administration has ever retaliated. Second, this Administration has retaliated in seven instances: Argentina leather hides, Canada border broadcasting, EC citrus, EC enlargement, Japan leather, Japan leather footwear, and Canada stumpage. Moreover, the President determined to retaliate in two additional cases, Taiwan customs valuation and Taiwan beer/wine/tobacco. The satisfactory resolution of the latter two disputes eliminated the need to retaliate, however. While retaliation is not the goal of Section 301, the threat of retaliation must be credible to provide leverage in negotiations to resolve trade disputes. For the threat of retaliation to be credible, retaliation must be resorted to when trading partners act unfairly and then refuse to negotiate an acceptable resolution. While this Administration has not retaliated injudiciously, it has not shirked from retaliation when the circumstances required it.

Now on pp 37-38.

On page 55, the description of the EC citrus/almond agreement is somewhat misleading. First, the EC made tariff concessions on various citrus products, not just oranges (including some products not covered in the GATT dispute, and some products that were covered in that dispute but on which the U.S. "lost"). Second, the EC made those concessions to resolve the citrus case. The EC also agreed to lower its tariff on almonds in return for a larger cheese quota and reduced U.S. tariffs on anchovies, satsuma oranges, capers, cider, paprika, olive oil and certain green olives.

Now on pp 40-45

Finally, in the summary of Section 301 cases appended to your report, many are improperly described. For example, the EC citrus case has not been suspended (p. 57); the Japan leather and Canada border broadcasting cases are not pending (p. 58); the EC sugar export subsidies case is not pending (p. 59); the Japan footwear case likewise is not pending (p. 60); Argentina air couriers also has been concluded (p.61), while the Japan tobacco case is suspended rather than pending (p. 61); and the two self-initiated Korea cases were terminated rather than suspended (p. 62). These errors call into serious question any statistical analysis of Section 301 results.

The following are GAO's comments on the Office of the U.S. Trade Representative's letter dated January 30, 1987.

GAO Comments

1 We have made changes in the report to address OUSTR's suggested technical corrections. The agency's more substantive points are specifically identified and addressed in the applicable report chapters.