

GAO

Testimony

FOR RELEASE ON
DELIVERY
EXPECTED AT
10:00 A.M.
MARCH 17, 1987

SECTION 301 OF THE
TRADE ACT OF 1974,
AS AMENDED

STATEMENT OF
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BEFORE THE
SENATE COMMITTEE ON FINANCE



038276-132407

Mr. Chairman and Members of the Committee

We are pleased to be here today to summarize our report to this Committee, entitled "Combating Unfair Foreign Trade Practices." Our report focuses specifically on Section 301 of the Trade Act of 1974, which, as you know, gives the President broad powers to enforce U.S. trade rights. Section 301 is, in fact, the primary provision of U.S. trade law that authorizes the U.S. government to act against unfair trade practices that restrict U.S. access to foreign markets. As such, it has been called a "key weapon" in the administration's "trade arsenal."

We examined the overall 301 process and its record of success in remedying unfair foreign trade practices. We also documented the experiences of 301 petitioners in our analysis of all 35 petitioner-initiated section 301 cases that were pending or initiated between January 1, 1980, and December 31, 1985. Twenty-three of these cases were taken to the General Agreement on Tariffs and Trade (GATT) for resolution under the GATT dispute settlement process, and 12 cases were negotiated bilaterally. In addition, we analyzed the 4 cases self-initiated by the Office of the U.S. Trade Representative (OUSTR) during this period.

Overall, we found that the use of section 301 had limited success in achieving the removal of unfair foreign trade practices. Although its broad scope is adequate to address such practices, the

section 301 process has generally been very lengthy, particularly when complaints must also go through the GATT dispute settlement process. Both petitioners and government officials involved in this process expressed great concern about its length.

Length of process

The length of the 301 cases we 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. We note that these averages will ultimately be longer because they include cases that were not terminated as of June 1, 1986, the cutoff date for our analysis.

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.

Petitioner's experiences

In our interviews, petitioners often 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. Several petitioners told us that they would not

attempt to use this provision again, especially if it meant 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 results of completed cases, the development of evidence, the amount of "political will" to resolve 301 cases, and the long-range impact of negotiated agreements.

With regards to results, the U.S. government generally views success in 301 cases as the removal of the unfair foreign trade practice. However, during the period of our study relatively few cases resulted in the elimination of the specified unfair practices. Three petitioners told us that the section 301 process had remedied the unfair foreign trade practice completely; 20 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 stated that it had remedied the practice partially.

In addition to eliminating unfair trade practices, petitioners also want the resulting injury eliminated. Eleven out of the 35 petitioners reported that the trade injury cited in their complaints was 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 injury cited. Of those reporting that the unfair practice was partially remedied, half also

indicated that the injury 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. We agree that only in this forum can the dispute settlement process be improved and its potential value realized. However, because the anticipated GATT negotiations will be protracted, we believe that a uniform mechanism is needed now to limit the length of U.S. participation in GATT dispute settlement for section 301 cases.

We, therefore, are recommending 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. In consideration of the complexity and sensitivity of each case, we believe that this amendment should give OUSTR some flexibility in setting a deadline.

In response to our report, OUSTR cited the aggressive stance it has taken over the past 18 months in addressing section 301 cases, specifically the self-initiation of cases as well as a variety of

other 301-related actions which it characterizes as producing successful results throughout fiscal year 1986.

OUSTR was also concerned that our recommendation would require the United States to withdraw prematurely from GATT dispute settlement and that it might be unwise to preclude continuation of these proceedings. OUSTR advised us that the administration has proposed that a 24-month deadline be set for OUSTR's recommendation to the President in dispute settlement cases. OUSTR could recommend continuing U.S. participation in the GATT process, withdrawing from it, or taking other actions.

The administration's proposal does not set a firm deadline to end U.S. participation in protracted GATT dispute settlement cases. In the past, GATT cases for which OUSTR recommendations were required have been followed by Presidential determinations to continue U.S. participation in the GATT process. Such section 301 cases have often gone on for years without resolution. We believe that a firm deadline for U.S. withdrawal from the GATT process is necessary to bring such cases to closure. Consequently, we recommend that at the time each case is referred to the GATT, a firm deadline be established for ending U.S. participation in the GATT dispute settlement process.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions you and other members may have at this time.