



## Overview

The United States International Trade Commission (USITC) is an independent, nonpartisan agency meant to ensure U.S. companies have a level playing field and promote competitiveness, even when a foreign company falls outside the jurisdiction of U.S. federal courts. In its many roles, the USITC adjudicates cases of alleged unfair import or intellectual property (IP) violations, and provides crucial support to Congress and the executive branch on questions of trade policy. Most of the Commission's policy research and support is done through an investigative procedure authorized in Section 332 of the Tariff Act of 1930. While these investigations do not deliver policy recommendations or enforceable actions, they do inform decisions from Congress and the Administration. This Basic will explore the structure of the USITC and the process of Section 332 investigations, as well as a relevant recent investigation.

## Organizational Structure

The USITC is headed by six Commissioners, appointed by the President. Appointees are confirmed by a full Senate vote after a hearing before the Finance Committee. No more than three Commissioners may be affiliated with the same political party at one time, and one of the six Commissioners will serve as Chairperson. The Chairperson will alternate every two years between Commissioners of different parties, by selection of the President.

Today, the USITC operates to fulfill a three-pronged mission:

1. To fairly and objectively administer U.S. trade remedy laws, done mostly through the adjudication of unfair import investigations
2. To give independent, quality analysis, information, and support on policy questions related to tariffs, international trade, and U.S. economic competitiveness
3. To maintain the U.S. Harmonized Tariff Schedule

The most common type of case filed at the USITC falls under Section 337 of the Tariff Act, to investigate **unfair import** violations. These cases look into whether or not, or to what extent an unfair trade practice harms U.S. businesses. The Administrative Law Judge hearing the case may decide to implement corrective measures and order remedial action when harmful trade practices or intellectual property infringements are found to have taken place. *Center Forward will examine Section 337 and unfair import investigations in a future Basic, to be released in summer 2023.*

While 337 investigations are the most common function of the Commission, the USITC also serves to provide support to the President (including the United States Trade Representative [USTR]) and Congress through a variety of channels. The USITC is responsible for maintaining the **U.S. Harmonized Tariff Schedule**. The Harmonized Tariff Schedule classifies goods imported into the U.S. by their category of use, regions of origin, and materials used in manufacturing them. The USITC publishes an updated schedule on a semi-annual basis, and can offer the President, USTR, and the Bureau of Customs and

## Center Forward Basics

Center Forward brings together members of Congress, not-for profits, academic experts, trade associations, corporations and unions to find common ground. Our mission: to give centrist allies the information they need to craft common sense solutions, and provide those allies the support they need to turn those ideas into results.

In order to meet our challenges we need to put aside the partisan bickering that has gridlocked Washington and come together to find common sense solutions.

For more information, please visit [www.center-forward.org](http://www.center-forward.org)

Border Protection policy support and advice on implementation.

## Section 332 Investigations

Most of the USITC's policy research is carried out through investigations under Section 332 of the Tariff Act of 1930. These investigations are requested by the President, the USTR, the Senate Finance Committee, or the House Ways and Means Committee, and largely serve as fact-finding missions to inform policy decisions. The USITC can also commence a Section 332 investigation on its own initiative.

Section 332 investigations largely serve as general fact finding missions to provide market analysis, historical background, and forecasted economic impact of trade-related policies to Congress and the Administration. The Commission makes no recommendations on policy or other matters in its Section 332 reports. The USITC carries out its enforcement actions through Section 337 investigations and trials, separate from the questions and findings of any fact-finding work.

The President, USTR, or Congressional committees will usually request a deadline and schedule for 332 investigations when requesting them. If no deadline is requested or set by mutual agreement, the USITC will set its own schedule. In most cases, the Commission will open 332 investigations for public comment and testimony. There is typically an in-person hearing for interested parties to provide oral testimony and address the Commissioners' questions. There is also a longer written comment period, where the public can submit any written testimony, data, and resources for the Commission's consideration in the course of their independent research.

At the conclusion of the investigation, the USITC will issue a report to the requesting body with its findings. These reports are made public unless otherwise requested for national security reasons.

### *Investigation 332-596: COVID-19 Diagnostics and Therapeutics: Supply, Demand, and TRIPS Agreement Flexibilities*

In June 2022, the World Trade Organization (WTO) member nations agreed to waive certain intellectual property (IP) commitments in the **TRIPS Agreement** for COVID-19 vaccines in the face of the ongoing pandemic and global health crisis. TRIPS, or the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights, is the most comprehensive multilateral agreement on international IP protections. As part of the original decision to waive commitments protecting IP on COVID-19 vaccines, the WTO also pledged to examine whether to extend the waiver to COVID-19 therapeutics and diagnostic technologies.

To inform the Administration's position at the WTO on extending the TRIPS waiver, Trade Representative Tai requested a Section 332 investigation at the USITC for impartial background research and analysis, and to gather a robust record of the public and industry's comments on the matter.

In her letter to the USITC, Trade Representative Tai requested the Commission address a wide range of questions and topics in its investigation, including but not limited to:

- Identify definitions for "diagnostics" and "therapeutics" in the medical field
- Outline the existing universe of diagnostics and therapeutics for COVID-19, both covered by patents as well as those in development
- Provide an overview and description of the production and distribution of COVID diagnostic and therapeutic products, including the key components in manufacturing, supply chains, major firms, operational costs, and geographic distribution
- An overview of demand for COVID-19 therapeutics and diagnostics, an assessment of where unmet demand exists, where supply is accumulated, and a study on the impact, if any, of the relationship between testing and the demand for treatment
- An analysis of the market segmentation of global demand and consumption for diagnostic and therapeutic products, delineated by countries' income levels
- Information on the availability and pricing of diagnostic and therapeutic products, where they are available

- The relationship between patent protection and innovation in the health sciences sector, and between patent protection and access to medicine in countries across the income scale
- An inventory of actions by WTO member states to use compulsory licensing for the production and distribution of therapeutic and diagnostic products, and the impacts on product access, global health, and innovation
- A description of any alternatives to compulsory licensing, including voluntary licenses through the Medicines Patent Pool (MPP) and other multilateral programs

Among the many specific questions the USTR raised, the core question of investigation 332-596 is to assess what level of global health crisis persists in late 2023, and what effects an expanded TRIPS waiver would have on global markets, access to medicine, health outcomes, and future innovation in the sector. This question is especially pertinent given that the World Health Organization (WHO) officially ended the global health emergency status for COVID-19 in May 2023.

Using the USITC's findings, the USTR's position on this waiver at the WTO will either establish or solidify a powerful precedent for U.S. and global trade policy and the value of IP protections. Industry experts and leaders in both major Parties warn that further weakening commitments to protect IP under TRIPS will have strong negative consequences on innovating new technologies and economic growth. Advocates aligned with the nations requesting the extended waiver, India and South Africa, assert that a waiver extension is needed because the existing compulsory licensing mechanisms in TRIPS are too burdensome, albeit no government has utilized the TRIPS waiver for COVID-19 vaccines.

The USITC will issue its final report on this investigation to the USTR no later than October 17th, 2023.

## Conclusion

Aside from its role in building a fair and competitive market for U.S. companies against foreign competitors, the USITC also provides important research and support to trade-related policy decisions. Many parties have raised questions about the USITC's effectiveness and impartiality related to IP enforcement and import controls, but Section 332 investigations are largely viewed as a good resource supporting trade policy decisions. The process of Section 332 investigations gives the public and industry a valuable avenue to voice their opinions and concerns on trade decisions in real time, and the decisions made from 332 reports can establish long-reaching precedents.

## Links to Other Resources

- USITC - [A Centennial History of the United States International Trade Commission](#)
- USITC - [Information on Section 332 Investigations \(2011\)](#)
- USITC - [A List of Ongoing Section 332 Investigations](#)
- USTR - [Trade Representative Katherine Tai's Letter Requesting USITC Investigation 332-569](#)
- USITC - [USITC Announcement of Investigation 332-569 and Schedule](#)
- United States House of Representatives - [House Democrats' Letter of Concern on Expanding TRIPS Waivers](#)