

CAC Board Considers Section 201 Investigation

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On September 1, 2020, the Office of the U.S. Trade Representative, the Department of Agriculture, and the Department of Commerce released a report outlining several steps to be taken by the Trump Administration to address the harm being caused to U.S. growers due to increased imports of seasonal and perishable fruits and vegetables.

Among other actions, the Administration committed in its report to ask the U.S. International Trade Commission (ITC) to initiate an investigation under Section 201 of the Trade Act of 1974 (a “global safeguard investigation”) to determine the extent to which increased imports of blueberries have caused, or threaten to cause, serious injury to domestic blueberry growers.

The Administration issued its Section 201 request to the ITC on September 29, 2020. Once a Section 201 case begins, the ITC determines whether the covered product is being imported in such increased quantities as to be a substantial cause of serious injury, or threat of serious injury, to the U.S. industry producing the like or directly competitive product. If the ITC makes an affirmative injury determination, it recommends to the President specific forms of relief that would facilitate the domestic industry’s positive adjustment to import competition. The President makes the final decision on whether and how to provide relief.

Possible relief measures, which are only applicable for a temporary period, can include increased duties, tariff-rate quotas, or quantitative restrictions, among other actions. The President holds broad authority to implement a range of relief actions authorized under the law to alleviate or compensate for the injury.

The blueberry Section 201 action received significant press coverage and, understandably, drew interest from within the ranks of the California avocado industry. California avocado

farmers have faced significant market pressure as a result of large increases in U.S. avocado imports over the last 20 years.

For some time, California Avocado Commission staff has been engaged with the U.S. government officials on possible relief options for the California avocado industry. Staff has explored, among other options, the viability of an investigation under Section 201.

Section 201 investigations, which are not frequently launched, evaluate multiple factors to determine if the legal standard is met. An investigation typically examines the previous five years for which data are available and looks with care at import levels, the condition of the U.S. industry, and all factors that may be causing harm to the affected producers. To help it evaluate the level of harm being experienced by the domestic producers, the ITC sends out confidential questionnaires to the producing industry seeking information on several factors relevant to each producer’s financial condition.

The cost of litigating a Section 201 case is borne by the domestic industry. Legal and economic experts present arguments to the ITC to demonstrate that increased imports are a “substantial cause” of “serious injury” to the industry, and work with the industry to recommend appropriate relief.

CAC staff reported at the Commission’s November board meeting on this relief option, and a leading trade attorney laid out the many requirements of a Section 201 action at the board’s December meeting. After extensive discussion and consideration, on a split vote, the board determined not to move forward with forming a committee to pursue a Section 201 action. However, the board consented to President Tom Bellamore’s request to allow Commission staff to evaluate further the viability of such an action for the California avocado industry. 🍷