National Pork Producers Council®

The Global Voice for the U.S. Pork Industry

November 9, 2026

Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street SW, Washington, DC 20436

RE: Docket No. MISC-053; Request for comments regarding implementation of 19 U.S.C. 1338(g)

Dear Ms. Barton,

The National Pork Producers Council (NPPC) submits these comments in response to a Federal Register Notice (Docket Number MISC-053) requesting comments regarding implementation of 19 U.S.C. 1338(g)**.** We appreciate the opportunity to comment on the statutory scope, historical intent, and procedural framework for Section 338.

NPPC represents 43 state producer organizations and the domestic and global interests of more than 60,000 U.S. pork operations. The U.S. pork industry is a major value-added enterprise in the U.S. agricultural economy and a significant contributor to the overall U.S. economy, producing more than 28 billion pounds of high-quality, safe, and affordable pork in 2025. More than 500,000 American jobs are supported by U.S. pork production, and U.S. pork exports sustain more than 70,000 of these jobs. In any given year, the U.S. pork industry ships product to more than 100 countries. Exports contribute significantly to the bottom line of all U.S. pork producers, accounting for more than $66 of value for each hog marketed. Last year, the U.S. pork industry exported 3 million metric tons of pork and pork products valued at over $8.4 billion.

Summary of Concerns

Section 338 was specifically enacted to serve as a retaliatory weapon against third-country trade discrimination (such as 1930s imperial preferences), rather than a mechanism to address general domestic protectionism or trade imbalances with across-the-board tariffs. NPPC is concerned that such use of Section 338 could bypass important dispute settlement mechanisms such as those established under Free Trade Agreements (FTAs) like the United States-Mexico-Canada Agreement (USMCA) that are recognized exceptions to most-favored nation (MFN) principals. This could lead to supply chain disruptions, counter-retaliation, and commercial damage. NPPC recommends that the USITC establish clear factual standards, protect submitters from foreign reprisals, and ensure any recommendations are targeted and provisional.

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Feedback on Specific Topics Posed by the USTIC

1. **Defining Unreasonable and Discriminatory Conduct Under Section 338**
   Section 338 targets instances where a foreign country discriminates *in fact* against U.S. commerce so as to place U.S. products at a disadvantage compared to the products of third countries. The Commission must maintain a sharp distinction between protectionism (granting favorable treatment to domestic goods over imports) and discrimination (treating U.S. goods worse than other foreign goods). Protectionist barriers are governed by other trade statutes (such as Section 301); Section 338 applies specifically to differential treatment favoring third countries.

   Enacted in the 1930 Smoot-Hawley Tariff Act (and preceded by Section 317 of the 1922 Act), Section 338 was intended as a leverage tool against preferential trading blocs and imperial preferences. Under GATT Article XXIV and modern international trade law, comprehensive FTAs like the United States-Mexico-Canada Agreement (USMCA) represent legitimate, trade-liberalizing exceptions to Most-Favored-Nation (MFN) rules. The United States' long history of negotiating and ratifying FTAs—including USMCA—does a great deal to eviscerate any potential characterization of FTAs as a form of discrimination actionable under Section 338.

2. **Specific Mechanisms and Limitations of Foreign Discrimination**
   Modern actionable discrimination under Section 338 manifests in discrete areas, including:

   - Product and environmental standards applied disproportionately to U.S. exports.
   - Arbitrary Sanitary and Phytosanitary (SPS) restrictions and non-transparent registration requirements on agricultural goods (e.g., dairy, poultry, meat).
   - Targeted revenue measures, such as unilateral Digital Services Taxes (DSTs) that specifically burden U.S. technology providers while exempting domestic or third-country competitors.
   - Discriminatory limitations on U.S. cloud services and artificial intelligence platforms.

   While these discriminatory measures provide specific areas for targeted investigations, they do **not** support sweeping, across-the-board national or reciprocal tariffs. Trade friction with Canada or Mexico—such as disputes over SPS measures—should be addressed through the dedicated dispute settlement mechanisms established under USMCA rather than unilateral 1930s statutory tools. The application of unilateral Section 338 retaliatory tariffs against USMCA partners disrupts deeply integrated cross-border supply chains, invites immediate counter-retaliation, and provokes consumer and commercial backlash that damages U.S. export interests. Attempting to stretch Section 338 into an unconstrained, universal tariff tool would also conflict with congressional intent and may face severe judicial skepticism.

3. **Information Gathering, Confidentiality, and Reprisal Safeguards**
   The USITC explicitly requests input on factors that discourage public participation, including the risk of foreign government reprisal. When U.S. exporters or industry groups

expose foreign trade barriers or when the U.S. takes unilateral trade action, foreign governments frequently respond with targeted administrative or duties-based retaliation aimed at politically sensitive U.S. sectors.

The vulnerability of U.S. exporters to foreign trade retaliation is clearly illustrated by trade relations with Mexico. Following the U.S. termination/withdrawal from the Tomato Suspension Agreement, Mexico responded by initiating Antidumping and Countervailing Duty (AD/CVD) investigations targeting U.S. pork exports. This real-world precedent demonstrates that public trade disputes or unshielded private complaints rapidly escalate into retaliatory trade cases that punish unrelated domestic export industries.

Historically, USITC procedures under Section 317 were formal and public, but evolved under Section 338 into more informal, non-public proceedings involving close consultation with the President and diplomatic agencies (e.g., the State Department) due to the delicate nature of foreign trade investigations. To prevent foreign governments from identifying and targeting specific U.S. producers or commodity sectors for retaliation, the Commission should allow evidence to be submitted anonymously or through broad trade associations and aggregated industry reports. It should also rigorously enforce Confidential Business Information (CBI) protections pursuant to 19 CFR 201.6. Finally, interagency fact-verification channels should be established to independently validate reported discrimination.

4. **Analysis, Recommendation Framing, and Confidentiality**

Section 338 requires explicit findings of fact regarding real-world discrimination that places trade of pork at an actual disadvantage. The Commission should avoid relying on generalized trade deficit figures or broad policy disagreements.

Recommendations to the President under Section 338(g) should be narrowly tailored to remedy the specific foreign discrimination identified and structured as provisional measures designed to encourage negotiated solutions. The Commission should maintain its historical practice of delivering detailed, confidential reports and recommendations to the President, while publishing periodic, aggregated summaries to keep Congress and the public informed without compromising sensitive diplomatic negotiations or commercial data.

5. **Constitutional Limits and Statutory Framework**

Under Article I, Section 8 of the U.S. Constitution, the power to impose duties rests squarely with Congress. Delegated executive trade authorities—including Section 338—must be strictly construed within their statutory boundaries.

Section 338 must not be used as a substitute for expired or invalid emergency authorities. Maintaining clear boundaries between Section 338 (discrimination relative to third countries), Section 301 (unreasonable trade practices), Section 232 (national security), and Section 122 (balance of payments) ensures a stable, legal, and predictable trade policy.

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Again, NPPC expresses its appreciation for the opportunity to comment on the statutory scope, historical intent, and procedural framework for Section 338 as it pertains to the U.S. pork industry.

Thank you for your consideration.



Maria C. Zieba
Vice President of Government Affairs