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SUMMARY

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Section 301 of the Trade Act of 1974: Origin, Evolution, and Use

Section 301 of the Trade Act of 1974 grants the Office of the United States Trade Representative (USTR) a range of responsibilities and authorities to investigate and take action to enforce U.S. rights under trade agreements and respond to certain foreign trade practices. From the conclusion of the Uruguay Round of multilateral trade negotiations in 1994, which resulted in the establishment of the World Trade Organization (WTO) in 1995, until the start of the Trump Administration, the United States used Section 301 authorities primarily to build cases and pursue dispute settlement at the WTO. The Trump Administration has shown more willingness to go outside of the WTO to act unilaterally under these authorities to promote what the Administration touts as "free," "fair," and "reciprocal" trade. The Trump Administration's use of Section 301 to impose tariffs as punitive measures has been the subject of congressional and broader international debate, and some in Congress have raised a number of questions regarding USTR's actions, including the scope of USTR's authorities, the types of trade actions allowed, and the tariff exclusion process.

The Trump Administration has attributed its use of Section 301 to impose tariffs as punitive measures to its determination to close a large and persistent gap between U.S. and foreign government practices that it says may disadvantage or discriminate against U.S. exports, firms, and workers. In addition, the Administration has justified many of its recent tariff actions—particularly those against China—by pointing to alleged weaknesses in WTO dispute settlement procedures and the inadequacy or nonexistence of WTO rules to address certain Chinese and other trade practices. It has also cited what it terms as the failure of past trade negotiations and agreements to enhance reciprocal market access for U.S. firms and workers. While some Members of Congress have applauded the Trump Administration's Section 301 actions or called for more active use of trade authorities, others have decried unilateral trade sanctions under Section 301 as an undesirable shift in U.S. trade policy that could undermine the multilateral trading system.

The creation of an enforceable dispute settlement mechanism in the WTO, strongly advocated by the United States, significantly reduced U.S. use of Section 301. There have been 130 cases under Section 301 since the law's enactment in 1974, of which 35 have been initiated since the WTO's establishment in 1995. Historically, Section 301 cases have targeted primarily the European Union (EU), which accounts for about 30% of all cases—concerning mostly agricultural trade. Prior to 2017, that is, the start of the Trump Administration, the last Section 301 investigation took place in 2013 and involved Ukraine's practices regarding intellectual property rights (IPR). The last case that resulted in retaliation (e.g., the imposition of tariffs) took place in 2009 and involved Canada's compliance with the 2006 U.S.-Canada Softwood Lumber Agreement. During the Trump Administration, the USTR has initiated six new investigations against China, the EU, France, a group of 10 trading partners, and two against Vietnam.

The more active use of congressionally delegated trade authorities by the Trump Administration has prompted some Members of Congress to consider amending Section 301. Congress could require greater consultation or approval before a President takes new trade actions and request an economic impact study of how such actions may affect the U.S. economy, global supply chains, and global trade rules. In addition, Members may consider adding provisions that grant the President additional authorities to address new trade issues and barriers that may not be fully covered by WTO rules and disciplines (e.g., digital trade, state-owned enterprises, environment, and corruption). While some of these issues may not be directly related to trade, they may impair the competitiveness of U.S. exports, restrict U.S. investment abroad, and negatively impact the U.S. economy. Congress could also consider establishing a formal product exclusion process or set specific guidelines for when and how to grant exclusions to trade restrictions imposed under Section 301. This could potentially promote transparency, consistency, and proper application of standards in reviewing exclusion requests, thereby ensuring that the USTR carries out Section 301 objectives as prescribed by Congress.

Some Members have raised the issue of establishing or streamlining an exclusion process for the existing Section 301 tariffs against China during hearings and in letters to the USTR. For instance, for the third and largest action against China, a group of more than 160 Representatives urged the Administration to consider granting exclusions. Subsequently, the joint explanatory statement to the FY2019 appropriations law (P.L. 116-6) directed the USTR to establish a product exclusion process for that third stage of tariffs within 30 days of the law's enactment. During the 116th Congress, some Members introduced legislation to limit USTR's discretion on whether and how to grant or deny exclusion requests, while others supported expanding the President's trade authorities beyond the scope of Section 301. More recently, in August 2020, some Members proposed to suspend temporarily duties on imports of articles needed to combat the Coronavirus Disease 2019 (COVID-19) pandemic.

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Background

Section 301 of the Trade Act of 1974 grants the Office of the United States Trade Representative (USTR) a range of responsibilities and authorities to investigate and respond to certain foreign trade practices and take action to enforce U.S. rights under trade agreements. From the conclusion of the Uruguay Round of multilateral trade negotiations in 1994, which resulted in the establishment of the World Trade Organization (WTO) in 1995, until the start of the Trump Administration, the United States used Section 301 authorities primarily to build cases and pursue dispute settlement at the WTO. The Trump Administration has been more willing to go outside the WTO to act unilaterally under these authorities to promote what the Administration describes as "free," "fair," and "reciprocal" trade. The Trump Administration's use of Section 301 to impose tariffs as punitive measures has been the subject of congressional and broader international debate. Some in Congress have raised a number of questions regarding USTR's actions, including the scope of USTR's authorities, the types of trade actions allowed, and the tariff exclusion process.

The Administration has attributed its use of Section 301 to impose tariffs as punitive measures to its determination to close a large and persistent gap between U.S. and foreign government practices that may disadvantage or discriminate against U.S. exports, firms, and workers.[1] In addition, the Administration has justified many of its recent tariff actions—particularly those against China—by alleging weaknesses in WTO dispute settlement procedures and the inadequacy or nonexistence of WTO rules to address certain Chinese and other trade practices.[2] It has also cited what it terms as the failure of past trade negotiations and agreements to enhance reciprocal market access for U.S. firms and workers.[3] While some Members of Congress have applauded the Trump Administration's Section 301 actions or called for more active use of trade authorities, others have decried unilateral trade sanctions under Section 301 as an undesirable shift in U.S. trade policy that could undermine the multilateral trading system.[4]

Overview of Section 301

Title III of the Trade Act of 1974 (Sections 301 through 310, P.L. 93-618; codified as amended at 19 U.S.C. §§ 2411-2420), titled "Relief from Unfair Trade Practices," is often collectively referred to as "Section 301." Section 301 provides a statutory means by which the United States imposes penalties or trade restrictions (trade sanctions) on foreign countries that violate U.S.

[1] See, for example, Office of the USTR, *2018 Trade Policy Agenda and 2017Annual Report of the President of the United States on the Trade Agreements Program*, March 2018.

[2] For example, in its *2017 Report to Congress on China's WTO Compliance*, the USTR noted that "it is now clear that the WTO rules are not sufficient to constrain China's market-distorting behavior. While some problematic policies and practices being pursued by the Chinese government have been found by WTO panels or the Appellate Body to run afoul of China's WTO obligations, many of the most troubling ones are not directly disciplined by WTO rules or the additional commitments that China made in its Protocol of Accession," January 2018. More recently, U.S. Trade Representative Robert Lighthizer stated that "[t]he WTO is completely inadequate to stop China's harmful technology practices." (Office of the USTR, "WTO Report on US Action against China Shows Necessity for Reform," September 15, 2020.)

[3] Office of the USTR, *2018 Trade Policy Agenda and 2017Annual Report of the President of the United States on the Trade Agreements Program*, March 2018.

[4] See, for example, Adam Behsudi, "Duffy Finds 18 Co-sponsors for Bill to Increase Trump's Tariff Powers," *Politico*, January 23, 2019, and Clark Packard and Philip Wallach, "Restraining the President: Congress and Trade Policy," *R Street Policy Study No. 158*, November 2018.

trade agreements or engage in acts that are "unjustifiable" or "unreasonable" and burden U.S. commerce. Prior to 1995 and the establishment of the WTO, the United States used Section 301 extensively to pressure other countries to eliminate trade barriers and open their markets to U.S. exports. The creation of an enforceable dispute settlement mechanism in the WTO, strongly advocated by the United States, significantly reduced U.S. use of Section 301.

The United States retains the flexibility to determine whether to seek recourse to challenge unfair foreign trade practices through the WTO or to act unilaterally. The Statement of Administrative Action (SAA)—which explained how U.S. agencies would implement the 1994 Uruguay Round Agreements Act (URAA or "WTO Agreements," P.L. 103-465)—states that the USTR will invoke the dispute settlement procedures of the WTO Dispute Settlement Understanding (DSU) for investigations that involve an alleged violation of (or the impairment of U.S. benefits under) WTO Agreements.[5] At the same time, the SAA states that "[n]either section 301, nor the DSU will require the" USTR to do so if it "does not consider that a matter involves" WTO Agreements. Such a determination appears to be solely at the USTR's discretion. However, the USTR's decision to bypass WTO dispute settlement and potentially impose retaliatory measures may be challenged at the WTO.

Origins and Evolution of Section 301

Modern U.S. trade policy, with its emphasis on reducing trade barriers, began with the passage of the Reciprocal Trade Agreements Act of 1934 (P.L. 73-316). The act authorized the President to negotiate and implement reciprocal tariff reductions of up to 50%. The Trade Expansion Act of 1962 (P.L. 87-794) eventually superseded the 1934 Act. The purpose of the 1962 Act was to use mutually beneficial trade agreements to:

> (1) stimulate the economic growth of the United States and maintain and enlarge foreign markets for the products of U.S. agriculture, industry, mining, and commerce;
>
> (2) strengthen economic relations with foreign countries through the development of open and nondiscriminatory trading in the free world; and
>
> (3) prevent Communist economic penetration in developing countries.[6]

Section 201 of the 1962 Act provided the President with basic authority to enter into trade agreements and to reduce, remove, bind, or raise import restrictions. Additionally, Section 252 authorized the President to take steps to eliminate "unjustifiable" foreign import restrictions that impaired the value of tariff commitments made to the United States, burdened U.S. commerce, or prevented the expansion of trade. The President was authorized to take all appropriate and feasible steps within his power to eliminate such restrictions, including suspending or withdrawing the benefits of trade concessions made under existing trade agreements, and to impose duties or other import restrictions on the products of any country establishing or maintaining burdensome restrictions on U.S. exports. Section 252 was added to ensure that the President actively followed the intent of the 1962 Act.

Congress revised and expanded Section 252 under Title III of the Trade Act of 1974 (P.L. 93-618). At the time, Members expressed significant concerns with the U.S. trade deficit, and many

[5] Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994).

[6] U.S. Senate Committee on Finance, "Trade Expansion Act of 1962," Report to Accompany H.R. 11970, Report No. 2059, 87th Congress, 2nd Session, September 14, 1962.

believed that some U.S. trading partners were not providing the United States with reciprocal treatment in trade. For example, the Senate Finance Committee stated that the General Agreement on Tariffs and Trade's (GATT's) Kennedy Round (multilateral trade negotiations under the WTO's predecessor, which had been negotiated as authorized by the Trade Expansion Act of 1962) had failed to remedy fundamental inequities in the multilateral trading system, and that the U.S. economy had suffered as a result.[7] The committee stated that in the next round of negotiations authorized by the bill, the United States should "obtain full reciprocity and equal competitive opportunities for U.S. commerce."[8]

The 1974 Act authorized the President to enter into negotiations to liberalize trade, but it also sought to expand the President's authority to address unfair foreign trade practices. Title III provisions sought to "assure a swift and certain response to foreign import restrictions, export subsidies and price discrimination and other unfair foreign trade practices."[9] In particular, Section 301 of the 1974 Act authorized the President to retaliate against foreign countries that imposed "unjustifiable or unreasonable" restrictions against U.S. commerce. The act defined unjustifiable restrictions as those that violated international law or obligations under previous agreements.

Congress further revised and expanded Section 301 in the Trade Agreements Act of 1979 (P.L. 96-39), the Omnibus Tariff and Trade Act of 1984 (P.L. 98-573), and the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418) (**Table 1**). The 1979 Act amended Section 301 to establish a timetable for investigating and taking action on complaints, and to establish new procedures and requirements for the U.S. Special Trade Representative (later renamed as the U.S. Trade Representative, USTR) to follow and meet during investigations. In 1984, Congress expanded the President's authority to respond to unfair trading practices in services, investment, and intellectual property rights (IPR). The 1984 Act also defined the terms "unreasonable," "unjustifiable," and "discriminatory" trade practices. Moreover, the 1984 Act granted the USTR the authority to self-initiate investigations.

Table 1. Amendments and Executive Orders Affecting Section 301

Title III of the Trade Act of 1974 (P.L. 93-618, 19 U.S.C. §§ 2411-2420)

Amendments in Public Laws	P.L. 96-39	Trade Agreements Act of 1979
	P.L. 98-573	Omnibus Tariff and Trade Act of 1984
	P.L. 100-418	Omnibus Trade and Competitiveness Act of 1988
	P.L. 103-465	Uruguay Round Agreements Act (1994)
	P.L. 104-295	Miscellaneous Trade and Technical Corrections Act of 1996
	P.L. 106-113	Consolidated Appropriations Act, 2000
	P.L. 106-200	Trade and Development Act of 2000
	P.L. 108-429	Miscellaneous Trade and Technical Corrections Act of 2004
	P.L. 114-125	Trade Facilitation and Trade Enforcement Act of 2015
Executive Orders	E.O. 12901	Identification of Trade Expansion Priorities (1994)
	E.O. 13116	Identification of Trade Expansion Priorities and Discriminatory Procurement Practices (1999)

[7] U.S. Senate Committee on Finance, "Trade Reform Act of 1974: Report of the Committee on Finance, United States Senate, Together with Additional Views on H.R. 10710," Report No. 93-1298, 93rd Congress, 2nd Session, November 26, 1974.

[8] Ibid.

[9] Ibid.

E.O. 13155	Access to HIV/AIDS Pharmaceuticals and Medical Technologies (2000)

Source: Congressional Research Service.

Prior to the Uruguay Round Agreements Act (P.L. 103-465) and the establishment of the WTO in 1995, the last major revision to Section 301 took place in 1988, when Congress established additional timetables for investigations and retaliation, expanded the definitions of unfair trading practices, mandated certain types of retaliation (with waivers) and investigations, transferred retaliatory authority from the President to the USTR, and made other substantive changes. In addition, the 1988 Act established "Super 301," which required the USTR to identify and investigate "priority" foreign trade practices in "priority" countries that significantly hindered U.S. exports, seek negotiations with these countries to end the unfair trading practices, and barring successful negotiations, retaliate (see **textbox**).

"Super 301"

Section 310 of the Trade Act of 1974, as amended by Section 1302 of the Omnibus Trade and Competitiveness Act of 1988, required the USTR, within 30 days after submitting the National Trade Estimate Report on Foreign Trade Barriers to Congress in 1989 and 1990, to identify U.S. trade liberalization priorities.

This identification included priority practices (e.g., practices of foreign countries that burden U.S. trade) as well as "Priority Foreign Countries" and estimates of the amount by which U.S. exports would be increased if the barrier did not exist. The USTR was required to initiate Section 301 investigations on all priority practices identified for each of the priority countries within 21 days after submitting the report to the House Ways and Means and Senate Finance Committees. In its consultations with the foreign country, the USTR was required to seek to negotiate an agreement that provided for the elimination of, or compensation for, the priority practices within three years after the initiation of the investigation. This statutory requirement, however, expired in 1990.

In March 1994, President William J. Clinton issued Executive Order 12901 requiring the USTR, within six months of the submission of the National Trade Estimate Report on Foreign Trade Barriers for 1994 and 1995, to review U.S. trade expansion priorities and identify priority foreign country practices, the elimination of which would likely have the most significant potential to increase U.S. exports. In September 1995, President Clinton issued Executive Order 12973 to extend the terms of Executive Order 12901 to 1996 and 1997. The order required the USTR to submit to the House Ways and Means and Senate Finance Committees and to publish in the *Federal Register* a report on the Priority Foreign Country practices identified. The report was not submitted in 1998 because the authority expired in 1997. Super 301 authorities were renewed in March 1999, pursuant to Executive Order 13116, through the end of 2001. Thereafter, the authorities were not further renewed.

President's Clinton's executive order required the USTR to initiate Section 301 investigations within 21 days of the submission of the report with respect to all Priority Foreign Country practices identified. The normal Section 301 authorities, procedures, time limits, and other requirements generally applied to these investigations. In consultations requested with the foreign country under Section 303, the USTR was required to seek to negotiate an agreement providing for the elimination of the practices as soon as possible or, if that was not feasible, compensatory trade benefits. The USTR monitored any agreements pursuant to Section 306. The semiannual report under Section 309 included the status of any investigation and, where appropriate, the extent to which it led to increased U.S. export opportunities.

Section 314(f) of the Uruguay Round Agreements Act made permanent some of the terms of the executive orders in amending Section 310 of the Trade Act of 1974.

Source: Adapted from House Committee on Ways and Means, *Overview and Compilation of U.S. Trade Statues*, Part I of II, 2010 Edition, 111th Congress, 2nd Session, December 2010.

The history and evolution of Section 301 and its retaliatory provision, as reflected in congressional statements, appear to indicate that, while U.S. policymakers were concerned and frustrated with various foreign unfair trade practices, the motivation behind creating and strengthening mechanisms for potential retaliation had been primarily to expand U.S. export opportunities and to induce other nations to reduce trade barriers—not to punish or inflict economic harm on trading partners. For example, in 1974, the Senate Finance Committee stated that the authorities contained in the Trade Act of 1974 would:

> serve as negotiating leverage to eliminate those barriers to, and other distortions of trade which Title I of this bill gives the President broad authority to harmonize, reduce or eliminate on a reciprocal basis. The authority in this section should not be used frivolously or without justification. The Committee feels, however, that there must be a credible threat of retaliation whenever a foreign nation treats the commerce of the United States unfairly.[10]

The amendments to Section 301 since 1974 appear to reflect an effort by Congress to promote a more active trade policy to combat perceived unfair trading practices. By establishing timetables and identifying and expanding the definitions of unfair trading practices, Congress appears to have sought greater executive branch use of Section 301 to address these practices.

Section 301 Investigations

Section 301 delegates to the USTR broad authority to take action, subject to the specific direction of the President, if any, to enforce U.S. rights under any trade agreement and address certain acts, policies, or practices of foreign countries.[11] While the law does not limit the scope of investigations, it is possible to identify four types of foreign government conduct subject to Section 301 action:

(1) **A denial of U.S. rights under any U.S. trade agreement by a foreign country.**[12] This includes: (i) a violation of the provision of any U.S. trade agreement, (ii) an act, policy, or practice that is inconsistent with the provisions of any U.S. trade agreement, or (iii) an act, policy, or practice that denies benefits to the United States under any U.S. trade agreement.

(2) **An "unjustifiable" action that "burdens or restricts" U.S. commerce.**[13] Acts, policies, or practices are unjustifiable if they are in violation of, or inconsistent with, the international legal rights of the United States, and they include—but are not limited to—those that deny national or most-favored-nation treatment, the right of establishment to U.S. enterprises, or protection of IPR.[14]

(3) **An "unreasonable" action that "burdens or restricts" U.S. commerce.**[15] An act, policy, or practice, while not necessarily in violation of—or inconsistent with—the international legal rights of the United States, is unreasonable if it is otherwise unfair and inequitable.

Acts, policies, and practices that are unreasonable include—but are not limited to—those that constitute export targeting,[16] deny fair and equitable opportunities for the

[10] Ibid.

[11] For the purposes of Section 301 investigations, "foreign country" includes any foreign instrumentality, or possession or territory that is administered separately for customs purposes (19 U.S.C. §§ 2411(d)(7)).

[12] 19 U.S.C. §§ 2411(a)(1)(A) and 2411(a)(1)(B)(i).

[13] 19 U.S.C. § 2411(a)(1)(B)(ii).

[14] 19 U.S.C. § 2411(d)(4). The MFN treatment generally refers to the practice of extending to a country the best trade privileges granted to any other nation.

[15] 19 U.S.C. § 2411(d)(3). In determining whether any act, policy, or practice is unreasonable, USTR has to take into account, to the extent that is appropriate, reciprocal opportunities in the United States for foreign nationals and firms (19 U.S.C. § 2411(d)(3)(D)).

[16] 19 U.S.C. § 2411(d)(3)(B)(ii). The term "export targeting" refers to any foreign government plan or scheme consisting of a combination of coordinated actions (whether carried out severally or jointly) that are bestowed on a specific enterprise, industry, or group thereof, the effect of which is to assist the enterprise, industry, or group to

establishment of an enterprise,[17] deny adequate and effective protection of IPR,[18] fail to provide nondiscriminatory market access opportunities for U.S. persons that rely upon intellectual property protection,[19] or deny market opportunities.[20]

Policies and practices (or lack thereof) are also unreasonable if they constitute a persistent pattern of conduct that (i) denies workers the right to associate, organize, and bargain collectively, (ii) permits any form of forced or compulsory labor, or (iii) fails to provide a minimum age for the employment of children or standards for minimum wages, hours of work, and occupational safety and health of workers.[21]

(4) **A "discriminatory" action that "burdens or restricts" U.S. commerce.**[22] Acts, policies, and practices that are discriminatory include those that deny national or most-favored-nation (MFN) treatment to U.S. goods, services, or investment.[23]

The statute defines "commerce" to include goods, services (including transfers of information) associated with international trade (whether or not such services are related to specific goods), and U.S. investment abroad (i.e., foreign direct investment or FDI) by U.S. persons with implications for trade in goods or services.[24]

The Section 301 "injury test" (i.e., determining what actions "burden or restrict" U.S. commerce) may not be as stringent as that of other U.S. trade laws, in that Section 301 does not demand evidence of "substantial," "serious," or "material injury." However, petitioners still have to demonstrate a certain level of credible injury. In some instances, the USTR has refused to initiate (or has suspended) a Section 301 investigation because of insufficient substantiation for the claim that an allegedly unfair foreign trade practice burdens or restricts U.S. commerce.

Section 301 Committee

Section 301 investigations are conducted by a "Section 301 Committee"—a subordinate, staff-level body of the USTR-led interagency Trade Policy Staff Committee (TPSC). The Section 301 Committee is comprised of a Chair—an official from the Office of the USTR appointed by the U.S. Trade Representative, and, with respect to each investigation and subject to the invitation of the Chair, members designated by agencies that have an interest in the issues raised by the investigation. In three of the most recent investigations, members have included representatives from the U.S. Departments of Homeland Security, the Treasury, Commerce, State, and Agriculture and the U.S. Small Business Administration (**Table 2**). The functions of the

become more competitive in the export of a class or kind of merchandise (19 U.S.C. § 2411(d)(3)(E)).

[17] 19 U.S.C. § 2411(d)(3)(B)(i)(I).

[18] 19 U.S.C. § 2411(d)(3)(B)(i)(II). Acts, policies, and practices might be deemed unreasonable even if the foreign country is in compliance with the specific obligations of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, referred to in 19 U.S.C. § 3511(d)(15)).

[19] 19 U.S.C. § 2411(d)(3)(B)(i)(III).

[20] 19 U.S.C. § 2411(d)(3)(B)(i)(IV). The denial of fair and equitable market opportunities include a foreign government's toleration of systematic anticompetitive activities by enterprises or among enterprises in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of U.S. goods or services to a foreign market.

[21] 19 U.S.C. § 2411(d)(3)(B)(iii).

[22] 19 U.S.C. § 2411(d)(5).

[23] The MFN treatment generally refers to the practice of extending to a country the best trade privileges granted to any other nation.

[24] 19 U.S.C. § 2411(d)(1).

committee include, among other things, to review Section 301 complaints, conduct public hearings upon request by a complainant or an interested party, and make recommendations to the TPSC regarding potential actions under Section 301.[25] The USTR bases its final decision on the recommendations provided by the TPSC.

Table 2. Section 301 Committee Members

Federal Agencies Represented in Select Section 301 Investigations since 2017

	CASE 125 *China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*	**CASE 126** *Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute with the EU*	**CASE 127** *France's Digital Services Tax*
Office of the U.S. Trade Representative (Chair)	✓	✓	✓
U.S. Customs and Border Protection/U.S. Department of Homeland Security	✓	✓	✓
U.S. Department of the Treasury	✓	✓	✓
U.S. Department of Commerce	✓	✓	✓
U.S. Department of State	✓	✓	✓
U.S. Department of Agriculture	✓	✓	✓
U.S. Small Business Administration	✓	✓	✓
U.S. Department of Labor	✓	✓	
U.S. Department of Justice	✓		
U.S. Department of Health and Human Services	✓		
Council of Economic Advisers	✓		
U.S. Department of Transportation		✓	

Source: Congressional Research Service with information from the Office of the USTR.

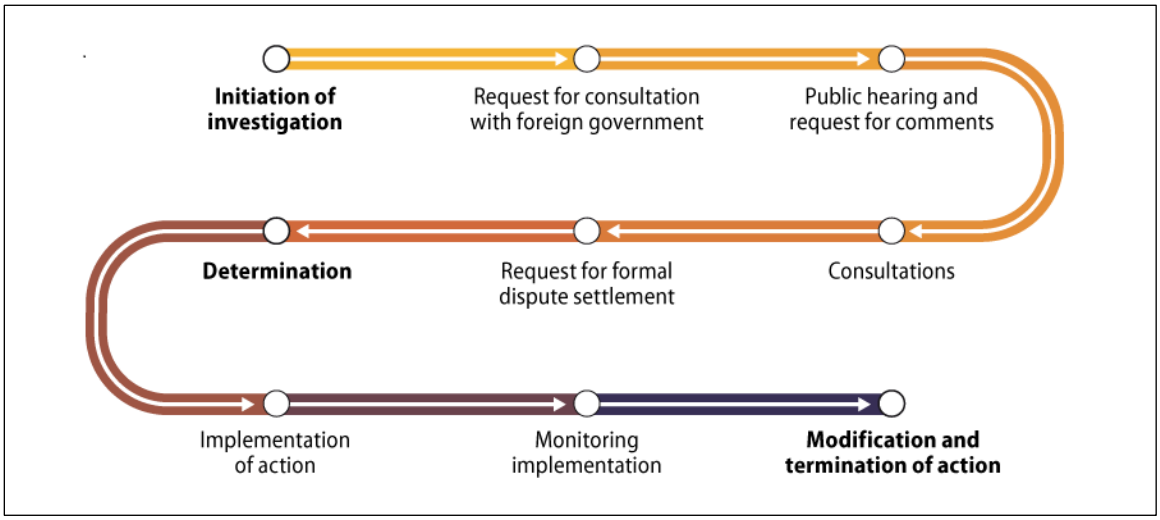
Notes: There have been representatives from the U.S. International Trade Commission (USITC) present in all three Section 301 hearings. However, they are not considered members of the Section 301 Committee.

Procedures for Section 301 Action

Sections 302 through 309 of the Trade Act of 1974 describe the procedural requirements and limitations for Section 301 actions. **Figure 1** depicts the typical proceedings of a Section 301 investigation.

[25] 15 C.F.R. § 2002.3.

Figure 1. The Section 301 Investigative Process



Source: Congressional Research Service, 19 U.S.C. §§ 2411-2420, and 15 C.F.R. Part 2006.

Notes: The actual process may vary and is subject to change at the discretion of the USTR.

Initiation of an Investigation

The USTR may initiate a Section 301 case as a result of a petition or can "self-initiate" a case. To date, 60% of all Section 301 investigations have arisen from petitions that private parties submitted to the USTR (**Table A-2**). However, since 1995, the USTR has initiated most investigations (74%). In deciding whether to initiate a Section 301 investigation, the USTR has discretion to determine if doing so would be effective in addressing the act, policy, or practice at issue.[26]

Initiation by Petition

Any interested person may file a petition with the USTR requesting that the agency take action under Section 301 (see **textbox**).[27] Petitions submitted pursuant to Section 302 are required, among other things, to:

(1) Describe the economic interest of the petitioner directly affected by a foreign act, policy, or practice that is actionable under Section 301;

(2) Describe the rights of the United States being violated or denied under the trade agreement that the petitioner seeks to enforce or the other act, policy or practice that is the subject of the petition;

(3) Identify the product, service, IPR, or FDI matter for which the rights of the United States under the agreement claimed to be violated or denied are sought, or that is subject to the act, policy or practice;

[26] 19 U.S.C. § 2412(c).

[27] The term "interested persons," for the purposes of 19 U.S.C. §§ 2412, 2414, 2416, and 2417, includes, but is not limited to, domestic firms and workers, representatives of consumer interests, U.S. product exporters, and any industrial user of any goods or services that may be affected by actions taken pursuant to 19 U.S.C. § 2411. The term "person" refers to "any individual, partnership, corporation, association, organization, business trust, government entity, or other entity subject to the jurisdiction of the United States" (19 U.S.C. § 1683(8)).

(4) Demonstrate that rights of the United States under a trade agreement are not being provided (or show the manner in which the foreign act, policy or practice violates or is inconsistent with the provisions of a trade agreement or otherwise denies benefits accruing to the United States under a trade agreement, or is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce);

(5) Provide information concerning the degree to which U.S. commerce is burdened or restricted, the volume of trade in the goods or services involved, and the methodology used to calculate it; and

(6) State whether the petitioner has filed (or is filing) for other forms of relief under the Trade Act of 1974 or any other provision of law.[28]

Interested Persons Requesting Action Under Section 301

An interested person is deemed to be any party that has a significant interest affected by the act, policy, or practice in question. These include any:

- producer, commercial importer, or exporter of an affected product or service;
- U.S. person seeking to invest abroad directly, with implications for trade in goods or services;
- person who relies on protection of IPR;
- trade association, certified union or recognized union or group of workers that is representative of an industry engaged in the manufacture, production or wholesale distribution in the United States of a product or service so affected; or
- other private party representing a significant economic interest affected directly by the act, policy or practice complained of in the petition.

Source: Adapted from 15 C.F.R. § 2006.0(b).

Within 45 days of the receipt of a petition, the USTR must determine, after the Section 301 Committee reviews the allegations, whether to initiate an investigation.[29] If the USTR determines not to initiate an investigation, it must notify the petitioner of the reasons and publish notice of the negative determination and a summary of such reasons in the *Federal Register*.[30] On the other hand, if the USTR determines to initiate an investigation, the agency must publish a summary of the petition in the *Federal Register* and provide an opportunity for the presentation of views concerning the issues raised in the petition, including a public hearing.[31] The petitioner or any interested person may also request a hearing.[32]

Self-Initiation

Section 301 also provides two means by which the USTR may initiate an investigation in the absence of a petition. It can determine to investigate any matter, but only after consulting with appropriate stakeholders and not before publishing such determination in the *Federal Register*.[33]

[28] For more detail, see 15 C.F.R. § 2006.0. According to 15 C.F.R. § 2006.2, "[i]f the petition filed pursuant to Section 302 does not conform substantially to [these] requirements ... , the Chairman of the Section 301 Committee may decline to docket the petition as filed and, if requested by petitioner, return it to petitioner with guidance on making the petition conform to the requirements, or may nevertheless determine that there is sufficient information on which to proceed to a determination whether to initiate an investigation."

[29] 19 U.S.C. § 2412(a)(2).

[30] 19 U.S.C. § 2412(a)(3).

[31] 19 U.S.C. § 2412(a)(4).

[32] 15 C.F.R. § 2006.3(b).

[33] 19 U.S.C. § 2412(b)(1). Matters may include acts, policies, or practices of a foreign government identified as a "trade

In addition, the USTR is generally required to initiate a Section 301 investigation of any country within 30 days after identifying it as a "Special 301" "Priority Foreign Country." In its annual "Special 301 Report," the USTR identifies countries with the most onerous or egregious acts, policies, or practices that deny adequate and effective IPR protection and have the greatest adverse impact (actual or potential) on U.S. products, services, and investments. Additionally, these are countries that are not entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective IPR protection.[34] The USTR may identify—or revoke the identification of—any foreign country as a Priority Foreign Country at any time, subject to various reporting requirements.[35] (Rules for IPR cases initiated through Special 301 differ somewhat from those that govern standard Section 301 investigations. For more detail, see "Intellectual Property Enforcement and Section 301.")

Request for Information and Consultations with the Targeted Foreign Government

When the USTR receives a petition alleging violations of an international trade agreement, the agency has to notify the government of the foreign country and may request any information necessary to make a determination as to whether or not to initiate an investigation.[36] If no information is received within a reasonable time, the USTR may proceed based on the information currently at its disposal.

Upon initiating an investigation, the USTR must request consultations with the targeted foreign government regarding the issues raised.[37] In preparing for these consultations, the USTR is required to seek information and advice from the petitioner and any appropriate private sector representatives.[38] The USTR may, after consulting with the petitioner (if any), delay for up to 90 days any request for consultations with the foreign government in order to verify or improve the petition and ensure an adequate basis for consultation.[39] The agency is required to submit a notice of any such delay to Congress and publish it in the *Federal Register*.[40]

Request for Formal Dispute Settlement

If the USTR determines that the investigation involves a trade agreement and a mutually acceptable resolution is not reached before the close of the consultation period—if any—specified in the trade agreement, or the 150th day after the day on which consultation was commenced, whichever is earlier, the USTR must request formal dispute settlement proceedings under the

enforcement priority" by 19 U.S.C. § 2420(c)(2). Stakeholders include, but are not limited to, the trade policy bodies authorized by 19 U.S.C. § 2155.

[34] 19 U.S.C. § 2242(b)(1).

[35] 19 U.S.C. § 2242(c)-(e).

[36] 15 C.F.R. § 2006.4.

[37] 19 U.S.C. § 2413(a)(1).

[38] For example, committees established pursuant to 19 U.S.C. § 2155.

[39] 19 U.S.C. § 2413(b)(1)(A).

[40] 19 U.S.C. § 2413(b)(2). If consultations are delayed by reason of 19 U.S.C. § 2413(b)(1)(A), each time limitation under 19 U.S.C. § 2414 is extended for the period of such delay. Reporting requirements to Congress are outlined in 19 U.S.C. § 2419(a)(3).

governing trade agreement (WTO or other relevant trade agreement to which the United States is a party).[41]

In the past, when investigations have not involved a trade agreement, the USTR has initiated investigations while simultaneously requesting consultations with the foreign government and seeking information and advice from appropriate trade advisory committees. If an investigation includes "mixed" issues, some of which are covered by an agreement and some of which are not, the Statement of Administrative Action (SAA)—which explained how U.S. agencies would implement the 1994 Uruguay Round Agreements Act (URAA)—states that the USTR will pursue consultations within the agreement framework and through bilateral negotiations.[42]

Public Hearing and Request for Comments

As mentioned above, if the USTR makes an affirmative determination to initiate an investigation, it is required to publish a summary of the petition or reasons to self-initiate such investigation in the *Federal Register*.[43] In addition, within 30 days of making such determination (or on a date after such period if agreed to by the petitioner), the USTR must provide an opportunity for interested persons to present their views concerning the issues raised in the petition, including through a public hearing.[44] However, to present views, an interested person must submit a written brief before the close of the period of submission as announced through a public notice (see **textbox**).[45] At any stage of the investigation, a petitioner, or any interested person, can request to present views at a hearing. The USTR is required to accommodate such requests within a timely and reasonable period.

Submitting Written Briefs

To participate in the presentation of views, either at a public hearing or otherwise, an interested person must submit a written brief before the close of the period of submission set forth in the public notice. The brief may be supplemented by oral testimony in any public hearing, and it must state clearly the position taken and describe with particularity the supporting rationale.

In order to assure each interested person an opportunity to contest the information provided by other parties, the Section 301 Committee is required to entertain rebuttal briefs filed by any interested person within a time limit specified in the public notice. Rebuttal briefs are to be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearing and be as concise as possible.

Source: Adapted from 15 C.F.R. § 2006.8.

Consultations before Making Determinations

During a Section 301 investigation and prior to making a determination on what action, if any, to take, the USTR is required to consult with the petitioner and to seek advice from any appropriate private sector advisory representatives.[46] If expeditious action is required, the USTR must seek such advice after making the determination. In addition, the USTR can—but is not required to—

[41] 19 U.S.C. § 2413(a)(2). The USTR must seek information and advice from the petitioner (if any) and the appropriate committees established pursuant to 19 U.S.C. § 2155 in preparing U.S. presentations for consultations and dispute settlement proceedings (19 U.S.C. § 2413(a)(3)).

[42] Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994).

[43] 19 U.S.C. § 2412(a)(4).

[44] 19 U.S.C. § 2412(a)(4)(A)-(B).

[45] 15 C.F.R. §§ 2006.8 and 2006.9.

[46] 15 C.F.R. § 2006.11. This includes committees established pursuant to 19 U.S.C. § 2155.

request the views of the U.S. International Trade Commission (USITC) concerning the impact that a proposed retaliatory action could have on the U.S. economy. Doing so might help the USTR avoid taking an action that could have negative effects on industries or sectors other than those petitioning for an investigation.

Determination

Following consultations, the USTR begins its investigation to determine if the alleged conduct is unfair or violates U.S. rights under trade agreements and is therefore actionable under Section 301. On the basis of the petition (if any), investigation, and consultations, and after receiving the advice of the Section 301 Committee, the USTR makes a determination. However, prior to making a recommendation on what action, if any, to take, the Section 301 Committee is required to hold a public hearing upon the written request of any interested person.[47]

If the USTR's determination is affirmative, it then decides what action—if any—to take, subject to the direction of the President.[48] In the case of an investigation involving violation of a trade agreement, the USTR is generally required to make a determination within 30 days after the dispute settlement procedure concludes, or 18 months after the initiation of the investigation, whichever is earlier.[49] In other cases, a determination generally must be made within 12 months of the initiation of an investigation.

Actions

The USTR can take all appropriate and feasible action authorized under Section 301 "and all other appropriate and feasible action within the power of the President that the President may direct... to obtain the elimination of that act, policy, or practice. Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country."[50]

Section 301 divides such actions into mandatory and discretionary categories.[51]

Mandatory Actions

The USTR is generally required to take action if it concludes that there is a trade agreement violation or that an act, policy, or practice of a foreign government is "unjustifiable" and "burdens or restricts" U.S. commerce.[52] However, the law stipulates several instances in which the USTR does not have to act. They include cases in which:

[47] 15 C.F.R. § 2006.7(b). If requested, such hearing should generally take place after at least 30 days' notice or within 30 days after the determination of action is made if the USTR determines that expeditious action is required.

[48] 19 U.S.C. § 2414(a)(1)(B).

[49] 19 U.S.C. § 2414(a)(2)(A). Different determination requirements apply to investigation initiated pursuant to 19 U.S.C. § 2412(b)(2)(A) involving rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 19 U.S.C. § 3511(d)(15)) or the General Agreement on Tariffs and Trade (GATT) 1994 (19 U.S.C. § 3501(1)(B)) relating to products subject to intellectual property protection.

[50] 19 U.S.C. § 2411(a)(1)(B)(ii) and 19 U.S.C. § 2411(b)(2).

[51] The Omnibus Trade and Competitiveness Act of 1988 divided actions into mandatory (19 U.S.C. § 2411(a)) and discretionary (19 U.S.C. § 2411(b)).

[52] 19 U.S.C. § 2411(a)(1).

(1) the WTO Dispute Settlement Body (DSB) has adopted a formal dispute settlement report that concludes that the trade policy or practice in question does not violate or is not inconsistent with WTO Agreements;[53]

(2) the USTR determines that the foreign country subject to investigation is taking satisfactory measures to grant U.S. rights under a trade agreement;[54]

(3) the foreign country subject to investigation enters into a binding agreement that commits it to stop the practice or phase out the policy,[55] find a solution that eliminates the burden on U.S. commerce,[56] or provide compensatory trade benefits to the United States;[57] or

(4) the USTR determines that taking action would either have an adverse impact on the U.S. economy (substantially out of proportion to the benefits of any action taken)[58] or cause serious harm to U.S. national security.[59]

Discretionary Actions

The USTR has discretion to take action—if it deems doing so appropriate—in those instances in which "an act, policy, or practice of a foreign country is unreasonable or discriminatory."[60] In both cases, such practices must burden or restrict U.S. commerce. Any such action would be subject to the specific direction, if any, of the President.

Retaliation

To remedy a foreign trade practice, Section 301 authorizes the USTR to (1) impose duties (i.e., tariffs) or other import restrictions,[61] (2) withdraw or suspend trade agreement concessions,[62] or (3) enter into a binding agreement with the foreign government to either eliminate the conduct in question (or the burden to U.S. commerce) or compensate the United States with satisfactory trade benefits.[63] The USTR must give preference to duties or tariffs if action is taken in the form of import restrictions.[64]

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[53] 19 U.S.C. § 2411(a)(2)(A).

[54] 19 U.S.C. § 2411(a)(2)(B)(i).

[55] 19 U.S.C. § 2411(a)(2)(B)(ii)(I).

[56] 19 U.S.C. § 2411(a)(2)(B)(ii)(II).

[57] 19 U.S.C. § 2411(a)(2)(B)(iii). 19 U.S.C. § 2411(c)(4) stipulates that the agreement should "provide compensatory trade benefits that benefit the economic sector which includes the domestic industry that would benefit from the elimination of the act, policy, or practice that is the subject of the ... [investigation], or benefit the economic sector as closely related as possible to such economic sector, unless (A) the provision of such trade benefits is not feasible, or (B) trade benefits that benefit any other economic sector would be more satisfactory than such trade benefits."

[58] 19 U.S.C. § 2411(a)(2)(B)(iv).

[59] 19 U.S.C. § 2411(a)(2)(B)(v).

[60] 19 U.S.C. § 2411(b).

[61] 19 U.S.C. § 2411(c)(1)(B). An import restriction, other than a duty, may include "a limitation, prohibition, charge, or exaction other than duty, imposed on importation or imposed for the regulation of importation. The term does not include any orderly marketing agreement" (19 U.S.C. § 2481(2)).

[62] 19 U.S.C. § 2411(c)(1)(A). The USTR is also authorized to withdraw or suspend preferential duty treatment under the Generalized System of Preferences (GSP), the Caribbean Basin Initiative (CBI), or the Andean Trade Preferences Act (19 U.S.C. § 2411(c)(1)(C)).

[63] 19 U.S.C. § 2411(c)(1)(D).

[64] 19 U.S.C. § 2411(c)(5)(A).

The USTR may also restrict the terms and conditions or deny the issuance of any "service sector access authorization" issued under U.S. federal law.[65] Authorizations include licenses and permits that allow a foreign supplier of services access to the U.S. market. Such action must be applied prospectively to authorizations granted—or applications therefor pending—on or after the date on which a Section 301 petition is filed, or if the USTR self-initiates an investigation, the date on which the investigation is initiated. Before imposing fees or restrictions, the USTR must consult the federal or state agency involved in the regulation of the services.

The level of mandatory action under Section 301 should "affect goods or services of the foreign country in an amount equivalent in value to the burden or restriction being imposed by that country on" U.S. commerce.[66] The USTR is authorized to take action against any goods or economic sector regardless of whether they were involved in the policy or practice that is the subject of such action.[67]

Implementation

Once the USTR makes a determination to take action under Section 301, the agency generally has 30 days to implement that action. The USTR may delay, by not more than 180 days, implementation if: (1) either the petitioner or a majority of the representatives of a domestic industry that would benefit from the action requests a delay; or (2) the USTR determines substantial progress is being made, or that a delay is necessary or desirable, to obtain a satisfactory solution with respect to the acts, policies, or practices that are the subject of the action.[68]

Monitoring and Modifications of Actions

Sections 306 and 307 specify the requirements for monitoring, modifying, and terminating any action taken under Section 301. In particular, the USTR is required to monitor the implementation of any measure undertaken or agreement that is entered into by a foreign country to provide a satisfactory resolution of a matter subject to a Section 301 investigation. If the USTR considers that a foreign country is not satisfactorily implementing such measure or agreement, the agency has to determine what further action it will take.[69]

The USTR may modify or terminate any action, subject to the specific direction, if any, of the President, if among other things, the WTO DSB determines that the rights of the United States under a trade agreement are not being denied, the burden or restriction on U.S. commerce has

[65] 19 U.S.C. § 2411(c)(2). The statute does not specify the services against which the USTR can take action under Section 301. In addition, there is no precedent for that type of action. However, some trade and legal scholars—with whom CRS spoke about Section 301—noted that the USTR might be able to impose restrictions on federal licenses and permits for some of the following services-related activities: agriculture, alcohol beverages, animal feed and drugs, aviation, biological products, customs brokerage, debt collection, import/export, firearms, ammunition and explosives, fish and wildlife, food products, investment brokers/dealers/companies, medical device manufacturing, nuclear energy/ radiation-emitting products, pharmaceuticals, telecommunications/radio/television broadcasting, tobacco, and transportation and logistics.

[66] 19 U.S.C. § 2411(a)(3).

[67] 19 U.S.C. § 2411(c)(3).

[68] There are other exceptions to implementing timelines, particularly for cases of export targeting. For more detail, see 19 U.S.C. § 2415(a)(2)(B)-(C) and 19 U.S.C. § 2415(b).

[69] 19 U.S.C. § 2416(b)(1).

increased or decreased, or such action is no longer appropriate.[70] The USTR considers foreign noncompliance with a measure or agreement undertaken as a result of a Section 301 investigation a violation of an agreement under Section 301 and is subject to mandatory retaliatory action. Section 301 actions terminate automatically after four years,[71] unless the USTR receives a request for continuation and conducts a review of the case.[72]

In some cases, the USTR may reinstate a previously terminated Section 301 action. The Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125), for example, amended Section 306 of the Trade Act of 1974 to authorize the USTR to reinstate such actions in order to exercise WTO authorization to suspend concessions or other obligations.[73] The USTR may do so following: (1) a request from the petitioner or any representative of the domestic industry that would benefit from reinstatement of the action; (2) consultations with the petitioner, if any, involved in the initial investigation and opportunity for the presentation of views by interested persons; and (3) a review of the effectiveness of the action (or any other actions that could be taken to achieve the objectives of Section 301) and its impact on the U.S. economy.

Information Open to Public Inspection

Any interested person may generally request to review written petitions, briefs, or similar information (other than that to which confidentiality applies) submitted in the course of an investigation, as well as records of public hearings (see **textbox**).[74]

[70] 19 U.S.C. § 2411(a)(2).

[71] 19 U.S.C. § 2417(c)(1) provides that if a Section 301 action has been taken by the USTR during any four-year period (e.g., the imposition of increased tariffs on the products of a foreign country) and neither the petitioner nor any representative of the domestic industry benefitting from the action has submitted to the USTR during the last 60 days of the four-year period a written request for the continuation of the action, the action is to terminate at the end of the four-year period.

[72] 19 U.S.C. § 2417(c)(3).

[73] 19 U.S.C. § 2416(c).

[74] The term "interested persons," for the purposes of 19 U.S.C. §§ 2412, 2414, 2416, and 2417, includes, but is not limited to, domestic firms and workers, representatives of consumer interests, U.S. product exporters, and any industrial user of any goods or services that may be affected by actions taken pursuant to 19 U.S.C. § 2411. The term "person" refers to "any individual, partnership, corporation, association, organization, business trust, government entity, or other entity subject to the jurisdiction of the United States" (19 U.S.C. § 1683(8)).

Public Inspection of Information

On written request and subject to availability, any person may obtain the following information from the Office of the USTR or other federal agencies:

- the nature and extent of a specific trade policy or practice of a foreign government or instrumentality with respect to particular goods, services, investment, or IPR;
- U.S. rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and
- past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

If the Office of the USTR does not have, and cannot obtain from other federal agencies, the information requested, the USTR is required to request the information from the foreign government involved or decline to request the information and inform the person in writing of the reasons for the refusal.

The USTR is authorized to exempt from public inspection business information submitted in confidence if it determines that such information involves trade secrets or commercial and financial information whose disclosure is not authorized by the person furnishing it or required by law. Nevertheless, the USTR may use such information, or at its own discretion, make it available to any federal employee for use in any Section 301 investigation or to any other person in a form that cannot be associated with, or otherwise identify, the person providing the information.

Source: Adapted from 15 C.F.R. §§ 2006.13 and 2006.15, 19 U.S.C. § 2418.

"Carousel" Retaliation

Section 306 of the Trade Act of 1974 requires the USTR to periodically revise (e.g., rotate) the list of products subject to retaliation (e.g., tariff or other trade restriction) when the targeted foreign government does not implement a recommendation made pursuant to a dispute settlement proceeding under the WTO.[75] This periodic revision is known as "carousel" retaliation, and the intent of rotating products (and/or increasing the level of additional duties) is to exert pressure on the foreign government, through its domestic exporters, to change its position on the disputed practice.[76] The USTR has 120 days after the date in which an action is first taken (and every 180 days thereafter) to review the list of products or action and revise it—in whole or in part.[77] In revising any list or action, the USTR is required to act in a manner that is most likely to result in the targeted government implementing the WTO DSB's recommendations or achieving a mutually satisfactory solution to the issue(s) raised. The law does not require a revision if the USTR determines that compliance is imminent or agrees with the affected U.S. industry that revising the list is not necessary.

The impetus for more pressure on foreign governments came during the 1990s, when many Members of Congress expressed concern over the effectiveness of the WTO dispute settlement

[75] 19 U.S.C. § 2416.

[76] In 1999, Senator Mike DeWine introduced the "Carousel Retaliation Act" as an amendment to Section 306 of the Trade Act of 1974. For more detail, see S. 1619, "A bill to amend the Trade Act of 1974 to provide for periodic revision of retaliation lists or other remedial action implemented under section 306 of such Act," 106th Congress, introduced on September 22, 1999. As noted by Senator DeWine, the "Carousel Retaliation Act" was meant to increase pressure on U.S. trading partners to comply with WTO rules by requiring the USTR to rotate or carousel retaliation lists. (*Congressional Record*, Senate, 106th Congress, 1st Session, October 13, 1999, Vol. 145, No. 138, p. S12491.)

[77] The USTR is authorized to take action against any goods or economic sector regardless of whether such goods or sector were involved in the policy or practice that is the subject of such action. The agency must give preference to duties or tariffs if action is taken in the form of import restrictions, and it may also restrict the terms and conditions or deny the issuance of any "service sector access authorization" issued under U.S. federal law.

process to convince other countries to remove various trade barriers.[78] In particular, congressional concern over the European Union (EU)'s noncompliance with WTO dispute rulings led to the amendment of Section 306 of the Trade Act of 1974 with the enactment of the Trade and Development Act of 2000 (P.L. 106-200). Two WTO dispute cases—the U.S.-EU beef hormone[79] and banana[80] disputes—particularly frustrated many policymakers and U.S. exporters, because of the length of time to decide the cases and the unlikelihood that the losing party would change its practices.[81]

In response to the Section 306 amendment, the EU filed a WTO complaint challenging the statutory provision shortly after its enactment in 2000.[82] It alleged that the statute mandates unilateral action and the taking of retaliatory action, other than that which had been authorized by the WTO, in violation of the Dispute Settlement Understanding.[83] Specifically, the EU considered that Section 306: (1) was "in breach of the DSU since it mandates unilateral action without any prior multilateral control"; (2) could lead the United States to unilaterally modify at will "all U.S. concessions bound in its Schedule of commitments under the GATT 1994; (3) was "in breach of the obligation of equivalence"; and (4) "affect[ed] the security and predictability of the multilateral trading system."[84] Because the United States had not invoked the provision, the EU refrained from requesting the establishment of a WTO panel in the case, thereby leaving the issue of its legality in question.

In December 2008, the United States exercised "carousel" authorities to propose modifications to the list of EU products subject to the WTO-authorized tariff surcharges that it had originally imposed in the beef hormones case. A final modified list was published in January 2009.[85]

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[78] See, for example, Congressional Record, "Statements on Introduced Bills and Joint Resolutions," Vol. 145, No. 124, pp. S11260-S11262, September 22, 1999, and S. 1619, "A bill to amend the Trade Act of 1974 to provide for periodic revision of retaliation lists or other remedial action implemented under section 306 of such Act," introduced on September 22, 1999.

[79] Specifically, "European Communities-Measures Concerning Meat and Meat Products" (WTO Cases DS26 and DS48). Since 1989, the United States and the EU have engaged in a long-standing dispute over the EU's decision to ban hormone-treated meat. For more detail, see CRS In Focus IF10958, *U.S. Trade Debates: Select Disputes and Actions*, by Andres B. Schwarzenberg and CRS Report R40449, *The U.S.-EU Beef Hormone Dispute*, by Renée Johnson.

[80] Specifically, "European Communities-Regime for the Importation, Sale and Distribution of Bananas" (WTO Case DS27). During the 1990s, the EU banana import regime was a primary source of U.S.-EU trade tension. The regime, instituted in 1993, granted preferential treatment to bananas from producers in the EU and former European colonies, which adversely affected U.S. banana firms. For more detail, see CRS In Focus IF10958, *U.S. Trade Debates: Select Disputes and Actions*, by Andres B. Schwarzenberg.

[81] See, for example, *Congressional Record*, Senate, 106th Congress, 1st Session, October 13, 199, Vol. 145, No. 138, p. S12491.

[82] For more detail, see WTO Case "DS200: United States—Section 306 of the Trade Act of 1974 and Amendments Thereto."

[83] In particular, the EU considered that Section 306, "as amended by Section 407 of the Trade and Development Act of 2000, is inconsistent with, in particular, the following WTO provisions: Articles 3.2, 21.5, 22 and 23 of the DSU; Article XVI:4 of the WTO Agreement; and Articles I, II and XI of the GATT 1994." WTO, "DS200: United States—Section 306 of the Trade Act of 1974 and Amendments Thereto."

[84] WTO, "DS200: United States—Section 306 of the Trade Act of 1974 and Amendments Thereto." The EU contended that Section 306 was "in breach of the obligation of equivalence, in that it create[ed] a structural imbalance between the cumulative level of the suspension of concessions and the level of nullification and impairment as determined under relevant DSU procedures."

[85] Office of the USTR, "Modification of Action Taken in Connection With WTO Dispute Settlement Proceedings on the European Communities' Ban on Imports of U.S. Beef and Beef Products," 74 *Federal Register* 4265, January 23, 2009.

Originally applicable to all covered goods entering the United States on or after March 2009, the revisions removed some products from the original list, added new products to the list, modified coverage with regard to certain EU member states, and increased to 300% *ad valorem* duties on one product (Roquefort cheese).[86] The EU announced in January 2009 that it had decided to "start preparations" to pursue WTO dispute settlement regarding the carousel statute, stating that it "breaches the WTO requirement of equivalence between the damage caused by the sanction or ban and the retaliation proposed."[87] In May 2009, following a series of negotiations, the United States and the EU signed a memorandum of understanding (MOU), which phased in certain changes over the next several years.[88] As part of this MOU, the EU granted new market access to U.S. exports of beef raised without the use of growth hormones, and the United States suspended its retaliatory tariffs on certain EU products. In September 2009, USTR announced it was officially terminating its plan to rotate the list of products specific to the U.S.-EU beef hormone dispute.[89]

More recently, the USTR has made use of "carousel" authorities to revise twice its Section 301 action related to the enforcement of U.S. WTO rights in the "Large Civil Aircraft" dispute with EU. (For more detail, see "European Union: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute.")

Intellectual Property Enforcement and Section 301

Congress's enactment of Section 301 has been viewed to help U.S. negotiators secure commitments from foreign governments to help ensure that the interests of U.S. IPR holders are protected abroad. These laws also arguably provided impetus for many countries to adopt and enforce their own national IP laws. Because intellectual property rights (IPR) are national rather than international in scope, these can differ significantly from country to country. U.S. patent or copyright rights do not extend into foreign countries, and the United States does not enforce IPR granted solely under foreign laws. While there are no international patents, trademarks, or copyrights, there are international conventions and treaties that establish a minimum standard of IP protection, including the Berne Convention for the Protection of Literary and Artistic Works[90] and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).[91]

The two principal U.S. laws addressing trade-related IPR violations are Section 337 of the Tariff Act of 1930 and Section 301 of the Trade Act of 1974. Furthermore, the Omnibus Trade and

[86] Ibid.

[87] European Commission, "EU Prepares WTO Action Over US Trade Sanction Law," Press Release, January 15, 2009.

[88] WTO, "European Communities—Measures Concerning Meat And Meat Products (Hormones), Joint Communication from the European Communities and the United States," WT/DS26/28, September 30, 2009; Office of the USTR, "Implementation of the U.S.-EC Beef Hormones Memorandum of Understanding," 74 *Federal Register* 40864, August 13, 2009, and "Implementation of the U.S.-EC Beef Hormones Memorandum of Understanding," 74 *Federal Register* 48808, September 24, 2009.

[89] Office of the USTR, "Implementation of the U.S.-EC Beef Hormones Memorandum of Understanding," 74 *Federal Register* 48808, September 24, 2009.

[90] The Berne Convention is an international copyright convention negotiated in 1886 and revised in 1991. The Berne Convention is administered by the World Intellectual Property Organization (WIPO, a specialized United Nations agency that also administers the Paris Convention), and is based on national treatment for works created by nationals of other states.

[91] For more detail on the TRIPS Agreement, see WTO, "Overview: The TRIPS Agreement," and CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar, Ian F. Fergusson, and Liana Wong.

Competitiveness Act of 1988 substantially amended the IP provisions of the Tariff Act of 1930 (see textbox) and strengthened Section 301 by creating "Special 301."

Section 337: Unfair Practices in Import Trade

Section 337 of the Tariff Act of 1930 (19 U.S.C. §1337) prohibits unfair methods of competition or other unfair acts in the importation of products into the United States. It also prohibits imports of articles that infringe valid U.S. patents, copyrights, processes, trademarks, semiconductor products produced by infringing a protected "mask work" (e.g., integrated circuit designs), or protected design rights.[92] While the statute has been used to counter imports of products judged to be produced by unfair competition, monopolistic, or anti-competitive practices, it has become increasingly used for its intellectual property rights (IPR) enforcement functions. Under the statute, the import or sale of an infringing product is illegal only if a U.S. industry is producing an article covered by the relevant IPR or is in the process of establishing such production. Unlike other trade remedies, such as antidumping or countervailing duty actions, no showing of injury because of the import is required for statutory IP cases.

The U.S. International Trade Commission (USITC) administers Section 337 proceedings. The USITC investigates complaints submitted to it, mainly by companies, and investigates concerns under its own initiative. An administrative law judge provides an initial determination to the USITC, which can accept the initial determination or order a further review of it in whole or in part. If the USITC finds a violation, it may issue two types of remedies: exclusion orders or cease and desist orders.

- ***Exclusion orders***, enforced by the U.S. Customs and Border Protection (CBP), are issued by the USITC to stop infringing imports from entering the United States. Exclusion orders can be general or limited. General exclusion orders apply to all products that are found in violation of Section 337, regardless of source. Limited exclusion orders apply to the goods originating from the specific firm(s) found to be in violation of Section 337. Limited exclusion orders typically are issued more commonly. The USITC issues general exclusion orders if such a broad-based exclusion is necessary to prevent the circumvention of the limited exclusion order, or if there is a pattern of violation and it is difficult to identify the source of infringing products.
- ***Cease and desist orders***, enforced by the USITC, require the firm to stop the sale of the infringing product in the United States.

The USITC may consider several public interest criteria during the proceedings and decline to issue a remedy. In addition, the President may disapprove a remedial order during a 60-day review period for "policy reasons." A presidential review of a remedial order often considers several relevant factors, including "(1) public health and welfare; (2) competitive conditions in the U.S. economy; (3) production of competitive articles in the United States; (4) U.S. consumers; and (5) U.S. foreign relations, economic and political."

Source: Adapted from CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar, Ian F. Fergusson, and Liana Wong.

Overview of "Special 301"

Section 301 is the principal U.S. statute for identifying foreign trade barriers that result from inadequate IP protection. The Omnibus Trade and Competitiveness Act of 1988 strengthened Section 301 by creating Special 301 provisions requiring the USTR to identify foreign countries that "deny adequate and effective protection of intellectual property rights" or "deny fair and equitable market access to United States persons that rely upon intellectual property rights."[93]

[92] The Semiconductor Chip Protection Act of 1984 (P.L. 98-620) defines a "mask work" as "a series of related images, however fixed or encoded, (i) having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and (ii) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product" (17 U.S.C. § 901(a)(2)).

[93] A foreign country denies *adequate and effective protection of IPR* if that country denies adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such foreign country to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights, trade secrets, and mask works. In addition, a foreign country denies *fair and equitable market access* if that foreign country denies access to a market for a product protected by a copyright or related right, patent, trademark, mask work, trade secret, or

According to an amendment to Special 301 enacted in the 1994 Uruguay Round Agreements Act, the USTR can identify a country as denying sufficient IP protection even if the country is complying with its commitments under the WTO TRIPS Agreement. Congress also amended Special 301 to direct the USTR to take into account, in its review process, the history of IP laws and practices of the foreign country, including any previous identification under "Special 301," as well as the history of U.S. efforts—and the response of the foreign country—to achieve adequate and effective IPR protection and enforcement. Most recently, the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125) directed USTR to monitor foreign countries' protection of trade secrets in addition to the other types of IPR that the agency was already monitoring.

Within 30 days of submitting the annual "National Trade Estimate Report on Foreign Trade Barriers," the USTR must determine which of the countries identified in the report are "Priority Foreign Countries" (see **textbox**). According to Special 301 provisions, Priority Foreign Countries are those that "have the most onerous or egregious acts, policies or practices that deny intellectual property protection and limit market access to U.S. persons or firms depending on intellectual property rights protection" and "have the greatest adverse impact (actual or potential) on the relevant United States products."[94] The USTR cannot identify a country as Priority Foreign Country if it is found to be entering into good faith negotiations to address IP protection or making significant progress in improving its IP protection record. The USTR submits findings of its review in the annual "Special 301 Report."

"Special 301" Designations

The USTR can designate countries in one of several statutorily or administratively created categories:

- ***Priority Foreign Country.*** A statutory category for those countries that the USTR designates as having "the most onerous or egregious acts, policies or practices that deny intellectual property protection and limit market access to U.S. persons or firms depending on intellectual property rights protection" with the "greatest adverse impact (actual or potential) on the relevant United States products." The USTR may investigate these countries under Section 301. If the USTR names a country as a Priority Foreign Country, the agency must launch an investigation into that country's IPR practices. The USTR may suspend trade concessions and impose import restrictions or duties, or enter into a binding agreement with the priority country that would eliminate the act, policy, or practice under scrutiny. Since the advent of the WTO, the United States has generally brought IPR-related cases to the WTO rather than investigate or retaliate unilaterally.
- ***Priority Watch List.*** An administrative category that the USTR created for those countries whose acts, policies, and practices warrant concern, but who do not meet all of the criteria for identification as a Priority Foreign Country. The USTR may place a country on the Priority Watch List if the country lacks proper IP protection and has a market of significant U.S. interest. After placing a country on the Priority Watch List, the USTR must develop an action plan with respect to that country. If the President, in consultation with USTR, determines that the foreign country fails to meet the action plan benchmarks, then the President may take appropriate action with respect to that country.
- ***Watch List.*** An administrative category that the USTR created to designate countries that have IP protection inadequacies that are less severe than those on the Priority Watch List but still require U.S. attention.
- ***Section 306 Monitoring.*** A tool that the USTR uses to monitor countries for compliance with bilateral IP agreements that resolve investigations initiated under Section 301.
- ***Out-of-Cycle Review.*** A tool that the USTR uses to monitor countries' progress on IP issues, and which may result in countries' status changes for the following year's Special 301 report. In 2010, the USTR also began

plant breeder's right, through the use of laws, procedures, practices, or regulations which violate provisions of international law or international agreements to which both the United States and the foreign country are parties, or constitute discriminatory nontariff trade barriers. Finally, the term "persons that rely upon intellectual property protection" means persons involved in the creation, production or licensing of works of authorship that are copyrighted, or the manufacture of products that are patented or for which there are process patents. For more detail, see 19 U.S.C. § 2242.

[94] 19 U.S.C. § 2242.

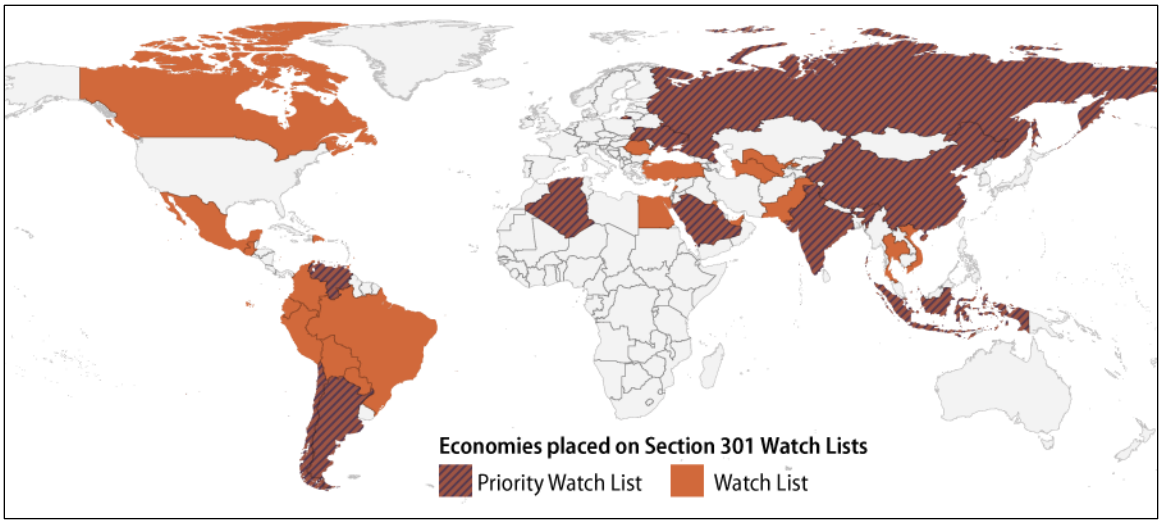
publishing annually the Notorious Markets List as an out-of-cycle review, separately from the annual Special 301 Report. The List identifies online and physical markets "that reportedly engage in, facilitate, turn a blind eye to, or benefit from substantial copyright piracy and trademark counterfeiting."

Source: Adapted from CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar, Ian F. Fergusson, and Liana Wong.

If the USTR names a country as a Priority Foreign Country, the agency must launch an investigation into that country's IPR practices. The agency conducts this investigation in a manner similar to a Section 301 investigation. If it finds that the practices under investigation are actionable under Section 301, then the USTR can seek to negotiate and enter into a binding agreement with the foreign country. Such an agreement can commit the country to address or eliminate the practices or policies under investigation or provide compensation to the United States. Absent mutual resolution, the United States can impose retaliatory trade measures (e.g., tariffs), but then the foreign country could pursue WTO dispute settlement or retaliate by targeting U.S. exports.

In its most recent Special 301 Report, the USTR placed 33 trading partners on the Priority Watch List or Watch List (**Figure 2**).[95] According to the agency, these are countries "that currently present the most significant concerns regarding IP rights."[96]

Figure 2. Special 301: Country Designations in 2020



Source: Congressional Research Service with information from USTR's *2020 Special 301 Report*.

Notes: China is on the "Priority Watch List" and subject to "Section 306 Monitoring."

Procedures for Country Identification

The Special 301 statute provides the overall guidelines for identifying countries for the various designations or lists. However, the USTR also considers a host of factors specific to the country, including the level and scope of the country's IPR infringement and its impact on the U.S.

[95] Office of the USTR, *2020 Special 301 Report*, April 2020.

[96] Office of the USTR, "USTR Releases Annual Special 301 Report on Intellectual Property Protection and Review of Notorious Markets for Counterfeiting and Piracy," Press Release, April 29, 2020.

economy; the strength of the country's IPR laws and the effectiveness of its enforcement; and progress made by the country in improving IPR protection and enforcement in the past year.[97] Additionally, the USTR considers the country's commitment to bilateral and multilateral agreements related to IPR (entering into bilateral trade agreements with the United States or joining IPR-related international agreements).[98] No "weighting criteria" or formula exists to determine the placement of a country on a list. Furthermore, no particular threshold exists for determining when a country should be upgraded or downgraded on a list. In making a determination, the USTR gathers information based on its "National Trade Estimates of Foreign Trade Barriers," as well as consultations with a wide variety of sources, including government agencies, industry groups that rely on IP protection, other private sector representatives, Congressional leaders, and foreign governments.

Placement Considerations

The Special 301 list is a method to disseminate information on IP issues in other countries and to guide U.S. trade policy. Country identification based on a wide variety of factors can provide a more informed understanding of a country's IP situation. However, some trade analysts have speculated that the rankings are subject to external influences.[99] The lack of a specific framework for placing countries on the list—or for removing them—aside from the general directives from the Special 301 statute, has raised concerns that foreign policy or other considerations may affect the process.

World Trade Organization and Section 301

Background on the WTO DSU

From its inception in 1947, the General Agreement on Tariffs and Trade (GATT)—the predecessor to the WTO—provided for consultations and dispute resolution, allowing a GATT party to invoke dispute settlement procedures if it believed that another party's measure violated a GATT provision or caused it trade injury.[100] Because the original GATT did not set out a dispute procedure with great specificity, GATT parties developed a more detailed process, including *ad hoc* panels and other practices. The process was perceived to have certain deficiencies, however, including a lack of deadlines, a consensus decision-making process, and laxity in surveillance and implementation of panel reports—even when reports were adopted and had the status of an official GATT decision.[101] The consensus decision-making process did not ensure enforceability because it allowed a GATT party against whom a dispute was filed to block the establishment of a dispute panel (and the adoption of a panel report by the GATT parties as a whole).

Congress made reform of the GATT dispute process a principal U.S. negotiating objective in the GATT Uruguay Round of multilateral trade negotiations. These talks began in 1986 and concluded in 1994 with the signing of the Marrakesh Agreement, which established the WTO in

[97] For more detail, see "Special Rules for Identifications," (19 U.S.C. § 2242(b)).

[98] Ibid.

[99] See, for example, Consumers International, "IP Watch List 2019," February 20, 2010.

[100] For more detail on the dispute settlement under GATT, see WTO, "Historic Development of the WTO Dispute Settlement System," Dispute Settlement System Training Module, Chapter 2.

[101] Ibid.

1995.[102] In particular, U.S. officials sought to create an effective dispute resolution system to enforce multilateral commitments under the future WTO. The WTO Agreements included several provisions to strengthen dispute resolution procedures by providing stricter timetables for panel decisions in trade disputes, establishing mechanisms to prevent the blocking of panel decisions by affected countries, and broadening the ability of nations to retaliate against countries that fail to abide by WTO dispute settlement decisions. The WTO Agreements also further reduced and removed barriers to trade among WTO members through new market access commitments and expansion of the level and types of trade in goods, services, and agriculture covered by multilateral rules and disciplines. They also included new rules for trade-related investment and IPR, among other new commitments.

Article 23 of the DSU requires that WTO members invoke DSU procedures in disputes involving WTO agreements and that they act in accordance with the DSU (i.e., not unilaterally) when: (1) deciding if another member has violated a WTO Agreement, (2) determining a date by which the member must comply with a WTO decision, and (3) taking any retaliatory action against a noncomplying member (see **textbox**).

Article 23: Strengthening of the Multilateral System
WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)

"1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

2. In such cases, Members shall:

(a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;

(b) follow the procedures set forth in Article 21 [Surveillance of Implementation of Recommendations and Rulings] to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and

(c) follow the procedures set forth in Article 22 [Compensation and the Suspension of Concessions] to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time."

The Statement of Administrative Action (SAA), which Congress approved in 1994 along with the implementing legislation for the WTO Agreements, noted that the United States would commit to pursue formal dispute settlement before the WTO if a practice or policy involved a violation of the WTO Agreements. The creation of a strong dispute mechanism in the WTO was expected to

[102] The first "principal trade negotiating objective" outlined by Congress in the Omnibus Trade and Competitiveness Act of 1988 with respect to GATT and the Uruguay Round of multilateral trade negotiations was "to ensure that... [dispute settlement] mechanisms within the GATT and GATT agreements provide for more effective and expeditious resolution of disputes and enable better enforcement of United States rights." (Section 1101(b)(1), P.L. 100-418). The WTO Agreement requires any country that wishes to be a WTO member to accept all of the multilateral trade agreements negotiated during the Uruguay Round, including the GATT 1994 (an updated version of the GATT 1947), as well as the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), applicable to disputes arising under virtually all WTO agreements.

reduce the United States' need to take unilateral action under Section 301, which many countries opposed.[103]

Relationship between the WTO and Section 301

As noted above, since the establishment of the WTO in 1995, the United States has relied primarily on the WTO DSU to enforce its trade rights. Thus, many cases initiated under Section 301 have been brought before the WTO for dispute resolution (if initial consultations failed to resolve the issue). In fact, in most cases, the USTR has brought disputes directly to the WTO without carrying out a formal Section 301 investigation. However, the 1994 Statement of Administrative Action (SAA) also made clear that the United States was not committing to invoke dispute settlement procedures if the USTR determined that a practice under investigation did not involve or was not covered by the WTO Agreements (see **textbox**).[104]

[103] For more detail on the congressional debate with respect to the WTO's dispute settlement mechanism and the use of Section 301, see, for example, "Uruguay Round Agreements Act," 103rd Congress, 2nd Session, *Congressional Record*, Senate, Vol. 140, No. 148, pp. 29924-30016, November 30, 1994.

[104] Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994).

Excerpts from the Uruguay Round Agreements Act's Statement of Administrative Action: "Enforcement of U.S. Rights" September 1994

"The Administration intends to use section 301 to pursue vigorously foreign unfair trade barriers that violate U.S. rights or deny benefits to the United States under the Uruguay Round agreements. The Administration equally intends to use section 301 to pursue foreign unfair trade barriers that are not covered by those agreements. This is what Congress intended in the Omnibus Trade and Competition Act of 1988 when, on the one hand, it made a more effective and expeditious dispute settlement mechanism the first principal U.S. negotiating objective and, on the other hand, the Congress made major modifications to strengthen section 301 for use against both those practices falling within and outside trade agreements to which the United States is a party."

"Neither section 301 nor the DSU will require the Trade Representative to invoke DSU dispute settlement procedures if the Trade Representative does not consider that a matter involves a Uruguay Round agreement. Section 301 will remain fully available to address unfair practices that do not violate U.S. rights or deny U.S. benefits under the Uruguay Round agreements and, as in the past, such investigations will not involve recourse to multilateral dispute settlement procedures."

"Moreover, the mere fact that the Uruguay Round agreements treat a particular subject matter—such as intellectual property rights—does not mean that the Trade Representative must initiate DSU proceedings in every section 301 investigation involving that subject matter. In the event that the actions of the foreign government in question fall outside the disciplines of those agreements, the section 301 investigation would proceed without recourse to DSU procedures."

"Some foreign government practices may involve a number of actions, some of which are covered under the rules imposed by the Uruguay Round agreements and some of which are not. In section 301 investigations involving mixed actions of this kind, the Administration intends to continue the current practice of initiating dispute settlement proceedings against actions falling under a trade agreement and addressing other actions through bilateral negotiations."

"Finally, nothing in the DSU will affect application of section 301 against practices by governments that either are not WTO members or by WTO members to which the United States does not apply the Uruguay Round agreements. The Trade Representative will address section 301 investigations of unfair trade practices by such countries on a bilateral basis."

Source: Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994).

In 1998, the EU filed a complaint over Section 301 at the WTO based on various obligations in Article 23 of the DSU, which, as noted above, precludes certain unilateral actions in trade disputes involving WTO Agreements.[105] While Section 301 may generally be used consistently with the DSU, some U.S. trading partners complained that the statute allows unilateral action and forces negotiations through its threat of sanctions. In this case, the WTO panel found that the language of Section 304 of the Trade Act of 1974, which requires the USTR to determine the legality of a foreign practice by a given date, is *prima facie* inconsistent with DSU Article 23 because in some cases it mandates a USTR determination—and statutorily reserves a right for the USTR to determine that a practice is WTO inconsistent—before DSU procedures are completed.[106] The panel also found, however, that the serious threat of determinations that were in violation of U.S. obligations (and consequently *prima facie* inconsistent) was removed by U.S. undertakings, as set forth in the SAA and U.S. statements made before the panel, that the USTR would use its statutory discretion to implement Section 301 in conformity with WTO obligations. The panel also could not find that Section 306 violated the DSU. That provision directs USTR to make a determination as to imposing retaliatory measures by a specified date, given differing

[105] For more detail, see WTO Case "DS152: United States—Sections 301–310 of the Trade Act 1974."

[106] WTO, Panel Report, "United States—Sections 301-310 of the Trade Act of 1974," WT/DS152/R (December 22, 1999).

good faith interpretations of the "sequencing" ambiguities in the DSU.[107] The panel report, which was not appealed, was adopted in January 2000.

The panel, however, did not address when or how the USTR could retaliate unilaterally under Section 301. It seems that neither the legislation itself nor case law interpreting it provides guidance as to how the USTR should determine if an act, policy, or practice of a foreign country is actually covered by a trade agreement.

Section 301 Investigations

There have been 130 cases under Section 301 since the law's enactment in 1974, including 35 initiated since the WTO's establishment in 1995 (**Figure 3**). Historically, Section 301 cases have targeted primarily the trade practices of the EU, which is the subject of about 30% of all cases—mostly concerning agricultural trade. The EU is followed by Japan (12%), Canada (11%), and South Korea (8%). Prior to 2017—that is, prior to the Trump Administration—the last Section 301 investigation took place in 2013 and involved Ukraine's practices regarding IPR.[108] However, in light of the political situation in Ukraine at the time, the USTR determined that no action was appropriate.[109] The last investigation prior to the Trump Administration that resulted in retaliation (i.e., tariffs) took place in 2009 and involved Canada's compliance with the 2006 U.S.-Canada Softwood Lumber Agreement.[110] Per a U.S-Canadian understanding, the USTR suspended the tariffs in 2010.[111]

[107] Although many WTO rulings have been implemented satisfactorily, difficult cases have tested DSU articles on implementation, highlighting deficiencies in the system and prompting suggestions for reform. For example, gaps in the DSU have resulted in the problem of "sequencing," which first manifested itself in 1998-1999 during the compliance phase of the successful U.S. challenge of the European Union's banana import regime. Article 22 allows a prevailing party to request authorization to retaliate within 30 days after a compliance period ends, while Article 21.5 provides that disagreements over the existence or adequacy of compliance measures are to be decided using WTO dispute procedures, including resort to panels. A compliance panel's report is due within 90 days after the dispute is referred to the panel, and may be appealed. The DSU does not integrate an Article 21.5 procedure into the 30-day Article 22 deadline, nor does it expressly state how compliance is to be determined so that a prevailing party may pursue action under Article 22. Given the absence of multilateral rules on the matter, disputing parties have entered into *ad hoc* procedural agreements in individual disputes.

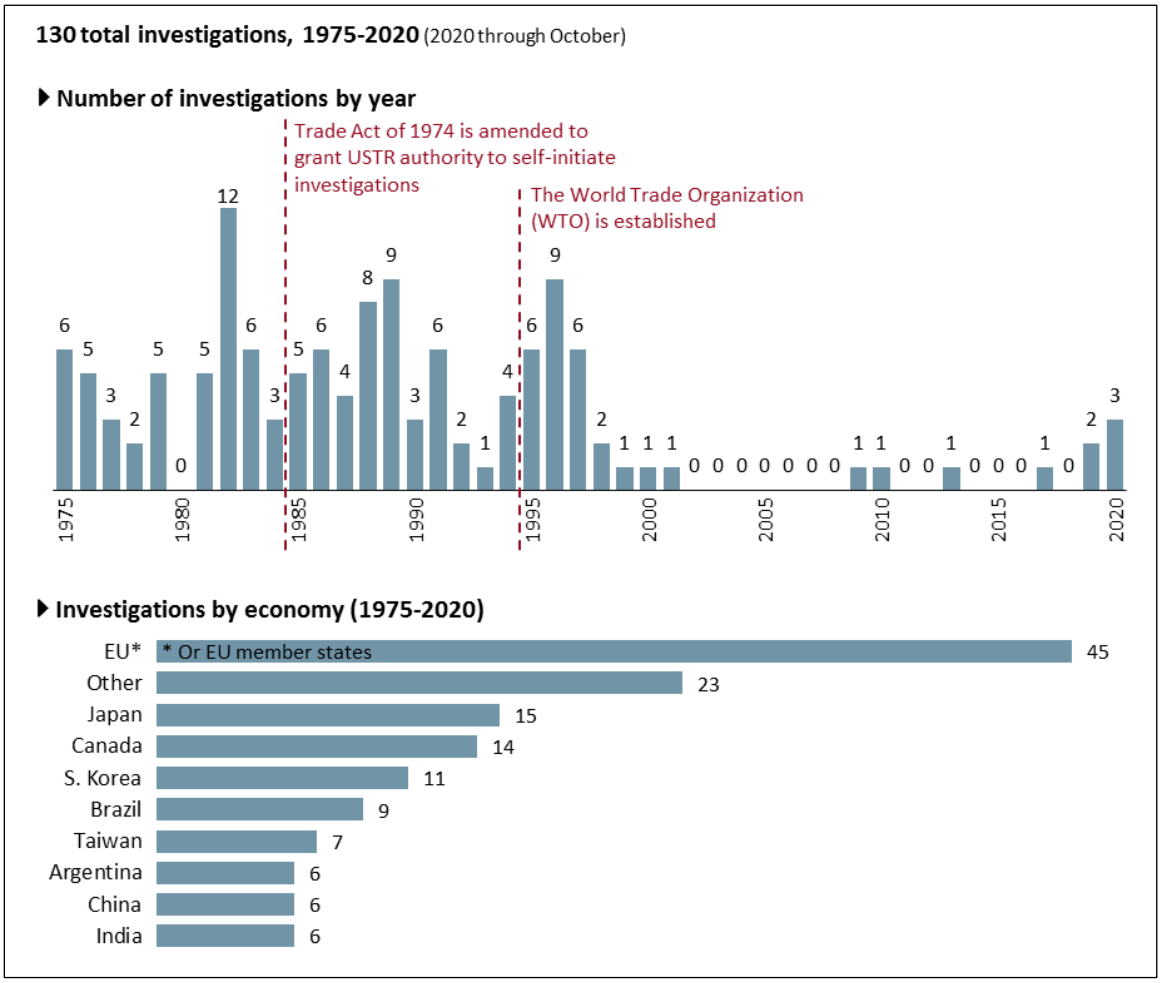
[108] Office of the USTR, "Identification of Ukraine as a Priority Foreign Country and Initiation of Section 301 Investigation," 78 *Federal Register* 33886, June 5, 2013.

[109] Office of the USTR, "Notice of Determination in Section 301 Investigation of Ukraine," 79 *Federal Register* 14326, March 13, 2014. For more detail on Ukraine's Euromaidan protests and Russia's 2014 invasion and occupation of Ukrainian territory, see Serhy Yekelchyk, *The Conflict in Ukraine: What Everyone Needs to Know*, Oxford University Press, 2015.

[110] Office of the USTR, "United States Imposes Tariffs On Softwood Lumber From Four Canadian Provinces Due To Canada's Failure To Comply With The Softwood Lumber Agreement, Press Release, April 7, 2009, and "Initiation of Section 302 Investigation, Determination of Action Under Section 301, and Request for Comments: Canada-Compliance With Softwood Lumber Agreement," 74 *Federal Register* 16436, April 10, 2009.

[111] Office of the USTR, "Notice and Modification of Action: Canada-Compliance with Softwood Lumber Agreement," 75 *Federal Register* 53014, August 30, 2010.

Figure 3. Section 301 Investigations: 1975-Present



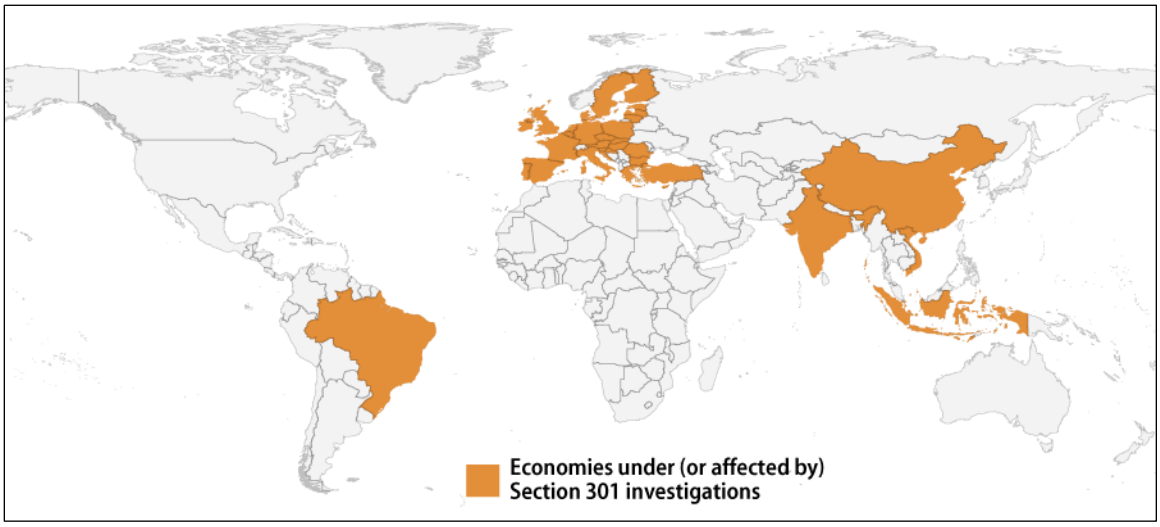
Source: Congressional Research Service and USTR's *Federal Register*.

Notes: Includes all investigations initiated by the Office of the USTR, regardless of whether the case was suspended or combined with others, or action was ultimately taken under Section 301.

Cases during the Trump Administration

During the Trump Administration, the USTR has self-initiated six new investigations against China, the EU, France, a group of 10 trading partners, and two against Vietnam (**Figure 4**). Two investigations have resulted in the USTR imposing tariffs to date—on U.S. imports from China and the EU. The investigation against the EU, launched in April 2019, sought to enforce a WTO ruling in connection with the "Large Civil Aircraft Dispute." Unlike the U.S. action taken against China, the WTO had authorized the action against the EU.

Figure 4. Section 301 Investigations: 2017-Present



Source: Congressional Research Service with information from the Office of the USTR.

China: Technology Transfer, Intellectual Property, and Innovation

Concerns over China's policies on IPR, subsidies, technology, and innovation led the Trump Administration to launch in August 2017 a Section 301 investigation into those policies and their impact on U.S. stakeholders.[112] The investigation, concluded in March 2018, determined that four of China's broad policies or practices justified U.S. action: (1) forced technology transfer requirements; (2) cyber-enabled theft of U.S. intellectual property (IP) and trade secrets; (3) discriminatory and nonmarket licensing practices; and (4) state-funded strategic acquisition of U.S. assets.[113] President Trump sought to justify taking unilateral action to address most of these

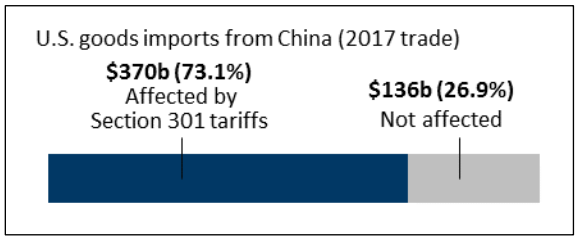
[112] Office of the USTR, "USTR Announces Initiation of Section 301 Investigation of China," Press Release, August 18, 2017, and "Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 82 *Federal Register* 40213, August 24, 2017. The initiation of the investigation followed the issuance of a Presidential Memorandum instructing the USTR to determine "whether to investigate any of China's laws, policies, practices, or actions that may be unreasonable or discriminatory and that may be harming American intellectual property rights, innovation, or technology development." (Executive Office of the President, "Addressing China's Laws, Policies, Practices, and Actions Related to Intellectual Property, Innovation, and Technology, Memorandum for the United States Trade Representative," 82 *Federal Register* 39007, August 17, 2017. For more detail on U.S.-China trade and investment relations, see CRS In Focus IF11284, *U.S.-China Trade and Economic Relations: Overview*, by Karen M. Sutter and CRS In Focus IF11283, *U.S.-China Investment Ties: Overview and Issues for Congress*, by Andres B. Schwarzenberg.

[113] Office of the USTR, *Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974*, March 22, 2018. See also, Executive Office of the President, "Actions by the United States Related to the Section 301 Investigation of China's Laws, Policies, Practices, or Actions Related to Technology Transfer, Intellectual Property, and Innovation," Presidential Memorandum, 83 *Federal Register* 13099, March 27, 2018. The USTR estimated that these policies cost the U.S. economy at least $50 billion annually (Office of the USTR, "Section 301 Fact Sheet," March 22, 2018). Some estimates also suggest that Chinese IPR violations are a major source of U.S. economic losses. U.S. firms cite lax IPR enforcement as one of the primary challenges to doing business in China, and some view the enforcement shortfalls as a deliberate effort by the Chinese government to give domestic firms an advantage over foreign competitors. In 2018, the U.S. National Counterintelligence and Security Center (NCSC) described China as having "expansive efforts in place to acquire U.S. technology to include sensitive trade secrets and proprietary information." It warned that if the threat is not addressed, "it could erode America's long-term competitive economic advantage." (National Counterintelligence and Security Center, "Foreign Economic Espionage in Cyberspace," July 2018.)

issues by pointing to alleged weaknesses in WTO dispute settlement procedures and the inadequacy or nonexistence of WTO rules to address certain Chinese trade practices.[114] The Trump Administration also added issues unrelated to the Section 301 investigation to the subsequent bilateral consultations and trade negotiations with China. These included demands that China take steps to reduce the bilateral trade imbalance (including by making significant purchases of U.S. products), make economic structural changes that provide the United States greater reciprocity in access to China's market, and address currency issues.[115] The broadening in the scope of the negotiations to include additional demands may be viewed by some to have complicated the resolution of the issues identified by the Section 301 investigation and the subsequent trade dispute.

Following the Section 301 findings, the USTR, at the direction of President Trump, took five major tariff actions in 2018 and 2019 (**Table 3**). Approximately three-fourths of U.S. imports from China became subject to increased Section 301 tariffs, ranging from 15% to 25% (**Figure 5**).[116] The United States and China engaged in several rounds of negotiations to resolve U.S. concerns raised during the investigation, as well as other unrelated issues.[117] These negotiations ultimately resulted in a "phase one" deal of narrow scope (so-called "U.S.-China Phase One Trade Agreement"), signed in January 2020 and described by the Administration as the first step toward a more comprehensive trade agreement.[118] As part of the deal, the USTR announced reductions in certain tariff rate hikes,

Figure 5. U.S.-China Trade in 2017



Source: Congressional Research Service with data from the U.S. Department of Commerce's Bureau of Economic Analysis.

Notes: Calculations based on pre-tariff import data.

[114] See, for example, Office of the USTR, "United States—Tariff Measures On Certain Goods from China (DS543): First Written Submission of the United States of America," August 27, 2019. In this submission, the USTR stated that "China has chosen to adopt a range of policies and practices to obtain an unfair competitive edge over other Members by stealing or otherwise unfairly acquiring their technology and intellectual property. Where those policies or practices can be addressed through WTO rules, the United States is pursuing WTO dispute settlement. Most of China's practices, however, are not covered by existing WTO disciplines."

[115] See, for example, Gabriel Wildau and Shawn Donnan, "US Demands China Cut Trade Deficit by $200bn: Washington Increases Brinkmanship with Call for Beijing to Open Economy More," *Financial Times*, May 4, 2018.

[116] Approximately 73.1% of U.S. imports from China became subject to Section 301 tariffs ($370 billion out of $506 billion). Based on CRS calculations using 2017 (pre-tariff) data from the U.S. Department of Commerce's Bureau of Economic Analysis.

[117] For a comprehensive timeline, see, for example, China Briefing, "The US-China Trade War: A Timeline," Dezan Shira & Associates. Official statements from The White House, include, among others: "Trump Administration Officials to Host Trade Delegation from China," May 16, 2018; "Statement from the Press Secretary Regarding the President's Working Dinner with China," December 1, 2018; "Statement of the United States Regarding China Talks," January 31, 2019; "Statement by the Press Secretary Regarding China Talks," February 15, 2019; "Statement of the United States Regarding China Talks," March 29, 2019; "Statement from the Press Secretary Regarding the Administration's Trade Talks with China," April 5, 2019; "Statement from the Press Secretary Regarding the Administration's Trade Talks with China," April 23, 2019; "Remarks by President Trump and Vice Premier Liu He of the People's Republic of China in a Meeting," October 11, 2019.

[118] Office of the USTR, "Economic and Trade Agreement between the Government of the United States of America and the Government of the People's Republic of China," January 15, 2020.

effective February 2020.[119] President Trump has indicated that all existing Section 301 tariffs on U.S. imports from China will remain in place until a "phase two" deal is concluded.[120]

Table 3. Major Section 301 Tariff Actions on U.S. Imports from China

Effective Date	List	Additional Tariff Rate (*ad valorem*)	Stated Value of U.S. Imports Affected	*Federal Register* Notice
07/06/2018	1	25%	$34 billion	83 FR 28710
08/23/2018	2	25%	$16 billion	83 FR 40823
09/24/2018	3	10%	$200 billion	83 FR 47974 83 FR 49153
06/15/2019	3	25% (increased from 10%)	$200 billion	84 FR 20459
09/01/2019	4A	15%	$120 billion*	84 FR 43304 84 FR 45821

Source: Congressional Research Service and USTR's *Federal Register* notices.

Notes: *Office of the USTR, "United States and China Reach Phase One Trade Agreement," Press Release, December 13, 2019. The USTR had not previously made public an official estimate of value of U.S. imports affected by List 4A, a subset of List 4 ("$300 Billion Trade Action").

The United States pursued part of the Section 301 investigation at the WTO, and in November 2018, a dispute panel was composed to review China's technology licensing requirements.[121] However, the proceedings have been suspended at the request of the United States since June 2019.[122] Since April 2018, China has filed three WTO cases challenging Section 301 tariffs.[123] In September 2020, a WTO dispute settlement panel ruled in the first case and determined that Section 301 tariffs on U.S. imports from China were not consistent with U.S. WTO commitments.[124] In response, U.S. Trade Representative Robert Lighthizer criticized the decision and stated that the "WTO is completely inadequate to stop China's harmful technology practices."[125] He noted that even though the panel in the case "did not dispute the extensive evidence submitted by the United States of intellectual property theft by China, its decision shows that the WTO provides no remedy for such misconduct."[126] In October 2020, the United States

[119] Office of the USTR, "Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 85 *Federal Register* 3741, January 22, 2020.

[120] See, for example, "Trump: U.S. Will Lift Tariffs on China after Phase 2 Deal Finished," *Reuters*, January 15, 2020.

[121] Office of the USTR, "Following President Trump's Section 301 Decisions, USTR Launches New WTO Challenge Against China," Press Release, March 23, 2018, and WTO, "DS542: China—Certain Measures Concerning the Protection of Intellectual Property Rights."

[122] For more detail, see WTO Case "DS542: China—Certain Measures Concerning the Protection of Intellectual Property Rights."

[123] The WTO cases are: (1) "DS543: United States—Tariff Measures on Certain Goods from China" (April 4, 2018), (2) "DS565: United States—Tariff Measures on Certain Goods from China II" (August 23, 2018), and (3) "DS587: United States—Tariff Measures on Certain Goods from China III" (September 2, 2019).

[124] For more detail, see WTO Case "DS543: United States—Tariff Measures on Certain Goods from China" and "WT/DS543/R: United States—Tariff Measures on Certain Goods from China," September 15, 2020.

[125] Office of the USTR, "WTO Report on US Action against China Shows Necessity for Reform," Press Release, September 15, 2020.

[126] Ibid.

notified the WTO Dispute Settlement Body of its decision to appeal the panel report in this case.[127]

The Trump Administration has used the Section 301 investigation and the resulting threat and imposition of tariffs as the primary tool to spur trade negotiations with China over U.S. concerns. However, many analysts have raised concerns over the economic impact that a protracted trade dispute between the United States and China could have on the U.S. and global economy, bilateral commercial ties, and global supply chains that involve producers in many countries.[128] The tariffs have reportedly had the impact of raising some prices for U.S. consumers and firms that use Chinese parts and components in production and exports.[129] Chinese retaliation may continue to curtail U.S. exports to the world's second largest economy.[130]

European Union: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute

In April 2019, the USTR initiated a Section 301 investigation in order to enforce U.S. WTO rights in connection with the *Large Civil Aircraft* dispute with the EU and the United Kingdom (UK) (together referred to as the EU in this subsection).[131] Based on the WTO panel, appellate, compliance, and arbitrator reports, and information obtained during the investigation, the USTR determined that the EU had denied U.S. rights under WTO agreements.[132] Specifically, the USTR concluded that the EU and certain member states had not complied with a WTO DSB ruling recommending the withdrawal of WTO-inconsistent subsidies on the manufacture of large civil aircraft. In 2011, the DSB confirmed that these subsidies had breached the EU's WTO obligations under GATT 1994 and the Agreement on Subsidies and Countervailing Measures (SCM

[127] World Trade Organization, "United States Appeals Panel Report Regarding US Tariffs on Chinese Goods," October 26, 2020. The WTO noted that "[g]iven the ongoing lack of agreement among WTO Members regarding the filling of Appellate Body vacancies, there is no Appellate Body Division available at the current time to deal with the appeal." For more detail, see CRS Legal Sidebar LSB10553, *Section 301 Tariffs on Goods from China: International and Domestic Legal Challenges*, by Nina M. Hart and Brandon J. Murrill.

[128] See, for example, Mark Zandi, Jesse Rogers, and Maria Cosma, "Trade War Chicken: The Tariffs and the Damage Done," Analysis, Moody's Analytics, September 2019; Shawn Donnan and Reade Pickert, "Trump's China Buying Spree Unlikely to Cover Trade War's Costs," *Bloomberg*, December 18, 2019; and Mary Amiti, Sang Hoon Kong, and David E. Weinstein, "The Investment Cost of the U.S.-China Trade War," Liberty Street Economics, Federal Reserve Bank of New York, May 28, 2020.

[129] See, for example, Mary Amiti, Stephen J. Redding, and David E. Weinstein, "Who's Paying for the US Tariffs? A Longer-Term Perspective," *NBER Working Paper No. 26610*, January 2020; Andrea Shalal, "Trump's Tariffs Cost U.S. Companies $46 Billion to Date, Data Shows," *Reuters*, January 9, 2020; Sylvan Lane and Alex Gangitano, "Businesses, farmers brace for new phase in Trump trade war," *The Hill*, August 8, 2019; and Reuters Staff, "Who Pays Trump's Tariffs, China or U.S. Customers and Companies?" *Reuters*, May 21, 2019.

[130] See, for example, Liyan Qi, Grace Zhu and Lin Zhu, "China's U.S. Exports Tumble as Tariffs Bite," *The Wall Street Journal*, October 14, 2019; Riley Walters, "Decreasing U.S.-China Trade Is Worrisome," Commentary, The Heritage Foundation, April 3, 2020; and Kenneth Rapoza, "U.S. Exports To China Down For The Second Consecutive Year," *Forbes*, April 17, 2020.

[131] Office of the USTR, "Initiation of Investigation; Notice of Hearing and Request for Public Comments: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute," 84 *Federal Register* 15028, April 12, 2019. For more detail, see CRS In Focus IF11364, *Boeing-Airbus Subsidy Dispute: Recent Developments*, by Andres B. Schwarzenberg.

[132] Office of the USTR, "Notice of Determination and Action Pursuant to Section 301: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute," 84 *Federal Register* 54245, October 9, 2020.

Agreement).[133] As a result, in October 2019, with WTO authorization, the United States imposed additional tariffs on $7.5 billion worth of U.S. imports from the EU.[134]

The WTO's authorization for the United States to take countermeasures against the EU—the largest amount in the WTO's history—came after nearly 15 years of litigation at the WTO.[135] The litigation involves the world's two largest aerospace manufacturers, U.S.-based Boeing and EU-based Airbus, which have competed for years for dominance in the commercial airline supply market. The United States successfully argued that Airbus had received billions of dollars in illegal subsidies, which resulted in a loss to Boeing of significant market share throughout the world. The U.S. action to impose tariffs, consistent with the WTO arbitrator's finding on the appropriate level of countermeasures, aimed to pressure the EU into either ending the subsidies or negotiating an agreement with the United States.

In a parallel dispute case against the United States, in October 2020, the WTO authorized the EU to seek remedies in the form of tariffs on $4 billion worth of EU imports from the United States. The WTO had previously determined that some of the subsidies provided by the United States for the manufacture of Boeing's large civil aircraft violated the WTO commitments of the United States and had caused harm to the interests of the EU.[136] The EU exercised its legal rights under the WTO's decision to impose retaliatory tariffs on products from the United States, effective November 9, 2020.[137] However, the tariff increases are limited to 15% on large civil aircraft and 25% on agricultural and other products. The USTR has noted that with the elimination of a Washington State preferential tax rate in early 2020, the United States has fully implemented the WTO's recommendations in this case, and therefore "there is no valid basis for the EU to retaliate against any U.S. goods."[138]

Due to the magnitude of U.S.-EU trade (of which civilian aircraft, engines, and parts are a major component) and ongoing trade frictions, some Members of Congress are closely monitoring developments in the WTO litigation and in U.S.-EU negotiations.[139]

[133] WTO Case "DS316: European Communities and Certain member States—Measures Affecting Trade in Large Civil Aircraft."

[134] Ibid. WTO, "Arbitrator Issues Decision in Airbus Subsidy Dispute," October 2, 2020.

[135] For an overview of the WTO DSU procedures in the case since 2004, see WTO Case "DS316: European Communities and Certain member States—Measures Affecting Trade in Large Civil Aircraft."

[136] WTO, "WTO Arbitrator Issues Decision in Boeing Subsidy Dispute," October 13, 2020. For more detail on the EU's case against the United States, see WTO Case "DS353: United States—Measures Affecting Trade in Large Civil Aircraft—Second Complaint."

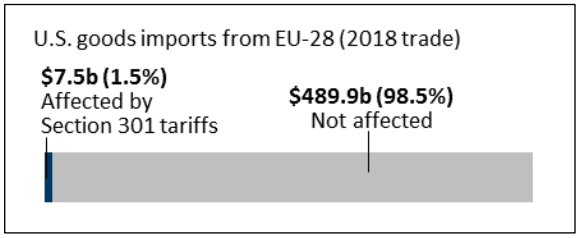
[137] European Commission, "Boeing WTO Case: The EU Puts in Place Countermeasures Against U.S. Exports," Press Release, November 9, 2020.

[138] Office of the USTR, "U.S. Notifies Full Compliance in WTO Aircraft Dispute," Press Release, May 6, 2020, and "EU Has No Legal Basis to Impose Aircraft Tariffs; WTO Award Relates Only to Now-Repealed Tax Break, Rejects EU Request on Other Measures," Press Release, October 13, 2020.

[139] More recently, Senate Finance Committee Chairman Chuck Grassley called for the Trump Administration to negotiate with the EU to resolve the long-standing dispute. ("Grassley: Administration Should Strike Boeing-Airbus Deal with EU," *Inside U.S. Trade*, October 13, 2020.)

Following the USTR's Section 301 investigation and its determination to enforce U.S. WTO rights, the USTR published in October 2019 a list of 158 eight-digit Harmonized Tariff Schedule of the United States (HTSUS) product lines subject to additional duties.[140] The list targeted mainly U.S. imports from the EU member states responsible for the illegal subsidies—France, Germany, Spain, and the UK, but is not limited to the aircraft industry. The tariffs affected approximately $7.5 billion worth of imports, or about 1.5% of all U.S. goods imports from the EU in 2018 (**Figure 6**). The WTO authorized the United States to impose additional *ad valorem* duties—that is, based on the value of the import—of up to 100%; however, at the time, the USTR indicated that the tariff increases would be limited to 10% on large civil aircraft and 25% on agricultural and other products.[141]

Figure 6. U.S.-EU Trade in 2018



Source: Congressional Research Service with data from the U.S. Department of Commerce's Bureau of Economic Analysis.

Notes: Calculations based on pre-tariff import data.

By broad product category, aircraft (mainly from France and Germany) accounted for roughly 40% of the $7.5 billion of trade affected, while whiskies, liqueurs, and wine (mainly from the UK and France) accounted for another 40%, and food and agricultural products (mainly from Spain and France) accounted for the remaining 20%.[142]

February 2020 Revision

In December 2019, the USTR announced a review of the initial Section 301 action taken in October 2019.[143] The agency specifically requested public comments on whether (1) products covered by the action should remain on or be removed from the tariff list, (2) the current rate of additional duty should be increased to as high as 100% for products that remain on the list, and (3) additional EU products should be added to the list. Based on this review, in February the USTR increased the rate of additional duties on large civil aircraft to 15%, effective March 18, 2020, and modified the list of other products subject to additional 25% duties (by removing prune juice and adding knives to the list), effective March 5, 2020.[144] The number of product lines and total trade affected remained unchanged.

August 2020 Revision

In June 2020, the USTR initiated a second review of the Section 301 action and requested public comments.[145] Although in July 2020 the EU announced amendments to certain French and

[140] Office of the USTR, "Notice of Determination and Action Pursuant to Section 301: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute," 84 *Federal Register* 54245, October 9, 2020.

[141] Office of the USTR, "U.S. Wins $7.5 Billion Award in Airbus Subsidies Case," Press Release, October 2, 2020.

[142] CRS calculations based on 84 *Federal Register* 54245 and data from the U.S. Department of Commerce's Bureau of Economic Analysis.

[143] Office of the USTR, "Review of Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute," 84 *Federal Register* 67992, December 12, 2019.

[144] Office of the USTR, "Notice of Modification of Section 301 Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute," 85 *Federal Register* 10204, February 21, 2020.

[145] Office of the USTR, "Review of Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute," 85

Spanish Airbus launch aid contracts, the USTR determined that these changes were insufficient and did not fully implement the DSB's recommendations.[146] As a result, in August 2020, the USTR altered the composition of the list of nonaircraft products subject to additional duties (two product lines removed and nine added of an equivalent amount of trade), effective September 1, 2020.[147] The amount of trade affected and level of additional duties remained unchanged.

As required by Section 306 of the Trade Act of 1974, the USTR plans to continue to reevaluate the tariff actions periodically based on the progress of its negotiations with the EU (see "Carousel" Retaliation).[148]

France: Digital Services Tax

France enacted a digital services tax (DST) formally on July 24, 2019, after which the USTR responded by initiating a Section 301 investigation.[149] The DST applies a 3% levy on gross revenues derived from two digital activities of which French "users" are deemed to play a major role in value creation: (1) intermediary services,[150] and (2) advertising services based on users' data.[151] It is retroactive to digital services revenue as of January 1, 2019.[152] The law excludes certain services, including digital interfaces for the delivery of "digital content." The DST applies only to companies with annual revenues from the covered services of at least €750 million (approximately $847 million) globally and €25 million (approximately $28 million) in France.[153]

Federal Register 38488, June 26, 2020.

[146] European Commission, "EU and Airbus Member States Take Action to Ensure Full Compliance in the WTO Aircraft Dispute," July 24, 2020; and Office of the USTR, "Notice of Modification of Section 301 Action: Enforcement of U.S. World Trade Organization (WTO) Rights in Large Civil Aircraft Dispute," 85 *Federal Register* 50866, August 18, 2020.

[147] Office of the USTR, "Notice of Modification of Section 301 Action: Enforcement of U.S. World Trade Organization (WTO) Rights in Large Civil Aircraft Dispute," 85 *Federal Register* 50866, August 18, 2020.

[148] Office of the USTR, "U.S. Wins $7.5 Billion Award in Airbus Subsidies Case," Press Release, October 2, 2019, and "USTR Modifies $7.5 Billion WTO Award Implementation Relating to Illegal Airbus Subsidies," Press Release, August 12, 2020.

[149] KPMG, "France: Digital Services Tax (3%) Is Enacted," July 25, 2019. See also, Office of the USTR, "USTR Announces Initiation of Section 301 Investigation into France's Digital Services Tax," Press Release, July 10, 2019, and "Initiation of a Section 301 Investigation of France's Digital Services Tax," 84 *Federal Register* 34042, July 16, 2019. For more detail on the investigation, see CRS In Focus IF11564, *Section 301 Investigations: Foreign Digital Services Taxes (DSTs)*, by Andres B. Schwarzenberg.

[150] According to the USTR, "intermediate" services or "'digital interface' services are the provision of an electronic interface that users use to connect with other users, especially to buy and sell goods or services between themselves. Notably, this definition excludes where a 'digital interface' provider (i.e., a company operating a website) sells to a user goods or services that it owns. Additionally, the law excludes from its scope certain types of digital interfaces, namely those used 'primarily' to provide 'digital content,' 'communications,' 'payment services,' various banking and financial services, or the placement of targeted ads. The law gives little guidance on the scope of these carve-outs. However, it is generally thought that the 'digital content' carve-out excludes interfaces primarily for the delivery of music or movies, that the 'communications' carve-out excludes telecommunications providers, and that other carve-outs exclude essentially all financial service, including payment interfaces." (Office of the USTR, *Section 301 Investigation: Report on France's Digital Services Tax*, December 2, 2019.)

[151] For example, the placement of an ad targeted based on data concerning the individual who views the ad, the monitoring of an ad placed based on data concerning the individual who views the ad, and the sale of user data in connection with internet advertising. (Office of the USTR, *Section 301 Investigation: Report on France's Digital Services Tax*, December 2, 2019.)

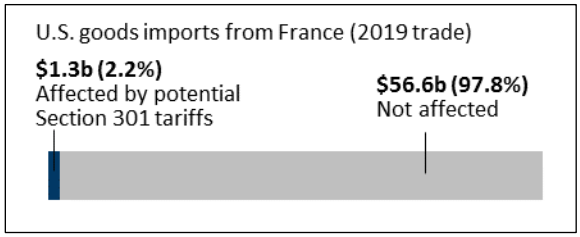
[152] LOI n° 2019-759 du 24 juillet 2019 portant création d'une taxe sur les services numériques et modification de la trajectoire de baisse de l'impôt sur les sociétés [LAW no. 2019-759 dated 24 July 2019 concerning creation of a tax on digital services and modification of the downward correction of the corporation tax].

[153] Amounts stated in U.S. dollars are approximate due to exchange rate fluctuations.

Covered companies are required to calculate revenues attributable to France (and, therefore, covered by the DST) using formulas specified in the law.

In its investigation, initiated on July 10 and completed on December 2, 2019, the USTR ultimately concluded that France's DST discriminates against major U.S. digital companies and is inconsistent with prevailing international tax policy principles.[154] France suspended its DST for the remainder of 2020 and agreed to continue working with the United States at the Organization for Economic Cooperation and Development (OECD) to reach a compromise on international digital taxation.[155] The USTR faced a July 10, 2020 statutory deadline to make a determination on what action to take; it ultimately determined to take retaliatory action in the form of additional duties. On July 10, 2020, the agency announced that it would impose additional tariffs of 25% on approximately $1.3 billion worth of imports, or about 2.2% of all U.S. goods imports from France in 2019 (**Figure 7**).[156] However, it delayed the implementation for up to 180 days (that is, up to January 6, 2021) to allow more time for bilateral and multilateral discussions that could lead to a satisfactory resolution of this matter.[157]

Figure 7. U.S.-France Trade in 2019



Source: Congressional Research Service with data from the U.S. Department of Commerce's Bureau of Economic Analysis.

Notes: Calculations based on pre-tariff import data.

The list of imports on which USTR has determined to impose tariffs is narrower than that originally proposed in December 2019, which had an annual import value of approximately $2.4 billion and covered dairy products, soaps, cosmetics, sparkling wine, handbags, and porcelain.[158] The final list, is limited to certain cosmetics, soaps, and leather goods. Moreover, whereas preliminary notice also contemplated possible fees or restrictions on services imported from France or provided in the United States by French businesses, USTR's latest determination imposes no such restrictions. According to the USTR, in determining the level of trade affected by the action, the agency considered the value of digital transactions covered by France's DST and the amount of taxes assessed by France on U.S.

[154] Office of the USTR, "Initiation of a Section 301 Investigation of France's Digital Services Tax," 84 *Federal Register* 34042, July 16, 2019; "Conclusion of USTR's Investigation Under Section 301 into France's Digital Services Tax," Press Release, December 2, 2019; *Section 301 Investigation: Report on France's Digital Services Tax*, December 2, 2019; and "Notice of Determination and Request for Comments Concerning Action Pursuant to Section 301: France's Digital Services Tax," 84 *Federal Register* 66956, December 6, 2019.

[155] James Politi, Mehreen Khan, Victor Mallet, and Martin Arnold, "France signals breakthrough in US digital tax talks," *Financial Times*, January 20, 2020, and Liz Alderman, Jim Tankersley, and Ana Swanson, "France and U.S. Move Toward Temporary Truce in Trade War," *The New York Times*, January 21, 2020. For more detail, see Organization for Economic Cooperation and Development, "Action 1 Tax Challenges Arising from Digitalisation," Inclusive Framework on Base Erosion and Profit Shifting (BEPS); CRS Report R45532, *Digital Services Taxes (DSTs): Policy and Economic Analysis*, by Sean Lowry; and CRS Report R44900, *Base Erosion and Profit Shifting (BEPS): OECD Tax Proposals*, by Jane G. Gravelle.

[156] Office of the USTR, "Notice of Action in the Section 301 Investigation of France's Digital Services Tax," 85 *Federal Register* 43292, July 16, 2020. While the overall amount of trade affected by the action may be relatively small, the impact on particular U.S. stakeholders or sectors of the U.S. economy could be large.

[157] Ibid.

[158] Office of the USTR, "Notice of Determination and Request for Comments Concerning Action Pursuant to Section 301: France's Digital Services Tax," 84 *Federal Register* 66956, December 6, 2019.

companies.[159] Finally, the USTR's notice contemplates the possibility that the action could be modified or the 180-day suspension shortened, depending on the progress of discussions with France or in the OECD.[160] Because progress at the OECD has been relatively slow, and the deadline to reach an agreement was recently pushed back to mid-2021, French finance minister Bruno LeMaire stated in October 2020 that France would begin collecting its DST in December 2020.[161] It remains to be seen if the USTR will move ahead with its tariff hike as planned or modify the 180-day suspension.

Foreign Digital Services Taxes

On June 2, 2020, the USTR launched a new Section 301 investigation into the DSTs adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom (see **textbox**).[162] The USTR also requested consultations with the governments of these jurisdictions. The investigation is ongoing.

DSTs Under Investigation

Adopted

- **Austria.** Adopted a 5% tax on revenues from online advertising services. It applies to companies with at least €750 million ($847 million) in annual global revenues for all services and €25 million ($28 million) in in-country revenues for covered services.
- **India.** Adopted a 2% tax that applies to nonresident companies, and covers online sales of goods and services to, or aimed at, persons in India. The tax applies to companies with annual revenues in excess of approximately INR 20 million ($265,000).
- **Indonesia.** Adopted a 10% value-added tax on digital products and services provided by nonresident companies with a "significant economic presence" in the Indonesian market, including music and video streaming services, applications, and digital games. It will be effective July 1, 2020.
- **Italy.** Adopted a 3% tax on revenues from targeted advertising and digital interface services. The tax applies to companies generating at least €750 million ($847 million) in global revenues for all services and €5.5 million ($6 million) in in-country revenues for covered services.
- **Spain.** Adopted a 3% tax on revenues from targeted advertising and digital interface services that would apply to companies generating at least €750 million ($847 million) in global revenues for all services and €3 million ($3 million) in in-country revenues for covered services. The DST will go into effect in January 2021.
- **Turkey.** Adopted a 7.5% tax on revenues from targeted advertising, social media, and digital interface services. The tax applies to companies generating €750 million ($847 million) in global revenues from covered digital services and TRY 20 million ($3 million) in in-country revenues from covered digital services. The Turkish President has authority to increase the tax rate up to 15%.
- **United Kingdom.** Adopted a 2% tax on revenues above £25 million from internet search engines, social media, and online marketplaces. The tax applies to companies generating at least £500 million ($640 million) in global revenues from covered digital services and £25 million ($32 million) in in-country revenues from covered services.

Under Consideration

[159] Office of the USTR, "Notice of Action in the Section 301 Investigation of France's Digital Services Tax," 85 *Federal Register* 43292, July 16, 2020.

[160] Ibid.

[161] Bjarke Smith-Meyer and Elisa Braun, "France Reinstates Digital Tax, Courting Trade War: Bruno Le Maire Said Digital Giants Musts Begin Paying Levy in December," *Politico*, October 14, 2020.

[162] Office of the USTR, "USTR Initiates Section 301 Investigations of Digital Services Taxes," Press Release, June 2, 2020, and "Initiation of Section 301 Investigations of Digital Services Taxes," 85 *Federal Register* 34709, June 5, 2020. For more detail, see CRS In Focus IF11564, *Section 301 Investigations: Foreign Digital Services Taxes (DSTs)*, by Andres B. Schwarzenberg.

- **Brazil.** Considering a 1% to 5% tax (to be levied progressively) on revenues from targeted advertising and digital interface services. It would apply to companies generating at least BRL 3 billion ($534 million) in annual global revenues and at least BRL 100 million ($18 million) in in-country revenues for covered digital services.
- **Czech Republic.** Considering a 7% tax on revenues from targeted advertising and digital interface services. It would apply to companies generating €750 million ($847 million) in annual global revenues for all services and CZK 50 million ($2 million) in in-country revenues for covered services.
- **European Union.** Considering a DST as part of the financing package for its proposed Coronavirus Disease 2019 (COVID-19) recovery plan. It is based on a 2018 DST proposal that would: (1) include a 3% tax on revenues from targeted advertising and digital interface services, and (2) apply only to companies generating at least €750 million ($847 million) in global revenues from covered digital services and at least €50 million ($56 million) in EU-wide revenues for covered services.

Source: Adapted from Office of the USTR, 85 *Federal Register* 34709 (June 6, 2020).
Note: Amounts stated in U.S. dollars are approximate due to exchange rate fluctuations.

As part of the investigation, the agency may seek to address several issues, including

- Are the taxes discriminatory and do they burden or restrict U.S. commerce? Are these jurisdictions unfairly aiming to tax certain U.S. firms?
- What are the implications of applying the taxes retroactively? Some taxes are (or will be) applied retroactively, raising administrative and legal questions as to how firms will be able to calculate their potential liabilities.
- Is the tax policy "unreasonable"? The USTR has indicated that these DSTs appear to diverge from norms reflected in U.S. and international tax systems, particularly because of their extraterritorial scope and their taxing of revenue instead of income.
- Are the DSTs inconsistent with international commitments and obligations under the WTO or other agreements?
- Does the WTO General Agreement on Trade in Services (GATS) cover digital trade? If so, the USTR may invoke the dispute settlement procedures of the WTO DSU.

The United States and more than 130 countries, comprising both members and nonmembers of the OECD, are negotiating policy recommendations in an attempt to update the global tax system and develop an international digital tax framework.[163] The OECD Secretariat originally announced its intent to conclude these negotiations by the end of 2020. However, due to the COVID-19 pandemic and critical policy differences among countries, the organization as of October 2020 was aiming to reach a deal by mid-2021.[164] The European Commission has stated that if work at the OECD level fails, the EU would go ahead with a common taxation framework for digital services across the EU during the first half of 2021.[165] EU officials are reportedly

[163] Organization for Economic Cooperation and Development, "Action 1 Tax Challenges Arising from Digitalisation," Inclusive Framework on Base Erosion and Profit Shifting (BEPS).

[164] Organization for Economic Cooperation and Development, *Tax Challenges Arising from Digitalization—Report on the Pillar Two Blueprint: Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project, October 9, 2020.

[165] European Commission, "Remarks by Executive Vice-President Dombrovskis at the Informal ECOFIN Press Conference," Speech, September 12, 2020.

hoping that an EU-wide DST would prevent the proliferation of unilateral measures by individual EU member states that could fragment the single market.[166]

If an international tax agreement is not reached at the OECD in the near term, and the USTR determines that the DST of any country under investigation is unreasonable or discriminatory and burdens or restricts U.S. commerce, the USTR could seek to negotiate and enter into a binding agreement that commits a trading partner to eliminate the tax policy or that provides compensation to the United States. Absent mutual resolution, a likely scenario would be the imposition of tariffs and the escalation of tensions in U.S. economic relations with these trading partners. Should the United States impose retaliatory trade measures, the affected parties could pursue WTO dispute settlement or retaliate by targeting U.S. exports.

Vietnam: Timber Trade and Currency Practices

On October 2, 2020, the USTR announced that it had initiated two separate Section 301 investigations with respect to Vietnam's trade with the United States.[167] The investigations pertain to Vietnam's acts, policies, and practices related to timber trade and currency valuation. The USTR will review Vietnam's importation of timber that may have been illegally harvested or traded, used as input for its timber product-manufacturing sector, and subsequently exported to the United States.[168] In a separate investigation, the USTR will also review, in consultation with the Department of the Treasury, any practices that may have contributed to the undervaluation of Vietnam's currency and impaired the competitiveness of U.S. exports.[169] The USTR has requested consultations with the government of Vietnam, sought public comments on any issue covered by the investigations, and will held public hearings on December 28 and 29, 2020.[170]

The Trump Administration and some Members of Congress have expressed concern over the rapidly growing U.S. merchandise trade deficit with Vietnam, which reached an all-time high of $55.8 billion in 2019 (a 74% increase from the level registered in 2016).[171] They have attributed this trend primarily to Vietnam's trade practices and unfair export competitiveness, which they claim is afforded by manipulative currency undervaluation.[172] Others contend that recent changes

[166] See, for example, Deloitte, "European Union Alert: European Commission Proposes Tax on Digital Services, Structural Changes to PE Rules," March 23, 2018, and European Commission, "Commission Gathers Views on How to Tax the Digital Economy Fairly and Effectively," Press Release, October 26, 2017.

[167] Office of the USTR, "USTR Initiates Vietnam Section 301 Investigation," Press Release, October 2, 2020. For more detail, see CRS In Focus IF11683, *Section 301 Investigations: Vietnam's Timber Trade and Currency Practices*, by Andres B. Schwarzenberg and Rebecca M. Nelson.

[168] Office of the USTR, "Initiation of Section 301 Investigation: Vietnam's Acts, Policies, and Practices Related to the Import and Use of Illegal Timber," 85 *Federal Register* 63639, October 8, 2020.

[169] Office of the USTR, "Initiation of Section 301 Investigation: Vietnam's Acts, Policies, and Practices Related to Currency Valuation," 85 *Federal Register* 63637, October 8, 2020.

[170] For more detail, see Office of the USTR, "Notice of Public Hearing in Section 301 Investigation of Vietnam's Acts, Policies, and Practices Related to the Import and Use of Illegal Timber," 85 *Federal Register* 75398, November 25, 2020, and "Notice of Public Hearing in Section 301 Investigation of Vietnam's Acts, Policies, and Practices Related to Currency Valuation," 85 *Federal Register* 75397, November 25, 2020.

[171] CRS calculations with data sourced from the U.S. Department of Commerce's Census Bureau.

[172] See, for example, David Lawder, "U.S. Treasury says Vietnam currency was undervalued in 2019 in tire probe assessment," *Reuters*, August 25, 2020; James Politi, "US Proposes Punishment For Countries That Manipulate Currencies: President Trump Seeks To Inject Measures Preventing Devaluations Into Trade Deals," *Financial Times*, May 24, 2019; Dat Nguyen, "US Adds Vietnam to Currency Manipulation Watchlist," *VN Express International*, May 29, 2019; Steve Goldstein, "Trump Threatens Vietnam, Which Has Been Benefiting From U.S. Tariffs on China," *Market Watch*, June 26, 2019; Reuters Staff, "After Trump Threat, Vietnam Says It Wants Free and Fair Trade with U.S.," *Reuters*, June 28, 2019; and John Boudreau and Michelle Jamrisko, "Lighthizer Says Vietnam Must Cut Its

in the sources of U.S. imports are due mainly to other factors. For example, manufacturing companies are reportedly relocating production from other countries in Asia to Vietnam to take advantage of lower costs and to avoid Section 301 tariffs on U.S. imports from China.[173] In August 2020, the Department of the Treasury found that Vietnam—through its central bank, the State Bank of Vietnam (SBV)—deliberately undervalued its currency against the U.S. dollar in 2019.[174] The assessment is part of a countervailing duty (CVD) investigation by the Department of Commerce, which, as of this year, is allowed to consider currency undervaluation in its subsidy investigations.

Import and Use of Illegal Timber

During the past decade, Vietnam has become one of the world's largest exporting countries of timber and timber products, with exports valued at approximately $9.5 billion in 2019.[175] As a processing hub, Vietnam is heavily reliant on imports of timber harvested in other countries, particularly for the manufacturing and export of high-end products such as furniture. According to the USTR, a significant portion of the timber inputs used in these products may have been illegally harvested or traded.[176] The agency further asserts that some of that timber may be from species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).[177] As parties to the Convention, both the United States and Vietnam are bound by CITES provisions designed to curb illegal timber trade.[178]

The main destination market for Vietnam's exports was the United States (48%).[179] In announcing the investigation, the USTR noted that "[u]sing illegal timber in wood products exported to the U.S. market harms the environment and is unfair to U.S. workers and businesses who follow the rules by using legally harvested timber."[180] In 2019, Vietnam was the third largest supplier of U.S. timber and timber-based product imports, after Canada and China. U.S. imports from Vietnam of these products totaled $5.8 billion—of which $3.7 billion accounted for wooden furniture (**Figure 8**).[181] In nominal terms, this is up 34% from 2018, and it represents a 77% increase from 2016.

Trade Surplus with U.S.," *Bloomberg*, July 29, 2019.

[173] See, for example, Brad W. Setser, "Vietnam Looks To Be Winning Trump's Trade War," Council on Foreign Relations, May 27, 2019, and Paul Wiseman, Anne D'innocenzio, and Joe McDonald, "Facing Trump's Tariffs, Some Companies Move, Change or Wait," AP News, July 18, 2019. See, also, Chuin-Wei Yap, "American Tariffs on China Are Being Blunted by Trade Cheats," The Wall Street Journal, June 26, 2019, and Eamon Barrett, "Vietnam Is Receiving Diverted U.S. Orders from China. That Doesn't Mean It's Winning the Trade War," Fortune, July 18, 2019.

[174] For more detail on how countries can allegedly use policies to manipulate the value of their currency to gain an unfair trade advantage against other countries, see CRS In Focus IF10049, *Debates over Currency Manipulation*, by Rebecca M. Nelson.

[175] CRS calculations using data sourced from UN Comtrade Database.

[176] Office of the USTR, "Initiation of Section 301 Investigation: Vietnam's Acts, Policies, and Practices Related to the Import and Use of Illegal Timber," 85 *Federal Register* 63639, October 8, 2020.

[177] Ibid.

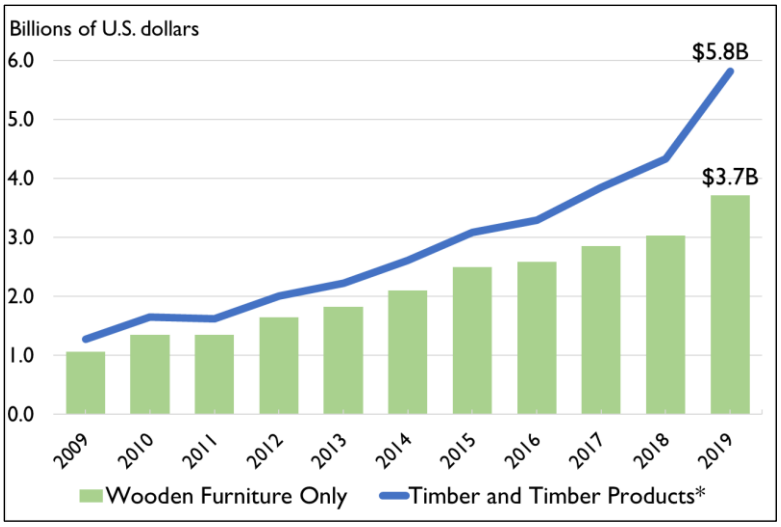
[178] See, for example, Convention on International Trade in Endangered Species of Wild Fauna and Flora, "CITES Conference to Strengthen Wildlife Trade Rules for Fisheries, Timber, Exotic Pets, Elephants and More," Press Release, August 7, 2019.

[179] CRS calculations using data sourced from UN Comtrade Database.

[180] Office of the USTR, "USTR Initiates Vietnam Section 301 Investigation," Press Release, October 2, 2020.

[181] CRS calculations using data sourced from the U.S. International Trade Commission's DataWeb.

Figure 8. U.S. Imports from Vietnam: Timber and Timber-Based Products



Source: Congressional Research Service with data from USITC's DataWeb.

Notes: Not adjusted for inflation. *Calculations do not include wood pulp, paper and paperboard, and printed books and newspapers.

In light of these concerns, the USTR is to address several issues in its ongoing investigation, including

- Is Vietnam importing illegal timber to supply the inputs needed for its timber-manufacturing sector?[182] Are these imports inconsistent with Vietnam's domestic laws (e.g., those concerning the import, processing, and re-export of timber), the laws of exporting countries, or international agreements and commitments? The agency is to examine whether timber imported by Vietnam has been harvested against the laws of source countries, particularly those of Cambodia, and traded illegally—for example, in violation of log export bans, CITES, or U.S. wildlife trade laws and regulations.
- Do Vietnamese officials improperly record the origin of timber crossing the Cambodia-Vietnam border, facilitate illegal timber imports, or allow the importation of CITES-listed species based on invalid permits?[183] The USTR is to investigate if certain aspects of the importation and processing of this timber may violate Vietnam's domestic laws and be inconsistent with CITES. The agency alleges that timber processors in Vietnam may be failing to ensure the lawful origins of the timber they use and that Vietnamese authorities may not be enforcing import or re-export permits or certification requirements.
- To what extent are products made in Vietnam from illegal timber, including wooden furniture, imported into the United States?[184] The agency seeks to determine if Vietnam's practices related to the import and use of illegal timber burden or restrict U.S. commerce and what actions the United States should take to address them.

[182] Office of the USTR, "Initiation of Section 301 Investigation: Vietnam's Acts, Policies, and Practices Related to the Import and Use of Illegal Timber," 85 *Federal Register* 63639, October 8, 2020.

[183] Ibid.

[184] Ibid.

Currency Valuation

The government of Vietnam, through the SBV, tightly manages the value of its currency—the Vietnamese dong. (SBV's management of the dong is tied closely to the U.S. dollar.) The USTR reviewed evidence that indicates that the dong has been undervalued in recent years, which may be due, in part, to SBV's active intervention in the foreign exchange market.[185] In announcing the investigation, U.S. Trade Representative Robert Lighthizer stated that "unfair currency practices can harm U.S. workers and businesses that compete with Vietnamese products that may be artificially lower-priced because of currency undervaluation."[186]

The USTR seeks to determine whether Vietnam's currency practices are unreasonable or discriminatory, and whether they burden or restrict U.S. commerce. Specifically, the investigation will focus on (1) whether SBV's interventions in exchange markets contribute to the undervaluation of the dong; (2) the specific acts, policies, or practices that may contribute such undervaluation; (3) the nature and level of burden or restriction on U.S. commerce caused by these practices, particularly the undervaluation of the dong; and (4) the actions the United States should take to address them.[187] In conducting its investigation, the USTR stated that it would work with the Department of the Treasury on matters related to currency valuation and exchange rate policies. The investigation is ongoing.

Tariff Exclusions on U.S. Imports from China

As noted above, in 2018 the USTR determined, pursuant to an investigation under Section 301, that China's acts, policies, and practices related to technology transfer, IP, and innovation are unreasonable or discriminatory, and burden or restrict U.S. commerce. To counter them and obtain their elimination, the Trump Administration imposed, under Section 301, four rounds of additional tariffs of up to 25% on approximately two-thirds of U.S. imports from China (under four separate actions, per Lists 1, 2, 3, and 4).

During the Section 301 notice, hearing, and comment period on proposed tariff increases, the USTR heard from numerous U.S. stakeholders who expressed concerns about how additional tariffs could affect their businesses, as well as the possible impact on U.S. consumers. In response, for each Section 301 action regarding a new list of covered products, the USTR instituted "tariff exclusions" for certain U.S. imports from China that would otherwise be subject to tariffs whereby interested parties could request that a particular product be excluded from the tariffs, subject to certain criteria. This was the first and only time that the agency has established an exclusion request process, and several Members of Congress raised concerns about its implementation.[188] (The USTR has not established an exclusion process for U.S. imports from the

[185] In January 2020, the U.S. Department of the Treasury found that Vietnam and nine other major trading partners warranted placement on Treasury's "Monitoring List" of major trading partners that merit close attention to their currency practices. (U.S. Department of the Treasury, "Treasury Releases Report on Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States," Press Release, January 13, 2020.). For more recent developments, see, for example, David Lawder, "U.S. Treasury says Vietnam currency was undervalued in 2019 in tire probe assessment," *Reuters*, August 25, 2020; Michelle Jamrisko, "U.S. Treasury Says Vietnam Deliberately Weakened Currency," *Bloomberg*, August 25, 2020.

[186] Office of the USTR, "USTR Initiates Vietnam Section 301 Investigation," Press Release, October 2, 2020.

[187] Office of the USTR, "Initiation of Section 301 Investigation: Vietnam's Acts, Policies, and Practices Related to Currency Valuation," 85 *Federal Register* 63637, October 8, 2020.

[188] See, for example, Representative Ron Kind, "Rep. Ron Kind Introduces Bipartisan Bill to Establish a Section 301 Exclusion Process for Tariffs," Press Release, February 28, 2019, and Representative Jackie Walorski, "Walorski, Kind

EU subject to Section 301 tariffs.) Title III of the Trade Act of 1974 does not outline a formal process for exclusions or require the USTR to establish one. The determination to do so appears to be solely at the USTR's discretion.

In particular, some Members and stakeholders have questioned USTR's ability to "pick winners and losers" through granting or denying requests, or have pushed for broad tariff relief amid concerns about the negative impact of tariffs on the U.S. economy.[189] Others, however, not wanting to undermine the use of Section 301 to address China's unfair trade practices, have discouraged the USTR from granting tariff exclusions at all.[190] To date, the agency has established an exclusion process for each of the four stages of tariff increases under Section 301—all of which have now closed.[191]

The USTR's latest action in response to the COVID-19 pandemic seems to suggest that new exclusions might be limited in scope to apply to trade in medical supplies related to COVID-19, and not be aimed at providing broader tariff relief.[192] The agency has prioritized the review of exclusion requests concerning medical products, resulting in new exclusions for some personal protective equipment (PPE) in short supply. Separately, the USTR requested public comments on whether to remove additional products covered by any tariff list that are relevant to the U.S. response to COVID-19.[193]

Tariff Exclusion Process

The tariff exclusion process enabled interested parties—including law firms, trade associations, and customs brokers, among others—to petition for an exemption from the Section 301 tariff increases for specific imports classified within a 10-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading. The time window to submit new exclusion requests closed in January 2020, but the USTR is considering extensions of exclusions granted from Lists 1, 2, 3, and 4. While the USTR approved, on average, 35% of requests under the first two actions, the approval rates under the third and four actions were 5% and 7%, respectively.[194]

According to the USTR, all requests are evaluated on a case-by-case basis.[195] The agency has indicated that, in determining which requests to grant, it considers the following:

Introduce Bicameral, Bipartisan Bill to Establish a Section 301 Exclusion Process," February 28, 2019. For a list of legislation introduced in the 116th Congress to alter the President's trade authorities under Section 301, see **Table B-1**.

[189] See, for example, Ed Crooks and Fan Fei, "Trade War Winners and Losers Grapple with Trump Tariff Chaos," *Financial Times*, July 23, 2018.

[190] Since first announcing the procedures and criteria related to requests for product exclusions, the USTR has indicated that it evaluates each request "on a case-by-case basis, taking into account whether the exclusion would undermine the objective of the Section 301 investigation." See, for example, Office of the USTR, "Procedures to Consider Requests for Exclusion of Particular Products from the Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 83 *Federal Register* 32181, July 11, 2018.

[191] For more detail on the exclusion process for each of the four stages, see Office of the USTR, "China Section 301—Tariff Actions and Exclusion Process."

[192] Office of the USTR, "Request for Comments on Additional Modifications to the 301 Action to Address COVID-19: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 85 *Federal Register* 16987, March 25, 2020.

[193] Office of the USTR, "USTR: Response to Coronavirus Crisis," Press Release, March 20, 2020.

[194] CRS calculations based on information sourced from the Office of the USTR, "China Section 301—Tariff Actions and Exclusion Process."

[195] See, for example, Office of the USTR, "Procedures to Consider Requests for Exclusion of Particular Products from

1. availability of the product in question from non-Chinese sources,
2. attempts by the importer to source the product from the United States or third countries,
3. the extent to which the imposition of Section 301 tariffs on the particular product will cause severe economic harm to the importer or other U.S. interests, and
4. the strategic importance of the product to "Made in China 2025" or other Chinese industrial programs.[196]

Past exclusions also have been granted for reasons that are thought to include, among others, U.S. national security interests and demonstrable economic hardship from the tariffs for small businesses.

There is no timetable for providing responses to filed requests, but the agency periodically announces decisions on pending requests through *Federal Register* notices. The "index" on the USTR Exclusion Portal also indicates the status of each request in the review process: (1) Public Comment Period; (2) Initial Substantive Review; (3) Administrability Review; (4) Publication in Progress; (5) Granted; and (6) Denied.[197] When the USTR issues an exclusion, it is generally valid for one year after the exclusion notice is published in the *Federal Register* and retroactive to the imposition of the tariffs (with the starting date varying by applicable list). Exclusions are not specific to the requestor, so any party importing a product covered by an exclusion may take advantage of the exclusion and request retroactive tariff refunds from U.S. Customs and Border Protection (CBP).[198]

Through January 31, 2020, the USTR received a total of 52,746 exclusion requests, pertinent to all four actions (**Figure 9**).[199] Of these, 6,804 (13%) have been granted and 45,942 (87%) have been denied (as of December 8, 2020). Specifically, the exclusions are reflected in approximately 90 10-digit HTSUS tariff subheadings and 2,120 specially prepared product descriptions—all of which cover 6,804 separate requests. Because most exclusions apply to specific products within a relevant subheading, and not to entire subheadings, CRS cannot determine the exact amount of trade covered by the exclusions. The USTR has also issued extensions to certain exclusions that have expired or are set to expire soon. These apply to 42 (of the 89) HTSUS subheadings and 507 (of the 2,120) specially prepared product descriptions.

the Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 83 *Federal Register* 32181, July 11, 2018.

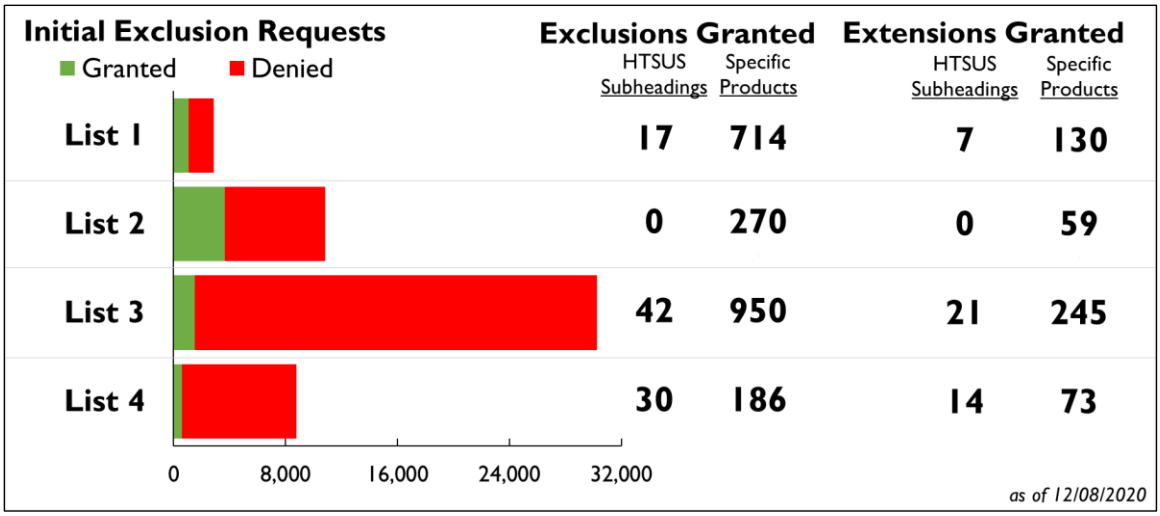
[196] Ibid. For more detail on "Made in China 2025," see CRS In Focus IF10964, *"Made in China 2025" Industrial Policies: Issues for Congress*, by Karen M. Sutter.

[197] Office of the USTR, "USTR Comments Portal: Public Dockets."

[198] See, for example, U.S. Customs and Border Protection, "Guidance: Section 301 Product Exclusions from Tranche 4A—$300B Round from China," CSMS #41955151, March 9, 2020. According to CBP, "[t]o request a refund of Section 301 duties paid on previous imports of products granted duty exclusions by the USTR, importers may file a Post Summary Correction (PSC) if within the PSC filing timeframe."

[199] CRS calculations based on information sourced from the Office of the USTR, "China Section 301—Tariff Actions and Exclusion Process."

Figure 9. Section 301 Exclusions and Extensions Related to U.S. Imports from China



Source: Congressional Research Service with information from the Office of the USTR.

Notes: Figures may not reflect amendments to product specific exclusions and do not include requests submitted on or after 03/25/2020 in response to 85 *Federal Register* 16987. However, those earlier requests may have informed exclusions granted to date and noted here.

COVID-19 and Medical-Care Products

The USTR announced on March 20, 2020, that even prior to the COVID-19 outbreak, it had been working with the U.S. Department of Health and Human Services (HHS) "to ensure that critical medicines and other essential medical products were not subject to additional Section 301 tariffs."[200] Consequently, the United States has not imposed tariffs on certain critical medical products, such as ventilators, oxygen masks, and nebulizers. Moreover, the USTR indicated that, in recent months, it had prioritized the review of requests for exclusions on medical care products, resulting in exclusions granted on basic medical supplies, including gloves, soaps, medical-quality facemasks, surgical drapes, and hospital gowns.

Since March 2020, the USTR has exempted certain medical products from Section 301 tariffs in several rounds of exclusions.[201] CRS could not determine exactly how many of these products have been exempted on the basis of COVID-19 concerns, as the USTR does not specify the rationale for granting exclusions in its announcements. While some products can be easily identified, there are others with known or potential medical uses—or inputs for the manufacture thereof—that have received exclusions but whose ultimate purpose cannot always be ascertained from HTSUS subheadings or the product descriptions provided (e.g., organic chemicals or textiles for the manufacture of pharmaceuticals or PPE).

New Exclusion Process?

In March 25, 2020, the USTR published a *Federal Register* notice seeking comments over a three-month period to determine if further modifications to the Section 301 tariffs on U.S. imports

[200] Office of the USTR, "USTR: Response to Coronavirus Crisis," Press Release, March 20, 2020.

[201] For more detail on all exclusions granted, see Office of the USTR, "China Section 301—Tariff Actions and Exclusion Process."

from China are necessary to respond to the COVID-19 pandemic in the United States.[202] Specifically, the agency requested comments on whether to remove Section 301 duties on "medical-care products" related to the COVID-19 response.[203] Comments could be submitted regarding any medical product subject to Section 301 tariffs, whether or not it was subject to a pending or denied exclusion request.

The notice provided no further guidance on the types of products that the USTR considers to be "medical-care products." Petitioners were required to "identify [specifically] the particular product of concern and explain precisely how the product relates to the response to the COVID-19 outbreak."[204] For example, comments could "address whether a product is directly used to treat COVID-19 or to limit the outbreak, and/or whether the product is used in the production of needed medical-care products."[205] In addition, commenters were asked to include, to the extent possible, the 10-digit "subheading of the HTSUS applicable to the product, and the identity of the particular product in terms of its functionality and physical characteristics (e.g., dimensions, material composition, or other characteristics)."[206]

The review of comments runs parallel to, and is not to affect, any ongoing product exclusion requests still under review.[207] The USTR has not indicated what form the response will take or when it will respond to comments—only that it will review them on a rolling basis. These comments may already be informing product exclusion decisions, or may lead to the establishment of a new formal exclusion process, akin to that used for Lists 3 and 4A, but strictly for medical products. In August 2020, some Members introduced a bill to suspend all duties, including Section 301 tariffs, on imports of articles needed to combat the COVID-19 pandemic.[208]

Tariff Exclusions and Congressional Action

In recent years, some Members have raised the issue with the USTR of establishing or streamlining an exclusion process during hearings and in letters to the USTR. For instance, for the third and largest action (List 3), a bipartisan group of more than 160 Representatives urged the Trump Administration to consider granting exclusions. Subsequently, the joint explanatory

[202] The comment period remained opened until June 25, 2020. Office of the USTR, "USTR: Response to Coronavirus Crisis," Press Release, March 20, 2020, and "Request for Comments on Additional Modifications to the 301 Action to Address COVID-19: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 85 *Federal Register* 16987, March 25, 2020.

[203] Office of the USTR, "FAQs for Request for Comments on Additional Modifications to the 301 Action to Address COVID-19: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," June 26, 2020.

[204] Office of the USTR, "Request for Comments on Additional Modifications to the 301 Action to Address COVID-19: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 85 *Federal Register* 16987, March 25, 2020.

[205] Ibid.

[206] Ibid.

[207] Office of the USTR, "FAQs for Request for Comments on Additional Modifications to the 301 Action to Address COVID-19: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," June 26, 2020.

[208] On August 8, 2020, Senators Pat Toomey and Margaret Wood Hassan introduced S. 4497, "Stop PPE Taxes Act of 2020." The bill would suspend—through December 31, 2022—any duty imposed on specified articles and articles identified by the U.S. International Trade Commission (USITC) as related to the response to COVID-19, including any duty imposed pursuant to (1) Section 301 of the Trade Act of 1974, (2) Section 232 of the Trade Expansion Act of 1962, or (3) the International Emergency Economic Powers Act.

statement to the FY2019 appropriations law (P.L. 116-6) directed the USTR to establish a product exclusion process for that third stage of tariffs within 30 days of the law's enactment. During the first session of the 116th Congress, some Members introduced legislation to limit USTR's discretion on whether and how to grant or deny exclusion requests. These proposals included the American Business Tariff Relief Act of 2019 (S. 2362) and the Import Tax Relief Act of 2019 (S. 577/H.R. 1452).

Court Challenge to Section 301

On September 10, 2020, importers of vinyl tile—HMTX Industries LLC, Halstead New England Corporation, and Metroflor Corporation—filed a complaint at the U.S. Court of International Trade (USCIT) challenging both the substantive and procedural processes followed by the USTR when instituting Section 301 tariffs under List 3, and subsequently List 4A (*HMTX Industries LLC et al. v. United States*).[209] The complaint alleges that USTR's imposition of these tariffs violated the Trade Act of 1974 because: (1) the action was taken more than a year after USTR initiated the underlying Section 301 investigation; (2) the rationale and justification to take the action were unrelated to the acts, policies, or practices that USTR investigated pursuant to the underlying Section 301 investigation; and (3) the statute does not authorize the USTR "to increase tariff actions that are no longer 'appropriate,' but rather only to delay, taper, or terminate such actions."[210]

In addition, the plaintiffs allege that the manner in which in the tariff action was implemented violated the Administrative Procedure Act[211] because the USTR: (1) exceeded its authority under the 1974 Act; (2) did not "offer any evidence for any asserted 'increased burden' from China's intellectual property policies and practices that were the subject of USTR's Section 301 investigation," and (3) "did not provide a sufficient opportunity for comment, failed to meaningfully consider relevant factors when making their decisions, and failed to adequately explain their rationale."[212] As of September 20, 2020, more than 3,000 companies had joined HMTX Industries LLC et al. in filing lawsuits at the USCIT against the Trump Administration's use of Section 301 tariffs.[213]

Role of Congress

Congress exerts oversight by reviewing, monitoring, and supervising USTR's activities, exercise of authorities, and implementation of actions taken under Title III of the Trade Act of 1974. In addition, the USTR is required to report to Congress regularly on a number of matters. These include

[209] U.S. Court of International Trade, HMTX Industries LLC, Halstead New England Corporation, and Metroflor Corporation vs. United States of America; Office of the United States Trade Representative; Robert E. Lighthizer, U.S. Trade Representative; U.S. Customs & Border Protection; Mark A. Morgan, U.S. Customs & Border Protection Acting Commissioner, Court No. 20-00177, September 10, 2020. For more detail, see CRS Legal Sidebar LSB10553, *Section 301 Tariffs on Goods from China: International and Domestic Legal Challenges*, by Nina M. Hart and Brandon J. Murrill.

[210] Ibid.

[211] 5 U.S.C. Chapter 5: Administrative Procedure.

[212] Ibid.

[213] John Brew, "HTMX et al. v. United States – An (ongoing?) Opportunity for Importers to Recover Section 301 Tariffs Paid on Section 301 List 3 (and List 4a) Products," LexBlog, September 23, 2020.

Update on Section 301 Investigations. The USTR is required to submit, on a biannual basis, a report to the House of Representatives and Senate describing petitions filed or investigations initiated under Section 301, the determinations made, and actions taken. The report must also provide updates on the development and status of ongoing investigations and on the implementation of agreements entered into as part of past investigations.[214]

Modification or Termination of Section 301 Investigations. The USTR may modify or terminate any Section 301 action, subject to the specific direction, if any, of the President and criteria set forth in legislation.[215] The USTR is required to publish notice of the modification or termination in the *Federal Register* and submit a written report to Congress on the reasons for doing so.[216]

Delaying Request for Consultation with Foreign Governments. During a Section 301 investigation, the USTR may, after consulting with the petitioner (if any), delay for up to 90 days any request for consultations with the foreign government concerned for the purpose of verifying or improving the petition to ensure an adequate basis for consultation. If consultations are delayed, the USTR is required to publish notice of the delay in the *Federal Register* and report to Congress on the reasons for delaying consultations in its semiannual report to the House of Representatives and the Senate.[217]

Notice of Inability to Resolve Issues through Formal Dispute Settlement. In Section 301 cases involving a trade agreement, if a dispute is not resolved before the close of the minimum dispute settlement period provided for in the agreement, the USTR is required to submit a report to Congress, within 15 days after the close of such period, setting forth the reasons why the dispute was not resolved, the status of the case, and the prospects for resolution.[218]

Export Targeting Assessment.[219] If the USTR makes an affirmative determination in a Section 301 investigation involving export targeting by a foreign country and determines to take no action, the USTR shall establish an advisory panel to recommend measures that will promote the competitiveness of the domestic industry affected by the export targeting. By no later than six months after it is established, the advisory panel shall submit to the USTR and to Congress a report on measures that it recommends be taken by the United States to promote the competitiveness of the affected industry.[220]

Based on the recommendations of the report, and subject to the specific direction, if any, of the President, the USTR may take any administrative actions authorized under any other provision of law, and, if necessary, propose legislation to implement any other actions, that would restore or improve the industry's international competitiveness. By no later than 30 days after the

[214] 19 U.S.C. § 2419(3).

[215] Specifically, 19 U.S.C. § 2417(a)(1).

[216] 19 U.S.C. § 2417(b).

[217] 19 U.S.C. § 2413(b)(2)(B), as required under 19 U.S.C. § 2419(a)(3).

[218] 19 U.S.C. § 2414(a)(4).

[219] The term "export targeting" refers to any foreign government plan or scheme consisting of a combination of coordinated actions (whether carried out severally or jointly) that are bestowed on a specific enterprise, industry, or group thereof, the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise (19 U.S.C. § 2411(d)(3)(E)).

[220] 19 U.S.C. § 2415(b)(2)(B).

submission of the panel report, the USTR is to submit a report to Congress on actions taken and proposals made.[221]

Trade Enforcement Priorities under Section 310

- The USTR is required to consult, by no later than May 31 of each calendar year, with the Senate Committee on Finance and the House Committee on Ways and Means on acts, policies, or practices of foreign governments that raise concerns with respect to obligations under the WTO Agreements or any other U.S. trade agreement, or that otherwise create or maintain barriers to U.S. goods, services, or investment.[222]
- The USTR is required to report, by no later than July 31 of each calendar year, to the Senate Committee on Finance and the House Committee on Ways and Means on acts, policies, or practices of foreign governments identified as trade enforcement priorities (based on consultations and criteria set forth in statute).[223] When reporting to the committees, the USTR is also required to include, as relevant, a description of actions taken to address trade enforcement priorities identified in preceding calendar years.[224]
- The USTR is required to consult, at the same time as the reporting above[225] and no later than January 31 of each calendar year, with the Senate Committee on Finance and the House Committee on Ways and Means on acts, policies, or practices of foreign governments of concern with respect to obligations under the WTO Agreements or any other U.S. trade agreement, or that otherwise create or maintain trade barriers to U.S. goods, services, or investment.[226] In consultations, the USTR is required to address (1) those acts, policies, and practices that the agency is actively investigating,[227] (2) all ongoing enforcement actions taken by or against the United States,[228] and (3) the availability of resources and constraints on monitoring and enforcement activities.[229]
- The USTR is required to notify and consult with the Senate Committee on Finance and the House Committee on Ways and Means in advance of the initiation of any formal trade dispute by or against the United States taken in regard to an obligation under the WTO Agreements or any other U.S. trade agreement.[230] The USTR is also required to notify and consult with the committees in advance of the announced or anticipated circulation of any report

[221] 19 U.S.C. § 2415(b)(1)(C).

[222] 19 U.S.C. § 2420(a)(1).

[223] 19 U.S.C. § 2420(a)(3)(A). Specifically, based on consultations under 19 U.S.C. § 2420(a)(1) and criteria set forth in 19 U.S.C. § 2420(a)(2).

[224] 19 U.S.C. § 2420(a)(3)(B).

[225] Specifically, under 19 U.S.C. § 2420(a)(3).

[226] 19 U.S.C. § 2420(b)(1).

[227] 19 U.S.C. § 2420(b)(3).

[228] 19 U.S.C. § 2420(b)(4).

[229] 19 U.S.C. § 2420(b)(5).

[230] 19 U.S.C. § 2420(d)(1).

> of a WTO dispute settlement panel or the Appellate Body or of a dispute settlement panel under any other U.S. trade agreement.[231]

Priority Foreign Countries. The USTR is not required to initiate a Section 301 investigation with respect to any act, policy, or practice of a "Priority Foreign Country" if doing so would be detrimental to U.S. economic interests.[232] (For more detail, see "Intellectual Property Enforcement and Section 301.") If the agency makes such a determination, then the USTR is required to submit to Congress a written report setting forth the reasons for the determination and the U.S. economic interests that would be adversely affected by the investigation.[233]

Outlook and Issues for Congress

Congress plays a major role in shaping U.S. trade policy through its legislative and oversight authority. Article I, Section 8 of the U.S. Constitution grants Congress the power to "regulate Commerce with foreign Nations" and to "lay and collect Taxes, Duties, Imposts and Excises." Congress exercises this authority in numerous ways, including the enactment of laws authorizing trade programs and measures to address unfair and other trade practices. Congress also conducts oversight of trade policies, programs, and agreements. These include such areas as U.S. trade agreement negotiations, tariffs and nontariff barriers, trade remedy laws, import and export policies, economic sanctions, and the trade policy functions of the federal government. In many of these areas, particularly in the negotiation of trade agreements and U.S. efforts to eliminate unfair foreign trade barriers against U.S. exports and investment abroad, Congress has delegated certain authorities to the President. Section 301 is one of these congressionally delegated trade authorities.

Since the establishment of the WTO, the United States has generally pursued bilateral and multilateral negotiations with many of its trading partners to resolve disagreements or diffuse tensions over discrete issues and achieve expanded market access for U.S. firms. The United States has also resorted to the multilateral forum provided by the WTO to settle trade disputes, and it has used Section 301 authorities primarily to build cases and pursue dispute settlement there. The Trump Administration has been more willing to act unilaterally, and its use of delegated authorities to impose Section 301 tariffs as punitive measures has been the subject of congressional and broader international debate. While some Members of Congress have applauded the Section 301 actions by the Trump Administration or called for more active use of trade authorities, others have decried unilateral trade sanctions under Section 301 as an undesirable shift in U.S. trade policy that could undermine the multilateral trading system.[234] Whether a more unilateral approach to trade disputes will become a prominent feature of U.S. trade negotiations remains to be seen.

Current Debate over the Use of Section 301

In light of the Trump Administration's more active use of trade authorities, many Members of Congress, U.S. businesses, interest groups, and trade partners have raised questions about the

[231] 19 U.S.C. § 2420(d)(2).

[232] Specifically, a foreign country identified under 19 U.S.C. § 2242(a)(2).

[233] 19 U.S.C. § 2412(b)(2)(C).

[234] See, for example, Adam Behsudi, "Duffy Finds 18 Co-sponsors for Bill to Increase Trump's Tariff Powers," *Politico*, January 23, 2019, and Clark Packard and Philip Wallach, "Restraining the President: Congress and Trade Policy," *R Street Policy Study No. 158,* November 2018.

economic and broader policy implications of imposing unilateral trade restrictions under Section 301.[235] The Trump Administration and some U.S. stakeholders, including some domestic producers, argue that Section 301 tariffs and other import restrictions are necessary to level the playing field for U.S. firms and workers.[236] In their view, Section 301 tariffs are meant, in part, to obtain the elimination of foreign protectionist policies and practices that impair the competitiveness of U.S. exporters and investors abroad.[237] The Administration and some Members also contend that while past trade negotiations and agreements have lowered or eliminated U.S. trade restrictions, they have failed to enhance reciprocal market access for U.S. firms and workers.[238] Section 301 tariffs can potentially incentivize U.S. trading partners to enter into negotiations to achieve broader trade barrier reductions and develop new trade rules on issues not adequately covered by existing WTO agreements.

Some analysts and trading partners, on the other hand, are concerned that Section 301 tariffs—or threat thereof—threaten the U.S. and global economies and the rules-based multilateral trading system that the United States helped to establish following World War II.[239] They emphasize that the economic repercussions of U.S. actions are felt not only by U.S. consumers and producers who rely on imports subject to Section 301 tariffs, but also by U.S. exporters targeted for retaliation.[240] Some companies also report that the uncertainty resulting from the unpredictable nature of the U.S. and retaliatory actions has made long-term planning difficult.[241] This may be affecting U.S. and global economic activity, and it could result in disrupted global supply chains (as firms find ways to avoid tariffs), job losses, deferred investments, lost profits, and lost export markets.

In addition, some Members and U.S. trading partners contend that the Trump Administration's Section 301 tariffs undermine—and potentially violate—WTO rules and could lead to a tit-for-tat escalation of trade-restrictive measures around the world.[242] They see the imposition of U.S. trade

[235] See, for example, Mark Zandi, Jesse Rogers, and Maria Cosma, "Trade War Chicken: The Tariffs and the Damage Done," Analysis, Moody's Analytics, September 2019; Shawn Donnan and Reade Pickert, "Trump's China Buying Spree Unlikely to Cover Trade War's Costs," *Bloomberg*, December 18, 2019; and Mary Amiti, Sang Hoon Kong, and David E. Weinstein, "The Investment Cost of the U.S.-China Trade War," Liberty Street Economics, Federal Reserve Bank of New York, May 28, 2020.

[236] See, for example, Office of the USTR, *Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974*, March 22, 2018.

[237] See, for example, Office of the USTR, "Statement by U.S. Trade Representative Robert Lighthizer on Section 301 Action," Press Release, July 10, 2018.

[238] See, for example, Office of the USTR, *2019 Trade Policy Agenda and 2018 Annual Report of the President of the United States on the Trade Agreements Program*, March 2019.

[239] See, for example, "EU Backs China's WTO Challenge of U.S. Section 301 Tariffs," *Inside U.S. Trade*, September 27, 2020, Vol. 37, No. 38; and Colin Patch, "A Unilateral President vs. A Multilateral Trade Organization: Ethical Implications In The Ongoing Trade War," *The Georgetown Journal of Legal Ethics*, 2019, Vol. 32, pp. 883-902.

[240] See, for example, Mark Zandi, Jesse Rogers, and Maria Cosma, "Trade War Chicken: The Tariffs and the Damage Done," Analysis, Moody's Analytics, September 2019; Shawn Donnan and Reade Pickert, "Trump's China Buying Spree Unlikely to Cover Trade War's Costs," *Bloomberg*, December 18, 2019; and Mary Amiti, Sang Hoon Kong, and David E. Weinstein, "The Investment Cost of the U.S.-China Trade War," Liberty Street Economics, Federal Reserve Bank of New York, May 28, 2020.

[241] For a discussion on the effects of uncertainty, see, for example, Eddy Bekkers and Sofia Schroeter, "An Economic Analysis of the US-China Trade Conflict," *Staff Working Paper ERSD-2020-04*, World Trade Organization, Economic Research and Statistics Division, March 19, 2020; and Aaron Flaaen and Justin Pierce, "Disentangling the Effects of the 2018-2019 Tariffs on a Globally Connected U.S. Manufacturing Sector," *Finance and Economics Discussion Series 2019-086*, Board of Governors of the Federal Reserve System, December 23, 2019.

[242] See, for example, World Bank, *Global Economic Prospects: The Turning of the Tide?*, June 2018; Wang Yong,

restrictions as an undesirable shift in U.S. trade policy, and they argue that the United States should make use of WTO dispute settlement procedures to address U.S. trade concerns rather than resorting to unilateral action. In contrast, the Trump Administration has argued that Section 301 tariffs are justified as a response to violations of existing commitments under the WTO by other trading partners, particularly China.[243] In response to the President's actions, China and some U.S.-based importers have challenged Section 301 tariffs in international and domestic legal fora, and the outcome of these cases could have implications for the United States and the future of the multilateral trading system.[244]

Potential Options and Questions for Congress

The use of Section 301 authorities to impose trade restrictions on U.S. imports does not require formal approval by Congress or an affirmative finding by an independent agency such as the U.S. International Trade Commission. As a result, the President has broad discretion in determining when and how to act. Should Congress disapprove the President's exercise of authorities and implementation of actions taken under Title III of the Trade Act of 1974, Members' current recourse is largely limited to passing new legislation or using informal tools to pressure the Administration to change course. Some Members and observers have suggested that Congress should require additional steps in the Section 301 process in order to promote transparency, consistency, and proper application of authorities and to ensure that the President and the USTR carry out Section 301 objectives as prescribed by Congress.

In the 116th Congress, debate over congressional and executive powers to regulate tariffs has generated multiple proposals to revise the President's trade authorities to take action under Section 301, along with other reforms (**Table B-1**). The majority of these proposals would expand the role of Congress in determining whether or not to impose tariffs, for example, by requiring congressional approval before certain presidential trade actions can go into effect. Two bills introduced during the 116th Congress would grant the President additional authorities to increase tariff rates.[245]

As debates continue, Congress may consider the following:

- Has the use of Section 301 in recent years been in line with congressional intent in crafting the delegated authorities to the President?
- What is the impact of taking unilateral actions to impose tariffs under Section 301—and of retaliatory tariffs by trading partners—on U.S. consumers and different sectors of the U.S. economy?

"The U.S. and China: Domestic Adjustment and Trade Relations Crisis," AmCham Shanghai, January 23, 2019; "EU Backs China's WTO Challenge of U.S. Section 301 Tariffs," *Inside U.S. Trade*, September 27, 2020, Vol. 37, No. 38; and Colin Patch, "A Unilateral President vs. A Multilateral Trade Organization: Ethical Implications In The Ongoing Trade War," *The Georgetown Journal of Legal Ethics*, 2019, Vol. 32, pp. 883-902.

[243] See, for example, Office of the USTR, *2019 Trade Policy Agenda and 2018Annual Report of the President of the United States on the Trade Agreements Program*, March 2019, and "Statement by U.S. Trade Representative Robert Lighthizer on Section 301 Action," Press Release, July 10, 2018.

[244] Since April 2018, China has filed three WTO cases challenging Section 301 tariffs. The WTO cases are: (1) "DS543: United States—Tariff Measures on Certain Goods from China" (April 4, 2018), (2) "DS565: United States—Tariff Measures on Certain Goods from China II" (August 23, 2018), and (3) "DS587: United States—Tariff Measures on Certain Goods from China III" (September 2, 2019). For more detail on the complaint filed at the U.S. Court of International Trade (USCIT), see *HMTX Industries LLC et al. v. United States*.

[245] H.R. 764, "United States Reciprocal Trade Act," 116th Congress, January 24, 2019. See also, S. 2409, "United States Reciprocal Trade Act, 116th Congress, July 31, 2019.

- Should Congress consider establishing a formal product exclusion process or set specific guidelines for when and how to grant exclusions to trade restrictions imposed under Section 301?
- Does the current use of Section 301 set a precedent for other countries to bypass WTO dispute settlement and act unilaterally? Do these actions undermine the credibility and effectiveness of the multilateral trading system?
- Should Congress consider amending current delegated authorities under Section 301 by clarifying provisions or clearly specifying requirements for carrying out Section 301 investigations?
- Should Congress consider adding provisions that grant the President additional authorities to address new trade issues and barriers that may not be fully covered by WTO rules and disciplines (e.g., digital trade, state-owned enterprises, environment, and corruption)?

Appendix A. Section 301 Investigations

Table A-1. Section 301 Investigations Since the Establishment of the WTO: 1995-Present

Case	Year	Economy	Issue	Type of Investigation	*Federal Register* Notice	Retaliatory Action by USTR	Type of Action	Notes
96	1995	Colombia	Exportation of Bananas to the EU	Self-Initiated	60 FR 3283	No		Governments reached a satisfactory resolution.
97	1995	Costa Rica	Exportation of Bananas to the EU	Self-Initiated	60 FR 3284	No		Governments reached a satisfactory resolution.
98	1995	Canada	Communications Practices (U.S.-Owned Programming Services)	Petition	60 FR 8101	No		Private parties (Country Music Television and the New Country Network) reached a resolution.
99	1995	Japan	Consumer Photographic Film and Paper	Petition	60 FR 35447	No		The United States filed a case before the WTO (DS44).
100	1995	EU	EU Banana Regime	Self-Initiated	60 FR 52026	No		The United States filed a case before the WTO (DS27).
101	1995	EU	EU Enlargement (Withdrawing Concessions and Increasing Tariffs on U.S. Trade)	Self-Initiated	60 FR 55076	No		Governments signed the "Agreement for the Conclusion of Negotiations Between the United States and the European Community Under Article XXIV:6 of the GATT of 1994" (formally signed on 07/22/1996 with effect 12/30/1995) (61 FR 56082).
102	1996	Canada	Discriminatory Treatment of	Self-Initiated	61 FR 11067	No		The United States filed a case before the WTO (DS31).

Case	Year	Economy	Issue	Type of Investigation	*Federal Register* Notice	Retaliatory Action by USTR	Type of Action	Notes
			Imported Periodicals					
103	1996	Portugal	Term of Patent Protection	Self-Initiated	61 FR 19970	No		The United States filed a case before the WTO (DS37).
104	1996	Pakistan	Patent Protection for Pharmaceuticals and Agricultural Chemicals	Self-Initiated	61 FR 19971	No		The United States filed a case before the WTO (DS36).
105	1996	Turkey	Discriminatory Tax on Box Office Revenues	Self-Initiated	61 FR 32883 61 FR 30646	No		The United States filed a case before the WTO (DS43).
106	1996	India	Patent Protection for Pharmaceuticals and Agricultural Chemicals	Self-Initiated	61 FR 35857	No		The United States filed a case before the WTO (DS50).
107	1996	Australia	Subsidies Affecting Leather	Petition	61 FR 55063	No		The United States filed a case before the WTO (DS57).
108	1996	Argentina	Duties and Non-Tariff Barriers Affecting Apparel, Textiles, and Footwear	Self-Initiated	61 FR 53776	No		The United States filed a case before the WTO (DS56).
109	1996	Indonesia	Incentives Related to the Promotion of the Indonesian Motor Vehicle Sector	Self-Initiated	61 FR 54246	No		The United States filed a case before the WTO (DS59).
110	1996	Brazil	Trade and Investment in the Auto Sector	Self-Initiated	61 FR 54485	No		The United States filed a case before the WTO (DS52/DS65).

Case	Year	Economy	Issue	Type of Investigation	*Federal Register* Notice	Retaliatory Action by USTR	Type of Action	Notes
111	1997	EU	Subsidies Affecting Access to the EU's Market for Modified Starch	Petition	62 FR 12264	No		The investigation was terminated effective 06/06/1997 (62 FR 32398).
112	1997	Japan	Market Access Barriers to Agricultural Products	Self-Initiated	62 FR 53853	No		The United States filed a case before the WTO (DS76).
113	1997	Canada	Export Subsidies and Market Access for Dairy Products	Petition	62 FR 53851	No		The United States filed a case before the WTO (DS103).
114	1997	EU	Circumvention of Export Subsidy Commitments on Dairy Products	Self-Initiated	62 FR 53852	No		The United States filed a case before the WTO (DS104).
115	1997	Korea	Auto Import Barriers	Self-Initiated	62 FR 55843	No		Governments reached a satisfactory resolution and signed a memorandum of understanding (MOU). The investigation was terminated on 10/20/1998 (63 FR 59836).
116	1997	Honduras	Intellectual Property	Self-Initiated	62 FR 60299	Yes (Unilateral)	Suspend preferential treatment accorded under the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI) programs to certain products from Honduras, including certain cucumbers, watermelons, and cigars.	Retaliatory action was terminated. Governments reached a satisfactory resolution. The United States restored the tariff-free treatment under the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI) programs accorded to

Case	Year	Economy	Issue	Type of Investigation	*Federal Register* Notice	Retaliatory Action by USTR	Type of Action	Notes
								products of Honduras in response to the Government of Honduras' measures to combat piracy and to protect U.S. intellectual property rights.
117	1998	Paraguay	Intellectual Property	Self-Initiated	63 FR 9292	No		Governments reached a satisfactory resolution and signed a memorandum of understanding (MOU). The investigation was terminated on 11/17/1998 (63 FR 64982). New MOU signed on 04/20/2008.
118	1998	Mexico	High Fructose Corn Syrup	Petition	63 FR 28544	No		The United States filed a case before the WTO (DS101/DS132).
119	1999	Canada	Tourism and Sport Fishing	Petition	64 FR 28545	No		Governments reached a satisfactory resolution. Ontario revoked the provincial measures affecting certain U.S. providers of tourism services and the Government of Canada agreed that the immigration measure under investigation would be reviewed by the NAFTA Temporary Entry Working Group. The investigation was terminated on 02/15/2000 (65 FR 7606).
120	2000	Canada	Canadian Wheat Board	Petition	65 FR 69362	No		The United States filed a case before the WTO (DS276).

Case	Year	Economy	Issue	Type of Investigation	*Federal Register* Notice	Retaliatory Action by USTR	Type of Action	Notes
121	2001	Ukraine	Intellectual Property	Self-Initiated	66 FR 18346	Yes (Unilateral)	Suspended preferential treatment accorded under the Generalized System of Preferences (GSP) to certain products from Ukraine (Action 1). Imposed 100% ad valorem duties on Ukrainian products with an annual trade value of approximately $75 million (Action 2)	Retaliatory action was terminated. Governments reached a satisfactory resolution. The United States terminated the 100% *ad valorem* duties in place on U.S. imports from Ukraine in response to the Government of Ukraine's adoption of improvements to its legislation protecting intellectual property rights (Action 1). The United States subsequently restored the tariff-free treatment under GSP accorded to products of Ukraine and revoked the identification of Ukraine as a "Priority Foreign Country" under Section 182 of the Trade Act of 1974 and placed it on the "Priority Watch List" in response to the Government of Ukraine's improving its intellectual property right enforcement efforts (Action 2).
122	2009	Canada	Softwood Lumber Agreement Compliance	Self-Initiated	74 FR 17276 74 FR 16436	Yes (Unilateral)	Imposed 10% *ad valorem* duties on imports of softwood lumber products from the provinces of Ontario, Quebec, Manitoba, and Saskatchewan due to Canada's failure to comply with certain obligations	Retaliatory action was terminated. Governments reached a satisfactory resolution. The United States terminated the 10% *ad valorem* duties on imports of softwood lumber products in response to the Government of Canada's adoption of its

Case	Year	Economy	Issue	Type of Investigation	*Federal Register* Notice	Retaliatory Action by USTR	Type of Action	Notes
							under the 2006 Softwood Lumber Agreement (SLA). The duties were to be imposed until the United States had collected $54.8 million.	own measures to address its breach of the SLA.
123	2010	China	Trade and investment in Green Technologies	Petition	75 FR 64776	No		Governments reached a satisfactory resolution. China invalidated WTO-inconsistent measures.
124	2013	Ukraine	Intellectual Property	Self-Initiated	78 FR 33886	No		Retaliatory action not taken due to Ukraine's political situation.
125	2017	China	Technology transfer, Intellectual Property, and Innovation	Self-Initiated	82 FR 40213	Yes (Unilateral)	Imposed additional ad valorem duties of 10%, 15%, and 25% on over two-thirds of U.S. imports from China.	Governments reached a partial agreement ("U.S.-China Phase One Trade Agreement") on 01/15/2020. The United States also filed a case before the WTO (DS542) pertaining China's discriminatory technology licensing requirements. However, the case was suspended, most recently, effective 06/08/2020. For details on China's WTO case against the United States, see DS543.
126	2019	EU	Subsidies to the large civil aircraft domestic industry	Self-Initiated	84 FR 15028	Yes (WTO-Sanctioned)	Imposed additional *ad valorem* duties of 10% and 25% on a list of products with an approximate annual trade value of $7.5 billion.	The United States filed a case before the WTO (DS316), and it used Section 301 authorities to implement WTO-sanctioned tariffs.

Case	Year	Economy	Issue	Type of Investigation	*Federal Register* Notice	Retaliatory Action by USTR	Type of Action	Notes
127	2019	France	Digital Services Tax	Self-Initiated	84 FR 34042	Yes (Unilateral/ Suspended)	Imposed additional *ad valorem* duties of 25% on $1.3 billion worth of French imports.	Application of additional duties was immediately suspended, effective 07/10/2020 until 01/06/2021 (85 FR 43292).
128	2020	Austria Brazil Czech Republic EU India Indonesia Italy Spain Turkey UK	Digital Services Taxes	Self-Initiated	85 FR 34709			Investigation is ongoing.
129	2020	Vietnam	Currency Valuation	Self-Initiated	85 FR 63637			Investigation is ongoing.
130	2020	Vietnam	Import and Use of Illegal Timber	Self-Initiated	85 FR 63639			Investigation is ongoing.

Source: Congressional Research Service with information sourced from the *Federal Register*, the Office of the USTR's annual "Trade Policy Agendas" and "Annual Reports of the President of the United States on the Trade Agreements Program," and the U.S. International Trade Commission's "Year in Trade" reports.

Table A-2. Section 301 Investigations: 1975-Present

Case	Economy	Year	Petition/Self-Initiated
1	Guatemala	1975	Petition
2	Canada	1975	Petition
3	European Communities	1975	Petition
4	European Communities	1975	Petition
5	European Communities	1975	Petition
6	European Communities	1975	Petition
7	European Communities	1976	Petition
8	European Communities	1976	Petition
9	Taiwan	1976	Petition
10	European Communities Japan	1976	Petition
11	European Communities	1976	Petition
12	Brazil Korea China	1977	Petition
13	Japan	1977	Petition
14	Union of Soviet Socialist Republics (Soviet Union)	1977	Petition
15	Canada	1978	Petition
16	European Communities	1978	Petition
17	Japan	1979	Petition
18	Argentina	1979	Petition
19	Japan	1979	Petition
20	Korea	1979	Petition
21	Switzerland	1979	Petition
22	European Communities	1981	Petition
23	European Communities	1981	Petition
24	Argentina	1981	Petition
25	European Communities	1981	Petition
26	European Communities	1981	Petition
27	Austria	1982	Petition
28	France	1982	Petition
29	Italy	1982	Petition
30	Sweden	1982	Petition
31	United Kingdom	1982	Petition
32	Canada	1982	Petition

Case	Economy	Year	Petition/Self-Initiated
33	Belgium	1982	Petition
34	Canada	1982	Petition
35	Brazil	1982	Petition
36	Japan	1982	Petition
37	Korea	1982	Petition
38	Taiwan	1982	Petition
39	Korea	1983	Petition
40	Brazil	1983	Petition
41	Portugal	1983	Petition
42	Spain	1983	Petition
43	Taiwan	1983	Petition
44	Argentina	1983	Petition
45	Taiwan	1984	Petition
46	European Communities	1984	Petition
47	European Communities	1984	Petition
48	Japan	1985	Petition
49	Brazil	1985	Self-Initiated
50	Japan	1985	Self-Initiated
51	Korea	1985	Self-Initiated
52	Korea	1985	Self-Initiated
53	Argentina	1986	Petition
54	European Communities	1986	Self-Initiated
55	Canada	1986	Petition
56	Taiwan	1986	Self-Initiated
57	Taiwan	1986	Self-Initiated
58	Canada	1986	Self-Initiated
59	India	1987	Petition
60	European Communities	1987	Petition
61	Brazil	1987	Petition
62	European Communities	1987	Self-Initiated
63	European Communities	1988	Petition
64	Korea	1988	Petition
65	Korea	1988	Petition
66	Japan	1988	Petition
67	Korea	1988	Petition
68	Argentina	1988	Petition

Case	Economy	Year	Petition/Self-Initiated
69	Japan	1988	Self-Initiated
70	European Communities	1988	Petition
71	European Communities	1989	Self-Initiated
72	Thailand	1989	Petition
73	Brazil	1989	Self-Initiated
74	Japan	1989	Self-Initiated
75	Japan	1989	Self-Initiated
76	Japan	1989	Self-Initiated
77	India	1989	Self-Initiated
78	India	1989	Self-Initiated
79	Norway	1989	Petition
80	Canada	1990	Petition
81	European Communities	1990	Self-Initiated
82	Thailand	1990	Petition
83	European Communities	1991	Petition
84	Thailand	1991	Petition
85	India	1991	Self-Initiated
86	China	1991	Self-Initiated
87	Canada	1991	Self-Initiated
88	China	1991	Self-Initiated
89	Taiwan	1992	Self-Initiated
90	Indonesia	1992	Petition
91	Brazil	1993	Self-Initiated
92	China	1994	Self-Initiated
93	Japan	1994	Self-Initiated
94	European Communities	1994	Petition
95	Korea	1994	Petition
96	Colombia	1995	Self-Initiated
97	Costa Rica	1995	Self-Initiated
98	Canada	1995	Petition
99	Japan	1995	Petition
100	European Union	1995	Self-Initiated
101	European Union	1995	Self-Initiated
102	Canada	1996	Self-Initiated
103	Portugal	1996	Self-Initiated
104	Pakistan	1996	Self-Initiated

Case	Economy	Year	Petition/Self-Initiated
105	Turkey	1996	Self-Initiated
106	India	1996	Self-Initiated
107	Australia	1996	Petition
108	Argentina	1996	Self-Initiated
109	Indonesia	1996	Self-Initiated
110	Brazil	1996	Self-Initiated
111	European Union	1997	Petition
112	Japan	1997	Self-Initiated
113	Canada	1997	Petition
114	European Union	1997	Self-Initiated
115	Korea	1997	Self-Initiated
116	Honduras	1997	Self-Initiated
117	Paraguay	1998	Self-Initiated
118	Mexico	1998	Petition
119	Canada	1999	Petition
120	Canada	2000	Petition
121	Ukraine	2001	Self-Initiated
122	Canada	2009	Self-Initiated
123	China	2010	Petition
124	Ukraine	2013	Self-Initiated
125	China	2017	Self-Initiated
126	European Union	2019	Self-Initiated
127	France	2019	Self-Initiated
128	Austria Brazil Czech Republic European Union India Indonesia Italy Spain Turkey United Kingdom	2020	Self-Initiated
129	Vietnam	2020	Self-Initiated
130	Vietnam	2020	Self-Initiated

Source: Congressional Research Service with information sourced from the *Federal Register*, the Office of the USTR's annual "Trade Policy Agendas" and "Annual Reports of the President of the United States on the Trade Agreements Program," and the U.S. International Trade Commission's "Year in Trade" reports.

Notes: Includes all investigations initiated by the Office of the U.S. Trade Representative, regardless of whether the case was suspended or combined with others, or whether the USTR ultimately took action under Section 301.

Table A-3. Summary of Section 301 Investigations by Economy: 1975-Present

Economy	Frequency
European Union (EU) or EU Member States	45
EU (including European Communities)	30
Austria	2
France	2
Italy	2
Portugal	2
Spain	2
United Kingdom	2
Belgium	1
Czech Republic	1
Sweden	1
Japan	15
Canada	14
Korea	11
Brazil	9
Taiwan	7
Argentina	6
China	6
India	6
Indonesia	3
Thailand	3
Turkey	2
Ukraine	2
Vietnam	2
Australia	1
Colombia	1
Costa Rica	1
Guatemala	1
Honduras	1
Mexico	1
Norway	1
Pakistan	1
Paraguay	1
Switzerland	1
Soviet Union (USSR)	1

Source: Congressional Research Service with information sourced from the *Federal Register*, the Office of the USTR's annual "Trade Policy Agendas" and "Annual Reports of the President of the United States on the Trade Agreements Program," and the U.S. International Trade Commission's "Year in Trade" reports.

Notes: Includes all investigations initiated by the Office of the U.S. Trade Representative, regardless of whether the case was suspended or combined with others, or whether the USTR ultimately took action under Section 301.

Appendix B. Legislative Proposals Related to Section 301

Table B-1. Select Legislative Proposals Related to Section 301 Authorities

116th Congress (2019-Present)

Date of Introduction	Legislation	Title	Brief Description
01/03/2019	H.Con.Res. 2	Reclaiming Congress's Constitutional Mandate in Trade Resolution	Establishes (1) a Joint Ad Hoc Committee on Trade Responsibilities to develop a plan under which the functions and responsibilities of the Office of the USTR shall be moved to the legislative branch, and (2) a Congressional Advisory Board on Trade Responsibilities to advise the committee in its development of the plan.
01/17/2019	S. 188	Border, Law Enforcement, Operational Control, and Sovereignty Act of 2019	Makes revenue from certain duties imposed on goods imported from the China available for border security, and for other purposes.
01/23/2019	H.R. 723	Global Trade Accountability Act of 2019	Requires congressional approval of unilateral trade actions. Such actions may take effect without congressional approval for one 90-day period if the President determines that it is necessary because of a national emergency, because of an imminent threat to health or safety, for the enforcement of criminal laws, or for national security; and submits written notice of the determination to Congress.
01/30/2019	H.R. 902	Protect American IPR Act	Directs the President to impose duties on merchandise from the China to compensate holders of U.S. intellectual property rights for losses resulting from violations of such intellectual property rights in China, and for other purposes.
02/27/2019	S. 577	Import Tax Relief Act of 2019	Requires the President to establish a process by which certain articles imported from China may be excluded from duties.
02/28/2019	H.R. 1452	Import Tax Relief Act of 2019	Requires the President to establish a process by which certain articles imported from China may be excluded from duties.
03/27/2019	S. 899	Reclaiming Congressional Trade Authority Act of 2019	Limits the authority of the President to modify duty rates for national security reasons and to limit the authority of the USTR to impose certain duties or import restrictions, and for other purposes.
05/02/2019	S. 1284	Global Trade Accountability Act of 2019	Provides for congressional review of the imposition of duties and other trade measures by the executive branch, and for other purposes
06/25/2019	H.R. 3477	Reclaiming Congressional Trade Authority Act of 2019	Limits the authority of the President to modify duty rates for national security reasons and to limit the authority of the USTR to impose certain duties or import restrictions, and for other purposes.

Date of Introduction	Legislation	Title	Brief Description
07/31/2019	S. 2362	American Business Tariff Relief Act of 2019	Requires the USTR to establish a process whereby U.S. businesses may request that articles newly subject to raised import duties be excluded from such duties. For an exclusion to be granted, the business seeking the exclusion must demonstrate the article's unavailability from any other source or that the duty would cause economic harm to a U.S. interest.
10/24/2019	S. 2697	Tariff Tax Credit Act of 2019	Allows a new refundable tax credit for the return to taxpayers of revenue raised from duties imposed on goods imported from China in preceding calendar years.
07/16/2020	H.R. 7665	To direct the United States Trade Representative to extend the exclusions of goods of China from additional duties imposed under section 301 of the Trade Act of 1974, and for other purposes.	Requires the USTR to extend for at least one year the exclusion of certain Chinese goods from additional duties. Such goods include medical-care products needed to address the COVID-19 pandemic.
08/06/2020	S. 4493	USTR Inspector General Act of 2020	Requires the President to appoint an Inspector General of the Office of the USTR, who shall conduct an audit of the process for excluding articles from certain duties with respect to articles imported from China.
08/06/2020	S. 4497	Stop PPE Taxes Act of 2020	Suspends through December 31, 2022, any duty imposed on specified articles and articles identified by the U.S. International Trade Commission as related to the response to COVID-19, including any duty imposed pursuant to (1) Section 301 of the Trade Act of 1974, (2) Section 232 of the Trade Expansion Act of 1962, or (3) the International Emergency Economic Powers Act.
08/07/2020	H.R. 7980	USTR Inspector General Act of 2020	Amends the Inspector General Act of 1978 to establish an Inspector General of the Office of the United States Trade Representative, and for other purposes.
09/17/2020	S. 4629	America LEADS Act	Addresses issues involving the People's Republic of China (including Section 301 actions).

Source: Congressional Research Service with information from CONGRESS.GOV.

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