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Section 301 Tariffs and Proceedings: Recent and Potential Developments

Shara L. Aranoff, James McCall Smith, Marney Cheek, Alexander D. Chinoy, John K. Veroneau, Christopher Adams, and Kate McNulty*

In this article, the authors provide an overview of Section 301 of the Trade Act of 1974, explore how Section 301 has been used by recent administrations to increase tariffs on imports from China, and survey other Section 301 actions, including currently pending investigations. The authors also examine how the second Trump administration could reactivate or modify Section 301 tariffs that were previously announced, but that have been suspended or terminated.

President Trump's second term is expected to bring important changes to U.S. trade policy, including with respect to U.S. tariffs. Among the tools Trump may use to modify existing U.S. tariffs is Section 301 of the Trade Act of 1974, which provided the vehicle for imposition of tariffs against China under the first Trump administration.

More recently, the Biden administration has initiated new proceedings under Section 301, while also modifying existing Section 301 tariffs against China.

This article provides an overview of Section 301, explores how Section 301 has been used by recent administrations to increase tariffs on imports from China, and surveys other Section 301 actions, including currently pending investigations. This article also examines how the second Trump administration could reactivate or modify Section 301 tariffs that were previously announced, but that have been suspended or terminated.

Overview of Section 301

Section 301 is an investigative tool under U.S. trade law that allows the Office of the U.S. Trade Representative (USTR) to pursue

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unilateral trade retaliation against countries that impose unfair trade barriers against the United States. USTR may launch Section 301 investigations in response to the filing of a petition submitted by an "interested party," or upon USTR's own initiative. Once a Section 301 investigation is launched, the statutory deadline for completion is typically between 12 and 18 months. Under the first Trump administration, USTR often did not use the full period provided under the statute, instead completing certain investigations several months before the statutory deadline.

As part of the investigative process, USTR must request consultations with the foreign government whose conduct is at issue, and it will generally also solicit public comments and hold a hearing as part of its investigation. At the end of the investigation, USTR is authorized to impose duties or other trade restrictions where it has determined:

1. That the rights of the United States under any trade agreement are being denied;
2. That an act, policy, or practice of a foreign country violates, is inconsistent with, or otherwise denies the United States the benefits of any trade agreement; or
3. That an act, policy, or practice of a foreign country is unjustifiable and burdens or restricts U.S. commerce.

Once imposed, Section 301 tariffs must be terminated after four years unless an extension is requested. As explained below, USTR under certain conditions can also modify existing Section 301 duties or reinstitute previously suspended or terminated Section 301 actions.

Background on Existing Section 301 Measures on China and Recent Tariff Adjustments

In 2017, under the first Trump administration, USTR self-initiated a Section 301 investigation into China's acts, policies, and practices relating to "technology transfer, intellectual property [IP], and innovation." Following its investigation, USTR announced in March 2018 that China's actions harmed the U.S. economy, and that the United States would impose retaliatory tariffs on Chinese imports. The United States subsequently imposed tariffs ranging from 7.5 to 25 percent on four separate tranches of products (Lists 1, 2, 3, and 4A) of Chinese imports worth over $360 billion. USTR also announced additional tariffs on a fifth list of products (List 4B), which were originally scheduled to take effect January 1, 2020, but were suspended in December 2019.

For each of the four tranches or "Lists," USTR established a process for requesting product-specific exclusions from Section 301 tariffs. In total, USTR initially granted over 2,200 exclusions. The approval rate for initial exclusion requests decreased over time, with USTR approving, on average, roughly 35 percent of new exclusion requests for Lists 1 and 2, but only 5 to 7 percent of exclusions initially requested for Lists 3 and 4. Eventually, USTR allowed the majority of the thousands of initially granted exclusions to expire between 2019 and 2020. Absent a further extension, the small subset of remaining exclusions are scheduled to expire on June 1, 2025.

In May 2024, the Biden administration released the results of the four-year review of the Section 301 tariffs on China, nearly two years after the review's launch. USTR announced that it would significantly increase tariffs on specific Chinese imports tied to strategic sectors, including the green economy, semiconductors, medical supplies, port infrastructure, and steel and aluminum. In many cases, the additional tariffs applied ranged from 25 or 50 percent, though in some cases were as high as 100 percent. Some of these tariffs took effect on September 27, 2024, while others entered into force on January 1, 2025, or will enter into force on January 1, 2026.

USTR also announced that it would establish a new exclusion process, limited to manufacturing machinery in certain tariff lines in Chapter 84 ("Nuclear Reactors, boilers, machinery and mechanical appliances; parts thereof") and Chapter 85 ("Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles") of the Harmonized Tariff Schedule of the United States. That new exclusion process launched on October 15, 2024, and the deadline for submitting exclusion requests is March 31, 2025.[1]

Most recently, USTR announced on December 11 that it would raise Section 301 tariffs on imports of certain tungsten products, solar wafers, and polysilicon from China. The increases followed a previous USTR announcement in September proposing these tariff increases and soliciting public comments. Beginning on January 1, 2025, a 25 percent tariff will apply to certain tungsten products—which are not currently subject to Section 301 measures—while existing Section 301 tariffs of 25 percent that apply to wafers and polysilicon will increase to 50 percent.

Pending and Potential Section 301 Investigations

Separate from the existing Section 301 action against China, USTR has also carried out a number of other Section 301 proceedings within the past several years, including in the final weeks of the Biden administration.

Investigation on China's Shipbuilding Sector and Policies

On April 17, 2024, USTR initiated a Section 301 investigation into China's maritime, logistics, and shipbuilding sectors in response to a petition submitted by several unions led by the United Steelworkers. The petition alleged that China pursued a range of distortive policies, including subsidization, in an effort to support development of its shipbuilding industry, leading to global overcapacity and depressed prices in the sector. USTR solicited public comments on the investigation and held a public hearing in May 2024. While the agency has until April 2025 to complete its review and issue a determination as to whether China's practices are actionable under Section 301, lawmakers—many of them Democrats—have pressured USTR to conclude the Section 301 investigation swiftly. Shortly after the investigation was initiated, a bipartisan coalition from the U.S. House of Representatives and Senate released a report on reversing the decline of U.S. shipbuilding capacity and confronting China's rise as the world's top shipping (and shipbuilding) nation. Among lawmakers championing the report were President Trump's National Security Adviser, Mike Waltz, and his Secretary of State, Marco Rubio.

Newly Initiated Investigation on Labor and Human Rights in Nicaragua

On December 10, 2024, USTR self-initiated[2] a Section 301 investigation into Nicaragua's conduct relating to repressive and persistent attacks on human rights, labor rights, and the rule of law. This investigation marks the first time USTR has invoked Section 301 to investigate labor and human rights issues. USTR cited "[n]umerous credible reports" from organizations such as the United Nations, International Labour Organisation, and others, connecting the Ortega-Murillo regime in Nicaragua to politically motivated arrests and imprisonments, religious repression, extra-judicial killings, and repression of nongovernmental organizations.

USTR has not linked the investigation to Nicaragua's obligations under the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), though lawmakers—including then-Senator Rubio—have previously called for the United States to consider removing Nicaragua from that agreement based on the actions of the Ortega-Murillo administration. USTR sought public comments,[3] which were to be submitted through January 8, with rebuttal comments due January 23. USTR also held a hearing on January 16. Under the time line for this investigation, the ultimate decision regarding the outcome will rest with the Trump administration.

Potential Investigation on Legacy Semiconductors from China

Recent reports indicate that USTR may be planning to self-initiate—prior to Trump's inauguration on January 20—a new Section 301 investigation into older-generation semiconductors, often known as "foundational" or "legacy" chips. Any Section 301 investigation would follow the release on December 6 of the results of a survey conducted by the Department of Commerce's Bureau of Industry and Security (BIS), which found that nearly half of U.S. companies surveyed could not identify whether their products contained older-generation Chinese semiconductors. BIS found that more than two-thirds of responding companies did in fact contain Chinese-origin legacy chips, though such chips currently make up a small proportion of the total chips in most products. After the survey, BIS Undersecretary Alan Estevez stated that "more action is needed to build strong, diverse, and resilient semiconductor supply chains."

Similarly, in remarks at the Reagan National Defense Forum on December 7, then-Commerce Secretary Gina Raimondo suggested that the United States could impose tariffs on legacy chips from China. As with the Nicaragua investigation, the ultimate decision in any investigation of legacy chips from China will rest with the Trump administration.

Section 301 Actions Subject to USTR Monitoring

Finally, under both the first Trump and the Biden administrations, USTR suspended or terminated certain Section 301 proceedings in which products had already been identified for or subjected to retaliation. USTR continues to monitor foreign government actions relating to these proceedings, as shown in Table 1.

Table 1

Section 301 Investigation	Status
European Union—Large Civil Aircraft	Tariffs imposed effective October 2019, then suspended in July 2021 for a five-year period (until July 2026) with active monitoring
Seven Countries—Digital Services Tax	Following investigations against 11 countries, USTR proposed retaliatory tariffs against seven of those countries—France, Austria, Italy, Turkey, India, Spain, and the United Kingdom—but suspended the proposed tariffs in 2021 with active monitoring
European Union—Beef Hormone	Tariffs were imposed under Section 301 beginning in 1999, but were terminated in 2011 USTR took steps to reinstate the tariffs in 2016 and 2017, but ultimately decided not to do so, subject to monitoring

Modification or Reinstatement of Terminated or Suspended Section 301 Tariffs

Under U.S. law, USTR maintains the authority under certain conditions to reinstitute tariffs under terminated or suspended Section 301 actions, including those listed in the table above. For instance, USTR may reactivate Section 301 actions that it previously terminated, but that are subject to monitoring under Section 306 of the Trade Act of 1974. Under that provision, tariffs can be imposed where (1) monitoring shows unsatisfactory implementation by a foreign country of a measure or agreement that resolved the investigation, or (2) the petitioner or a representative of the domestic industry that would benefit from reinstatement of a Section 301 action requests a reactivation under Section 306(c). In both scenarios, Section 306(d) requires USTR to solicit views from interested parties before tariffs can be imposed. Generally, USTR could meet this requirement by holding hearings or by seeking only written comments.

In addition, with respect to active Section 301 actions—such as the existing Section 301 tariffs on imports from China—USTR may impose tariffs on new products or modify existing tariffs under Section 307. Notably, USTR also retains the authority to reactivate suspended tariffs, including the List 4B tariffs against Chinese imports that USTR suspended in December 2019. Under Section 307, USTR could reactivate these suspended tariffs, potentially very quickly and without the need to seek advance public comment. Indeed, in the 2019 notice suspending the List 4B tariffs, USTR specifically indicated that—for any future modifications regarding List 4B—USTR "intends to take into account the extensive public comments and testimony previously provided."

In sum, these various statutory authorities enabling USTR to swiftly impose Section 301 tariffs without conducting a new investigation may be particularly relevant under a second Trump administration. President Trump has made clear that he will use tariffs extensively to achieve his policy objectives, including noneconomic goals, and the potential reactivation of Section 301 measures may provide an attractive tool as his administration considers which statutory authorities to utilize.

Conclusion

Given recent developments, Section 301 may have significant effects on companies doing business with China and Nicaragua in the near term. In addition, the Trump administration may look to authorities under Section 301 to impose new or previously suspended tariffs against a wider range of countries. Companies should monitor, prepare for, and react to these and other evolving trade developments. This includes evaluating the impact that potential tariffs or other trade measures may have on companies and their supply chains, and assessing ways to reduce exposure to new trade measures. In addition, it is important to assess and manage risks arising from potential retaliatory trade actions by foreign governments.

Notes

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1. https://www.federalregister.gov/documents/2024/10/17/2024-23880/procedures-for-requests-to-exclude-certain-machinery-used-in-domestic-manufacturing-from-actions.

2. https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/december/ustr-initiates-section-301-investigation-nicaraguas-acts-policies-and-practices-related-labor-rights.

3. https://ustr.gov/sites/default/files/2024-29422_0.pdf.