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Section 301 of the Trade Act of 1974

Title III of the Trade Act of 1974 (Sections 301-310, 19 U.S.C. §§2411-2420), titled “Relief from Unfair Trade Practices,” is often collectively referred to as “Section 301.” Under Section 301, Congress grants the Office of the United States Trade Representative (USTR) a range of responsibilities and authorities to investigate and take action (e.g., impose a tariff) to enforce U.S. rights under trade agreements and respond to certain foreign trade practices. There are two ongoing investigations under Section 301 related to practices by the People’s Republic of China (PRC, or China) and Nicaragua and one recently concluded investigation into PRC shipping practices, all initiated under the Biden Administration. Tariffs on imports from China imposed in 2018 under Section 301 during the first Trump Administration remain in effect.

The 119th Congress could consider the effectiveness of Section 301 actions in deterring certain foreign trade practices, the impact of actions taken under Section 301 on the U.S. economy, and whether the authorities are being used in the way Congress intends.

Section 301 Investigations

An investigation under Section 301 may occur if the rights of the United States under any trade agreement are being denied, or an act, policy, or practice of a foreign government (1) violates, is inconsistent with, or denies benefits to the United States under a trade agreement; or (2) is “unjustifiable” and “burdens or restricts” U.S. commerce. The law does not limit the scope of investigations and defines “commerce” to include services and investment.

Initiation. Any interested person may file a petition with USTR requesting that the agency initiate an investigation under Section 301. USTR must determine whether to initiate an investigation within 45 days. The law does not specify criteria for USTR to use when determining whether to initiate an investigation from a petition. USTR may also “self-initiate” a case after consulting with appropriate public and private stakeholders.

Administration. Section 301 investigations are conducted by a “Section 301 Committee,” established in 15 C.F.R. §2002.3 as a subordinate, staff-level body of the USTR-led, interagency Trade Policy Staff Committee (TPSC). The Section 301 Committee reviews petitions, conducts public hearings, and makes recommendations to the TPSC regarding potential actions under Section 301. USTR bases its decision on recommendations provided by the TPSC.

Consultations. USTR must request consultations with the foreign government at the initiation of an investigation. If consultations do not result in a mutually acceptable outcome, USTR must request formal dispute settlement proceedings under the governing trade agreement (World Trade Organization [WTO] or free trade agreement [FTA]). For investigations that do not involve an agreement, USTR generally has requested consultations with the foreign

government and consulted with appropriate trade advisory committees as it initiated the investigation.

Determinations and Implementation. Following consultations, USTR conducts an investigation to determine if the alleged conduct is unfair or violates U.S. rights under trade agreements. If USTR’s determination is affirmative, it then decides what action, if any, to take. Section 301 divides actions into mandatory and discretionary. If USTR concludes there is a violation of a trade agreement or that an act, policy, or practice of a foreign government is “unjustifiable” and “burdens or restricts” U.S. commerce, action is mandatory. If an investigation involves an alleged violation of a trade agreement, USTR must make its final determination within 30 days after the date on which the dispute settlement procedure concludes. Generally, in cases not involving trade agreements, USTR makes its determination within 12 months after an investigation begins. Upon making an affirmative determination, USTR must implement any retaliatory action within 30 days.

Retaliatory Action. To remedy a foreign trade practice, Section 301 authorizes USTR to (1) impose tariffs or other import restrictions, (2) withdraw or suspend trade agreement concessions, and (3) enter into a binding agreement with the foreign government to either cease the conduct in question or compensate the United States. USTR must prioritize tariffs if it opts for import restrictions. The level of mandatory action should “affect goods or services of the foreign country in an amount that is equivalent in value to the burden or restriction being imposed by that country on” U.S. commerce.

Subsequent Actions. The law also specifies requirements for monitoring, modifying, and terminating actions taken under Section 301. USTR must report to Congress the reasons for any modification or termination of an action. Under Section 301, foreign noncompliance is considered a violation of a trade agreement and subject to mandatory action. Section 301 actions terminate after four years, unless USTR receives a request for continuation and conducts a review of the case. In some instances, USTR may reinstate a previously terminated Section 301 action.

Use of Section 301 Since 2018

Prior to the first Trump Administration and since the establishment of the WTO in 1995, the United States used Section 301 primarily to build cases and pursue dispute settlement at the WTO. The first Trump Administration investigated foreign trade practices under Section 301 six times. Two investigations into China and the European Union (EU) resulted in the imposition of tariffs. The tariffs on EU imports were imposed in 2020 and based on a WTO dispute related to EU subsidies on civil aircraft. The tariffs were suspended in 2021.

Following a 2017 investigation into PRC practices related to forced technology transfer, intellectual property rights, and innovation, in 2018 USTR imposed tariffs ranging from

7.5% to 25% on around \$370 billion worth of U.S. imports from China. Those tariffs remain in place. In May 2024, under the Biden Administration, USTR concluded the statutory four-year review of Section 301 actions and their impact on the U.S. economy. The review found that the actions induced China to “take steps toward eliminating” some of its practices related to forced technology transfer, but that many of the concerns raised in the 2017 investigation persisted and, in some cases, worsened, such as increasingly “aggressive” cybertheft activity. Following the review, USTR maintained existing tariffs and increased tariffs on certain products (e.g., electric vehicles).

In addition, the Biden Administration initiated three investigations under Section 301, all in 2024. Investigations into labor practices in Nicaragua (see **text box**) and PRC policies in the semiconductor industry, both initiated in December 2024, are ongoing. An investigation into PRC shipping and shipbuilding practices, initiated in April 2024, resulted in a January 2025 finding that PRC practices in this sector burden or restrict U.S. commerce. As a remedy, USTR has proposed port fees on PRC vessel owners and operators for use of PRC-built ships. A fourth petition related to illicit fentanyl from China was withdrawn by the petitioner, a fentanyl nonprofit, in fall 2024.

Certain Labor Practices in Nicaragua

In December 2024, USTR initiated an investigation into Nicaragua’s acts, policies, and practices related to labor rights, human rights, and the rule of law to determine whether they are unreasonable, discriminatory, or burden or restrict U.S. commerce. According to USTR, Nicaragua’s practices may directly or indirectly negatively impact U.S. workers and companies through unfair competition and lost investment, business, and sales opportunities. USTR cites as an example the revoking of legal status in Nicaragua of the American Chamber of Commerce. If USTR makes an affirmative determination, it may impose tariffs or other import restrictions on imports from Nicaragua. The United States has an FTA with Nicaragua, the Central American-Dominican Republic Free Trade Agreement (CAFTA-DR), and imported \$4.6 billion of goods from Nicaragua in 2024. Top imports were \$2.0 billion of apparel, \$703 million of electronics, and \$583 million of pearls, precious stones and metals, and imitation jewelry.

Source: Trade Data Monitor; USTR, December 2024.

The second Trump Administration may use Section 301 to investigate and/or take action in response to foreign trade practices it has indicated may be restrictive to U.S. exports, such as the practices of major seafood-producing countries, PRC practices in the apparel sector, or foreign digital regulations, including taking new action on investigations into foreign digital services taxes (see **text box** below).

Tariff Exclusion Process

Section 301 does not specify a process through which products, companies, or imports from a particular country can be excluded from tariffs or other actions taken under Section 301. In 2018, stakeholders and some Members of Congress expressed concerns about how additional tariffs imposed under Section 301 on U.S. imports from China could affect U.S. firms and consumers. In response, USTR established a process through which importers could apply for a temporary exclusion from the tariffs for a particular

product. USTR evaluated applications for exclusions based on the availability of the product from non-PRC sources, including domestic manufacturers, and the extent to which Section 301 tariffs would harm the importer, among other factors. For some of the temporary exclusions that were granted, USTR later issued extensions. In May 2025, USTR extended exclusions for 178 products until August 31, 2025. The four-year review of the Section 301 actions from the 2017 investigation proposed a new exclusion process for equipment used in domestic manufacturing. It is not known if the second Trump Administration will adopt the proposal. Some Members of Congress have questioned USTR’s ability to influence markets by granting or denying exclusions to particular importers.

Investigations into Foreign Digital Services Taxes

The second Trump Administration has indicated that it will evaluate the impact of digital services taxes (DSTs) on U.S. firms, including considering whether to initiate Section 301 investigations into foreign DSTs or renew investigations initiated under Section 301 in 2019 and 2020. The first Trump Administration initiated investigations into France’s DST in 2019 and DSTs implemented or under consideration by 10 other jurisdictions in 2020. The investigations into France’s DST and the DSTs of Austria, India, Italy, Spain, Turkey, and the United Kingdom found that the taxes discriminated against U.S. firms, were inconsistent with prevailing international tax policy principles, and burdened or restricted U.S. commerce. USTR announced 25% tariffs on about \$3.4 billion of imports from the seven countries but immediately suspended those tariffs to allow time for ongoing multilateral negotiations on a global tax framework under the Organisation for Economic Development (OECD)/G20 Framework. The framework would have provided an alternative approach for taxation of multinationals and prohibited unilateral DSTs, but its implementation stalled. In January 2025, the United States withdrew from the framework.

Considerations for Congress

The 119th Congress has not yet debated whether to maintain, limit, or expand the scope of the authority it has delegated under Section 301, but has introduced legislation to require the notification to and review by Congress of tariffs imposed, such as the Trade Review Act of 2025 (H.R. 2665/S. 1272). Previous Congresses have debated limits to executive authorities to impose tariffs, including Section 301 (e.g., 115th Cong., H.R. 5760). Congressional efforts related to Section 301 have generally been focused on establishing a formal product exclusion process (e.g., 117th Cong., §73001 in S. 1260 and S.Amdt. 5576) or penalizing tariff evasion (H.R. 3575/S. 1886). The 119th Congress could consider the effectiveness of Section 301 actions in deterring certain foreign trade practices, and whether the authorities to investigate and take action are being used in the way Congress intends. Congress could also consider the impact of actions taken under Section 301 on the U.S. economy. H.R. 2287 calls for a study by the Federal Reserve on the impact of tariffs on prices. The 117th Congress directed the U.S. International Trade Commission to study the impact on the U.S. economy of tariffs that were active in 2022 under Section 301 (P.L. 117-103).

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