Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Section 301 Tariffs on Goods from China: International and Domestic Legal Challenges

Updated April 5, 2022

In August 2017, the Office of the U.S. Trade Representative (USTR) initiated an investigation, under Section 301 of the Trade Act of 1974, into several allegedly unreasonable or discriminatory trade practices carried out by the People's Republic of China (China). On March 22, 2018, the Trump Administration issued a report finding that several of these practices were unreasonable or discriminatory and burdened U.S. commerce. Following this announcement, the Administration imposed additional tariffs on a variety of imported goods from China. These tariffs, imposed in four stages (or "tranches") between 2018 and 2019, have been challenged by China and U.S.-based importers in international and domestic legal fora. Although these legal challenges involve the Section 301 investigation and tariff actions initiated by the Trump Administration, the Biden Administration has left the tariffs in place, and the related legal disputes remain ongoing. This Sidebar analyzes the litigation at the World Trade Organization (WTO) and U.S. Court of International Trade (CIT).

Background

On August 24, 2017, USTR announced an investigation into "whether acts, policies, and practices of the Government of China related to technology transfer, intellectual property (IP), and innovation are actionable" under authorities delegated to the President in Sections 301 through 310 of the Trade Act of 1974 (often referred to as "Section 301"). On March 22, 2018, USTR issued a report finding that four such Chinese practices or policies justified action under Section 301: (1) forced technology transfer requirements; (2) cyber-enabled actions to acquire U.S. IP and trade secrets illegally; (3) discriminatory and nonmarket licensing practices; and (4) state-funded strategic acquisition of U.S. assets. (For more information on the Section 301 report and subsequent actions, see this CRS Report and In Focus.)

After USTR issued its report on the outcome of its Section 301 investigation, it determined that imposing tariffs on approximately $50 billion worth of U.S. imports from China was an appropriate response. On June 20, 2018, USTR issued a list of products covered by the first round of tariffs (List 1), with an annual trade value of approximately $34 billion. The Notice of the action indicated the U.S. Government "reviewed the extent to which the tariff subheadings . . . include products containing industrially significant technology" to tailor the tariffs to those products affected by the practices identified during the Section 301 investigation. USTR issued a second list of products (List 2), covering approximately $16

Congressional Research Service
https://crsreports.congress.gov
LSB10553

billion worth of imports, on August 16, 2018. The Notice of the second action indicated this amount was identified to "maintain the effectiveness" of the Section 301 action, which USTR previously determined should cover $50 billion in annual trade value. In response, China announced that it would impose additional tariffs on $50 billion worth of goods from the United States to counter what China viewed as U.S. action that "severely violated China's legitimate rights in the WTO."

Following these events, President Trump ordered USTR to modify the Section 301 action and impose additional tariffs on another $200 billion worth of products from China—bringing the total value of goods subject to tariffs to $250 billion. The President stated the $50 billion action was insufficient because China "refuses to change its practices—and indeed recently imposed new tariffs" on U.S. goods. On September 21, 2018, USTR issued List 3, which set the additional tariffs at 10% with projected increases to 25% on January 1, 2019. China responded by imposing additional tariffs on $60 billion worth of U.S. goods. The United States delayed the projected tariff increases to 25% until May 10, 2019, after which China also increased the tariff levels on $60 billion worth of goods from the United States. In May 2019, the USTR proposed to modify further the $250 billion action against China. It announced on August 17, 2019, that the action "was insufficient to obtain the elimination of China's unfair and harmful policies" and expanded it to cover an additional $300 billion in annual trade value (List 4). In response, China announced new tariffs on $75 billion worth of products from the United States.

During this period, China initiated several WTO disputes against the United States, with each dispute challenging different tariff lists. In addition, thousands of U.S.-based importers filed lawsuits with the CIT, challenging Lists 3 and 4; the CIT has sought to assess the legal viability of these disputes by using several claims as "test cases."

Disputes at the World Trade Organization

China initiated three disputes at the WTO that challenge the four tariff lists: DS543 challenges List 1 and List 3, including the increase of tariffs on List 3 from 10% to 25%; DS565 challenges List 2; and DS587 challenges all four lists. Thus far, only DS543 has gone beyond consultations (i.e., private negotiations between China and the United States). A WTO panel issued a report in that case, finding the United States breached its WTO obligations when it imposed tariffs under Lists 1 and 3.

In DS543, although the parties raised several procedural issues before the WTO panel, the main substantive issues involved China's claims under Articles I, II(a), and II(b) of the General Agreement on Tariffs and Trade and the U.S. defense under Article XX(a). Article I reflects the general "most-favoured-nation" (MFN) principle, which requires WTO members to provide nondiscriminatory treatment to "like products" of all other WTO members with respect to customs duties and certain other charges. Article II(a) reflects a more specific application of the MFN principle, obliging WTO members to provide nondiscriminatory treatment to all other members with regard to commitments they make on, among other things, maximum tariffs applied to goods. These commitments are reflected in documents referred to as "schedules of concessions." Article II(b) prohibits WTO members from imposing tariff rates on goods that are higher than those listed in their schedules of concessions. Article XX allows WTO members to impose WTO-inconsistent measures if they are taken to further legitimate public policy goals and satisfy certain conditions. Article XX(a) allows certain measures that are "necessary to protect public morals."

China argued that the U.S. tariffs violated Article I because the action imposed higher tariffs on goods from China than were imposed on goods from other nations. Further, China claimed the Section 301 tariffs violated Articles II(a) and (b) because the tariffs exceeded the maximum tariff levels set out in the U.S. Schedule of Concessions and applied only to China. The United States did not dispute that the Section 301 tariffs were inconsistent with these provisions. Instead, the United States sought to justify the measures under Article XX(a), contending they were necessary to protect public morals. Specifically, the

United States explained the practices identified in the Section 301 report (e.g., misappropriation of U.S. IP) violated U.S. public morals. The tariffs were imposed to combat the continuation of these practices.

The WTO panel found that China made a *prima facie* case that the tariffs were inconsistent with Article I because they "apply only to products from China" and do not provide the same treatment to Chinese products as to all other WTO members' products. It also concluded that the Section 301 tariffs were *prima facie* inconsistent with Articles II(a) and (b) because they "applied in excess of the rates to which the United States bound itself in its Schedule [of Concessions] and accord imports from China 'less favourable treatment' than that provided in the United States' Schedule."

Turning to the United States' public morals defense, the panel first found the "'standards of right and wrong' invoked by the United States . . . could, at least at a conceptual level, be covered by the term 'public morals.'" However, the United States had not, in the panel's view, demonstrated the tariffs were "necessary" to protect public morals, and therefore the tariffs were not justified under Article XX(a). The panel concluded the Section 301 tariffs were inconsistent with the United States' WTO obligations and recommended the United States "bring its measures into conformity."

On October 26, 2020, the United States announced its decision to appeal the DS543 panel report. As the WTO's Appellate Body currently lacks a quorum of members, and therefore cannot hear appeals, there is no immediate way to resolve the dispute within the WTO. Thus, at least in the near term, there will be no final recommendation from the WTO's Dispute Settlement Body. Any resolution to the dispute will likely need to be negotiated by the United States and China outside of the WTO's dispute settlement framework. It has been suggested that appealing a dispute under circumstances where the dispute cannot become final may give rise to a separate breach of the international obligation of good faith, and may entitle another WTO member to impose countermeasures (e.g., raise tariffs) to address the dispute. The two other disputes remain pending before the WTO, but China has not taken action beyond requesting consultations with the United States.

Disputes at the U.S. Court of International Trade

In addition to China's dispute settlement cases against the Section 301 tariffs at the WTO, thousands of companies have challenged the tariffs before the CIT. In September 2020, HMTX Industries LLC, a U.S.-based importer, brought the first of these lawsuits to the CIT. The company, as well as several of its affiliates, challenged the List 3 tariffs, and later amended its complaint to challenge List 4A. Subsequently, approximately 6,000 importers of various goods from China filed similar challenges to the Lists 3 and 4A tariffs as well as List 4B, seeking a refund of duties paid. Collectively, these lawsuits represent the first domestic court challenges to Section 301 tariffs. Not only is this legal challenge unprecedented, but the number of cases is as well. The CIT generally receives a few hundred cases per year; the Section 301 cases, in conjunction with other 2020 filings, increased its caseload by 1,546% from 2019 to 2020.

The CIT has taken several procedural steps reflecting the scope and potentially significant legal implications of these challenges. First, the court assigned all cases to a three-judge panel and created a single "master case" titled *In re Section 301 Cases*, under which the parties must file all relevant documents. Second, the court decided to manage the disputes by selecting a representative sample of claims, which would be used to assess the legal challenges' viability and potentially suggest how the court should address the remaining cases. While the test case is considered, all other cases are stayed.

The *HMTX* case, whose claims served as a model for many subsequent claims, was selected by the CIT to serve as the test case. In their amended complaint, the *HMTX* plaintiffs contend that (1) the USTR violated procedural requirements for imposing Section 301 tariffs; and (2) the Agency exceeded its statutory authority when imposing the tariffs.

On April 1, 2022, the CIT issued an opinion on the merits. The court first ruled that USTR acted within the authority provided by Section 307 when it imposed additional tariffs under Lists 3 and 4A. Specifically, the court found a "clear connection" between China's retaliatory actions (i.e., imposition of tariffs on U.S. goods) and USTR's determination that these retaliatory actions increased the burden on U.S. commerce resulting from China's unfair acts, policies, and practices such that USTR could rely on Section 307(a)(1)(B) to modify the action.

Although the CIT found that USTR acted within its statutory authority to modify the Section 301 action, it next ruled that USTR violated the Administrative Procedure Act (APA) (5 U.S.C. § 551 *et seq.*) by failing to respond adequately to public comments in its final action. In particular, the court faulted USTR for failing to explain how USTR arrived at its decision to raise tariffs on particular products despite the numerous public comments contesting the appropriateness of imposing new tariffs and the inclusion or exclusion of particular products. Based on these procedural violations, the court remanded Lists 3 and 4A to USTR for reconsideration or further explanation, but decided to allow the tariffs to remain in place given the "disruptive consequences" of removing them during remand, stating: "For now, the court declines to try to unscramble this egg."

If USTR chooses to reconsider or provide further explanation, it must submit its decision to the CIT by June 30, 2022. Alternatively, USTR and the plaintiffs may seek to appeal the CIT's ruling.

Author Information

Nina M. Hart
Legislative Attorney

Brandon J. Murrill
Legislative Attorney

Disclaimer