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## Section 301 of the Trade Act of 1974

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. Prior to the Trump Administration and since the establishment of the World Trade Organization (WTO) in 1995, the United States used Section 301 authorities primarily to build cases and pursue dispute settlement at the WTO. Former President Trump was more willing than previous officials to act unilaterally under these authorities.

The Trump Administration attributed this shift in policy to its determination to close a persistent gap between U.S. and foreign government practices that it said disadvantaged U.S. firms. In addition, it justified many of its 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 trade practices. It also cited the failure of past trade negotiations and agreements to enhance reciprocal market access for U.S. firms and workers.

The recent use of Section 301 has been the subject of congressional and broader international debate. In 2021, the Biden Administration took a number of steps to eliminate certain foreign practices and policies that were the subject of Section 301 investigations. The Administration continues to review its strategy for China, and so far, it has extended and reinstated certain tariff exclusions and is conducting a review of all Section 301 actions against China.

### Overview of Section 301

Title III of the Trade Act of 1974 (Sections 301 through 310, 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 trade sanctions on foreign countries that violate U.S. trade agreements or engage in acts that are “unjustifiable” or “unreasonable” and burden U.S. commerce. Prior to 1995, 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 supported by the United States, significantly reduced U.S. use of Section 301. While the United States retains the flexibility to seek recourse for foreign unfair trade practices in the WTO or under Section 301, a determination to bypass WTO dispute settlement and impose retaliatory measures (if any) in response to a Section 301 investigation may be challenged at the WTO.

### Section 301 Investigations

While the law does not limit the scope of investigations, it cites several types of foreign government conduct subject to Section 301 action, including (1) a violation that denies U.S. rights under a trade agreement, (2) an “unjustifiable” action that “burdens or restricts” U.S. commerce, and (3) an “unreasonable” or “discriminatory” action that “burdens or

restricts” U.S. commerce. The statute defines “commerce” to include goods, services, and investment.

### Procedures for Section 301 Action

Sections 302 through 309 describe the procedural requirements and limitations for Section 301 actions.

**Administration.** 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 reviews Section 301 petitions, conducts public hearings, and makes recommendations to the TPSC regarding potential actions under Section 301. The USTR then bases its final decision on the recommendations provided by the TPSC.

**Initiation.** The USTR may initiate a Section 301 case as a result of a petition or can “self-initiate” a case. Any interested person may file a petition with the USTR requesting that the agency take action under Section 301. Within 45 days of the receipt, the agency must review the allegations and determine whether to initiate an investigation. In the absence of a petition, the USTR can also investigate any matter, but only after consulting with appropriate stakeholders. In addition, the USTR is generally required to initiate an investigation of any country—within 30 days—after identifying it as a “Special 301” “Priority Foreign Country.” (Rules for intellectual property rights [IPR] cases initiated through “Special 301” differ somewhat from those that govern standard Section 301 investigations.)

**Consultations.** Upon initiating an investigation, the USTR must request consultations with the targeted foreign government regarding the issues raised. If the investigation involves a trade agreement and a mutually acceptable resolution is not reached, the USTR must request formal dispute settlement proceedings under the governing trade agreement (WTO or potential U.S. free trade agreement). In the past, with regard to investigations that do not involve an 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 USTR generally pursues consultations within the agreement framework and through bilateral negotiations.

**Determinations and Implementation.** Following consultations, the USTR begins its investigation to determine if the alleged conduct is unfair or violates U.S. rights under trade agreements. If the USTR’s determination is affirmative, it then decides what action, if any, to take (subject to the direction of the President, if any). Section 301 divides such actions into mandatory and discretionary categories. Mandatory action is required if the USTR 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. If

an investigation involves an alleged violation of a trade agreement, the USTR must make its final determinations 30 days after the date on which the dispute settlement procedure concludes. Generally, in cases not involving trade agreements, the USTR must make its determinations within 12 months after an investigation begins.

Upon making an affirmative determination to take retaliatory action, the USTR must implement that action within 30 days. Waivers are allowed for mandatory actions and implementing timelines.

**Retaliatory Action.** To remedy a foreign trade practice, Section 301 authorizes the USTR to (1) impose duties or other import restrictions, (2) withdraw or suspend trade agreement concessions, 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. The USTR must give preference to duties (i.e., tariffs) if action is taken in the form of import restrictions. 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.

**Subsequent Actions.** Sections 306 and 307 specify the requirements for monitoring, modifying, and terminating any action taken under Section 301. Notably, foreign noncompliance with a measure or agreement undertaken as a result of a Section 301 investigation is considered a violation of an agreement under Section 301 and subject to mandatory retaliatory action. Section 301 actions terminate automatically after four years, unless the USTR receives a request for continuation and conducts a review of the case. In addition, in some instances, the USTR may reinstate a previously terminated Section 301 action.

### Section 301 Cases

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. These cases have primarily targeted the European Union (EU), Canada, Japan, and South Korea. Prior to 2017, the last Section 301 investigation took place in 2013 and involved Ukraine’s practices regarding IPR. Given the political situation in Ukraine, the USTR determined that no action was appropriate at the time. The last investigation prior to the Trump Administration resulting in retaliation (i.e., 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 initiated six new investigations (see **text box**). Two investigations resulted in the imposition of tariffs: on U.S. imports from China and the EU. The U.S. action against the EU—unlike that against China—was based on a WTO dispute in which the USTR anticipated being allowed to retaliate.

### Issues for Congress

While some Members support recent Section 301 actions, others have decried them as an undesirable shift in U.S. trade policy. Congress could consider amending Section 301 to require greater consultation or approval before a President takes new trade actions, or to establish a formal product exclusion process (e.g., S. 1260). Congress directed the U.S. International Trade Commission to investigate the impact of Section 301 tariffs on U.S. industries and report

the findings by March 2023. Members may review and use the results of that investigation to inform oversight of trade policy and potential legislative changes to Section 301.

### Recent Section 301 Investigations

#### China

**Date of Initiation.** August 2017.

**Issue.** China’s technology transfer, IP, and innovation policies/practices.

**Finding.** Four Chinese IPR-related practices are unreasonable (or discriminatory) and burden (or restrict) U.S. commerce.

**Action Taken.** Additional tariffs, ranging from 7.5% to 25%, on approximately \$370 billion worth of U.S. imports from China.

**WTO Procedures.** WTO case DS542. (See also: DS543 | DS565 | DS587.)

#### European Union

**Date of Initiation.** April 2019.

**Issue.** EU (including the UK) subsidies on large civil aircraft; violation of U.S. rights under the WTO Agreement; and EU’s failure to implement WTO Dispute Settlement (DS) panel recommendations concerning certain subsidies to the EU large civil aircraft industry.

**Finding.** EU and certain member states have denied U.S. rights under the WTO Agreement and have failed to bring WTO-inconsistent subsidies into compliance with WTO rules.

**Action Taken.** Suspended (March 2021). Additional tariffs of 15% or 25% on \$7.5 billion worth of U.S. imports from the EU.

**WTO Procedures.** WTO case DS316. (See also: DS353.)

**Latest Development.** Agreements reached with the EU and UK, as part of which the action will be suspended for five years (July 2021).

#### France

**Date of Initiation.** July 2019.

**Issue.** France’s digital services tax (DST).

**Finding.** The DST discriminates against major U.S. digital companies and is inconsistent with prevailing international tax policy principles.

**Action Taken.** Suspended (July 2020). Additional tariffs of 25% on \$1.3 billion worth of U.S. imports from France.

**Latest Development.** Action terminated (November 2021). Political compromise reached on a transitional approach to France’s DST while implementing Pillar 1 of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (“OECD/G20 Framework”).

#### Foreign Digital Services Taxes

**Date of Initiation.** July 2020.

**Issue.** The DSTs adopted or under consideration by Austria, Brazil, the Czech Republic, the EU, India, Indonesia, Italy, Spain, Turkey, and the UK.

**Findings.** Investigations with respect to four jurisdictions (Brazil, the Czech Republic, EU, and Indonesia) were terminated because their DSTs either had not been adopted or not implemented (March 2021). The DSTs of six countries (Austria, India, Italy, Spain, Turkey, and UK) discriminate against major U.S. digital companies and are inconsistent with prevailing international tax policy principles (January 2021).

**Action Taken.** Suspended (June 2021). Additional tariffs of 25% on approximately \$2.1 billion worth of U.S. imports from the six countries.

**Latest Development.** Action terminated (November 2021). Political compromise reached on a transitional approach to the six countries’ DSTs while implementing Pillar 1 of the OECD/G20 Framework.

#### Vietnam

**Date of Initiation.** October 2020.

**Issue.** Vietnam’s policies/practices related to the valuation of its currency.

**Finding.** Vietnam’s investigated policies/practices, including excessive foreign exchange market interventions, taken in their totality, are unreasonable and burden or restrict U.S. commerce.

**Action Taken.** None. The USTR determined that the agreement reached by the U.S. Department of the Treasury and the State Bank of Vietnam provides a satisfactory resolution to the matter subject to the investigation and that no action is currently warranted (July 2021).

#### Vietnam

**Date of Initiation.** October 2020.

**Issue.** Vietnam’s policies/practices related to the import and use of timber that is illegally harvested or traded.

**Action Taken.** None. The USTR determined that the investigated policies/practices are not actionable in light of the Vietnam-U.S. Agreement on Illegal Logging and Timber Trade and that no action is currently warranted (October 2021).

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