



## 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 various practices by Brazil and the implementation of the commitments made under the “Phase One” agreement by the People’s Republic of China (PRC, or China). USTR recently concluded investigations into PRC shipping practices, PRC semiconductor practices, and labor and human rights practices in Nicaragua. Tariffs on imports from China imposed in 2018 under Section 301 during the first Trump Administration remain in effect.

The 119<sup>th</sup> Congress could consider the effectiveness of USTR’s 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 Process

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 is burdening or restricting 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 also may “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 is required to request consultations with the foreign government at the initiation of an investigation. If consultations do not result in a mutually acceptable outcome, USTR is required to request formal dispute settlement proceedings under a governing trade agreement, if applicable. For investigations that do not involve an agreement, USTR generally has requested consultations with the foreign government and consulted

with appropriate trade advisory committees at initiation of the investigation.

**Determinations and Implementation.** Following consultations, USTR conducts an investigation to determine if the alleged conduct is unfair and harms U.S. trade and whether to take retaliatory action. 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 USTR determines that an act, policy, or practice of a foreign government is “unreasonable or discriminatory” and “burdens or restricts” U.S. commerce, action is discretionary. Generally, in cases not involving trade agreements, USTR makes its determination within 12 months after an investigation begins.

**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. The statute specifies that USTR seek public comment on proposed actions.

**Subsequent Actions.** The statute 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 2017

From the establishment of the World Trade Organization (WTO) in 1995 until the first Trump Administration, 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. In 2020, USTR imposed tariffs on imports from the EU under Section 301 based on the findings of a WTO dispute settlement body decision on EU subsidies on civil aircraft. Those 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. 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. Following the review, USTR maintained existing tariffs and increased tariffs on certain products (e.g., electric vehicles).

In 2024, the Biden Administration initiated three investigations under Section 301 that were completed in 2025. In each case, USTR determined that the policies under investigation were actionable under Section 301 but has not implemented actions that would increase tariffs or other import restrictions. Investigations into labor and human rights practices in Nicaragua (see **text box**) and PRC policies in the semiconductor industry, both initiated in December 2024, were determined to be actionable under Section 301 in late 2025 but resulted in no immediate additional tariffs. An investigation into PRC shipping and shipbuilding practices, initiated in April 2024, resulted in a January 2025 finding by the Biden Administration that PRC practices in this sector burden or restrict U.S. commerce, but proposed port fees and tariffs were suspended in 2025.

#### Certain 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. 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. In October 2025, USTR determined that the practices were unreasonable and burden or restrict U.S. commerce. The United States has a free trade agreement (FTA) with Nicaragua, the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), and imported \$4.6 billion of goods from Nicaragua in 2024. As a remedy to the affirmative determination, USTR proposed suspending the application of benefits to Nicaragua under CAFTA-DR or imposing 100% tariffs on imports from Nicaragua, among other actions. Following a public comment period on the proposed actions, USTR imposed a phased-in tariff beginning at 0% in January 2026 and rising to 15% in January 2028 on imports of goods not originating under CAFTA-DR.

Under the second Trump Administration, USTR has initiated two investigations into: (1) Brazil's practices related to digital trade and electronic payment services, ethanol market access, and other issues in July 2025, (2) and China's implementation of its commitments under the U.S.-China "Phase One" deal in October 2025.

#### 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, in response to concerns expressed by stakeholders and some Members of Congress about how additional tariffs on U.S. imports from China could affect U.S. firms and consumers, USTR established a process through which importers could apply for a temporary tariff exclusion. 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. It is not known if USTR would administer an exclusion process for future actions.

#### Future Use of Section 301

The Trump Administration has indicated that it may pursue Section 301 investigations into issues such as the practices of major seafood-producing countries, PRC practices in the apparel sector, or digital regulations, including digital services taxes (see **text box** below). If the Supreme Court rules that other tariffs imposed by the second Trump Administration are illegal, the Administration may increase its use of Section 301, among other trade authorities. Having recently concluded some investigations, USTR may have more capacity to take on new investigations.

#### 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 new Section 301 investigations into foreign DSTs or renew Section 301 investigations initiated 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 the DSTs of France, 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. The United States withdrew from the framework in 2025.

#### Considerations for Congress

The 119<sup>th</sup> Congress 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). Congress also may debate whether to maintain, limit, or expand the scope of the authority it has delegated under Section 301. Previous Congresses have debated limits to executive authorities to impose tariffs, including Section 301 (e.g., 115<sup>th</sup> Cong., H.R. 5760). Congressional efforts related to Section 301 generally have been focused on establishing a formal product exclusion process (e.g., 117<sup>th</sup> Cong., §73001 in S. 1260 and S.Amdt. 5576) or penalizing tariff evasion (H.R. 3575/S. 1886). The 119<sup>th</sup> Congress could consider the effectiveness of Section 301 actions in deterring certain foreign trade practices, and whether the authorities are being used in the way Congress intends. Congress also could consider the impact of tariff actions on the U.S. economy. For example, H.R. 2287 calls for a study by the Federal Reserve on the impact of tariffs on prices. The 117<sup>th</sup> 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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