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Legal Sidebar

Legal Authority for Section 301 Tariffs to Address Forced Labor and Excess Manufacturing Capacity

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Title III of the Trade Act of 1974 (19 U.S.C. § 2411–2420, collectively referred to as "Section 301") authorizes the U.S. Trade Representative (USTR) to impose tariffs on U.S. imports in response to conduct by foreign countries that burdens or restricts U.S. commerce in "unjustifiable," "unreasonable," or "discriminatory" ways, or that violates U.S. rights under international trade agreements. Recent administrations have conducted several investigations into whether various foreign practices are actionable (i.e., trigger USTR's authority to take action) under Section 301, and it is one of a number of statutes those administrations have used to impose tariffs on various U.S. imports.

In March 2026, USTR initiated two Section 301 investigations that could result in new tariffs on most U.S. imports. One of these investigations addresses 60 trading partners' alleged "failure to impose and effectively enforce a prohibition on the importation of goods produced with forced labor" (the Forced Labor Investigation), while the other addresses 16 trading partners' alleged "structural excess capacity and production in manufacturing sectors" (the Excess Capacity Investigation). On June 2, 2026, USTR proposed tariffs of 10% or 12.5% on imports from all 60 trading partners in the Forced Labor Investigation, with exceptions for some types of goods. The Excess Capacity Investigation is ongoing.

This Legal Sidebar provides an overview of Section 301's legal requirements, USTR's actions in the Forced Labor Investigation and Excess Capacity Investigation, potential questions regarding USTR's authority to impose tariffs based on these investigations, and options for Congress.

Legal Requirements of Section 301

Section 301 is one of several statutes that allow the executive branch to impose tariffs on U.S. imports under specified conditions. Unlike other such statutes, Section 301 grants tariff authority not to the President but to USTR, "subject to the specific direction, if any, of the President." USTR may initiate Section 301 investigations of its own volition or based on a petition filed by an "interested person." Generally, USTR must request consultations with the foreign country once it initiates an investigation. The deadline to complete an investigation varies according to the basis and nature of the investigation. USTR must provide an opportunity for interested persons to present their views during the investigation, including via a public hearing if one is requested.

Section 301 divides USTR's authority into "mandatory" and "discretionary" actions. USTR has invoked discretionary authority for the Forced Labor Investigation and Excess Capacity Investigation. Discretionary action is authorized, but not required, when USTR determines that "(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and (2) action by the United States is appropriate." Section 301 defines an "unreasonable" act, policy, or practice as one that, "while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable." As USTR noted in launching the Forced Labor Investigation, Section 301 specifies that "[a]cts, policies, and practices that are unreasonable include, but are not limited to, any [that] constitute[] a persistent pattern of conduct that [] permits any form of forced or compulsory labor."

If USTR makes an affirmative determination that the foreign conduct is actionable, USTR is authorized to impose duties or other import restrictions, among other measures. Unlike some other tariff authorities, Section 301 does not set a maximum rate for tariffs. Tariffs and other actions taken under Section 301 terminate automatically after four years unless a petitioner or domestic industry representative requests continuation, in which case USTR may extend the action. Section 301 also allows USTR to "modify or terminate any action" under any of three conditions: (A) the Dispute Settlement Body of the World Trade Organization, or dispute settlement proceedings under other trade agreements, finds that the foreign practice does not violate U.S. rights; (B) the "burden or restriction on United States commerce" resulting from the foreign conduct "has increased or decreased"; or (C) a discretionary action "is no longer appropriate."

In September 2025, the U.S. Court of Appeals for the Federal Circuit analyzed the scope of USTR's authority to modify Section 301 tariffs in *HMTX Industries LLC v. United States*. Following USTR's imposition of Section 301 tariffs on certain imports from the People's Republic of China (PRC, or China) in 2018, the PRC imposed retaliatory tariffs on certain articles from the United States. USTR responded, in turn, by imposing tariffs on additional PRC imports. In *HMTX Industries*, the Federal Circuit held that the additional tariffs imposed by USTR were permitted under Section 301's provision allowing modification of discretionary action that "is no longer appropriate." On June 15, 2026, the Supreme Court denied a request by the plaintiffs in *HMTX Industries* for certiorari (review) of the Federal Circuit's decision. The Federal Circuit's holding in *HMTX Industries* could give USTR latitude to expand or alter tariffs that may be imposed following the Forced Labor Investigation or the Excess Capacity Investigation.

Investigations Regarding Forced Labor and Structural Excess Capacity

USTR launched the Forced Labor Investigation and the Excess Capacity Investigation in March 2026. Some Trump Administration officials as well as critics appear to consider these investigations vehicles to reimpose tariffs similar to those previously imposed using other statutory authorities. In 2025, President Trump imposed global tariffs of 10% or more on most U.S. imports using the International Emergency Economic Powers Act (IEEPA, 50 U.S.C. §§ 1701–1706). The U.S Supreme Court struck down those tariffs in February 2026, holding that IEEPA does not authorize tariffs. Shortly after the Court's decision, President Trump announced a global 10% tariff under Section 122 of the Trade Act of 1974 (19 U.S.C. § 2132), which went into effect on February 24, 2026. Under the statute's 150-day limit on presidential action, that tariff is set to expire on July 24, 2026, even if the Administration prevails in ongoing litigation regarding the tariff. The Forced Labor Investigation and Excess Capacity Investigation potentially offer a means to reinstate tariffs on imports from multiple countries on a more lasting basis.

The Forced Labor Investigation

The Forced Labor Investigation sought to determine whether the purported failure of 60 economies to "prohibit the importation of goods produced wholly or in part with forced labor is unreasonable or discriminatory and burdens or restricts U.S. commerce," warranting discretionary action under Section 301. According to USTR, over 99% of U.S. imports are shipped from these 60 trading partners. Another CRS product discusses forced labor policy issues relating to this investigation.

Following an initial round of public comments and a public hearing, on June 2, 2026, USTR issued a report and Notice of Proposed Actions. The report concluded that six trading partners (Canada, Ecuador, the European Union [EU], Indonesia, Mexico, and Pakistan) have prohibitions on forced labor imports but fail to effectively enforce them, while the remaining 54 economies have all "failed to impose a forced labor import prohibition." USTR concluded that these failures are "unreasonable" in part because they "undermine[] the universal aim of eliminating forced labor" while giving firms that use forced labor an unfair advantage. USTR also concluded that this failure "burdens or restricts" U.S. commerce "by subjecting U.S. producers to unfair competition from forced labor goods . . . and by displacing foreign goods produced without forced labor or forced labor inputs from their domestic market to the United States and other markets."

Based on its findings, USTR proposed a 10% tariff on the six trading partners it found do not effectively enforce an existing forced labor import prohibition, seven additional trading partners that have made commitments regarding forced labor in trade agreements with the United States (Argentina, Bangladesh, Cambodia, El Salvador, Guatemala, Malaysia, and Taiwan), and the United Kingdom. USTR proposed a 12.5% tariff on the remaining 46 trading partners. The proposed tariffs would exempt certain goods. USTR solicited a second round of public comments through July 6, 2026, and held another public hearing on July 7–9, 2026. It has not finalized its action in the Forced Labor Investigation as of the publication of this Sidebar.

The Excess Capacity Investigation

The Excess Capacity Investigation seeks to determine whether 16 trading partners "exhibit structural excess capacity and production in various manufacturing sectors." All 16 of these trading partners (China, the EU, Singapore, Switzerland, Norway, Indonesia, Malaysia, Cambodia, Thailand, Korea, Vietnam, Taiwan, Bangladesh, Mexico, Japan, and India) are also named in the Forced Labor Investigation. USTR describes "structural excess capacity" as "underutilized industrial production capacity that is sustained through governmental interventions or policies," and contends that such excess causes other countries to have "large or persistent goods trade surpluses" that displace U.S. production and manufacturing.

USTR solicited public comments through April 15, 2026, and held a public hearing on May 5–8, 2026. As of the publication of this Sidebar, USTR has not yet released a report of its findings or a notice of proposed actions in the Excess Capacity Investigation.

Legal Questions Over Forced Labor and Excess Capacity Tariffs

If USTR imposes tariffs based on the Forced Labor Investigation or the Excess Capacity Investigation, importers who are required to pay the tariffs could file lawsuits challenging USTR's action. The U.S. Court of International Trade (CIT) has exclusive jurisdiction to hear such lawsuits in the first instance. The U.S. Court of Appeals for the Federal Circuit has jurisdiction over appeals from the CIT.

As noted, Section 301 grants authority not to the President but to an agency: namely, USTR. The Federal Circuit has held that Section 301 actions are subject to judicial review under the standard prescribed by the Administrative Procedure Act (APA), in contrast to presidential actions, which are not subject to the APA's requirements. The APA directs courts to review whether an agency's action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "unsupported by substantial evidence," among other criteria. (By contrast, courts have traditionally applied a more deferential standard of review to presidential tariff actions.) Applying the APA standard of review, courts may be faced with answering several questions regarding USTR's actions, including those below.

Is the Foreign Countries' Purported Conduct Actionable Under Section 301?

Courts may be called to review whether foreign countries' purported conduct involving forced labor imports or excess manufacturing capacity triggers USTR's discretionary authority under Section 301. Specifically, importers may argue that the purported conduct by other countries does not constitute "acts, policies, or practices" that are "unreasonable" and "burden[] or restrict[]" U.S. commerce within the meaning of the statute. In the Excess Capacity Investigation, for example, some commentators argue that the purported existence of excess manufacturing capacity in some other countries is an "outcome" rather than an "act," "policy," or "practice" on the part of those countries.

Regarding the Forced Labor Investigation, Section 301 specifies that "[a]cts, policies, and practices that are unreasonable include, but are not limited to, any [that] constitute[] a persistent pattern of conduct that [] permits any form of forced or compulsory labor," as well as certain other practices that do not concern forced labor. CRS did not identify any judicial decisions considering the scope of this language. It may be uncertain whether a country's failure to effectively prevent the importation of goods made with forced labor in another country would necessarily rise to a "persistent pattern of conduct that [] permits" forced labor. Two potential definitions of "persistent," referring either to long duration or obstinacy, could contribute to this uncertainty.

It may also be debated whether USTR's authority to address "unreasonable" conduct encompasses forced labor-related conduct that does not constitute a "persistent pattern of conduct." On one hand, the words "include, but [] not limited to," may indicate that other types of conduct relating to forced labor may also be "unreasonable," and therefore actionable, under Section 301. On the other hand, Congress's specificity in defining as unreasonable a "persistent pattern of conduct" that "permits" forced labor may imply the exclusion of conduct regarding forced labor that does not rise to that level. The phrase "include, but are not limited to," prefaces a list of various types of conduct in addition to forced labor. One reading of this provision could be that "unreasonable" may include additional types of conduct, but where a specific category is listed, USTR's authority is limited in addressing that specific category.

Under the Supreme Court's holding in *Loper Bright Enterprises v. Raimondo*, "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," including in cases where a statute may be ambiguous. According to this holding, courts might refer to various principles of statutory interpretation to resolve questions regarding the meaning of Section 301. A court could give USTR's interpretation of the law some weight if it found it persuasive, but it would not be obligated to defer to USTR's interpretation of the law.

Does the Major Questions Doctrine Affect the Interpretation of Section 301?

Under a principle known as the major questions doctrine, the Supreme Court has held that the executive branch must have "clear congressional authorization" when it takes action of such extraordinary "history and breadth" or "economic and political significance" that there is "reason to hesitate before concluding that Congress meant to confer such authority." When the major question doctrine applies, broad but ambiguous statutory language may not confer significant authority. Instead, the agency must cite a more specific, "clear" authorization. The Court has indicated that the doctrine is more likely to come into play where an agency "discover[s] in a long-extant statute an unheralded power representing a transformative expansion in its regulatory authority."

Some commentators suggest that the scope of the authority USTR claims in the Forced Labor Investigation and Excess Capacity Investigation raises major-questions concerns. Previous Section 301 actions have typically addressed conduct by a single foreign country. In 2019–2020, USTR conducted contemporaneous investigations into 11 countries' digital services taxes (DST). USTR proposed tariffs in some of the DST investigations but ultimately did not impose any. If Section 301 is used to impose tariffs on imports from as many as 60 countries accounting for more than 99% of U.S. imports, as proposed in the Forced Labor Investigation, challengers may argue that USTR's action represents an "unheralded" and "transformational" use of the statute. The economic and political significance of imposing tariffs on a large percentage of U.S. imports could also support application of the major questions doctrine, as three Justices opined when the Supreme Court struck down worldwide tariffs imposed under IEEPA.

If the major questions doctrine applies, it could lend support for a narrower construction of the "unreasonable" or "burdens or restricts" elements for discretionary action or other provisions of Section 301. For example, opponents of USTR's actions might argue the major questions doctrine precludes USTR from treating as "unreasonable" conduct that is purportedly so widespread it would justify imposing tariffs on most U.S. imports.

Proponents of using Section 301 tariffs to impose tariffs in the Forced Labor Investigation and Excess Capacity Investigation may argue that the statute provides clear authorization for such action, precluding application of the major questions doctrine. Notably, unlike IEEPA, Section 301 specifically authorizes tariffs. Section 301 also does not expressly limit the number of trading partners USTR may address in a single action, arguably supporting USTR's authority for multi-country tariffs. Given USTR's explicit authority to impose tariffs under Section 301 and its past practice in doing so, proponents may argue that any tariffs imposed in the Forced Labor Investigation and Excess Capacity Investigation would not represent a "transformative" or "unheralded" use of the statute, regardless of whether they differ in scale from past Section 301 actions.

Does the Administrative Record Support USTR's Action?

In addition to the above questions regarding the scope of Section 301 itself, courts could be faced with adjudicating fact-specific disputes over whether final actions in the Forced Labor Investigation or the Excess Capacity Investigation are supported by "substantial evidence" and are otherwise justified under the APA's "arbitrary and capricious" standard. In the Excess Capacity Investigation, for example, factual disputes could arise regarding whether any excess capacity findings are supported by sufficient evidence and consistent methodologies.

In the Forced Labor Investigation, courts could potentially consider whether USTR has adequately supported its conclusions that the 60 trading partners at issue have in fact failed to impose or effectively enforce a prohibition on forced labor imports, that this failure "burdens" U.S. commerce, or that the proposed tariffs are appropriate to remedying this failure. Some commentators argue that USTR has made cursory factual findings, that it failed to show a burden to U.S. commerce on a country-by-country basis, and that the proposed tariff rate for each country may be tied to considerations other than the country's forced labor practices. In response, USTR may argue, for example, that detailed, country-specific findings were not needed to demonstrate that other countries lack (or fail to enforce) prohibitions on imports made with forced labor. USTR may also argue that Section 301 grants USTR broad authority to select "appropriate and feasible action . . . to obtain the elimination of [the foreign] act, policy, or practice."

As in past Section 301 litigation, courts might consider whether USTR adequately addresses significant comments it receives through the Forced Labor Investigation and the Excess Capacity Investigation. One potential issue is whether USTR's "accelerated timeframe" for these investigations allowed sufficient time to respond to significant comments.

The lower-court proceedings in *HMTX Industries* illustrate that courts may sometimes give USTR an opportunity to cure procedural defects in Section 301 actions. The CIT initially found that USTR had not adequately responded to comments critical of imposing tariffs on additional imports from the PRC.

Rather than vacate the tariffs, the CIT gave USTR an opportunity to provide additional justification. After USTR did so, the CIT upheld the modified tariffs, a decision that was affirmed by the Federal Circuit.

Options for Congress

Using its constitutional power over tariffs, Congress could amend Section 301 to augment, restrict, or clarify USTR's authorities. As one potential approach if Congress sought to assert greater congressional control over the use of Section 301, Congress could amend the statute to require enactment into law of a joint resolution of approval in order to impose tariffs.

Congress could also act to approve or disapprove of the specific USTR actions at issue. One question might be whether USTR's final actions in the Forced Labor Investigation, Excess Capacity Investigation, or other Section 301 investigations are subject to fast-track disapproval under the Congressional Review Act (or CRA, 5 U.S.C. §§801–808). The CRA requires agencies to submit to Congress any final actions meeting the APA's definition of a *rule* ("the whole or a part of an agency statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy"), with some exceptions. The CRA provides special procedures for Congress to consider a joint resolution of disapproval to overturn final agency rules within a limited time after they are submitted. Joint resolutions of disapproval are subject to veto by the President before they may become law.

Final Section 301 actions could raise questions regarding whether they might be considered rules subject to the CRA, insofar as they prescribe legal obligations (e.g., to pay tariffs) that are generally applicable (e.g., to all importers of certain goods). As a practical matter, Congress's ability to invoke the CRA's fast-track procedures has been contingent either on the agency submitting the rule to Congress or on the Government Accountability Office (GAO) issuing an opinion that an unsubmitted action meets the CRA definition of a rule. To date, it does not appear USTR has submitted any Section 301 actions to Congress under the CRA, suggesting the agency might be unlikely to submit future Section 301 actions. Congress's ability to use the CRA therefore might depend on GAO concluding that a Section 301 action constitutes a rule under the CRA.

In 2026, some Members of Congress asked GAO whether different tariff actions should have been submitted to Congress and subject to CRA review. In June 2026, GAO issued an opinion concluding that a Department of Commerce report supporting the President's imposition of copper tariffs under Section 232 of the Trade Expansion Act of 1962 was not a rule for purposes of the CRA. Section 232 grants the President authority to decide what action, if any, to take to "adjust the imports" of specific goods if Commerce submits a report finding that those imports threaten national security. GAO determined that the Commerce report did not itself prescribe law or policy, reasoning that it "merely outlined findings and proposed actions for the President to evaluate as final decisionmaker." Unlike Section 232, Section 301 charges the agency itself (USTR) with determining import restrictions, albeit "subject to the specific direction, if any, of the President." A different analysis, therefore, might govern final Section 301 actions.

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