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Section 301: Understanding U.S. Trade Investigations and Enforcement

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Introduction

Agricultural producers and exporters depend heavily on foreign markets. Foreign trade barriers like tariffs can increase input costs and affect the competitiveness of U.S. producers. For example, in 2025, China prohibited the importation of U.S. soybeans, leaving U.S. producers with fewer export opportunities, lower prices, and higher costs. Because soybeans account for 47% of all U.S. agricultural exports to China, this prohibition was particularly difficult for U.S. producers.

Provisions like Section 301 of the Trade Act of 1974 provides the United States with an important tool to respond to unfair foreign trade practices and trade agreement violations. It grants the Office of the United States Trade Representative ("USTR") the authority to investigate and act on violations of U.S. rights under trade agreements and unfair or unreasonable foreign trade practices. If the USTR finds that a foreign government has engaged in an unfair trade practice, Section 301 may allow trade restrictions, including tariffs, on foreign countries. This factsheet explains the USTR's process for using Section 301, how producers can participate, and how Section 301 actions may affect the agricultural industry.

The Statute

Section 301 of the Trade Act of 1974 authorizes the USTR to investigate foreign government acts, policies, and practices that either violate U.S. rights under a trade agreement or otherwise burden U.S. commerce. 19 U.S.C. § 2411. Section 301 provides both mandatory and discretionary action situations for the USTR.

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USTR takes action when it determines that the rights of the United States under any trade agreement are being denied, or when an act, policy, or practice of a foreign country either: (1) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the U.S. under any trade agreement, or (2) unjustifiably burdens or restricts U.S. commerce. Id. at § 2411 (a). An "unjustifiable" act or policy is one that violates or is inconsistent with the U.S.'s international legal rights. Unjustifiable conduct can include denying national or most-favored-nation treatment, denying the right of establishment, or denying protection of intellectual property rights. Id. at § 2411 (d)(4). Most-favored-nation treatment generally means that a nation has promised to treat another nation as well as it treats other trading partners with preferential treatment.

The right of establishment, on the other hand, addresses private party expansion into other countries, and considers whether branches, subsidiaries, and other businesses are permitted to be established in the foreign country. Denial of these rights can function as "unjustifiable" conduct under §301. The USTR works to eliminate the act, policy, or practice and ensure that the resulting impact on the foreign country's goods and services is equivalent to the burden imposed on U.S. commerce.

As a first step, USTR generally will prepare a damage assessment and retaliation list. In a damage assessment, USTR assesses the level of damage to the U.S. industry because of the foreign act, policy, or practice. In turn, USTR will develop a proposed retaliation list and invite public comments before implementing it. Action can be taken against any economic sector of the foreign country, even if that sector was not involved in the practice subject to investigation.

USTR may also act in situations where it determines that a foreign country's act, policy, or practice is unreasonable or discriminatory and burdens or restricts U.S. commerce. Here, USTR has discretion to determine whether U.S. action would be appropriate. "Unreasonable" generally refers to acts, policies, or practices that are unfair and inequitable, even if they do not violate international legal rights. In the past, U.S. government attorneys have said unreasonable practices include actions such as denying workers' rights through collective organization and bargaining or minimum standards for wage, hours, and safety, denying fair opportunities to establish enterprises, or export targeting. Unreasonable conduct also includes a foreign country tolerating systemic anticompetitive activities by enterprises that restrict access to foreign markets. 19 U.S.C. § 2411 (d)(3)(b)(iv). In contrast, "discriminatory" refers to acts that deny national or most-favored-nation treatment to U.S. goods, services, or investments. While discriminatory conduct overlaps with unjustifiable conduct because denial of national treatment violates both, unjustifiable conduct requires violation of U.S. international legal rights. If the USTR determines that a foreign country's actions are unreasonable or discriminatory, it has discretion to take all appropriate and feasible actions to eliminate the act, policy, or practice.

Investigations

How Are Investigations Triggered?

Section 301 outlines multiple triggers for an investigation. The primary methods are petitions filed by an interested person and self-initiation by the USTR. 19 U.S.C §2412. Additionally, there is a third route specific to designated priority foreign countries. 19 U.S.C. § 2242. In the majority of cases, the USTR must provide interested parties with notice of the investigation and a comment period, which is generally done through publication in the Federal Register.

An investigation may begin when an interested person files a petition with the USTR requesting action against a foreign country's act, policy, or practice. The petitioner must set forth supporting allegations of the foreign country's conduct. Once the petition is filed, the USTR must review it within 45 days. After doing so, USTR must decide whether to begin an investigation. Whether or not an investigation ultimately begins, the USTR must publish notice of its decision in the Federal Register.

Alternatively, the USTR may also self-initiate an investigation under Section 302(b) when it determines that an investigation is warranted to determine whether a foreign country's act, policy, or practice is actionable. 19 U.S.C § 2412. If the USTR decides to proceed, it also must publish its determination in the Federal Register and initiate the investigation. Unlike a petition-based investigation, self-initiation allows the USTR to act without a formal request. In both cases, though, the USTR must provide interested parties with an opportunity to submit comments about the investigation.

Section 301 also contains special procedures for countries identified as "priority foreign countries" under 19 U.S.C. § 2242. Priority foreign country procedures are tied to intellectual property rights. Specifically, this situation addresses countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons that rely upon intellectual property protection. The statute requires USTR to identify countries with the "most onerous or egregious acts, policies, or practices" that have the greatest adverse impact on U.S. products and are not entering into or making progress in trade negotiations. For example, in April 2026, USTR identified Vietnam as a priority foreign country because it failed to provide enforcement mechanisms to combat online piracy and counterfeiting, and to enforce against unlicensed software use and cable and satellite signal theft. Once a country is identified as a priority foreign country, the USTR must decide whether to investigate those acts under Section 301. Reviews are conducted throughout the year to identify, remove, or add countries to the priority foreign country list. Conduct indicating that a country may be removed from priority foreign country status includes good faith negotiations or elimination of the act, policy, or practice.

Additionally, USTR has created two non-statutory categories meant to identify countries with intellectual property rights deficiencies not rising to the level of a

priority foreign country. The categories include a "priority watch list" and "watch list." Countries are placed on the Priority Watch List when its acts, policies, and practices warrant concern but do not meet all criteria to be designated as a priority foreign country. The USTR may place a country on the Priority Watch List when the country "lacks proper intellectual property protection and has a market of significant U.S. interest." At the lowest level, the Watch List is used to designate countries that have inadequate intellectual property protection, but the inadequacies are not severe enough to be placed on the Priority Watch List.

What Happens When an Investigation Begins?

Step 1: "Notice and Comment"

First, USTR must publish notice of the investigation and give the public an opportunity to submit comments. USTR must give the public at least 30 days to comment on the investigation after USTR had published notice of the investigation. 19 U.S.C. § 2414. The notice-and-comment process gives interested parties an opportunity to influence the investigation by submitting evidence and explaining how the foreign country's actions affect their interests. For instance, members of the agricultural community may submit information about the economic harm of the foreign country's policy or how a particular Section 301 action may have domestic consequences. Interested parties should use these opportunities to provide information that supports their position and assists USTR in evaluation of the alleged practice. As mentioned below in "Examples of Final Determinations," a party's comment could influence the action taken by USTR. Parties can view USTR investigations available for comment here.

Step 2: Public Hearing and Consultations

In addition to online notice and comment procedures, the USTR may provide a public hearing if an interested person requests one. Interested persons include domestic firms and workers, representatives of consumer interests, U.S. product exporters, and any industrial user of any goods or services that may be affected by action taken under the investigation. *Id*. at § 2411. A hearing provides additional opportunities for parties to present their positions and explain the consequences of action or inaction. During the investigation, USTR will also consult with appropriate congressional committees under 19 U.S.C. § 2155, which includes the Advisory Committee for Trade Policy and Negotiations. Finally, USTR may also request that the International Trade Commission (ITC) analyze the probable economic consequences of USTR's proposed action.

Step 3: Government-to-Government Consultations

Investigations must include formal "government-to-government" consultations if a trade agreement exists. These consultations allow the U.S. to seek resolution with the foreign country and avoid action under Section 301. These consultations can result in negotiated settlements based on the country's agreement to do any of

the following: end the practice, compensate the U.S., or otherwise follow specified terms.

For most investigations involving trade agreements and dispute settlement proceedings, a determination is required either 18 months after the beginning of the investigation or 30 days after dispute settlement, whichever is earlier. 19 U.S.C. § 2414. However, if a trade agreement is not involved, USTR must issue a determination 12 months after the investigation begins.

Expeditious Action: A Delay to Comment

However, Section 301 also permits the USTR to proceed on an expedited basis when "expeditious action is required." The typical consequence of this determination is that USTR can make a final determination before completing notice-and-comment procedures. Even in this case, however, USTR still must offer an opportunity for interested parties to comment on the determination.

While "expeditious action" has not been defined in statute, regulations, or case law, past USTR actions illustrate when the term may apply. In 2009, Canada did not impose export measures on Canadian softwood lumber exports despite an existing Softwood Lumber Agreement ("SLA") with the U.S.. An arbitration tribunal—a body of impartial individuals that resolve disputes outside of normal court—found Canada liable under the SLA and ordered Canada to cure its breach within 30 days. Canada failed to do so. As a result, USTR determined expeditious action was required and imposed a 10% ad valorem duty on Canadian lumber imports. Specifically, USTR determined that expeditious action was required after the tribunal allowed the U.S. to impose duties matching the export charges specified as compensation for the breach—thereby requiring swift action—and after consulting with the Section 301 Committee.

Similarly, in 1996, USTR investigated China as a priority foreign country over concerns that the country failed to address intellectual property piracy. Despite negotiations and an agreement with the U.S., China's piracy remained rampant, flooding pirated items subject to U.S. intellectual property protections into other countries. Because it was deemed essential to prevent surges of imports in the U.S. market, USTR determined that expeditious action was necessary.

Even in that situation, the U.S. imposed prohibitive tariffs only on products most likely to be subject to the surge; otherwise, USTR asked for comments on what other products should be subject to the tariff. In most cases, actions instead follow the full notice-and-comment process. Both situations were determined to be expeditious, which allowed USTR to bypass the notice-and-comment process before issuing a final determination. However, in both cases, USTR allowed for notice and comment at some point through post-determination comment periods.

Examples of Conduct that Triggered Investigation

Various types of foreign conduct can also trigger an investigation. For example, in 2026 President Trump directed the USTR to investigate 60 countries for alleged failures to impose and enforce prohibitions on the importation of goods produced with forced labor. Subsequently, the USTR asserted that despite reciprocal negotiations and agreements to adopt measures intended to stop the importation of products produced using forced labor, "none of these countries have adopted and effectively enforced a forced labor import prohibition to date." Further, USTR decided to impose tariffs on all 60 countries in the investigation, with tariff rates of 10% or 12.5%. For more information on this investigation and the litigation challenging those tariffs, please see the NALC's article titled "**Section 301 Tariffs Challenged**."

In older examples, in 2016 the EU banned importation of beef and beef products produced from animals with growth-promoting hormones. The effect, as noted by USTR, was to "prohibit the import of all but specifically produced U.S. beef and beef products." The investigation led to an agreement between the U.S. and EU that allocated most of the tariff-rate quota to U.S. high-quality beef. USTR has similarly investigated Japanese market-access barriers affecting certain agricultural products. USTR alleged that for each agricultural product Japan requires quarantine treatment, "Japan prohibits the importation of each variety of that product until the quarantine treatment has been tested for that variety, even though the treatment has proven effective with respect to other varieties of the same product." For example, Japan agreed to permit imports of U.S. Red Delicious varietal apples based on Japan's determination that treatment of the fruit from inspected orchards would be effective against an invasive plant pest. However, Japan "has refused to allow other varieties of apples.. to be imported into Japan unless lengthy and expensive tests are performed on *each* variety [Gala, Fuji, Granny Smith] to prove the efficacy of the same treatment" used on the Red Delicious varietal. The investigation led to an agreement between the countries, with Japan ultimately abolishing the varietal testing requirement and developing a new quarantine methodology.

Not every request for an investigation is granted, however. For example, in 2022 the USTR did not pursue a petition regarding Mexico's perishable agricultural products because the allegations were so broad that it could not conclude its review in a 45-day period.

Beyond concerns about goods themselves, Section 301 can also address intellectual property in regards to agriculture. For example, in 1998, India was investigated for failure to comply with obligations under the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement to establish a mechanism for filing product patent applications, which included agricultural chemicals. After the investigation, India agreed to comply with its obligations and amend its laws. Thus, USTR did not act under Section 301.

The Final Determination

Once the investigation is complete, the USTR must determine whether actionable conduct exists and, if so, what action to take. Historically, Section 301 has been used to build cases with a goal of dispute settlement through the WTO. More recently, however, Section 301 has been used more directly, to impose tariffs on foreign countries. As discussed above, in 2026 President Trump directed an investigation of dozens of countries for their alleged failures to prohibit the importation of goods produced with forced labor. These investigations resulted in tariffs of up to 12.5% on the investigated countries products.

Although Section 301 authorizes USTR to take action against foreign countries, it does not require USTR to act in every instance. Instead, inaction may be the right path depending on the country's willingness to negotiate and find resolution. USTR does not have to act on a foreign county's acts, policies, or practices if USTR finds that the country is taking satisfactory measures to grant the rights of the U.S. under a trade agreement or other imminent solution, agreed to eliminate or phase out the act, policy, or practice, or agreed to provide the U.S. with compensatory trade benefits. For example, in 1997, USTR received a petition alleging that subsidized Canadian exports were "undercutting U.S. prices to major U.S. export markets" and had led to "a dairy processor mov[ing] to Canada… to benefit from Canadian dairy export subsidies." This investigation led USTR to enter a WTO dispute settlement proceeding with Canada. The WTO recommended that Canada bring its dairy products marketing regime into conformity with its obligations and shortly after, Canada and the U.S. reached a mutually agreed upon solution outside of Section 301 action. Generally, WTO dispute settlement proceedings use a panel of WTO members to study the facts of the dispute, issue a report, and require the losing country to follow the final ruling. For more information on the WTO, please see Understanding the WTO. Thus, while USTR can take action against a foreign country through Section 301, it may decide not to when a foreign country is willing to negotiate resolution.

If USTR determines that foreign acts or practices warrant a response, Section 301 provides the USTR with several mechanisms for addressing that conduct, including direct trade restrictions and suspending concessions. Under the Trade Act, USTR may suspend, withdraw, or prevent the application of trade agreement concessions; impose duties or other imports or restrictions (quotas); withdraw or suspend preferential duty treatment on the country's goods; or enter into binding agreements with the foreign country. If it decides to impose duties or other import restrictions on a foreign county, it must prioritize duties over other import restrictions and consider substituting an equivalent duty for any other import restrictions imposed. For example, USTR has investigated and acted on the EU's policy discriminating against U.S. banana marketing companies importing bananas from Latin America. There, the USTR has imposed a 100% ad valorem duty rate on certain products against the EU after determining that despite negotiations, the banana regime continued to have "discriminatory" impacts on U.S. banana marketing companies. Overall, USTR may resort to direct

trade restrictions when negotiations fail to resolve the challenged conduct, and Section 301 provides several mechanisms for imposing retaliation on foreign countries.

Section 301 ultimately provides USTR with flexibility in determining how to handle foreign trade practices. Depending on the circumstances, USTR has discretion to pursue negotiations, rely on international dispute settlement, or impose tariffs.

Examples of Actions Adversely Impacting U.S. Economy Disproportionately:

Although USTR has discretion in selecting an appropriate response, its decisions must consider the potential consequences on the U.S. economy. Under 19 U.S.C. §2411, USTR has authority to decline to act if an action will: (1) have disproportionate impacts on the U.S. economy, or (2) is likely to cause serious harm to U.S. national security. 19 U.S.C. § 2411(a). The United States International Trade Commission ("USITC") recognizes that some Section 301 actions may have an unwanted and adverse impact on the United States economy. As a result, it recognizes that some actions should be narrowed "with an eye towards imposing tariffs on products that are of export interest to the country… while avoiding tariffs that would cause disproportionate economic harm to U.S. consumers and industries." With that in mind, in many cases USTR has narrowed final actions in response to these concerns.

One example of where the USTR has narrowed final actions is where commenters raised concerns about the disproportionate impact on the US economy. For example, in a maritime action against China, commenters stated that a portion of the proposed action—the fee schedule for Chinese vessels—would disproportionately affect certain U.S. commodities, especially those that used bulk carriers for international transport. In response, USTR decreased the net ton vessel capacity fee from $1,000 to $50.

However, concerns about disproportionate economic harm do not necessarily prevent USTR from maintaining tariffs. In 2018, USTR investigated China's practices relating to technology transfer and intellectual property. USTR determined China engaged in unreasonable and discriminatory practices because of China's forced technology transfer requirements, cyber-enabled theft of U.S. intellectual property, discriminatory licensing practices, and state-funded acquisitions of U.S. assets. USTR imposed tariffs targeting apparel, home goods, and other fashion products from the country. Concerns were raised that those tariffs had a disproportionate impact on the U.S. economy. Further, USITC stated that these tariffs were not only a tax increase on American families, but also prevented the importation of goods for retail and apparel brands in the U.S. After further consideration, in October 2026, the USTR issued a formal notice continuing the tariffs currently in place against Chinese products, despite USITC's concern.

Another reason why USTR may narrow final actions is where the foreign country is engaged in negotiations that may change the situation. For example, in 2019 the USTR imposed duties on products—including large civil aircraft—of EU member

states because those countries failed to enforce U.S. rights under the World Trade Organization ("WTO") Agreement. However, two years later, USTR suspended tariffs against the U.K. because the U.S. aircraft industry needed relief, the U.K. showed greater willingness to negotiate a resolution, and "promoting a successful resolution . . . provides benefits to the U.S. economy that outweigh any adverse impacts."

In practice, rather than abandoning Section 301 altogether, the USTR has narrowed, modified, or suspended retaliatory actions to mitigate disproportionate harm to U.S. consumers and to encourage progress toward a negotiated resolution. While these considerations do not guarantee that the USTR will eliminate or reduce its proposed action, they are encouraging for interested parties that comment on the investigation.

Modifications and Terminations

Before modifying or terminating an existing action, USTR must follow certain procedural requirements designed to provide affected parties with an opportunity to participate. Generally, USTR must give interested parties an opportunity to submit comments on how they may be affected by the change. Additionally, the USTR must first consult with the petitioning party and any representatives of the applicable domestic industry. 19 U.S.C. § 2417. USTR notifies the petitioning party and representatives of the domestic industry of any termination at least 60 days before the date of termination, usually through mail or email. For example, in reviewing tariffs on China, USTR identified representatives of domestic industries by reviewing the interested parties that previously submitted comments in support of the tariff. After compiling a list of the applicable representatives, USTR sent letters notifying the interested persons of the potential change to Chinese tariffs.

After consultation, the USTR may modify or terminate an existing action under two circumstances. First, the USTR may modify or terminate an action when the conditions described in § 2411 are met. The conditions described in 19 U.S.C. § 2411 that allow modification or termination include compliance with a trade agreement, elimination of the act, policy, or practice that led to action, or compensatory measures taken by the country. This can occur when the country takes steps to resolve the underlying dispute. For example, consider the situation described above where duties were imposed on EU products, including large civilian aircraft. In that case, the UK initiated negotiations with the USTR to address the underlying trade dispute. Because the UK attempted to eliminate the actions that led to action and initiated negotiations, the USTR modified and ultimately terminated the duties imposed on UK products. In contrast, the second the USTR may also modify or terminate an action when the burden or restriction on U.S. commerce of the denial rights, or the acts, policies, and practices that are subject to action, have increased or decreased. In practice, this can involve both modification or termination because a foreign country may increase or decrease its unfair trade practices. If it increases, the USTR may increase retaliatory action against the country. If the policy or practice decreases, the USTR may modify or terminate the action accordingly.

Ultimately, these provisions give the USTR latitude to adjust or terminate trade actions as circumstances change. In all cases, however, the USTR must follow notice and comment procedures.

Conclusion

Overall, Section 301 serves as a mechanism for the U.S. to address unfair trade practices. It gives the USTR opportunities to act when foreign governments violate trade agreements or impermissibly burden U.S. commerce. The tools available range from tariffs to binding agreements with the offending country. For the agricultural industry, Section 301 can cut both ways. Applicable actions can open foreign markets and pressure trading partners to end barriers that hurt producers; however, the same tariffs can raise costs and disrupt export relationships. As new investigations move forward, producers and interested parties should use the comment opportunities provided by statute.

Resources

Statutory authority: Trade Act of 1974
USTR Rulemaking in Federal Register: Trade Representative, Office of the United States
Section 301 Investigations (Past and Present): Section 301 Investigations
Opportunities for comment on investigations by USTR: USTR Comment Portal
Procedure for Filing a Petition (Including Address of Delivery): Petitions
Congressional Research Service Discussion of Section 301: Section 301 of the Trade Act of 1974