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## Section 301 Investigation: China's Maritime, Shipbuilding, and Logistics Policies

On April 17, 2024, the Office of the United States Trade Representative (USTR) announced that it had initiated a new investigation pursuant to Section 301 of the Trade Act of 1974. This investigation focuses on the acts, policies, and practices of the People's Republic of China (PRC or China) that USTR says seek to establish global dominance in the maritime, logistics, and shipbuilding sectors. USTR's announcement follows its review, in consultation with the interagency Section 301 Committee, of a petition filed in March 2024 by labor unions requesting a Section 301 investigation.

Some Members of Congress have expressed support for the labor unions' petition and USTR's initiation of the Section 301 investigation. More broadly, China's drive to develop an integrated global maritime supply chain and project its maritime power globally has intensified debate among some in Congress about the state of the U.S. commercial shipbuilding industry. (For more detail, see CRS In Focus IF12534, *U.S. Commercial Shipbuilding in a Global Context*.) The debate also reflects growing congressional concerns about whether the United States has sufficient shipbuilding capability and capacity to address current and emerging threats to U.S. economic and national security.

### What Is Section 301?

Title III of the Trade Act of 1974 (Sections 301-310, codified at 19 U.S.C. §§2411-2420) is collectively referred to as "Section 301." It grants USTR a range of responsibilities and authorities to investigate foreign trade practices and impose trade sanctions on foreign countries found to violate U.S. trade agreements or engage in acts that are "unjustifiable," "unreasonable," or "discriminatory" and burden U.S. commerce. Prior to 1995, the United States often used Section 301 to unilaterally 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 World Trade Organization (WTO), strongly supported by the United States at the time, significantly reduced the use of Section 301. While the United States retains the flexibility to seek recourse for foreign unfair trade practices at the WTO or under Section 301 authorities, trading partners may challenge at the WTO a USTR determination to bypass WTO dispute settlement procedures and unilaterally impose retaliatory measures in response to a Section 301 investigation.

Between 2017 and 2020, USTR launched Section 301 investigations against China, the European Union (EU), France, a group of 10 trading partners, and Vietnam. Two investigations resulted in USTR imposing tariffs: on U.S. imports from China (2018) and the EU (2019). The U.S. action against the EU, unlike that against China, was based on the outcome of a WTO case in which USTR anticipated

being authorized to retaliate. (For more detail, see CRS In Focus IF11346, *Section 301 of the Trade Act of 1974*.)

### Section 301: Shipbuilding and Maritime Transportation Subsidies

In 1979, Congress amended Title III of the Trade Act of 1974 and added a provision in response to growing concerns about the rapid and continued decline of the U.S. commercial shipbuilding industry. In the Trade Agreements Act of 1979 (P.L. 96-39), Congress provided explicitly that subsidies by foreign governments for the construction of oceangoing vessels used in the commercial transportation of goods between the United States and other countries were within the purview of Section 301. The amendment is codified at 19 U.S.C. §2411(d)(2).

### The Petition and the Unions' Allegations

The petition to initiate the current Section 301 investigation was filed on March 12, 2024, by five major U.S. labor unions: (1) United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; (2) International Association of Machinists and Aerospace Workers; (3) International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; (4) International Brotherhood of Electrical Workers; and (5) Maritime Trades Department, AFL-CIO. The petition alleges that the PRC government, through nonmarket means, has "seized market share, suppressed prices, and created a worldwide network of ports and logistics infrastructure that threaten[s] to discriminate against U.S. ships and shipping companies, disrupt supply chains and undermine vital [U.S.] national security interests."

Specifically, the petition contends that China has pursued the explicit goal of dominating the global shipbuilding, maritime, and logistics sectors and "has funneled hundreds of billions of dollars and adopted numerous supporting policies to achieve" it. The petition presents a number of "complaints" involving the PRC government, including (1) directed mergers and anticompetitive activities, (2) intervention to support and grow the PRC shipbuilding industry, (3) favorable treatment and preferences/mandates for PRC-built ships, (4) policies targeting upstream inputs and technologies, (5) state-backed intellectual property theft, and (6) controls on freight rates and cargo space allocations. These actions, the petitioners claim, are "unreasonable, unfair, inequitable, and discriminatory"; create global overcapacity in the shipbuilding sector; and prevent the U.S. shipbuilding industry and its upstream suppliers from maintaining needed production and jobs in the United States. The petition also asserts that these actions have affected "significant interests" of the unions.

To address these issues and concerns and thereby, the petition asserts, make it possible for the U.S. shipbuilding industry to recover and operate sustainably, the petitioners request that USTR (1) “impose a fee on every [PRC]-built vessel that docks at a [U.S.] port”; (2) establish “a shipbuilding revitalization fund with proceeds from the fee to support investments in the domestic shipbuilding industry’s capacity, supply chains, and workforce”; (3) take actions to “support stronger demand for U.S.-built vessels in light of unfair competition from China” and “address China’s drive to dominate port and logistics infrastructure platforms and equipment”; and (4) negotiate “with other major shipbuilding countries to address any concerns about their own government support programs and coordinate measures to address China’s unfair practices.”

Some observers have questioned the unions’ claims and expressed concern about the potential implications of implementing some these remedies, noting that it could trigger a spiral of increased protectionist measures by other countries and adversely affect global economic growth and the rules-based trading system. Others also contend that China’s subsidies have benefitted U.S. consumers of ships and shipping services by keeping prices low.

### Next Steps

During the Section 301 investigation and prior to making a determination on whether to take action, USTR is required to consult with the petitioner and seek advice from private sector advisory representatives. The agency can—but is not required to—request the views of the U.S. International Trade Commission (USITC) concerning the impact that a proposed retaliatory action could have on the U.S. economy. Doing so might help USTR avoid taking an action that could have negative effects on industries or sectors other than those petitioning for an investigation.

Section 301 generally requires that investigations be concluded within 12 months. USTR has discretion to determine, after carrying out an investigation, whether action under Section 301 would be effective in addressing the issues and concerns raised in the petition. 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 burden to U.S. commerce) or compensate the United States with satisfactory trade benefits. The USTR may also restrict the terms and conditions or deny the issuance of any “service sector access authorization.” Authorizations include licenses and permits that allow a foreign supplier of services access to the U.S. market. The President is also authorized to take any action within his or her power “with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country” to obtain the elimination of the policy or practice under investigation.

Should USTR determine that China’s conduct is actionable under Section 301 and take unilateral action in this case, China could potentially pursue WTO dispute settlement or retaliate by targeting U.S. exports or firms, as it did in response to prior Section 301 actions by USTR.

USTR requested consultations with the PRC government; accepted public comments on the investigation between April 17 and May 22, 2024; and held a public hearing on May 29, 2024. The investigation may entail a detailed review of PRC government measures; their impact on the U.S. economy, including on U.S. workers; and legal analyses of the interplay between the measures and legal standards set under Section 301. The agency may seek to address several issues, including the following:

- What are the policies and practices of the PRC government with respect to the maritime, logistics, and shipbuilding sectors? What efforts is China undertaking to dominate these sectors, including the upstream and downstream supply chain and shipping services?
- Are these PRC policies and practices unreasonable or discriminatory? Do they burden or restrict U.S. commerce? If so, what is the nature and level of the burden or restriction on U.S. commerce (e.g., on any sector/industry or labor in the United States)?
- What other policies and practices relating to these sectors might be included in this investigation or addressed through other applicable mechanisms?
- Is the PRC government’s conduct inconsistent with China’s international commitments and obligations under the WTO or other agreements? If so, should the United States invoke WTO dispute settlement procedures?
- Are the applicable policies and practices of the PRC government actionable under Section 301? If so, what action, if any, should the United States take to obtain their elimination?

### Considerations for Congress

The use of Section 301 authorities does not require formal approval by Congress or an affirmative finding by an independent agency such as the USITC. As a result, the President has broad discretion in determining when and how to act. Congress, however, could engage in oversight of the investigation through hearings with USTR and stakeholders. Should Congress disagree with why or how the investigation is being carried out or disapprove of the President’s potential exercise of authorities under Section 301, Members may also consider legislation to amend Section 301 and the investigatory process.

A decision by USTR not to take action under Section 301 would not preclude other trade policy and economic tools to try to address the matters raised by the labor unions or identified during the course of the investigation. Congress could engage with the Administration to assess the economic and national security implications of China’s growing shipbuilding capabilities; develop legislation and/or administrative actions that would support and benefit the U.S. shipbuilding industry (e.g., grants and tax incentives); and examine the issues raised in the petition and consider any further actions that may be appropriate, including at the plurilateral and multilateral levels (e.g., OECD Council Working Party on Shipbuilding and WTO). In evaluating policy options, Congress may consider potential impacts on the U.S. economy, U.S.-China relations, and the rules-based multilateral trading system.

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