International Trade Update

April 2024

USTR Initiates Section 301 Investigation on China's Policies in the Maritime, Logistics, and Shipbuilding Sectors

Key Notes:

- Five U.S. labor unions filed a petition alleging that certain Chinese government policies have been designed to unfairly capture market share, distort global markets, and provide non-market advantages to Chinese entities in the maritime, logistics, and shipbuilding sectors.
- The petition identifies various acts and practices that burden or restrict U.S. commerce and threaten to undermine U.S. national and economic security.
- Initiation of the investigation establishes a loose timeline for public comments, hearings, a determination, and implementation of potential retaliatory actions.

On March 12, five national labor unions filed a petition with the Office of the U.S. Trade Representative (USTR) under Section 301 of the Trade Act of 1974 requesting an investigation into China's acts, policies, and practices in the maritime, logistics, and shipbuilding sectors. Section 301 may be used to enforce U.S. rights under bilateral and multilateral trade agreements and to respond to unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce. Arguing that "[the] American commercial shipbuilding industry is a shell of its former self," the petition states that in the past 50 years "the number of commercial shipyards in the United States has plunged by more than 70 percent, tens of thousands of jobs have been lost, and the United States now produces only a fraction of one percent of the world's commercial vessels."

The petition alleges that "[t]he biggest obstacle to the industry's recovery is the unfair trade practices of the world's largest shipbuilding nation: China." It states that, beginning as far back as 2001, China has "seized market share, suppressed prices, and created a worldwide network of ports and logistics infrastructure that threaten to discriminate against U.S. ships and shipping companies, disrupt supply chains, and undermine vital national security interests." The petition further alleges that Chinese state-owned enterprises and other facilities in China are now capable of producing over 1,000 ocean-going vessels a year, while the United States currently produces fewer than 10. The Chinese government's Five-Year Plans and Made in China 2025 policies have identified shipbuilding as a key industry, and the petition alleges that China "has funneled hundreds of billions of dollars and adopted numerous supporting policies to achieve the goals laid out in plans for shipbuilding." This supposedly includes various Chinese government interventions, including policy loans from state-owned banks, equity infusions and debt-for-equity swaps, steel plate provided by state-owned steel producers at below-market prices, tax preferences, and other government support.

The petition also alleges that via its Maritime Silk Road initiative, China has promoted state-owned shipping and logistics companies, invested in strategically located foreign ports and terminals, dominated the supply of cranes used at such ports, and promoted the government-sponsored logistics platform LOGINK. The petition argues that, as a result, related Chinese companies "have become leaders in financing, building, operating, and owning port terminals around the world." Such market share allegedly gives China leverage in key industry sectors and access to sensitive maritime traffic data, and it could allow China to abruptly disrupt critical supply chains or otherwise "inflict severe and widespread economic coercion or damage against commercial or state actors that do not align with China's geopolitical goals."

Ambassador Katherine Tai, the U.S. Trade Representative, confirmed USTR's receipt of the 4,000-page petition, noting that, "We have seen [China] create dependencies and vulnerabilities in multiple sectors, like steel, aluminum, solar, batteries, and critical minerals, harming American workers and businesses and creating real risks for our supply chains."

USTR Initiation of Investigation

Upon receipt of the petition, USTR had 45 days to review the allegations and determine whether to initiate an investigation into whether China's acts, policies, and practices are unreasonable, unfair, inequitable, and discriminatory, and whether they have burdened and restricted U.S. commerce. On April 17, USTR initiated the investigation. In determining to initiate the investigation, Ambassador Tai stated, "The petition presents serious and concerning allegations of [China's] longstanding efforts to dominate the maritime, logistics, and shipbuilding sectors, cataloguing [China's] use of unfair, non-market policies and practices to achieve those goals." In accordance with Section 301 statutory obligations, USTR has requested consultations with the Chinese government, is seeking public comments, and is holding a public hearing on the matter.

In citing a lengthy list of the alleged unreasonable and discriminatory actions and policies, USTR noted that, pursuant to the Trade Act of 1974, "[a]n act, policy, or practice is unreasonable if, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, it is otherwise unfair and inequitable." This may include actions that constitute export targeting (i.e., "any government plan or scheme consisting of a combination of coordinated actions … that are bestowed on a specific enterprise, industry, or group thereof, the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise.") It may also include a foreign country's policies or practices in providing "subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States."

Accordingly, the investigation will determine whether the allegations set forth in the petition are unreasonable or discriminatory and burden or restrict U.S. commerce. If so, USTR will determine any appropriate or necessary actions to take in response to China's acts and policies.

Request for Public Comments

Interested parties may submit written comments on any issue covered by the investigation. In particular, USTR is interested in comments concerning:

- China's acts, policies, and practices targeting the maritime, logistics, and shipbuilding sectors for dominance, and whether they are unreasonable and discriminatory
- China's efforts to dominate the global maritime, logistics, and shipbuilding sectors, including the upstream and downstream supply chains, as well as shipping services
- Information on China's other acts, policies, and practices relating to the maritime, logistics, and shipbuilding sectors, including political guidance, directives, and control within state and private enterprises; activities of state-owned or state-controlled enterprises; market access and investment restrictions; opaque regulatory preferences and discrimination; wage-suppressing labor practices; state support of industry (including government guidance funds); and forced technology transfer (including state-sponsored cyber theft of intellectual property) or other means employed by China to achieve its goals, which might be included in this investigation or be addressed through other applicable mechanisms
- Whether China's acts, policies, and practices burden or restrict U.S. commerce, and, if so, the nature and level of the burden or restriction
- Any other views on issues raised in the petition

All comments must be submitted on USTR's electronic portal no later than May 22, 2024, under Docket No. USTR-2024-0005, "Request for Comments on the Section 301

Investigation of China's Acts, Policies, and Practices Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance."

Public Hearing

A public hearing for this investigation will be held on May 29, 2024, beginning at 10:00 a.m. EDT in the main hearing room of the U.S. International Trade Commission. Persons wishing to appear at the hearing must notify USTR of their desire to appear and provide a summary of testimony no later than May 22, 2024. Such notification must be submitted separately on USTR's electronic portal under Docket No. USTR–2024–0004, "Request to Appear at the Hearing on the Section 301 Investigation of China's Acts, Policies, and Practices Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance."

For additional details on the request for public comments and procedures for the public hearing, see USTR's Notice.

Timeline for Investigation and Determination

Generally, upon initiation of a Section 301 investigation not involving an alleged violation of a formal trade agreement, USTR will typically make its determinations on the alleged unfair trade acts, policies, or practices within 12 months. Upon making an affirmative determination to take retaliatory action, USTR must implement that action within 30 days.

Available retaliatory steps under Section 301 to remedy any action or policy found to be unfair or burdensome to U.S. commerce are to impose duties or other import restrictions, withdraw or suspend trade agreement concessions, or enter into an agreement with the foreign government to either eliminate the conduct in question or compensate the United States with satisfactory trade benefits.

FOR MORE INFORMATION

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