

On March 12, 2024, the Office of the US Trade Representative (USTR) announced that it had received a petition from five national labor unions requesting action under Section 301 of the Trade Act of 1974, as amended (Trade Act), to address the People's Republic of China's (PRC) acts, policies and practices in the critical maritime, logistics and shipbuilding sectors.

2024 年 3 月 12 日，美国贸易代表办公室（USTR）宣布其收到来自五个全国性工会组织的一份申请书，请求根据 1974 年《贸易法》（修订版）第 301 条，对中华人民共和国（中国）在关键海事、物流和造船领域的涉嫌行为、政策和做法采取相应措施。

The petitioners allege in this new petition that the PRC has engaged in "non-market" policies through which it has "seized market share, suppressed prices and created a worldwide network of ports and logistics infrastructure that threaten to discriminate against US ships and shipping companies, disrupt supply chains and undermine vital national security interests." To "obtain the elimination of China's practices" and "rebuild a vibrant domestic shipbuilding industry," the petitioners request the following remedies:

申请人在这份新提交的申请书中声称，中国通过采取所谓的“非市场”政策，一直“攫取市场份额，压低价格，并在全球范围内建立港口和物流基础设施网络，因此可能歧视美国船舶和航运公司，扰乱供应链，损害重要的国家安全利益”。为了“消除中国的影响”并“重建一个充满活力的美国国内造船业”，申请人要求采取以下救济措施：

1. A port fee on Chinese-built ships that dock at a US port
对停靠美国港口的中国制造的船舶征收港口费
2. The creation of a Shipbuilding Revitalization Fund with proceeds from the port fee to support investments in the domestic shipbuilding industry's capacity, supply chains and workforce
将港口费收入用于设立“造船业振兴基金”，支持对美国国内造船业产能、供应链和劳动力的投资
3. Actions to support stronger demand for US-built vessels
采取行动支持增加对美国制造的船舶的需求
4. Actions to address China's drive to dominate port and logistics infrastructure platforms and equipment
采取行动应对中国为支配港口和物流基础设施等平台和设备所作的努力
5. Negotiations with other major shipbuilding countries to address any concerns about their own government support programs and to coordinate measures to address China's unfair practices

与其他船舶制造大国协商，解决其对其政府支持计划的顾虑，并协调各种措施以应对中国的不公平做法

Section 301 of the Trade Act authorizes USTR to take a broad array of actions to respond to unfair foreign trade practices that are ultimately determined – after an investigation – to burden or restrict US commerce. USTR may self-initiate a Section 301 investigation or initiate it in response to a petition. A petition may be filed by any interested person, and upon receipt, USTR must review the petition and make a determination within 45 days on whether to initiate an investigation. If an investigation is launched, USTR must decide whether to take responsive Section 301 action within 12 months. Section 301 permits USTR to take all "appropriate and feasible action" to remedy the trade harm, including the imposition of duties and other import restrictions, such as fees.

《贸易法》第 301 条授权 USTR 采取一系列行动，针对经调查后最终确定为对美国商业造成负担或限制的不公平外国贸易行为予以回击。USTR 可自行启动 301 条款调查，也可根据申请启动调查。任何相关人员均可提出申请，USTR 在收到申请后必须在 45 天内进行审核，并决定是否启动调查。如启动调查，USTR 必须在 12 个月内决定是否根据 301 条款采取相应行动。301 条款允许 USTR 采取一切“适当且可行的行动”来纠正贸易损害，包括征收关税和采取其他进口限制措施（如收费）。

Section 301 generally fell into disuse after the launch of the World Trade Organization (WTO) and its dispute settlement mechanism – but that dynamic has changed in recent years, with President Trump's initiation of six new 301 investigations, including a Section 301 investigation on Chinese intellectual property rights (IPR) practices that resulted in the imposition of tariffs on approximately US\$370 billion worth of Chinese imports into the US.

在世界贸易组织（WTO）及其争端解决机制启动后，301 条款属于已被搁置——但近些年随着特朗普总统发起六项新的 301 条款调查，这种态势发生了变化。前述调查之一就是针对中国的知识产权（IPR）行为，该调查导致对价值约 3700 亿美元的中国输美产品征收关税。

The normal remedy at the end of a Section 301 investigation is the imposition of some form of tariff (customs duty) on goods being imported from the target country. The problem with addressing alleged trade practices (e.g., subsidies) involving shipbuilding or maritime transportation and logistics services is that a vessel is only paying a port call at a US port of entry, and the vessel itself is never imported or never actually “enters” the US for purposes of imposition of duties. As such, this new Section 301 petition is seeking the imposition of an extraordinary and unprecedented retaliatory tariff in the form of a port fee that would be assessed on any Chinese-built vessel entering a US port. The petitioners have proposed port fees of US\$1 million per port-call as one of the possible Section 301 remedies.

301 条款调查结束后的常规救济措施是对从目标国进口的货物征收某种形式的关税。在处理涉及造船或海运以及物流服务的涉嫌贸易行为（如补贴）时，关键问题在于船只仅在美国入境港口付费停靠，就征收关税而言，船只本身并未进口或实际“进入”美国。因此，此项新提出的 301 条款申请所要求的是征收非同寻常且前所未有的报复性关税，采取的形式是对进入美国港口的任何中国制造的船只征收港口费。申请人提议，作为可能的 301 条款救济措施之一，对每次靠港征收 100 万美元的港口费。

As noted above, USTR is required to review and respond to the petition within 45 days of receipt, but it is not required to launch the investigation. However, given the president’s strong pro-union leanings, and the fact that the unions almost certainly consulted with USTR prior to finalizing and filing the petition, we expect that USTR will agree to initiate the investigation.

如上所述，USTR 必须在收到申请书后 45 天内进行审核并回应，但并非必然启动调查。不过，鉴于总统对工会的强烈支持，以及几乎可以料定工会在最终确定和提交申请书之前已与 USTR 磋商的事实，我们预计 USTR 将同意启动调查。

This Section 301 petition is not the first effort by the US domestic shipbuilding industry to use this provision of US trade law to address shipbuilding subsidies. In June 1989, the Shipbuilders Council of America (SCA) petitioned USTR under Section 301 to address alleged subsidies by West Germany, Japan, Korea and Norway. The SCA ultimately withdrew that petition weeks after filing it. That effort was followed in the 1990s by a multilateral effort to end shipbuilding subsidies worldwide through an Organization for Economic Cooperation and Development (OECD) negotiation and agreement that was ultimately not ratified by the US. Subsequent efforts by the OECD to address subsidization of shipyards in 2002 and 2010 were similarly abandoned, but the OECD continues to track subsidy developments.

此次 301 条款申请并非美国本土造船业首次利用美国贸易法的条款来解决造船补贴问题。1989 年 6 月，美国造船商委员会（SCA）根据 301 条款向 USTR 提出申请，要求处理西德、日本、韩国和挪威涉嫌补贴的行为。SCA 在提交申请数周后最终撤回了申请。在此之后的 20 世纪 90 年代，经济合作与发展组织（OECD）通过谈判达成一项协议，旨在通过多边努力终止全球范围内的造船补贴，但该协议最终未获美国批准。OECD 随后在 2002 年和 2010 年为解决造船补贴问题所做的努力同样被无视，但 OECD 仍在继续跟踪补贴问题的发展态势。

This new Section 301 petition is unprecedented in terms of the scope of alleged conduct it purports to ask USTR to investigate. It starts by alleging that virtually all Chinese economic policies are designed to support Chinese shipbuilding, and that all forms of Chinese economic planning are “unreasonable, unfair, inequitable and discriminatory.” The petition alleges inappropriate and unlawful subsidies and government support without providing the same level of evidentiary support normally required in a countervailing duty petition that would be filed with the US Department of Commerce and US International Trade Commission. The petition also alleges competition law/antitrust violations, intellectual property theft, injurious pricing (dumping), manipulation of freight rates, port access and operations and capacity allocations. This is not simply the same, old allegations regarding shipbuilding subsidies.

新的 301 条款申请书力图要求 USTR 调查的范围之广可谓前所未有。其开篇即指控几乎所有的中国经济政策都是为了支持中国的造船业，并且各种形式的中国经济规划都是“不合理、不公平、不平等和歧视性的”。申请书指控不恰当和不合法的补贴和政府支持，但并未提供向美国商务部和美国国际贸易委员会提交的反补贴税申请书所通常要求的同等程度的证据支持。申请书还指控违反竞争法/反垄断法的行为、知识产权盗窃行为、损害性定价（倾销）、操纵运费、港口准入和运营以及运力分配等行为。这显然不仅仅是简单的关于造船补贴的老一套指控。

The potential impact of this new Section 301 investigation is unprecedented. China is the world’s leading shipbuilder. Chinese-built vessels are involved in the transportation, both inbound and outbound, of products that are essential to the US economy – from agricultural products, petroleum and energy products to passenger vehicles, fruits and vegetables and consumer goods. Imposition of some of the remedies requested in the petition would potentially disrupt the US economy and further tax global supply chains.

该项 301 条款新调查的潜在影响将是空前庞大的。中国是世界领先的造船国。从农产品、石油和能源产品到客运车辆、果蔬以及消费品，中国制造的船舶参与了对美国经济至关重要的产品的进出境运输。申请书中要求的一些救济措施一旦实施，可能会反噬美国经济，并使全球供应链承压。

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