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The Historical Development of Section 301 of the US Trade Act

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ABSTRACT
Section 301 of the United States Trade Act of 1974 (hereinafter referred to as Section 301) is a representative foreign trade provision enacted by the United States during the Cold War. Since the aggressive unilateralism of Section 301 is incompatible with the international multilateral trading system that the United States has also actively established, discussions on the nature of Section 301 have been ongoing. After the establishment of the World Trade Organization (WTO), the United States reduced its use of Section 301. However, since Trump took office in 2016, the Trump administration has frequently used the Section 301 to protect domestic American companies and sanction other countries. In 2024, Trump won the US election for the second time, indicating that the Section 301 is likely to enter the public eye again. This article aims to explore the historical development process of the Section 301, and strengthen the understanding of this clause.

KEYWORDS
United States Trade Act; World Trade Organization; Trump administration

1 Section 252 of the Trade Expansion Act 1962

In July 1962, the EC introduced a differential import tax on foreign poultry, Started a trade war known as the Chicken War. The EC raised the common external tariff on poultry to 13.43 cents per pound (Germanys previous tariff was 4.8 cents per pound). The new tariff virtually wiped out the price advantage of U.S poultry raisers, whose exports plummeted from early 1963. In the face of the ECs import restrictions, the United States found that there is no right of complaint against this situation in the GATT, and there is no specific procedure in the U.S trade law about retaliation against the EC. Section 252 of the Trade Expansion Act of 1962 came into being in the face of deficiencies in U.S trade law. Section 252, entitled "Foreign Import Restrictions," gives the President the authority to: (1) act within the scope of his authority to remove unreasonable import restrictions of foreign countries when such restrictions are injurious to the interests of the United States or prevent the United States from expanding its trade on the basis of reciprocity, (2) negotiate with foreign governments imposing import restrictions to remove the restrictions, and (3) impose tariffs and import restrictions on foreign merchandise when necessary in the case of import restrictions on agricultural commodities. Second, when goods from foreign countries receive the benefits of U.S trade agreement concessions but burden U.S businesses through means inconsistent with the provisions of the trade agreement the President may, with due regard to U. S international obligations, suspend or terminate U. S trade agreement concessions for those foreign goods. Finally, there are procedural requirements for the President, who is required to express his views on foreign import restrictions and, if so requested by a relevant stakeholder, to hold a public hearing.

Section 252 gives the President partial authority to face foreign import restrictions, and is the first U.S law to retaliate against unreasonable foreign trade practices, and gives the President greater authority to face agricultural cases, while not having too many procedural and time constraints.

2 Section 301 of the Trade Act of 1974

In the late 1960s and early 1970s, the United States began to face a sharp rise in imports and a decline in exports. These phenomena led to the beginning of stagnation in the US economy, with unemployment rising from 3.5% in 1969 to 5.9% in 1971. The downturn incited protectionist pressures and many within the U. S blamed foreign competition for unemployment. Within Congress, many members of Congress believe that the primary cause of the United States trade deficit is because some countries have not complied with reciprocal trade with the United States. For example, the Senate Finance Committee has noted that the Kennedy Round of the General Agreement on Tariffs and Trade (a multilateral trade negotiation under the predecessor to the WTO, negotiated under the authority of the Trade Expansion Act of 1962) has failed to rectify fundamental inequities in the multilateral trading system. Accordingly, the Commission stated that in the next round of negotiations authorized by the Act, the United States should "obtain full reciprocity and equal competitive opportunity for United States commerce."

The Trade Act of 1974 arose in the process of the "Tokyo Round" negotiations that began in September 1973. Section 301 was created by Congress under Title III of the Trade Act of 1974 by amending and expanding Section 252 the provision provides that when U.S trade interests are impaired as a result of unreasonable practices of a foreign country, the

President has the authority to, by(1) suspending a trade agreement with the foreign country; (2)imposing tariffs or restrictive measures on the goods of that foreign country. Section 301 improves the procedural requirements by establishing a complaint procedure that allows interested parties to file a petition with the Special Trade Representative. Under the procedure, the Special Trade Representative first registers the complaint in the Federal Register, reviews the complaint and reports to Congress on its review every six months, and finally holds a public hearing at which the President decides whether to take retaliatory action. In terms of the division of powers, Section 301 greatly increases the Presidents authority to extend to all commodities the powers that would otherwise apply only to trade in agricultural products. In terms of legislative purpose, Section 301 no longer requires consideration of the U.S international obligations, as Section 252 does.

3 Changes to Section 301 in 1979 and 1984

In April 1979, the Tokyo Round of trade negotiations ended with mixed results for the United States. The biggest achievement of the negotiations was the establishment of a new dispute settlement mechanism under the General Agreement on Tariffs and Trade .The United States hopes to make more use of this new mechanism.Therefore,in the Trade Agreements Act of 1979,only minor changes were made to Section 301,mainly to further standardize the procedures: the Special Trade Representatives decision to investigate the addition of a 45-day period, the Trade Representative is also required to provide relevant information to the proponent of the investigation, the investigation of the end of the time has also made the corresponding limits The time to close an investigation varies from 7 to 12 months, depending on whether the case is within the scope of the GATT or not.After receiving the advice of the Special Trade Representative,the President still needs to decide within 21 days what action should be taken.

In the early 1980s,the U.S economy produced a severe recession,and within the U.S ,the growing fiscal deficit and the continued appreciation of the U.S dollar led to a large trade deficit and higher unemployment,and abroad,the rise of the Japanese industry created serious competitive pressures on U.S merchandise exports, and the protectionist policies of Western Europe further compressed U.S exports. Congress began to exert increasing pressure on the administration to introduce protectionist legislation to reduce deficits, minimize unemployment, and mitigate foreign competition. In the face of continuing domestic and congressional pressure,Section 301 was amended in the Trade and Tariff Act of 1984 to: (1) The Presidents authority is increased to add services,investment,and intellectual property trade issues to the scope of Section 301 investigations. (2) The U.S Trade Representative should submit an annual National Trade Assessment to Congress describing the constraints on U.S exports and what action should be taken.(3) Give the U.S Trade Representative the authority to initiate Section 301 investigations on his own, but the final decision remains with the President. (4) Interpret the terms “unreasonable” “unjust” and “discriminatory” to clarify the scope of the Presidents functions.

4 Changes to Section 301 of the Omnibus Trade and Competition Act of 1988

Despite the fact that Section 301 has gone through many revisions since its inception and that Congress has taken Section 301 very seriously, Section 301 has been a peripheral part of U.S trade law until the Omnibus Trade and Competition Act of 1988.Many lawmakers are dissatisfied with the government's disregard for trade barriers imposed on the United States in order to maintain diplomatic relations with allies. The government is only willing to use moderate negotiations to solve trade issues,but obviously this cannot solve the problem.

At the same time,Congress is also working on a bill to confront the trade deficit, which deals with one aspect of the Presidents authority under Section 301,which many in Congress,on both sides of the aisle,believe the President has not used effectively.They point to the Presidents discretionary power to act as the main reason for the failure of Section 301. Congressional concerns about the Presidents discretionary retaliatory powers continued, despite the fact that the President had already vigorously utilized Section 301 under congressional pressure between 1985 and 1988. Congress wants to shift the Presidents authority to the U.S Trade Representative(USTR), thereby reducing the likelihood that the Administration will be reluctant to use Section 301 due to other factors, such as diplomacy. In addition to the issue of presidential discretion,Congress is also revising the content of Section 301 to make it more powerful.

Section 301 was the centerpiece of the Omnibus Trade and Competition Act of 1988, it was substantially modified in this legislation,with the main changes being:

1.Mandatory retaliatory action when conditions are met.The bill expands the need for the Office of USTR to prioritize and act aggressively by providing for USTR to bring actions under certain circumstances and to retaliate when it is unable to negotiate the elimination of,or reparations for,an unfair practice.

2.Transfer of authority from the President to the United States Trade Representative. The power to take action against unfair trade practices is transferred from the President to the Office of the United States Trade Representative, which is authorized to determine whether the practices of a foreign government are fair and to take action in accordance with special instructions from the President.

3.Modification of the scope of use of Section 301.The scope of “unfair” and “unreasonable” acts of foreign countries is defined.

The most significant change to Section 301 in the Omnibus Trade and Competition Act of 1988 is the addition of Super 301 and Special 301,in addition to the usual General 301.

The history of Super 301 dates back to 1985, when three Democrats introduced a bill, known as the Gephardt Amendment, aimed primarily at Japan. The central goal of the bill was to reduce the U.S trade deficit by imposing an additional 25 percent tariff on countries with excessive trade surpluses. President Reagan, however, was adamantly opposed to this amendment because such a large number of retaliatory actions would inevitably provoke foreign counter-retaliation. Due to the unpopularity of the Gippert Amendment by the President, Congress adopted a plan later known as the Super 301 as an alternative. The main content of the Super 301 is to require the Office of the United States Trade Representative to identify and investigate the "priority" foreign trade practices of "priority" countries that seriously hinder US exports every year, seek negotiations with these countries to end unfair trade practices, and retaliate if negotiations fail.

Special Section 301 is a provision specifically designed to protect intellectual property rights. The Special 301 Act categorizes countries that the United States deems problematic in intellectual property protection into three types. The first category refers to countries that refuse intellectual property protection practices when they have the greatest adverse impact on US related products. The US Trade Representative can investigate these countries under Section 301 and implement suspensions of trade preferences, import restrictions, or agreements. The second category refers to countries whose behavior deserves attention but does not meet the first category. If the country lacks intellectual property protection, the US Trade Representative can put it on a watchlist and negotiate with the President whether to take action. The third category is countries with insufficient intellectual property protection, which is not as severe as the second category, but still needs attention.

The Omnibus Trade and Competition Act of 1988 was the last major amendment to the Section 301 before the establishment of the World Trade Organization (WTO) in 1995, and this amendment also made the Section 301 basically finalized in terms of procedure and scope. The previous vague definition is clarified, and the functions of Section 301 are refined through General 301, Special 301 and Super 301. The most crucial point is that Section 301 is characterized as mandatory, which indicates that the idea of unilateralism has been added to the U.S trade policy.

References

[1] Yang Guohua.Study on Section 301 of the U.S Trade Law.Beijing: law press,1998 edition.

[2] Han Liyu.U.S Foreign Trade Law ,Beijing: Law Press,1999 edition.

[3] Dougla A.Irwin Clashing over commerce A History of US Trade Policy,Beijing:CITIC Publishing Group 2019 edition

[4] Pei Guifen,and Li Shanshan.The Application,Impact and Implications of U.S Section 301 in Japan.The Japan Journal,2018,No.4:85-106.

[5] Andres B.Schwarzenberg,"Section 301 of the Trade Act of 1974: Origin,Evolution,and Use,".Congressional Research Service,R46604,December 14,2020.

[6] Warren Maruyama,Section 301 and the Appearance of Unilateralism,11 MICH.J.INTL L.394 (1990).

[7] Jagdish Bhagwati, Hugh T. Patrick: Aggressive Unilateralism Americas 301 Trade Policy and the World Trading System. University of Michigan Press,1991.

[8] Marc A. Moyer, Section 301 of the Omnibus Trade and Competitiveness Act of 1988: A Formidable Weapon in the War against Economic Espionage,15 Nw.J.Intl L.& Bus.178 (1994-1995).

[9] Scott Lincicome, Inu Manak, Alfredo Carrill: Unfair Trade or Unfair Protection? The Evolution and Abuse of Section 301, Cato Policy Analysis, 2022.6(930).

[10] Robert M.Stern.US Trade Policies in a Changing World Economy.The MIT Press,1989.

[11] The New Work Time.The Chicken War: A Battle Guide,Jan.10,1964.

[12] U.S Senate Committee on Finance,"Trade Reform Act of 1974: Report of the Committee on Finance, United States Senate, Together with Additional Views on H.R.10710,"Report No.93-1298,93rd Congress,2nd Session,November 26,1974.

[13] Comparing Major Trade Bills: Hearings on S.490,S.636,and H.R.3 Before the Senate Committee on Finance,100th Cong.,Ist sess.,1987,pt.1,10 (statement of Chairman Lloyd Bentsen [D-Texas]); hereinafter April Hearings on S.490.