

IN RE SECTION 301 LITIGATION

Introduction

Glistening racks of aluminum frames hang from industrial beams, as orange-vested laborers walk through chest-high rows of bike tires.¹ South Carolina's [Kent Bikes produces 350,000 bikes annually from its 200,000 square-foot domestic plant, and employs 130 Americans](#). *Kent's* output relies heavily on Chinese and Taiwanese part imports, which now come with import tariffs of up to [36% per unit](#). Such tariffs led *Kent* to raise prices on its American customer base, and [layoff 25% of their workers](#). These moves [sank Kent's annual sales by 20%](#).

Further up America's I-95 corridor in Fall River, Massachusetts, [similar tariffs](#) on Chinese washer machines have been a boon for the *Whirlpool Corporation* and its workers. Hundreds of new *Whirlpool* employees now work along the Taunton River, as [the company enjoys higher prices](#) enabled by decreased Chinese competition. American consumers may have paid over \$800,000 per new washer-machine job, [but 1,800 workers enjoyed these new jobs](#) across the United States.

Central Dilemma

The contrast between *Kent* and *Whirlpool's* prospects encapsulates [the dilemma](#) currently facing the United States Court of International Trade in the ongoing *In Re Section 301* litigation. Per the 1974 Trade Act, Congress delegated tariff authority to the Executive Branch, [enabling the Office of the United States Trade Representative to issue punitive tariffs](#) it deems necessary to

¹ <https://www.pbs.org/newshour/show/impact-of-u-s-china-trade-war-felt-in-both-countries>

ward off improper foreign trade behavior. Yet deeming whom tariffs are necessary for, whose interests they serve, is incredibly difficult.

[There are no united American trade interests](#), different stakeholders across the country win and lose with every possible permutation of trade policy. Indeed, [the question currently facing the Court](#) is if the *Office of the United States Trade Representative* appropriately incorporated all interested perspectives in its statutorily mandated public comment section prior to issuing Lists Three and Four of 2018 and 2019's punitive Chinese tariffs. Come spring of 2023, what perspectives American trade regulators consider before decisions may radically alter.² Concurrently with the court decision, [the executive branch debates extending the tariffs](#) assuming their constitutionality.

Background on Section 301 Chinese Tariffs

With protectionists manning the Trump Executive Branch, the United States Office of the Trade Representative [investigated](#) Chinese trade practices at the request of scores of domestic import-competing manufacturers. Their investigation discovered Chinese practices of forced technology transfers, state-backed acquisitions of American assets, and widespread theft of American intellectual property and trade secrets. Buoyed by these findings, the [United States Office of the Trade Representative fielded public comments](#) on potential tariffs per their statutory duty, and issued two levels of Chinese tariffs in July and August of 2018. [Such tariffs invited retaliatory tariffs from the People's Republic of China](#), inviting two new levels of American tariffs in September of 2018 and 2019. These latter tariffs faced much legal and policy debate, which I will now explore.

Legal Debate

Again, all Trade Act Section 301 tariffs must fall under the statutory grant of being necessary measures, adopted under the proper statutory process, to ward off illegitimate foreign trade practices. Thus, [importers suffering under the tariffs launched a four-pronged legal attack in the United States Court of International Trade](#). These attacks faced varying levels of success in the Court's April 2022 ruling, with one remaining an open question until the case's expected Spring 2023 resolution.

[First, they argued that evaluating the Office of the United States Trade Representatives' decision was squarely within the United States Court of International Trade's jurisdiction](#), and not a political question. Allegedly, they were not asking the court to evaluate the policy merits of the Chinese tariffs, rather, they were asking if the Executive Branch exceeded their statutory delegation of authority. While the Court agreed that such a question was judicable and *not* political, they ruled that such tariffs are squarely in the Executive Branch's delegated authority.

[Next the Court considered suffering-importers' third prong of attack, that the Office of the United States Trade Representative issued the final two tariff levels too far after their statutorily required investigation in March of 2018 with their September 2018 and 2019 issuances](#). The Court did not consider this to be too long of a delay in April, thus further defining the scope of acceptable Executive Branch tariff issuance.

The remaining question, which the Court will decide in the Spring of 2023, is [if the Executive Branch appropriately handled public comments on the then-pending tariffs](#). While the Court noted that the Office of the United States Trade Representative appropriately requested for public comment and appealed to President Trump's directive in justifying the tariffs, the Office did not appropriately address concerns raised in public comments. The Court will determine

what an appropriate response to those comments will look like in the Spring, but for now, let's examine policy rationales behind the Section 301 tariffs.

Policy Debates

Tariff supporters argue that the Section 301 tariffs were critical to shield American manufacturing from unfair Chinese practices, allegedly robbing American workers' jobs and corporations' profits. American industries competing with, allegedly, underpriced Chinese imports petitioned the Trump and Biden administrations to compete. Moreover, such tariffs were critical in assuring American power and independence from a rising China, [particularly in steel and microchips](#).

While certain industries like washer-machines have been clear winners, the extent of those benefiting is under intense debate. [According to economist Adam Tooze](#), America largely swapped Chinese imports with slightly more-expensive foreign counterparts such as Vietnamese imports, *not* American firms. Thus, [American consumers footed the bill](#) for both more expensive foreign imports and American manufacturers now able to raise their prices. Indeed, the *Brookings Institute* estimates that the average American household paid \$1,000 more annually due to tariff-induced inflation, and the country [collectively paid over \\$800,000 per new manufacturing job](#).

Indeed, certain industries, particularly those reliant on imports unavailable in the United States or those suffering retaliatory tariffs, suffered greatly. [The American technology industry suffered \\$32 billion in tariff-related losses](#). Businesses reliant on Chinese-exclusive goods (such as bamboo flooring) suffered extensive losses, as did *Kent's* bicycle plant as described earlier.

[Some argue for a return to the tariff-free, neoliberal trade policy](#) of the 1990s and 2000s, while others call for limited, targeted tariffs on key industries. Ensure resilient supply chains,

national security, and those truly impacted by unfair practices, not blanket protection from Chinese imports such that the American and Chinese markets become walled off from one another, [argues the *American Prospect*](#). How such debates represent themselves in the Court's Spring 2023 remains to be seen.