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## US-China Trade Relations as it Relates to Section 301 of the 1974 USTR and IPR

### Keywords

China, IPR, USTR

# **U.S.- China Trade Relations as it Relates to Section 301 of the 1974 USTR and IPR**

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## **Introduction:**

This white paper will discuss the current state of US-China trade relations in relation to section 301 of the 1974 United States Trade Representative (USTR) and the infringement of Intellectual Property Rights (IPR) of American business. Certain sectors most impacted will be highlighted such as the textile, agricultural, information technology (IT), and photovoltaic markets. General effects on business and consumers will also be discussed.

While this paper aims to consider both American and Chinese perspectives, its primary focus is on the US viewpoint. This approach is chosen due to challenges in accessing reliable sources from China and the paper's intended audience. Of course, efforts are made to maintain objectivity, but inherent biases from an American writer may still influence the discussion and tone of this paper.

Originally, this white paper was intended to follow the British PESTEL model of analysis. All the letters will be included, but the order will be changed for the sake of logical continuity. The new order will be SLPETE: Sociological, Legal, Political, Economical, Technological, and Environmental. At the end of the paper, I will include my opinion and recommendations on the issue, but before then, I will attempt to be impartial. Thank you for reading, and please enjoy.

## **Sociological, Overview:**

This white paper must start with a sociological analysis, which, at first glance, might seem like an odd choice. At the end of the day, the issue mainly boils down to trade policy, an inexplicably economic topic. One could say that trade, as it is between two different countries, is a political matter and this perspective will be covered later on in this paper, but due to the opposing nature of the primary actors, we must start with a sociological perspective. The cultural differences between the US and China are vast and throughout the many years of relations between the two countries, never once have they truly seen eye to eye. Concepts such as intellectual property differ greatly between the West and the East. I will now examine the history of US-China Trade, the effects of Confucianism and Marxism on this issue, and the history of IP in the West.

### **Sociological, US-China Trade History:**

The first US-China trade relations started on February 22, 1784, when the New England-built ship, the *Empress of China*, sailed from New York to Canton (modern-day Guangzhou) carrying many goods including 30 tons of Ginseng, a root valued in China for its medicinal purposes (*Empress of China becomes first US ship to trade with China 2012*).

Then, in 1804, the US-China Opium Trade began. The first American opium merchant to arrive was Benjamin C. Wilcocks on the ship *The Pennsylvania*. Unlike England, whose opium came from India, American merchants brought opium from the port of Smyrna in Greece, formally a part of Turkey. In 1812, Wilcocks became the first US consul at Canton (*Downs 1968*). Built on the back of the deadly opium trade, some semblance of US-China political relations was first established. The 1820s were known as the Lintin period, which was the peak of the US-China Opium Trade (*Downs 1968*). A series of trade treaties followed: “Under the Treaty of Nanking, signed on August 29, 1842, China agreed to open the five ports requested

(Canton, Amoy, Foochow, Ningpo, and Shanghai)” (Peter Perdue 2011). This ended the system of licensed merchants and led to more free trade. Many future treaties with China and the West would be based upon this precedent.

From 1858 to 1862 there was a series of agreements called the Treaties of Tianjin which expanded new ports to western ships, legalized the trading of opium, and created the first official US legation in China (U.S.-China Chronology - Countries - Office of the Historian n.d.). Next, from 1899 to 1900 the US began the Open Door policy, the first US-China trade doctrine. Here, the US called for equal trade in China and preventing European imperialism in China (Guocang Huan 1986). The Republic of China existed from January 1, 1912, till October 1, 1949, but then, following the Communist revolution and the establishment of the new PRC government, there were completely no relations between China and the US (The Contentious U.S.-China Trade Relationship n.d.). This diplomatic darkness ended in 1974 with President Nixon’s visit to China and by 1979 diplomatic relations were restored. (Nixon’s Trip to China | Richard Nixon Museum and Library n.d.). In October of 1992, China adopted the Socialist Market Economy model, and capitalistic trade with the US increased exponentially, culminating in December of 2001, with China joining the WTO.

### **Sociological, Confucianism, and Marxism:**

Given the bilateral nature of this issue, it's crucial to consider perspectives from both governments. The differing viewpoints of the Chinese government and its people, from the American public, regarding IPR and Section 301 necessitate intellectual empathy and academic honesty.

In many ways, disrespect for intellectual property law in China can be traced back to Confusion culture and Marxist ideology (Muehlfeld and Wang 2022). In many ways, the history

of IPR in China is a history of centralization, which started far before the CCP. Chinese history is filled with recovered, not rediscovered knowledge. This is different from the Western norm for concrete proof, putting less emphasis on innovation by society. The revival of Confucianism during the 19th-century brain drain played a significant role in shaping these attitudes.

The other major contributor to the disrespect of IPR is Marxism and Communism which have negative views of both the intellectuals and private property. The Chinese consensus is that knowledge can not be owned (Lehman 2006). This similar view is held by many collectivist countries, which tend to have higher rates of software piracy compared to more individualistic countries (Muehlfeld and Wang 2022). But intellectual property theft is more than a cultural problem, it is political. In fact, it is more than mere policy. Intellectual property theft is a core component of the Chinese party-state economy (Glenn Chafetz 2023). This will be discussed later on in the economic analysis.

### **Sociological, History of IP for the West:**

Next, the history of intellectual property laws in the West must be explored. Historians can trace back the earliest legal concept of intellectual property to 500 BCE when Sybaris, a Greek state, made it possible for citizens to obtain a one-year patent for “any new refinement in luxury” (Williams 2019). The first modern IP law was passed in 1709 in England. This was called the Statute of Anne and gave publishers of books legal protection for 14 years, as well as 21-year protection for books already in print (Jeremy Norman n.d.).

The first IP law in the US was the Copyright Act of 1790. It should be noted that the act “explicitly did not grant any protections to foreign works, stating, “Nothing in this Act shall be construed to extend to prohibit the importation or vending, reprinting or publishing within the United States, of any map, chart, book or books written, printed or published by any person not a

citizen of the United States.” During the early days of its industrialization, the United States was a world leader in IP rights violations, a fact often overlooked in the current discourse” (Smith 2019). Though this was a long time ago, it does seem like a rather interesting precedent.

### **Legal, Overview:**

Understanding this policy fundamentally requires a legal lens. While the complete 7-page text of the 1974 Trade Act provides the ultimate source of insight, this section aims to offer a condensed overview. It will first explore the historical context of the Trade Act before delving into its implications and implementation.

### **Legal, History of Section 301:**

In order to understand the impacts and application of Section 301, it is important to understand its history. As can be inferred by its name, the act passed in 1974. During President Reagan’s administration, there was a heightened use of the act, with 49 investigations taking place within his tenure (The History of Section 301 Tariffs n.d.). After 1994 and the creation of the WTO, Section 301 was used far more sparingly. In 2001, China would go on to join the WTO with the provision of economic reforms and increased foreign IP protection (The Contentious U.S.-China Trade Relationship n.d.). The next major use of Section 301 was in January 2019, with the Trump administration. Investigations over the violation of IPR by China led to many tariffs, and what many call a trade war (U.S.-China Trade War 2021). Most of the tariffs are still in place, now under the control of the Biden presidency (Andrew Chatzky and Anshu Siripurapu 2021).

Here, we should take a step back, and understand the background behind the acts creation. After the second world war, the US pursued both multilateralism and unilateralism. Focusing on multilateralism, the US founded and lead the General Agreement on Tariffs and

Trade (GATT), which in many ways was the predecessor of the WTO. One of the US main goals was “lowering worldwide tariffs and dismantling some of the non-tariff barriers to trade” (Taylor O’NEAL 1997). Additionally, the US frequently used the GATT dispute settlement system.

Following economic power declines, the US started leaning more towards unilateralism, in some ways resenting the GATT system it has created due to the belief that not all trade partners were as keen on trade liberalization as America was. Hence came Section 301 of the Trade Act of 1974, aiming to forcibly open up foreign markets.

There were multiple revisions of the law, most notably in 1994, following the Uruguay round of negotiations about GATT, from which WTO emerged. Congress provided clearer definitions of unreasonable practices concerning intellectual property protection and anti-competitive behaviors. For instance, even if a country adheres to the TRIPS Agreement, a new GATT Agreement mandating minimum standards for intellectual property rights protection among WTO members, it can still be deemed to be inadequately protecting intellectual property. This was a real important provision to include, as the US economy became more reliant on intellectual property: “The United States was so insistent about the need for an intellectual property agreement under GATT because a great deal of U.S. trade was no longer covered by the GATT rules” (Taylor O’NEAL 1997). There was a need for change.

The legislative history indicates that, in practice, congresses definition of unreasonable acts where “acts were considered to encompass import restrictions by countries that were not necessarily illegal, but which nullified or impaired benefits under international agreement or otherwise discriminated against or burdened U.S. commerce” (Taylor O’NEAL 1997). In short, the legislative history of section 301 is a rebuttal of dissatisfaction with the GATT system not giving the US the competitive edge it desired.



### **Legal, When and How Section 301 is Used:**

In general terms, the output of this policy is the continuation of the enforcement of section 301 of the USTR of 1974 as it relates to intellectual property theft. But to better understand what is the “enforcement” of the act and how to do so, it is vital to understand the specific logistics of the trade act (TRADE ACT OF 1974, H.R. 10710, 93rd Cong. (1974)).

Section A describes some of these operations. The first step in the enforcement of Section 301 is that the president must direct US trade representatives to enforce the trade agreements or eliminate whatever it is that is hurting US trade. This is done at the discretion of the office. Even if there is a clear problem, it is the choice of the president whether or not to pursue actions, and whether to do so through this fairly direct route. According to Hamiltonian constitutional theorists, the president may do just about anything that's not barred directly by the Constitution, so if there appears a better path than employing Section 301 they may take it (GOLDEN W. BELL, n.d.). Let us assume that, after weighing all options, the president decided to order US trade representatives to take action, there are still certain cases where the trade representatives can choose to take no action.

The trade representative does not need to do anything if the Dispute Settlement Body, in the WTO, finds that there has been no violation or impairment to US trade. In recent years, the US government has had negative relations with the WTO, regardless of the party of the president. Both the administrations of President Obama and President Trump the nomination of new judges to the WTO arbitration courts. Much of the legislation in the WTO is outdated and key issues like Intellectual property rights have not been updated. President Trump’s use of tariffs approved through the enforcement of Section 301 against China has in many ways undermined the credibility of the WTO. President Biden's wide-scale continuation of trade

policies made under the Trump administration further solidified this (Menshikova 2022). Due to the political weakness of the WTO, the step of checking for their approval has been circumvented.

Additionally, the trade representative does not need to do anything if the other country is taking steps to solve the problem at hand or if the foreign country is unable to resolve its issues, or if it provides the US with additional trade benefits to offset whatever problem there was. One could make the argument that, according to the claims of the Chinese government, China has made much progress in protecting IPR, and so, the US government should not take further action. The Chinese government says that it is a leader in IPR and that concerns raised by foreign companies over the issue have been resolved with a strengthened judicial system and new reforms. Furthermore, they claim that China is essentially a bastion of freedom for IP seeing as 327,000 invention patents were passed in one year, an increase from previous years (People's Republic of China State Council Information Office, and Xinhuanet 2019). So if China is doing all this great work, should US trade representatives push forward with Section 301?

Despite all that China may have done to improve the situation, many believe it is dire, saying that failure to protect American IP is a major failure of our government (Johnson 2023). US officials have long believed that China is stealing IP (The Contentious U.S.-China Trade Relationship n.d.). Non-governmental figures also complain about this (Glenn Chafetz 2023). The fact that so many diverse voices are saying that there is an issue, despite the Chinese government claiming that all the claims of its wrongdoing are false (People's Republic of China State Council Information Office, and Xinhuanet 2019), indicates that US trade representatives should ignore China's efforts and continue enforcing section 301.

Next, US trade representatives do not need to do anything if their actions would result in largely negative results to the US economy or harm national security. This provision is a tricky one. When it comes to trade policy, quantifying its impacts on the US economy can be difficult due to the complexity and multi-causality that exists. There is evidence that tariffs help the economy. There is evidence that says tariffs are bad. One could find an economist who would say anything about this issue. For that reason, I think it is best to assume that the US trade representative will not believe that enforcing Section 301 would lead to major negative results. That being said, some of the economic effects will be discussed later in the paper.

Finally, US trade representatives do not need to do anything if the problems are appropriate considering the country's level of economic development. China argues that, as a developing nation, certain regulations should not apply to them (Kanwit 2023). Essentially, the argument is that they lack sufficient governing capacity and bureaucratic infrastructure to deal with issues. That being said, China is the world's second-largest economy (after the US), and thus, claims of being a developing country, as opposed to a first-world superpower, tend to fall on deaf ears (Lewis 2020). Furthermore, the Chinese government seems to contradict itself. On one hand, they say that China is a poor country with no control over the regulation of things such as intellectual property rights, but on the other hand, boasts of its creation of specialized courts that target IPR infringements (Smith 2019). Due to this lack of clarity, it is best to assume that US trade representatives can move forward and enforce Section 301.

Either way, as a member of the WTO, China still has responsibilities at this point, regardless of their status of developing or not: "The developed WTO Member States were required by the TRIPs Agreement to bring their intellectual property systems into compliance with the agreement within one year after the WTO was established, i.e., by the end of 1996. By

contrast, developing countries have five years to meet TRIPs obligations, and least-developing countries have eleven years to do so ” (Taylor O’NEAL 1997). It has been over 11 years since 1996. US trade representatives can set in take action.

At this point, it is decided that the US trade representatives are going to do something. But what powers exactly does Section 301 of the 1974 USTR grant them? This is best covered in section C, Scope of Authority. US trade representatives are empowered to suspend or withdraw from trade agreements, impose duties (tariffs), or implement other import restrictions on specific goods. Negotiating agreements for the foreign country to rectify the issue or provide additional trade benefits to the US are also within their purview. If tariffs or similar measures are proposed on a service regulated by another federal agency, consultation with the agency head is mandatory. If other strategies fail to elevate the problem, the US trade representative should use duties on specific goods that could be substituted for related goods on a regular basis. In the case of China, the enforcement of Section 301 for the most part boils down to the aggressive use of tariffs.

Before we go further with this discussion, let us take a step back and define what tariffs are: “A tariff is a tax imposed on foreign-made goods, paid by the importing business to its home country’s government” (Andrew Chatzky and Anshu Siripurapu 2021). Tariffs for China are exactly what happened under the Obama administration with tires and with the Trump administration for steel, aluminum, and more (The Contentious U.S.-China Trade Relationship n.d.). Further impacts, like retaliatory tariffs by China, will be discussed later. Tariffs imposed on exports from China are the first domino. For example, in 2018 and 2019, the Trump administration imposed tariffs on imports from China that were valued at \$370 billion (Singh and Singh 2023). Tariffs on Chinese exports to the US were up to 19.2 percent (Qingqing and

Juecheng 2023). Though the tariffs put in place by the Trump administration were supposed to expire earlier this year, the Biden administration decided to keep them at least until December 31, 2023, at which point there will be further discussion of whether or not to keep the section 301 imposed tariffs (USTR Extends Reinstated and Covid-Related Exclusions from China Section 301 Tariffs n.d.).

At first glance, this might seem like a minute issue, filled with legal jargon, but in reality, its effects trickle down to many portions of society. Both the theory and the practical history of the implication of section 301 of the 1974 USTR on IPR as it relates to China leads to immense scholarly literature and a plethora of questions and answers.

### **Political, Overview:**

The next section is a political analysis which is a logical continuation of the last section, legal. Now that the law is established, it is used. I wholeheartedly believe that nothing in Washington ever gets done without political motivation. Yes, at first glance, the issue of tariffs and trade all seems like a purely economic problem. The economic perspective will be discussed later, but first, we must build the framework in the same way as the politicians do. Before anything, there is politics. That being said, this paper does not start with politics like the traditional PESTEL model. First, sociological analysis was needed. In the words of the late Andrew Breitbart, "Politics is downstream of culture". Because this is an issue between two sovereign states, we will look at both domestic and international politics.

### **Political, Internal Politics:**

In terms of internal politics, this paper will focus on two periods of American politics: the 2016 presidential elections and the 2018 midterms. There is evidence to suggest that during his campaign, Trump's rhetoric about a strong trade policy against China helped him win over

counties that were most harmed by competition with China. These counties seemed to be the ones where political polarization spread unproportionally rapidly and spurred on the rise of Trump and other populist politicians (The Contentious U.S.-China Trade Relationship n.d.). The use of Section 301 happened after he was elected but before the midterms which was the so-called Trump trade war. It is evident that the “tariffs were targeted for maximum electoral impact” (Chow and Sheldon 2021).

Unfortunately for the Trump administration, numbers showed that this strategy misfired. Counties with the greatest economic impact of the tariffs corresponded with a loss of Republican seats in Congress. This is particularly true with counties where Trump lost the popular vote by a small margin in 2016. Furthermore, these counties tend to be large producers of soybeans, and although the additional farm subsidies helped offset the loss of Republican votes, it proved not nearly enough (Chow and Sheldon 2021).

### **Political, International Politics:**

The impacts on internal politics were already discussed, but seeing as this policy involves two countries, it is important to consider the implications on the world stage. What are the effects on international politics and US-China relations?

In recent decades, trade between the US and China has grown enormously: “Today, the United States imports more from China than from any other country, and China is one of the largest export markets for U.S. goods and services” (The Contentious U.S.-China Trade Relationship n.d.). The two countries rely on one another with their economies intertwined. The Chinese government did not appreciate the Section 301-induced tariffs and felt that the US was treating them unfairly and that the tariffs were discriminatory (Singh and Singh 2023). The Chinese government's position is that trade is the cornerstone of US-China relations and that the

Section 301 tariffs should be removed, calling them “unreasonable” (Qingqing and Juecheng 2023). While the trade war may have raised tensions between the two superpowers, the evidence shows that the negative effects on bilateral trade were short-term. If anything, the result in terms of international relations is nuanced and it is unclear whether the tariffs by both sides have “succeeded in separating the two largest economies in the world” (Ka Zeng 2023).

Undoubtedly, if there are violations to be found, the US should pressure actions to protect IPR. Sure enough, the US went on to use Section 301 to institute tariffs against China, leading to counter tariffs and a trade war that had generally negative effects on both domestic and foreign politics. It is hard to say what would have happened if the Trump administration choose to not use Section 301. Would there be an uptick in IPR violations? Would the political climate domesticly and abroad be even worse? The answer alludes all but Nostrudamus, but what is clear is that the use of Section 301 is a mighty weapon that must be wielded with caution. In the words of Uncle Ben, “with great power comes great responsibility”.

### **Economical, Overview:**

As a rule of thumb, “tariffs often lead to retaliatory tariffs” (Andrew Chatzky and Anshu Siripurapu 2021). In the case of the US putting tariffs on China, the initial impact was as expected. At one point, Chinese tariffs on American goods were 7.1 percent (Qingqing and Juecheng 2023). Retaliatory tariffs were not a one-and-done situation, as they were expanded many times. For example, “On April 15, the State Council Tariff Commission (SCTC) announced another extension until November 30, 2022, for the Section 301 retaliatory tariff exclusions on 11 specific agricultural products” (Foreign Agricultural Service 2022). Effects on agriculture and other specific sectors will be discussed in more depth later on in this paper. The main takeaway should be that tariffs lead to a tit-for-tat system of ever-increasing retaliatory

tariffs by each nation, that, apart from some drastic circumstances, would show no sign of slowing until one country is simply unable to keep up and has to cry uncle (The Contentious U.S.-China Trade Relationship n.d.). It is a vicious cycle.

### **Economical, Impacts on Chinese Companies Generally:**

US trade representatives cracking down on Chinese businesses for their illegal practices of intellectual property theft barely has effects on those businesses. It is important to take a step back and realize that the way many businesses function in China is far different than in the West. Chinese business and the Chinese government, as well as the Chinese Communist Party (CCP), are all intrinsically intertwined. This is known as red capitalism, which emerged after China started abandoning Maoist economic reforms (Pei n.d.).

Building up domestic companies using stolen IP is a core component of the Chinese strategy. Once the technology is extracted, the Chinese government uses heavy subsidies and nontariff barriers to create national giants, such as Huawei. The national champions go on to dominate the world stage, using their propped-up support (Lewis 2020). The loose regulation of IPR in China helps benefit their domestic industries, at the expense of American companies. In fact: “many Chinese companies claim to believe that IP appropriation is normal because that is what they see every day in the environment in which they operate. Many smaller Chinese companies report that they are not aware of IP laws and regulations” (Glenn Chafetz 2023).

Ignorance is bliss. When theft is normalized it is called collectivism. The effects of tariffs on Chinese business are difficult to measure. Market focus does not affect Chinese business in ways that we might expect, due to them being, in many ways, an extension of a very wealthy government (The Contentious U.S.-China Trade Relationship n.d.). It is unclear whether the tariffs have changed Chinese behavior (Lee 2023). One could make the argument that because of



the tariffs leading to American businesses moving manufacturing to other countries like Vietnam, India, Mexico, Indonesia, and Bangladesh (Atkins 2023), Chinese workers might experience a higher rate of unemployment. The data does not support this claim very well. From 2002 till 2023, China's unemployment rate maintained a level between four and five percent, indicating that the use of Section 301 did not drastically impact Chinese workers (China Unemployment Rate 1991-2023 n.d.). It appears that the impact on Chinese business and workers is minimal, and largely mitigated by the effects of the red capitalist system.

### **Economical, Impact on US Companies Generally:**

How do the tariffs from Section 301 and the retaliatory tariffs from the Chinese government impact American business? What about IP infringements and the possibility of stopping them? The data shows that IP theft hurts American businesses. This is especially prevalent for small businesses that might not have the financial resources to protect themselves from IP theft or take retaliatory measures (Casey 2012). It is important to keep small businesses in mind because there are 33.2 million small businesses in the US. For scale, that designation includes 99.9% of American companies (Maryam Mohsin 2023). Unfair trade practices and IP theft led to the invocation of Section 301 and an increased trade war in China.

While IP theft hurts business, so do tariffs. On exports, there are over 5,700 headings covering all sorts of goods that fall under the duty rate. Food items, textiles, and some technology will be covered more in-depth later in the brief, but almost all industries are affected. In addition, for importers from China, there are additional 25% duties imposed (Lars-Erik A. Hjelm et al. n.d.). For American companies, there are two strategies for mitigating the additional costs that result from Section 301 tariffs.

The first is to try to get an exclusion. While there are many law firms and organizations that try to help facilitate this (Section 301 China Tariffs & Exclusions Guide | C.H. Robinson n.d.), most fail. For example for the apparel business, only 5% of the applied request for tariff exclusion were confirmed (<https://tradedpartnership.com/wp-content/uploads/2023/01/China-301-Tariff-Costs-Joint-Association-Study-FINAL.pdf>).

The other solution for American businesses is to move their manufacturing to a country other than China. It is important to remember that this doesn't necessarily, and most often doesn't, mean moving production to the States. Some of the more popular countries for relocation are India, Vietnam, Bangladesh, and Mexico (Atkins 2023). Unfortunately, shifting has a steep cost particularly due to the uncertainty and volatility of the tariff process (<https://tradedpartnership.com/wp-content/uploads/2023/01/China-301-Tariff-Costs-Joint-Association-Study-FINAL.pdf>). Furthermore, it is practically impossible to shift production of some specialized goods, such as footwear. Chinese workers are already quite skilled and do not need the investment of additional training. There is also complex machinery that would be impossible to move (Gabriella Beaumont-Smith 2023). Therefore, instead of trying to avoid the increased costs from tariffs, businesses transfer the cost to consumers.

The vexing question persists: which poses a greater threat—IP theft or tariffs? Regrettably, the evidence remains inconclusive, with conflicting perspectives from various sources. Quantifying the overall impact of these policies on businesses based solely on monetary metrics proves challenging. Therefore, it is prudent to proceed by examining the specific impacts on industries most affected by tariffs.

### **Economical, Textile:**

The first of these markets is the textile industry. The textile industry includes everything from the research, to manufacturing, to distribution of textiles, fabrics, and clothes (Abu Sayed 2015). Historically, this has been one of the largest and most important industries in the United States. It is a part of a national identity. That being said, there has been an astronomical decline in manufacturing since 1960, with domestic production dropping from 95% to 2% of apparel.

China's intellectual property theft, as well as predatory trade and labor practices, have directly contributed to the loss of over one million US jobs in the textile industry (Keep China in check: Don't let Section 301 tariffs expire | The Hill 2023). Furthermore, the same article from The Hill asserts that Section 301 tariffs prevent "the overconcentration of essential products like personal protective equipment — many items of which our industry produces — in just one country."

During the time of COVID-19, many have seen the importance of personal protective equipment (PPE). Before the pandemic, China made nearly half the world's masks; since the outbreak, their production has increased twelvefold. Furthermore, most of those masks are staying in China, creating a near monopoly (Bradsher and Alderman 2020). Face masks are important to not just the textile industry, but to the medical industry as well, and China's control over mask production could lead to tensions when the next global pandemic emerges.

In this industry, appear to have overall positive effects. The harm of IP theft, the apparent negative effects on US business are largely transferred to consumers who will buy the same amount of textiles regardless, due to the industry's low elasticity (Gabriella Beaumont-Smith 2023). Furthermore, the trickle-down impacts on the textile industry transfer to national health policy. Maintaining a strong textile industry is in many ways important to national security and the protection of public health.

### **Economical, Agriculture:**

The next industry that should be explored is agriculture. Trade with China is vital for the US agriculture industry. To put it simply, there are a lot of people in China, which means there are a lot of mouths to feed. During the Trump Administration's trade war with China, where Section 301 was aggressively imposed "U.S. agricultural exports to China fell by 33.1% year-on-year, with soybeans falling by nearly 50%" (People's Republic of China, State Council Information Office, and Xinhuanet 2019). It is worth noting that when the US government enforces Section 301 tariffs, the Chinese government almost certainly imposes tariffs of their own, and so, US Agriculture is often the industry first targeted by the Chinese government, because of how profitable of a market China is for American farmers. For example, in 2023, Soybean exports were almost half of the US agricultural exports to China, valued at \$16.4 billion. China is the largest importer of soybeans, accounting for nearly 60% of the world's trade. China is also the largest consumer of feed grain. 90% of US sorghum exports went to China. In 2022, corn exports to China were over \$4.8 billion (Record U.S. FY 2022 Agricultural Exports to China 2023).

In summary, American farmers are experiencing financial losses due to reduced exports. It is an industry that is already largely subsidized, in all aspects including export sales. In fact, "The Foreign Agricultural Service operates 100 foreign offices and spends more than \$2 billion a year on marketing activities for U.S. farm and food products" (Chris Edwards 2023). In total, that same paper says that the federal government spends over \$30 billion on farm subsidies. Farmers may not bear the brunt of tariffs, but taxpayers will certainly feel the impact.

### **Economical, US Consumers:**

The next stakeholders who would be impacted would be US consumers. In a capitalist society, the bottom line is everything. With the cutthroat nature of business, many producers try to cushion the impact of tariffs by transferring the additional cost to consumers. For example, in the footwear industry, 80% of producers have passed on some of the tariff cost to consumers and 10% of producers passed on the full cost of the tariffs onto consumers (<https://tradedpartnership.com/wp-content/uploads/2023/01/China-301-Tariff-Costs-Joint-Association-Study-FINAL.pdf>). American buyers suffer from Section 301 tariffs. There is the argument that Americans can change their spending habits. Unfortunately, many of the products that fall under section 301 tariffs, such as furniture and footwear, are bought at the same rate regardless of price because these are inelastic goods (Gabriella Beaumont-Smith 2023).

From the consumer's perspective, there is skepticism about the effectiveness of Section 301 tariffs. Some politicians echo these perspectives: "Sen. John Barrasso, R-Wyo., wrote, "I have long been skeptical of the effectiveness of the Section 301 tariffs on over \$300 billion in Chinese goods. American families and businesses are all struggling with inflation and the high cost of goods and services. While I understand the need to crack down on unfair Chinese trade practices, I believe these tariffs are simply making a bad situation worse for all Americans. I don't see where these tariffs have significantly altered Chinese behavior" (Lee 2023). Chinese counterparts note the negative effects of inflation on the American public as well (Qingqing and Juecheng 2023). Some 1,500 American consumers went as far as sending direct complaints to the USTR about the Section 301 tariffs negatively affecting the prices of many consumer goods (Gabriella Beaumont-Smith 2023).

Furthermore, these additional costs have an unequal effect on different sections of Americans. Those households in the bottom 20% of income, minority-headed, or without a

college education, are affected most by increased prices (<https://tradepartnership.com/wp-content/uploads/2023/01/China-301-Tariff-Costs-Joint-Association-Study-FINAL.pdf>). Simply put, the impact on US consumers from the Section 301 tariffs is negative. Prices increase, and average citizens need to pay more for everyday items. Intellectual property rights of companies are of little concern to most Americans, many of them not even knowing what IP is.

### **Technological, Overview:**

This section will cover the technological aspect by looking at two more industries that are more intricately intertwined into the domain of technology rather than straightforward economics. Here it is more than money. In the digital age, technology is the analysis of power. National Defence is intertwined with technology. Furthermore, this section is distinct from economics as it pertains to non-physical goods. The idea of intangible goods and intellectual property go hand in hand. The industries that will be explored are IT and the Semiconductor industry.

### **Technological, IT:**

The IT sector has been growing both in size and importance. It is an industry that intrinsically is very vulnerable to IP theft. China recognizes the importance of bolstering its own IT industry with the objective to overtake the U.S. economically and technologically (Lewis 2020). Seeing this, the Trump administration made it a goal to slow down the sleeping giant in their pursuit of an IT kingdom (Lee et al. 2022). While part of this was done with tariffs over electronic goods like semiconductors, IT is a virtual industry. There is often no physical good to tax. Furthermore, it is an industry that is easy to outsource to low-wage, high-skill, Chinese workers and in 2015 alone, the United States lost over 200,000 programming jobs to Chinese outsourcing (IT Reshoring News | Supporting American Businesses and Workers 2017). Figuring

out a way to stop the bleeding of the IT industry is an important step in maintaining American economic and technological hegemony. Whether or not this can be achieved through Section 301 tariffs is unclear, but the hemorrhaging of US jobs must slow.

### **Technological, Semiconductors:**

The final specific industry that will be covered is the semiconductor industry, also known as the photovoltaic industry. The complexities around semiconductors in many ways act as a perfect microcosm for the larger problem. Semiconductors are substances with special electrical properties that help regulate the flow of electricity in almost all electrical and computing appliances (Zola 2021). More and more devices connected to the internet require a semiconductor, highlighting the importance of this industry (Lewis 2020).

American semiconductor businesses are fairly competitive in the world market. In 2019, \$47 worth of semiconductors were exported from America. Due to the success of the domestic industry, there has been skepticism on the need for tariffs on China, as it relates to the semiconductor industry, with some claiming that if any problems exist, they would be more efficiently solved with subsidies (Lincicome 2021). Despite this, there were fears over a specific Chinese company, SMIC, over unfair trade practices and possible IP theft.

SMIC is China's largest chip manufacturer (Lee et al. 2022). They were founded in 2000, and have had consistent backing from the Chinese government. Congress passed a bill in 2022, where one of the points was banning American purchase of SMIC, or any affiliates (H.R. 7776, 3A, 2022). Beholden to the 301 tax, imports of semiconductors from China fell by over 70% (Lee 2023). Despite this, SMIC still had a record \$1.5 billion profit last year (Lee et al. 2022). Due to the nature of semiconductors, this topic ties into the IT sector and national security.

The tariffs do not hurt Chinese semiconductor business, and despite the IP theft, the domestic industry is profitable. The economic incentives of using Section 301 in order to protect the US photovoltaic industry are unclear and as stated before, the same is true for the general technology industry. That being said, there are still possible incentives and impacts for the sake of national security. A strong semiconductor sector is truly key to defense, especially in the information age (Lewis 2020).

Using national security as a perspective in general is controversial. Some claim that national security, as it relates to Section 301, is a shame, and that under the masquerade are isolationism and protectionism. There is the question of whether free trade and minimizing tensions is better for both the economy and national security (Lincicome 2021). As with all complex policies, there is a balancing act. IP theft could in theory negatively affect national security, but as of right now, that does not seem to be the case due to the overwhelming strength of the domestic semiconductor industry and other similar industries that relate to defense.

### **Environmental:**

The final impact that will be explored is perhaps the broadest. What is the impact on the environment and on climate? Not the political climate, but the actual, touch-grass climate. Even though this ties into semiconductor production, the importance of the topic warrants its own section. The climate doesn't have a voice, so as the caretakers of our planet, we must advocate for it. It is an ethical obligation.

Semiconductors have many uses. One of them is the creation of solar photovoltaic cells, which are used in solar panels. This is an important source of alternative green energy and China is the largest producer of solar photovoltaic cells. In 2008 China accounted for over one-third of solar photovoltaic cell production and exported over 95% of what it made (de la Tour, Glachant,



and Ménière 2011). The problem is that much of the green energy technology China has was obtained through intellectual property theft. A large American producer of solar technology SolarWorld was hacked by the Chinese People's Liberation Army. This in turn prompted a section 301 investigation (Marschner 2017). This leads to the broader argument over IPR as it relates to climate.

While developed countries can transfer technological goods needed for combating climate change, such as solar panels or wind turbines, because of intellectual property laws they do not transfer the technological knowledge to the production of these green technologies. This transfer of knowledge would be key for developing countries to step into the green industry market and help combat climate change (de la Tour, Glachant, and Ménière 2011). Due to its regional inequalities, it is unclear whether China is a developed or developing country (Kanwit 2023), and thus, if it even has a claim to this argument. There is a chance that the enforcement of Section 301 could slow the combat of green technology in China. Even if that technology is stolen, its existence in a country that pollutes as much as China may have a positive impact on the world as a whole.

### **Final Thoughts:**

I will start concluding this paper by prefacing that going into the research process my thoughts on the topic were muddled. As a matter of fact, the more I dug in, the more it was clear that this is a complicated topic without a black-and-white solution. This is not a Disney movie with a clear hero and villain. This is not merely a story of laws, governments, or business. In the end, this issue boils down to people.

Intellectual property is important and intellectual property theft is a serious problem. From an economic perspective, IPR protection leads to innovations and new goods and services.

This leads to new jobs and quality of life improvements for all consumers. In addition, IP is a great contributor to GDP and in many ways, an element of national security. The government needs it, businesses need it, and consumers need it.

There is also an ethical argument for the protection of IPR. This is a very Western perspective, but it rings true for many people. It is selfish and capitalistic, yes. I can easily foresee critics pointing that out, but rather than argue with them, I must agree. Yes, it is selfish and capitalistic. No, I don't believe that is a bad thing. These are the reasons why America is the number one superpower. Our number one export is not soybeans, it is rugged individualism. With all its flaws, America is still a great country, and the protection of IPR is one of the reasons for this. We must remember that, and in terms of culture, keep that sacred. God is dead and we must pray to the all holy dollar.

AND YET, I will still argue for lifting the tariffs and trying to de-escalate the trade war. If we lift our tariffs, it is likely that China will lift theirs. The resulting tariff of Section 301 is hurting consumers and businesses. Once we truly embrace capitalism, we must remember that the bottom line is everything. While intellectual property theft by China is violating the ideals of Capitalism, the resulting trade war is hurting the fruits of Capitalism. We should not let our ideas of good and bad get in the way of people. The rising prices disproportionately affect the lower class, who are more worried about buying food than some philosophy.

The tariffs are hurting Americans more than Chinese people. We lost. It is time for politicians to stop doubling down and retreat. The Thucydides Trap can be reached without firing a single gun, through economic warfare. We are on the trajectory to just that, so I urge our captains at the wheel to slow the ship and change course before the inevitable collision.

In the future, to better deal with this issue, we should try to better understand China from a Societal perspective. I believe that is key. Yes, politicians should still appear “strong on China”. There is nothing wrong with that. Politics is a game, so let them play it. But the bureaucrats, the US trade representatives, should stop using Section 301 so aggressively. For now, it is best to reverse the problem-solving back to the WTO. Right now is the time to learn about China.

I would like to conclude by quoting the great Chinese General, Sun Tzu, “If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle” (Tzu 2010).

## References

- Janet A. Weiss. 1989. "The Powers of Problem Definition: The Case of Government Paperwork." *Kluwer Academic Publishers*.
- "Empress of China Becomes First US Ship to Trade with China." 2012. *OUPblog*.  
<https://blog.oup.com/2012/02/empress-china-ship-trade-us-china/> (October 22, 2023).
- Downs, Jacques M. 1968. "American Merchants and the China Opium Trade, 1800-1840." *The Business History Review* 42(4): 418–42.
- Peter Perdue. 2011. "MIT Visualizing Cultures."  
[https://visualizingcultures.mit.edu/opium\\_wars\\_01/ow1\\_essay04.html](https://visualizingcultures.mit.edu/opium_wars_01/ow1_essay04.html) (October 22, 2023).
- "U.S.-China Chronology - Countries - Office of the Historian."  
<https://history.state.gov/countries/issues/china-us-relations> (October 22, 2023).
- Guocang Huan. 1986. "CHINA'S OPEN DOOR POLICY, 1978-1984 on JSTOR."  
<https://www.jstor.org/stable/24356571> (November 22, 2023).
- "Nixon's Trip to China | Richard Nixon Museum and Library."  
<https://www.nixonlibrary.gov/nixons-trip-china> (October 22, 2023).
- Williams, Jeff. 2019. "History of Intellectual Property | Williams Law Firm." *Williams IP Law*.  
<https://www.txpatentattorney.com/blog/the-history-of-intellectual-property/> (October 22, 2023).
- Jeremy Norman. "The Statute of Anne: The First Copyright Statute : History of Information."  
<https://www.historyofinformation.com/detail.php?entryid=3389> (November 23, 2023).
- Smith, Yukon Huang, Jeremy. 2019. "China's Record on Intellectual Property Rights Is Getting Better and Better." *Foreign Policy*. <https://foreignpolicy.com/2019/10/16/china-intellectual-property-theft-progress/> (October 22, 2023).
- "The History of Section 301 Tariffs." <https://www.businessroundtable.org/the-history-of-section-301-tariffs> (October 22, 2023).
- "U.S.-China Trade War: Origins, Timeline and Consequences." 2021. *Warsaw Institute*.  
<https://warsawinstitute.org/u-s-china-trade-war-origins-timeline-consequences/> (September 17, 2023).
- Andrew Chatzky and Anshu Siripurapu. 2021. "The Truth About Tariffs." *Council on Foreign Relations*. <https://www.cfr.org/backgrounder/truth-about-tariffs> (November 22, 2023).
- TRADE ACT OF 1974, H.R. 10710, 93rd Cong. (1974)
- GOLDEN W. BELL. "The President's Power in the Field of Foreign Relations." *Supplemental Opinions of the Office of Legal Counsel* 1.
- Menshikova, A. M. 2022. "Position of Joe Biden's Administration on the World Trade Organization." *Herald of the Russian Academy of Sciences* 92(Suppl 6): S529–33.
- People's Republic of China, State Council Information Office, and Xinhuanet. 2019. "指责中国‘盗窃’知识产权毫无依据-中国知识产权资讯网."  
[http://www.iprchn.com/Index\\_NewsContent.aspx?NewsId=116399](http://www.iprchn.com/Index_NewsContent.aspx?NewsId=116399) (October 9, 2023).
- Johnson, Josiah. 2023. "US-China Competition Still One-Sided." *American Enterprise Institute - AEI*. <https://www.aei.org/foreign-and-defense-policy/us-china-competition-still-one-sided/> (September 17, 2023).
- Glenn Chafetz. 2023. "How China's Political System Discourages Innovation and Encourages IP Theft - The SAIS Review of International Affairs." <https://saisreview.sais.jhu.edu/how->

- [chinas-political-system-discourages-innovation-and-encourages-ip-theft/](#) (October 9, 2023).
- Kanwit, Graham. 2023. "Is China Still a Developing Country?" *VOA*.  
<https://www.voanews.com/a/is-china-still-a-developing-country/7244652.html> (October 11, 2023).
- Lewis, James. 2020. *Section 301 Investigation: CHINA'S ACTS, POLICIES AND PRACTICES RELATED TO TECHNOLOGY TRANSFER, INTELLECTUAL PROPERTY, AND INNOVATION*. Center for Strategic and International Studies (CSIS).  
<https://www.jstor.org/stable/resrep24249> (October 9, 2023).
- Singh, Kanishka, and Kanishka Singh. 2023. "US Extends Tariff Exclusions on Some Chinese Categories till End of 2023." *Reuters*. <https://www.reuters.com/markets/us-extends-tariff-exclusions-some-chinese-categories-till-end-2023-2023-09-06/> (September 17, 2023).
- Qingqing ,Chen, and Zhao Juecheng. 2023. "Withdraw '301 Investigation,' Remove Additional Tariffs, Review Trade Deal to Be Discussed If Yellen Visits: Former Chinese Official - Global Times." *Global Times*. <https://www.globaltimes.cn/page/202306/1293477.shtml> (October 6, 2023).
- "USTR Extends Reinstated and Covid-Related Exclusions from China Section 301 Tariffs." *United States Trade Representative*. <http://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/september/ustr-extends-reinstated-and-covid-related-exclusions-china-section-301-tariffs> (October 22, 2023).
- Foreign Agricultural Service. 2022. "China: Section 301 Retaliatory Tariff Exclusions Extended." *USDA Foreign Agricultural Service*. <https://www.fas.usda.gov/data/china-section-301-retaliatory-tariff-exclusions-extended-0> (October 9, 2023).
- Pei, Bruce Dickson, Minxin. "Red Capitalists in China: Will Entrepreneurs Change the Party?" *Carnegie Endowment for International Peace*.  
<https://carnegieendowment.org/2003/03/05/red-capitalists-in-china-will-entrepreneurs-change-party-event-593> (October 11, 2023).
- Lee, Mara. 2023. "Section 301 Review Will Finish This Fall; USTR Says Initial Steel Agreement Will Cover Only Scope 1." *Export Compliance Daily*.  
<https://exportcompliancedaily.com/article/2023/07/21/section-301-review-will-finish-this-fall-ustr-says-initial-steel-agreement-will-cover-only-scope-1-2307190069> (October 6, 2023).
- Atkins, Betsy. 2023. "Manufacturing Moving Out Of China For Friendlier Shores." *Forbes*.  
<https://www.forbes.com/sites/betsyatkins/2023/08/07/manufacturing-moving-out-of-china-for-friendlier-shores/> (October 12, 2023).
- "China Unemployment Rate 1991-2023."  
<https://www.macrotrends.net/countries/CHN/china/unemployment-rate> (November 24, 2023).
- Casey, Senator Bob. 2012. "REPORT BY THE U.S. CONGRESS JOINT ECONOMIC COMMITTEE CHAIRMAN'S STAFF."
- Maryam Mohsin. 2023. "10 Small Business Statistics You Need to Know For 2023."  
<https://www.oberlo.com/blog/small-business-statistics> (October 10, 2023).
- Lars-Erik A. Hjelm et al. "Akin, an Elite Global Law Firm." *Akin Gump Strauss Hauer & Feld LLP - USTR Increases Section 301 Tariffs on List 3 Products to 25% and Announces Additional Tariffs on Remaining Imports from China*.

- <https://www.akingump.com/en/insights/alerts/ustr-increases-section-301-tariffs-on-list-3-products-and> (October 9, 2023).
- “Section 301 China Tariffs & Exclusions Guide | C.H. Robinson.”  
<https://www.chrobinson.com/en/resources/resource-center/guides/section-301-china-tariff-guide/> (October 9, 2023).
- <https://tradepartnership.com/wp-content/uploads/2023/01/China-301-Tariff-Costs-Joint-Association-Study-FINAL.pdf>  
Gabriella Beaumont-Smith. 2023. “Section 301 Tariffs Cost Americans, Not the Chinese.” *Cato Institute*. <https://www.cato.org/blog/section-301-tariffs-cost-americans-not-chinese> (October 9, 2023).
- Abu Sayed. 2015. “What Is Textile Industry? Definition and Meaning - Textile Apex.”  
<https://textileapex.com/what-is-textile-industry-definition-and-meaning/> (October 11, 2023).
- “Keep China in Check: Don’t Let Section 301 Tariffs Expire | The Hill.” 2023. *The Hill*.  
<https://thehill.com/opinion/finance/4153592-keeping-china-in-check-dont-let-section-301-tariffs-expire/> (October 9, 2023).
- Bradsher, Keith, and Liz Alderman. 2020. “The World Needs Masks. China Makes Them, but Has Been Hoarding Them.” *The New York Times*.  
<https://www.nytimes.com/2020/03/13/business/masks-china-coronavirus.html> (October 11, 2023).
- “Record U.S. FY 2022 Agricultural Exports to China.” 2023. *USDA Foreign Agricultural Service*. <https://www.fas.usda.gov/data/record-us-fy-2022-agricultural-exports-china> (October 11, 2023).
- Chris Edwards. 2023. “Cutting Federal Farm Subsidies | Cato Institute.”  
<https://www.cato.org/briefing-paper/cutting-federal-farm-subsidies> (November 24, 2023).
- Lee, Jane, Josh Horwitz, Alexandra Alper, and Jane Lee. 2022. “Analysis: China’s Massive Older Chip Tech Buildup Raises U.S. Concern.” *Reuters*.  
<https://www.reuters.com/technology/chinas-massive-older-chip-tech-build-up-raises-us-concern-2022-12-13/> (September 17, 2023).
- “IT Reshoring News | Supporting American Businesses and Workers.” 2017. *Default*.  
<https://planetmagpie.com/news/it-reshoring-news> (October 12, 2023).
- Zola, Andrew. 2021. “What Is a Semiconductor and What Is It Used For?” *WhatIs.com*.  
<https://www.techtarget.com/whatis/definition/semiconductor> (October 9, 2023).
- Lincicome, Scott. 2021. *Manufactured Crisis: “Deindustrialization,” Free Markets, and National Security*. Cato Institute. <https://www.jstor.org/stable/resrep28730> (October 10, 2023).
- H.R. 7776, 3A, 2022
- Chow, Daniel, and Ian Sheldon. 2021. “Understanding the Economic and Political Effects of Trump’s China Tariffs.” *William & Mary Business Law Review* 12(2): 273.
- Ka Zeng. 2023. “Gauging the Impact of the China-US Trade War.”  
<https://thediplomat.com/2023/02/gauging-the-impact-of-the-china-us-trade-war/> (September 17, 2023).
- de la Tour, Arnaud, Matthieu Glachant, and Yann Ménière. 2011. “Innovation and International Technology Transfer: The Case of the Chinese Photovoltaic Industry.” *Energy Policy* 39(2): 761–70.

- Marschner, Thomas. 2017. "SolarWorld Testifies on Chinese IP Theft." *pv magazine USA*. <https://pv-magazine-usa.com/2017/10/10/solarworld-testifies-on-chinese-ip-theft/> (October 11, 2023).
- Tzu, Sun. 2010. *The Art of War*. Chichester: Capstone Publishing.
- Lehman, John Alan. 2006. "Intellectual Property Rights and Chinese Tradition Section: Philosophical Foundations." *Journal of Business Ethics* 69(1): 1–9.
- Taylor O'NEAL. 1997. "The Limits of Economic Power: Section 301 and the World Trade Organization Dispute Settlement System." *Vanderbilt Journal of Transnational Law* 30(2).