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Review

A Comparative Study of China and Japan's Response to Section 301 Investigations of the United States

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A Comparative Study of China and Japan's Response to Section 301 Investigations of the United States

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Abstract

Japan is the country with the most Section 301 investigations initiated by the United States. Meanwhile, the ongoing Section 301 investigation case against China is the most complicated and tough case until now. The different responses of Japan and China will be the core theme of this paper. Originally, Japan, little by little, accepted all the demands of the United States under American pressure in the semiconductor conflict and then began to resist its unreasonable demands; eventually, Japan forced the United States to withdraw its excessive requirement in auto parts conflict. In the case of China, previous Section 301 investigations were resolved by bilateral or multilateral agreements although it was difficult. In this time, the Chinese government has taken a countermeasure against the United States' bullying, evident from the very beginning. The situation is that China and the United States conducted bilateral negotiations on the stretch. Meanwhile, the United States continued to extend the scope of tariff goods and escalate the tariff rate against China, and the Chinese government immediately published the same amount and tariff rate for imported products from the United States. China and other countries are jointly suffering the sanction from the United States and are trying to restrain the trade hegemony of the United States.

Keywords: China; Japan; United States; Section 301; Trade war.

1. INTRODUCTION

Trade friction between China and the United States appeared at the end of the 1980s. It can be said that the United States has exhausted all methods of dealing with the trade friction with China: traditional methods such as antidumping, voluntary export restraints (VERs), countervailing duties, country-specific safeguards and modern ones such as Section 301 investigation under domestic laws. The current trade conflict between China and the United States began in August 2017 when the United States Trade Representation (USTR) announced the initiation of Section 301 investigation against China. After that China has several times urged the United States to cease the investigation, but eventually, the investigation report was published by the USTR on March 22, 2018. Four allegations those are respectively, mandatory technology transfer, substantial barriers and restrictions on technology, licensing terms and procedures of US companies, and investments by Chinese companies in the United States with the intent to get its cutting-edge technology and intellectual property and unauthorized access to support strategic development goals by Chinese government. Moreover, the US government also announced sanctions, respectively, to impose tariffs on Chinese products, appeal to the World Trade Organization (WTO) to address China's discriminatory licensing practices, and restrict the direct investment of China's companies in key US technologies. China immediately published retaliatory measures, including the same amount in volume and the same tariff rates. From July 6, 2018, the day that the United States implemented the proposed tariffs on the Chinese products, the punitive tariff has been levied for more than a year at present. In this period, sometimes the mutual tariffs between the two

sides show that the trade disputes have fallen to the bottom and sometimes that the trade negotiations are progressing smoothly, and it seems that they have seen hope again. Hope and disappointment are intertwined, and no signs of resolution have been seen so far.

Historically, Japan and the United States have experienced serious trade frictions from the end of 1950 to the mid-1990s. The trade friction products involved many fields, such as textiles, sheet glass, televisions, iron and steel, automobiles and automotive parts, semiconductors, supercomputer, and satellites. The level of trade frictions was also escalating along with the transition from labor-intensive products to capital-intensive and then to technology-intensive ones. Many signs prove that the United States is using the method of dealing with Japan in the past to hit China. In the stand-up of Sino-US trade friction, apart from comparing and analyzing bilateral trades, frictions have also become a favorite topic. Many researchers are focused on the similarities and differences in the two episodes or lessons from US-Japan trade friction for China. Chi-Hung Kwan (2002) reviewed the history of the US-Japan and Sino-US trade relationships and discovered that China's rising as a powerful trade partner has replaced Japan's position in the foreign trade relationship of the United States, pointing out some similarities and differences and indicated some lessons from the US-Japan trade friction for China. The similarities are the economic growth achievement of the two countries and the position of the second largest economy. The great difference is the trade structure of the two countries. The Japanese trade surplus with the United States was mainly brought by domestic companies' exports, and a significant share of the Chinese trade surplus with the United States was resulting from the export of foreign-invested companies. The situation is, China, as a "world factory," imports intermediate products from foreign companies, including Japan and other Asian countries, and exports final products to the United States. Therefore, Sino-US trade imbalance is not a problem between two countries but rooted in international production fragmentation. Chad P. Bown and Rachel McCulloch (2009) highlighted the similarities and differences of the US-Japan (1970s-1980s) and the Sino-US (1990s-2000s) trade friction. The huge size of the bilateral trade imbalance with the United States is regarded as the evidence of unfair practices for both Japan and China. The US allegation of the similar problems with both countries is the explicit and implicit subsidies, foreign direct investment, technology transfer, and currency misalignment. The United States had taken measures not only for these two countries' "symptoms" but also for the underlying cause of the imbalance as perceived by the US government. For the "symptoms," traditional tools, such as VERs, antidumping, countervailing duties, and country-specific safeguards, were used to limit the expansion of export to the US market. For the underlying cause of imbalance, the United States usually used the Section 301 investigations under the Trade Acts of 1974, the dispute settlement mechanism (DSM) of WTO, to improve the market access of the two countries and force them on domestic structural reform. The difference is that some measures are specifically targeted at Japan, and some measures are specifically targeted at China. For example, the United States has recently begun using countervailing duties against China, and it did not take the same measure against Japan; another difference is the use of the PRC-specific safeguards negotiated when the PRC joined the WTO.

This paper will not discuss every difference or similarity of the two trade frictions and analyze the response of the two countries to the Section 301 investigation initiated by the United States. Section 1 is opening of this paper; Section 2 introduces the Section 301 clause and its application. Section 3 analyzes the Section 301 investigation cases against Japan and the response of the Japanese government for typical cases; Section 4 shows the Section 301 investigation against China and Chinese policy responses; Section 5 concludes the paper.

2. SECTION 301 AND ITS APPLICATION

Section 301 is an abbreviation of Section 301-309 of the Trade Act of 1974 and is commonly called as Section 301. Section 301 allowed the President to have the privilege and take retaliatory action if foreign trade practices were found to hurt US exports in an "unjustifiable and unreasonable" manner. Before Section 301, the focus of US foreign trade policy response was to control or reduce foreign goods into the domestic market by traditional methods such as antidumping or countervailing duties and VERs. Along with the US trade policy shift to open foreign markets, the Section 301 clause became the main lever to open the targeted country's market.

This idea, first embodied in Section 252 of the 1962 Trade Act, and later amended by the Trade Act of 1974 and the Omnibus Foreign Trade and Competitiveness Act of 1988, the definition of unfair trade practices and the retaliatory measures has been extended, and some variants have been derived, such as Super 301, Special 301, and so on. Based on the amendment of 1988, the USTR was endowed with the capability to deal with unfair trade relationships with a foreign country.

Special 301 is a variant from the Section 301 remedy that focuses on intellectual property rights (IPR). The USTR submits annual National Trade Estimates (NTE) to Congress; it evaluates the degrees of inadequate protection of IPR or “denying fair and equitable market access to United States persons that rely upon intellectual property protection.” The highest level will be registered as “priority foreign countries” (PFC), the second is priority watch list (PWL), and the third is watch list (WL). The USTR must initiate the Section 301 investigation again for PFC.

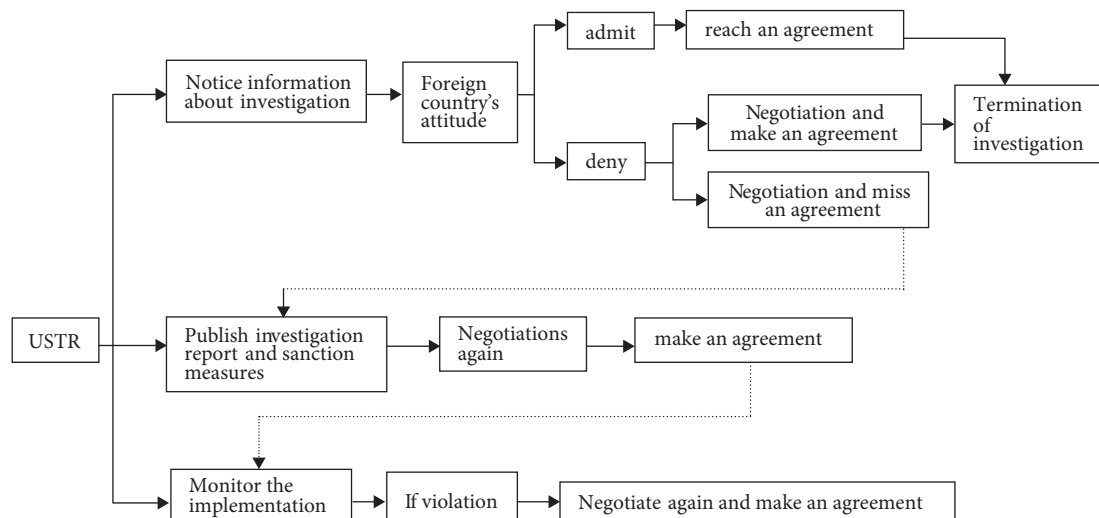
Super 301 was a time line provision, in which the Reagan administration required the USTR for 1989 and 1990 to issue a Super 301 Report on its trade priorities and to identify PFCs that practiced unfair trade and priority practices that had the greatest effect on restricting US exports. The USTR would then initiate a Section 301 investigation against the PFCs and quickly seek to negotiate a settlement with them in the form of compensation or elimination of the trade barrier. Following a breakdown in talks between the United States and Japan in February 1994 over a new framework for addressing Japanese trade barriers, President Clinton issued an executive order reactivating the Super 301 mechanism. Later, it was extended through 1997, suspended in 1998, and reinstated for three years from 1999 to 2001.

Section 1377, a variation, came from the Omnibus Trade and Competitiveness Act of 1988 and aimed to promote the operation and effectiveness of US telecommunications trade agreements. USTR issues Section 1377 review by March 31 of each year. It was also called “Telecommunication 301.”

If the USTR decides to start a Section 301 investigation, it must seek to negotiate with a foreign country. The procedure with a foreign country is shown in Figure 1.

Because the investigation of Section 301 was used in trade negotiations as a threat or leverage to aim at making a favorable agreement, lots of investigations were terminated at many stages. Partial cases were terminated after the foreign country admitted to the United States’ allegations and made an agreement, and other cases were suspended because the two sides made an agreement during the period of investigation; most of them will end before the investigation report is released. Individual cases have entered the stage of release of investigation reports and punitive measures, and several other individual cases have entered the stage of unfavorable punishment based on poor enforcement.

Figure 1. Procedure of Section 301 Investigation.



Based on the paper from the Peterson Institute for International Economics (PIIE), the USTR has initiated 122 Section 301 investigations (Chad P. Bown, 2017). However, we could not search the whole investigation information from the statistics database but only the cases from 1975 to 1997. There are 116 investigations in this period, and 94% of the total is shared. For all of those, the Reagan administration widely used the Section 301 investigation, and 49 cases had been initiated (i.e., 42% of the total 116 cases). Moreover, 21 cases were initiated before the era of Reagan.

Along with the establishment of the WTO, the United States turned to rely on the DSM of WTO and initiated 114 formal disputes against trading partners (i.e., more than 20% of all cases filed worldwide). However, the United States did not abandon the Section 301 clause although it has caused serious boycotts from trading partners and has become known as an “aggressively unilateral” or “empire provision.” From 1995 to 2017, the USTR initiated 29 Section 301 cases, which accounts for 23% of all investigations. The last formal Section 301 investigation before 2017 was initiated against Ukraine in 2010, who is not yet a WTO member.

Based on data from the USTR, Table 1 shows Section 301 investigation cases against selected countries or region and the fields range from 1975 to 1997.

Among the 116 cases, the European Union (EU) is the highest, 28 cases; the second is Japan, 16 cases; South Korea and Canada tie for third, each suffered 11 cases; and China encountered 3 in this period. The allegations were related to many fields, including agriculture, manufacturing, and services. The ways of terminating the investigation are either appeals to the General Agreement on Tariffs and Trade (GATT)/WTO or stopping the alleged acts or practices, or reaching an agreement between the two sides. In all investigations, the EU has the highest proportion of appeals to the GATT/WTO. Although the GATT/WTO tends to support the US claims in many cases, it is also the biggest constraint on US unilateralism. The responses of the Japanese government for Section 301 investigation were different from those of another country, some cases were terminated after the USTR announced the stoppage of the unfair acts or practices perceived by it, and some agreements were made at the very last minute of the deadline. The details will be analyzed later.

Table 1. Section 301 Investigations against Selected Countries or Regions.

Country	Amount	Main Acts or Practices That US Alleges
EU	28	Minimum import price and license/surety deposit systems on canned fruits, etc./EC and Japan diversion of steel/enlargement/certain subsidies affecting access to the EC's market for modified starch/third country meat directive/supplementary levies on egg imports/variable levy on sugar added to canned fruits and juices/citrus tariff preferences/poultry export subsidies/hormones/space agency satellite launching services/export subsidy commitments on dairy products/canned fruit production subsidies/copper scrap/export subsidies on wheat flour, on malt exports/triple superphosphate water solubility standard/livestock feed mixing requirement/sugar export subsidies/banana import/wheat export subsidies/pasta export subsidies/oilseeds
Japan	16	EC and Japan Steel agreement/leather/cigars/pipe tobacco/non-rubber footwear/semiconductors/tobacco products/citrus/construction-related services/supercomputers/forest products/satellites/market access barriers to agricultural products/auto parts/barriers to access to the Japanese market for consumer photographic film and paper
China	3	Intellectual property rights/market access
South Korea	11	Insurance/non-rubber footwear import restrictions/steel wire rope subsidies and trademark infringement/beef/agricultural market access restrictions/wine/barriers to auto imports/cigarettes/intellectual property rights
Brazil	8	Soybean oil and meal subsidies/non-rubber footwear import restrictions/import licensing/informatics/trade and investment in the auto sector/intellectual property rights/pharmaceuticals

Source: USTR archive.

https://ustr.gov/archive/assets/Trade_Agreements/Monitoring_Enforcement/asset_upload_file985_6885.pdf.

Table 2. Selected Countries and Japan's IPR Status Based on Special 301 Report.

COUNTRY	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018		
ALGERIA	WL	WL	WL	WL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL		
CHILE	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL+ OCR	WL	WL	WL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL		
CHINA (PRC)	PWL	PWL	PFC	WL	WL	PFC	WL	PFC	306	306	306	306	306	306	306	306+ OCR	PWL	PWL+ 306	PWL	PWL	PWL	PWL	PWL	PWL+ 306	PWL	PWL+ 306	PWL	PWL	PWL	PWL	PWL	
COLOMBIA	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	PWL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL+ OCR	WL+ OCR	PWL	PWL	
INDIA	PWL	PWL	PFC	PFC	PFC	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL+ GSP	PWL	PWL	PWL	PWL	PWL	PWL	PWL	
INDONESIA	WL	WL	WL	WL	WL	WL	WL	PWL	PWL	PWL	PWL	WL	PWL	PWL+ OCR	PWL	PWL	PWL	PWL+ OCR	PWL	WL	WL	PWL	PWL	PWL+ GSP	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL
PAKISTAN	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	PWL	PWL	WL	WL+ OCR	WL+ OCR	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	WL+ OCR	WL	WL	WL
THAILAND	PWL	PWL	PFC	PFC	PFC	PWL	WL	WL	WL	WL	WL	WL	WL	WL+ OCR	WL	WL	WL	WL	PWL	PWL+ OCR	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL
TURKEY	WL	WL	WL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	WL	WL	WL	PWL	PWL	PWL	PWL	PWL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
VIETNAM	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL
JAPAN	WL	WL	WL	WL	WL	PWL	PWL	PWL	WL	WL	WL	WL	OCR																			

Note: PFC: Priority Foreign Country; PWL: Priority Watch List; WL: Watch List; 306: Mention; OCR: Out-of-Cycle Review; GSP: IPR review ongoing, except in Ukraine and Indonesia where GSP IPR review was initiated in June 2012.
 Source: <https://iipa.org/reports/special-301-reports/>.

Since the start of the Special 301 clause in 1988, the USTR has annually issued a three-tier list of countries that are judged as inadequate protection of IPRs or as denying market access. According to the Special 301 Report, Table 2 shows the selected countries that have been designated every year from 1989 to 2018 and the data of Japan. Among the 98 countries designated in the history of the Special 301 report from 1989 to 2018, 10 countries were designated every year on different tiers. During the past 30 years, China was designated as a special 301 PFC in 1991, 1994, and 1996, which triggered the Section 301 investigation thrice; it has been designated as PWL 19 times and monitored by Section 306 11 times. Japan was designated from the beginning to the end of the twentieth century and has been designated as PWL 3 times and WL 8 times.

3. SECTION 301 INVESTIGATIONS IN JAPAN AND DIFFERENT RESPONSES

From Table 2, we find that the most investigation cases suffered for a single country was Japan. Among the 16 investigations, the first case (301-10) was terminated by STR (Special Trade Representation, the precursor to USTR) due to insufficient evidence, and the second to last case (301-99) was resolved by appealing to the WTO. We have compiled the remaining 14 cases in Table 3.

Table 3. Main Section 301 Investigations in Japan and the Degree of US Satisfaction.

Time	Allegations	Investigation process and results	Concession rate
1977-78	Brazil, Korea, and PRC thrown silk agreements with Japan (301-12)	Fisher filed a petition alleging that Japanese agreements with countries on the left about thrown silk effectively prevented US exports. The STR held a public hearing and appealed to the GATT. Japan adjusted the restrictions before the GATT concluded.	Largely successful 3
1977-85	Japan leather (301-13)	The Tanners Council filed a petition alleging violation by Japan imposing restrictions on leather imports from the United States. The United States and Japan made an understanding in Jan 1979, and the US monitored the implementation. The United States also appealed to the GATT and got support. In Dec 1985, the United States accepted compensation from Japan.	Partially successful 2
1979-81	Japan cigars (301-17)	The Cigar Association filed a petition alleging that Japan was restricting cigar imports. During panel deliberations under the GATT, Japan repealed its internal tax on imported cigars in 1981 and reached an agreement.	Nominally successful 1
1979-81	Japan pipe tobacco (301-19)	An association filed a petition in Oct 1979 alleging that Japan set unreasonable prices for imported pipe tobacco. In Nov 1979, the USTR consolidated this case with 301-17.	Nominally successful 1
1982-85	Japan non-rubber footwear import restrictions (301-36)	A footwear company filed a petition alleging import restrictions on non-rubber footwear by Japan and other countries. In Jul 1985, the United States requested the application of the conclusions reached by the GATT in 1984 on the leather quota to the leather footwear quota as well; Japan agreed to provide compensation.	Partially successful 2
1985-91	Japan semiconductors (301-48)	The SIA filed a petition alleging that the Japanese government created a protective structure for the sale of foreign semiconductors in Japan. The two countries reached an agreement in Jul 1986. In Apr 1987, the United States alleged Japan's failure to fulfill its obligations under the agreement, imposed 100% tariffs on Japanese products such as microcomputers; in 1991, the two countries reached a second agreement.	Nominally successful 1

(Continued)

Table 3. (Continued)

Time	Allegations	Investigation process and results	Concession rate
1985-86	Japan tobacco products (301-50)*	The USTR self-initiated an investigation of Japanese practices that acted as a barrier to US cigarette exports. The United States and Japan concluded an agreement under which Japan would reduce its tariff on cigarettes to zero by 1986.	Largely successful 3
1988	Japan citrus (301-66)	Florida Citrus Corp. filed a petition alleging that Japan's import quota on fresh oranges and orange juice contravene the GATT article. The USTR initiated an investigation; an agreement was reached in 1988.	Largely successful 3
1988-91	Japan construction-related services (301-69)*	The USTR initiated an investigation regarding the acts, policies, and practices in construction-related service areas that were barriers for US companies. In 1989, pursuant to Section 304, the USTR determined to investigate against Japan. The USTR monitored Japan's implementation of these commitments pursuant to Section 306.	Partially successful 2
1989-90	Japan satellites (301-74)*	In Jun 1989, the USTR initiated an investigation on the government's procurement of foreign satellites based on the identification as a "priority practice" under Section 310. In Apr 1990 the United States and Japan reached an agreement under which Japan provided open access to its domestic public satellite market to US companies.	Largely successful 3
1989-90	Japan forest products (301-76)*	In Jun 1989, the USTR initiated an investigation of Japan's policies and practices affecting imports of forest products based on the identification as a "priority practice" under Section 310. In Jun 1990 the United States and Japan reached an agreement that will greatly improve market access for US exporters.	Partially successful 2
1989-90	Japan supercomputers (301-75)*	In Jun 1989, the USTR initiated an investigation on the government's procurement of foreign supercomputers based on the identification as a "priority practice" under Section 301. In Jun 1990 the two sides reached an agreement.	Partially successful 2
1994-95	Japan auto parts *(301-93)	In Oct 1994, the USTR self-initiated an investigation with respect to certain acts or policies on auto parts. In May 1995, the USTR recognized the facts and will impose 100% tariff on luxury motor vehicles from Japan. On June 28, 1995, the two countries reached a satisfactory resolution. The USTR continued to monitor compliance with the agreement.	Nominally successful 1
1997	Japan market access barriers to agricultural products (301-112)	In October 1997, USTR self-initiated an investigation with respect to certain acts, policies and practices of the Government of Japan concerning Japan's prohibition on imports of certain agricultural products. Consultation with Japan government pursuant to the Article of GATT and resolved.	Largely successful 3

Source: Quoted from Guifen and Shanshan (2018).

The last column is based on the Ka Zeng analysis, which shows how satisfied the US government is with the agreement reached after the Section 301 investigation; it also indicates the degree of compromise or concession of foreign governments to US demands, and it could be called a compromise rate under US pressure. Ka Zeng introduced Bayard and Elliott's evaluation of the success of US economic coercion in Section 301 cases and on Elliott's and Richardson's updated and expanded dataset, illuminated the means of

the number “3,” “2,” and “1.” Number “3” is largely successful, means that the US demand was satisfied in all issue areas; number “2” is partially successful, means that foreign countries capitulated to US demands in some areas but not all; number “1” is nominally successful, and means that the issue recurs or that the foreign countries failed to implement the agreement.

From Table 3, we find that the average compromise rate on Japan is 2.07, on the EU it is 1.3, on Canada it is 1.67, and on China it is only 1, and it shows that Japan is the country most responsive to US pressure. Later, we will discuss two investigation cases involving Japan. The first is semiconductors, and the second is auto parts; the two cases show the different responses yet leading to the same result. In other words, the satisfaction of the United States in these two cases was nominally successful (i.e., the worst degree in Japan cases).

The trade conflict over semiconductors between Japan and the United States was the most drawn out and intense in the two countries’ history of trade conflicts. The semiconductor dispute appeared when the US semiconductor industry complained that the Japanese government had created a highly competitive domestic industry through its classical strategy of promotion and protection and outperformed US firms in both the quantity and quality of semiconductor production. US companies focused on the Japanese dumping in the United States and third-world countries, alleged the lack of access to the Japanese domestic market, and urged the US government to initiate market access negotiations with Japan. The United States and Japan reached an agreement under the US–Japan Working Group on High Technology in April 1982, in which the Japanese government committed to prevent dumping and provide US firms with greater access to Japan’s domestic market. The Semiconductor Industry Association (SIA) played an indispensable role during this campaign, which has united the semiconductor industry since 1977 and given it a voice. In June 1985, the SIA submitted a Section 301 petition against Japan’s unfair competitive tactics to the USTR and claimed that the substantial evidence was unbalancing market share in different areas. For example, in 1984, the US semiconductor industry captured 83% of the sales in the US market, 55% in the European market, 47% in other Asian markets besides Japan, and only 11% in the Japanese market. So the SIA created a public opinion atmosphere that the Japanese semiconductor industry’s behavior has hurt the benefit of the United States and even got support from industries outside the semiconductor industry, such as the American Electronics Association (AEA), which represents over 3,500 US electronics-related companies and industries. Following the SIA’s Section 301 petition, Intel, AMD, and National Semiconductor also filed another antidumping complaint against Japan. Those companies called on the USTR to monitor Japan’s predatory export behavior and market barriers and take appropriate measures to counter the effects of Japan’s industrial targeting practices until then.

The pressure came from industrial organizations and increased the imperatives for action on the Reagan administration. In November 1985, the Reagan administration had to initiate unfair trade negotiations with Japan. In September 1986, the two countries reached the semiconductor agreement, in which Japan promised to monitor the export prices of its firms to ensure that they do not sell semiconductors at a price below the cost of production, regulate sales both in the United States and in third-world countries, and promote the sale of US chips in Japan. The biggest difference during this negotiation was about the market share target. The US requested writing 20% of the market share target into the agreement; Japan rejected this indicator and committed itself to assist US firms seeking to increase their sales in Japan and to coordinate the relationship between Japanese users and US suppliers. However, under the coercive pressure of the United States, in a confidential letter to the accord, it explicitly undertook to increase foreign makers’ share of the Japanese market to 20% within the 5-year term of the agreement (in the agreement of 1991, a 20% market share target was finally written into the agreement).

Two years after this agreement, several US manufacturers complained that Japanese firms were violating the terms of the dumping agreement in third-world countries. In January 1987, the USTR threatened to retaliate with tariff sanctions if Japanese firms failed to conform to the terms of the agreement by April 1. Meanwhile, the SIA and the Economic Policy Council (EPC) urged to escalate sanctions against Japan, and Congress continued to criticize the discretion of the Reagan administration. With the Congress and the industry’s condemnation, on March 27, 1987, the USTR announced the imposition of 100% retaliatory tariffs on \$300 million of Japanese electrical devices, including TVs, laptops, computer, disk drive units, electric motors, and other consumer goods. Japan responded immediately and established the Users’ Committee of Foreign Semiconductors (UCOM) and Distributors Association of Foreign Semiconductors

(DAFS) to promote the sales of US semiconductor products. This retaliatory tariff was terminated in June 1987, but this action showed the US trade policy had undergone gradual shifts from rule oriented to result oriented.

Several semiconductor agreements imposed on Japan had a serious impact on the development of the Japanese semiconductor industry, but it has not brought about the boom of the US semiconductor industry. It has contributed to the thriving of the semiconductor industry in South Korea, Taiwan, and China.

The US–Japan trade conflict over auto and auto parts appeared in the late 1970s. The auto conflict was sparked by the dumping of large numbers of Japanese cars into the US market in the late 1970s and ended with a VER by Japanese automakers in 1981. VER on Japanese cars is a 3-year agreement that limits the export of its passenger cars by up to 1.68 million units for the first year, with 16.5% of the first year’s sales added to sale in the second year, and finally extends to the end of the fourth year. Four years later, the US government announced that it would not call for a renewal of the VER agreement but would instead lobby for increased access to the Japanese market and promote Japanese carmakers’ investment in the United States. However, Japan’s Ministry of Trade and Industry (MITI) requested the auto industry to continue its VER to avoid “excess competition.”

In January 1985, the two countries opened the market-oriented sector-selective (MOSS) talk, intended to open the Japanese domestic market. The starting sectors focused on four areas: forest products, telecommunications equipment and services, electronics, and pharmaceuticals and medical equipment, which included semiconductors but were later separated and became a special case as discussed earlier; the auto sector was also included in the talk of 1985 and auto parts in the talk of 1990. The MOSS talk would be about the removal of trade barriers rather than securing Japanese markets for American firms using a rules-oriented approach. Along with the US trade policy shift to a results-oriented approach, the US government started using aggressive methods to deal with the auto and auto parts trade conflict with Japan. The most typical one was the Framework Talks proposed by Bill Clinton in 1993. The Clinton administration sought to set concrete numerical goals, but the Japanese government opposed and resisted the setting of numerical targets. For example, the United States requested Japan to reduce its trade surplus by a certain target, but the Japanese government rejected the use of special figures and instead insisted on a vague wording—“significantly sufficient reduction in the medium term,” which was finally adopted by US (Masao Satake, 2000). The joint statement was announced in July 1993, but the disagreement between the two governments over targets led to the collapse of the Framework Talks in the next round of meetings between President Clinton and Prime Minister Hosokawa in February 1994. The United States began an investigation concerning the Japanese refurbished auto parts market under Article 301 of the US Trade Act.

The auto and auto parts talk still centered on the numerical target that the Japanese should purchase a specific amount of US cars. On May 11, 1995, the US government announced its intention to submit a file to the WTO on barriers to market access and to impose retaliatory tariffs of 100% on Japanese luxury cars under Section 301 investigation. The Japanese government quickly responded by petitioning the WTO based on a violation of principles and requesting bilateral consultations with the United States. In June, the United States withdrew its request for an upward revision of the voluntary plan, but Japan still rejected this revision, and the talks came to a deadlock again. Interestingly, this dispute was resolved by the Japanese automakers themselves, and they announced voluntary plans and promised to reduce export ratios, promote globalization, localize production sites, expand imports, and increase the purchasing of integrated and replacement parts. The final agreement was reached on July 26, 1995, just the day before the US sanctions became effective.

4. SECTION 301 INVESTIGATIONS IN CHINA AND DIFFERENT RESPONSES

Based on the data from the USTR website, four Section 301 investigations were initiated by the United States against China before 2017. The details are compiled in Table 4. The case about Chinese clean energy was resolved under the DSM of the WTO, and the rest of the three cases were resolved by a last-minute agreement between the two countries, and the United States withdrew the threatened sanction. We can observe the trade conflict around intellectual property has been an eternal subject of the Sino–US relationship, and the United States has now provoked a trade war with aim of preventing intellectual property theft.

Table 4. Section 301 Investigations in China and the US Satisfaction.

Time	Allegations	Investigation process and results	Concession rate
1991-92	China intellectual property protection (301-86)*	On May 26, 1991, the USTR self-initiated an investigation alleging the PRCs inadequate and noneffective protection of IPR. On Nov 26, 1991, the USTR announced that the action taken in reponse must be made no later than Feb 26, 1991. China signed the IPR agreement with the United States in Jan 1991 and signed the China-US memorandum of understanding regarding intellectual property rights peotection on Jan 17, 1992.	Nominally successful 1
1991-92	China market access (301-88)*	On October 10, 1991, the USTR self-initiated an investigation alleging certain acts, policies, and practices of china that restrict or deny imports of US products into the Chinese market. The USTR requested a public comment and announced that they would impose a penalty duty if China could not reach an agreement before Oct 10, 1992. At the deadline, China satisfied US demands and promised to remove trade barriers for a number of defferent products over the next five years.	Nominally successful 1
1994-96	China intellectual property rights (301-92)*	On June 30, 1994, the USTR self-initiated an investigation, alleging certain acts, policies, and practices of China that deny adequate and effective protection of IPR. On March 11, 1995, after strenuous and marathon talks, China and the United States reached an agreement on the protection of IPRs. In 1996, Special 301 report again listed China as PWL; the USTR censured Chinas failure to effectively enforce its 1995 commitments and initiated Section 301 investigation. In Jun 1996, the United States and China reached the third agreement on the protection of IPRs.	Nominally successful 1
2010	China clean-energy export	On Jan 9, United Steelworkers Union filed a petition under Section 301 of the 1974 Trade Acts; on Sept 9, the USTR initiated an investigation and required a bilateral consultation with China within 90 days. In Dec 2010, the USTR declared that it would solve this problem under the WTO DSM, and China agreed to revise the law regarding the trading subsidy.	

Source: USTR archive.

https://ustr.gov/archive/assets/Trade_Agreements/Monitoring_Enforcement/asset_upload_file985_6885.pdf and the concession rate data from Ka Zeng, "Trade Threats, Trade Wars: Bargaining, Retaliation, and American Coercive Diplomacy," University of Michigan Press, 2004, p. 62. 2010's case referenced from <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2010/october/united-states-launches-section-301-investigation-c>.

China acknowledged IPRs and protected themt since the 1980s. China not only acceded to the major international conventions on the protection of rights to intellectual property but also established the intellectual property law and decreed in the areas of trademark, copyright, and patent domestically. Although the Chinese government paid attention to protect IPRs, Chinese firms did not immediately form the concept of respecting intellectual property rights, churning out low-quality manufactured goods and imitating products and business models from abroad past long term. Those perceptions triggered two intellectual property frictions between China and the United States and made three agreements; they were the Memorandum of Understanding, the Sino–US Agreement on Intellectual Property Rights, and the agreement on the implementation of IPRs.

These agreements or memorandum have indeed promoted the protection of intellectual property in China, and along with this Chinese firms are pursuing global expansion abroad and high-tech innovation

at home; they have increasingly demanded effective intellectual property protections. The Chinese government is also aware that inadequate intellectual property protection will hinder China's move to becoming an innovative country and taking many effective measures. Foreign firms have been slow to realize the substantial changes in China's protection of IPRs. Based on the survey conducted by the American Chamber of Commerce in China in 2017, member businesses are split on their views of China's IPR laws and regulations; some respondents saw it improving, and some respondents noticed that protecting intellectual property would be properly enforced in China. According to the 2017 NTE, the United States first acknowledged the improvement and development of China's IPRs protection. Hard to understand is that in this situation the United States initiated Section 301 investigation against China in 2017 and constantly escalated it in 2 years. Looking back into this Sino-US trade friction, we can divide it into five stages.

The first stage: Before the initiation of the investigation. Confronting the US demand for China to reduce the trade imbalance, China has taken some effective measures. President Xi Jinping visited Trump's Mar-a-Lago estate in Florida on April 6, 2017, where China agreed to set up a 100 Day Action Plan to resolve the trade imbalance. China also promised to lift the ban on US beef, increase pork and soybean imports, and allow more Hollywood films to be shown on the mainland. Unfortunately, the USTR initiated an investigation into certain acts, policies, and practices of the Chinese government relating to technology transfer, intellectual property, and innovation on August 18, 2017. Chinese government resolutely opposed the serious unilateralism of the Section 301 investigation and strongly called to resolve trade disputes under the multilateral framework of the WTO. On July 19, 2017, the US-China Comprehensive Economic Dialogue opened in Washington but failed to agree on major new steps to reduce the trade deficit between the two countries.

The second stage: From the investigation report release to the United States' implementation of its first tariffs. On March 22, 2018, the USTR released the investigation report, and on the same day, Trump signed a memorandum directing to file a WTO case against China for discriminatory licensing practices, restricting investment in key technology sectors, and imposing tariffs on Chinese products. Since then, the two sides have entered the stage of shouting in the air. The United States released the list of proposed products, their worth, and the tariff rate, and China quickly reacted to the initial list with the same tariff rate and for the same worth. Meanwhile, the United States alleged Chinese telecom company ZTE violated US sanctions. On May 3, 2018, a second trade talk between the two countries was held in Beijing, where the United States demanded that China should reduce the trade surplus by \$200 billion within 2 years, and China agreed to it. In the third trade talk, China and the United States issued a joint statement on economic, trade consultations that agreed to "put the trade war on hold." This stage shows that the Sino-US trade friction was moving in the right direction.

The third stage: From the United States' implementation of its first tariffs (list 1) to the G20 Summit in Buenos Aires. July 6, 2018, was the first day that the United States implemented its first tariffs that collected a 25% tariff on Chinese products, valued at US\$34 billion. Later, the United States released the second (list 2: 25% tariff on US\$16 billion worth of goods) and third (list 3: a 10% tariff on US\$200 billion worth of goods from September 24, 2018, to be increased to 25% by January 1, 2019); China took retaliatory measures and announced its corresponding retaliatory tariffs on US products. In nearly half a year, high-level trade talks had ceased, but a midlevel representative meet was held on August 22, 2018, but no breakthrough in this meeting was achieved. The Sino-US trade friction was deadlocked.

The fourth stage: From the G20 Summit in Buenos Aires to Trump's threats to raise tariffs on China. On December 1, 2018, after the meeting between President Xi Jinping and Donald Trump, the two sides agreed to a temporary truce to de-escalate trade tensions, and both countries refrained from increasing tariffs or imposing new tariffs for 90 days (until March 1, 2019). Both sides were working hard to reach an agreement on time. The first face-to-face trade talks since a 90-day truce held on January 7-9, extended for one day than the originally scheduled 2 days. On February 21-24, 2019, the United States and China held trade talks in Washington, and Trump extended the tariff deadline but did not give a concrete deadline. In this stage, China temporarily lowered tariffs on US autos, resumed buying US soybean exports, and agreed to establish trade deal enforcement offices. Trump threatened to raise tariffs from 10 to 25% whimsically on May 5, 2019, and the two countries fell into a tit-for-tat trade war. The United States placed Huawei on its "entity list," banning it purchasing from US companies, and added another five Chinese entities to its "entity list." Meanwhile, China issued a white paper on US-China economic relations and denounced US unilateral and protectionist measures, criticized its backtracking on Sino-US trade talks,

and demonstrated China's stance on trade consultations and the pursuit of reasonable solutions. The trade conflict escalated into a trade war.

The fifth stage: From the G20 summit in Osaka to the future. Donald Trump and Xi Jinping met in Osaka on June 29, 2017, and agreed to resume trade talks and relax the ban on Huawei. Around this "restart" of trade talks, the status or situations of the United States and China likely have changed in the game. In the past negotiations, the common modes were the United States first delivered its demand, and then China would choose some requests. This time, China insists that the "restarted" trade negotiations should be based on "equality and mutual respect," which was the premise of restarting it. It is worth remembering that there is a trend that China is doing its own thing, no matter what happens to the outside world. This means the transformation of its economy from one based on massive investment and export-led manufacturing to one where domestic consumption plays a larger role. President Xi Jinping said, "We are here at the starting point of the Long March to remember the time when the Red Army began its journey" (short for "New Long March") in a meeting; of course, this rhetoric includes domestic reform issues as well as international environmental or international relations issues, that still show that China is preparing to hunker down for a protracted Sino-US trade war.

Compared with China's calm response, the United States seems to be eager to reach an agreement. Trump's willingness to make concessions is not only for the election but also for lobbying from retailers and US tech companies. On June 17, 2019, Reuters stated that chip companies including Intel, Xilinx, and Qualcomm had met with the US Department of Commerce to discuss the Huawei situation. They reportedly stated that the technology shipped for Huawei's 5G networking gear could not pose a security threat for common devices such as smartphones and computer servers, and SIA also claimed that common technologies that are not related to national security should be exempted from the ban. US companies have already felt the power of Chinese sanctions, such as the FedEx investigation, the corporate blacklist, and the prospective rare earth ban. Based on the current situations, even if an agreement is reached, the United States may not get more deals than China offered before the May breakdown; it is said that there was a 150-page list of requirements for China.

5. CONCLUSION

As can be seen from the previous analysis, the response of the Japanese government has gone through the process from simply obeying or surrendering to US pressure to resisting and then turning to using the DSM of the WTO and finally forcing the United States to withdraw its unreasonable demands. In the Japan-US trade negotiations, there is a phenomenon worth mentioning: that is, the United States made full use of the theory of "two-level games" and adopted some tactics to influence the behavior of Japanese residents or companies. "Two-level games" means that the international negotiations between two countries usually consist of simultaneous negotiations at both the intranational level and the international level. Over domestic negotiations, the chief negotiator absorbs the concern of societal actors and builds coalitions with them; at the international level, the chief negotiator seeks an agreement that is among the possible "wins" in his "wins" in his state's "win-set" (Robert D Putman, 1988). For example, when the Japanese government struggled to negotiate with the United States on the front line, the declaration of Japanese domestic companies satisfied the demands of the United States. That was the case in October 1994: the Japan Automobile Manufacturers Association Inc. (JAMA) announced the JAMA Action Plan for International Coordination to indicate the willingness of Japanese manufacturers to make greater efforts.

Regarding the future of the Sino-US trade conflict, we are confident of reaching a better agreement. The biggest background is that the international production fragmentation becomes the trend of globalization, and it has changed the mechanism of trade friction generation and cost-sharing mechanism. In the past trade conflicts between Japan and the United States, the conflict was only a matter between the two countries that could not impose negative effects on other countries; rather, there were benefits, such as the rise of the semiconductor industry in South Korea and Taiwan, and in China after the Sino-US semiconductor conflict. However, this time, it is different because the Sino-US trade conflict has badly affected other countries in the same global value chain (GVC), especially Japan and South Korea. Furthermore, in the context of Sino-US trade frictions, US companies hope to shift their Chinese production to other countries or reshift to

the United States. That also has great limitations. According to the research of Pisano and Shih (2012), the industrial development needs “industrial commons,” which refers to a foundation of knowledge and capabilities (technical, design, and operational) that is shared within an industry sector, such as “R&D know-how, advanced process development and engineering skills, and manufacturing competencies related to a specific technology.” After long-term Outward Foreign Direct Investment (OFDI) by US companies, the industrial commons of the United States have seriously damaged the domestic sector. Shifting to other countries faces the same issues as with reshoring to the United States; those countries are lacking a business environment. Although the full-scale industrial structure in Japan has some flaws, China still has great advantages.

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Conflict of Interest

None.

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