

# 国内主义保国

— 232 301

---

:

232 1962 301 1974

关 : 232 301  
D996.1 A 2096- 6180 2019 01-0001- 17

---

## 一、国内法律体

1916 Antidumping Act of 1916 1930 Tariff Act of 1930  
1962 Trade Expansion Act of 1962 1974 Trade Act of 1974 1979  
Trade Agreement Act of 1979 1984 Trade and Tariff Act of  
1984 1988 Omnibus Trade and Competitiveness Act of 1988  
North American Free Trade Agreement Implementation Act  
Uruguay Round Agreements Act 2002 Trade Act of 2002  
International Emergency Economic Powers Act

---

2018 “ ” CLS 2018 D158 -  
“ ” No.2 2018





---

301 14 102  
15 WTO  
WTO WTO

2002 16

WTO 17.6

“ ” standard of review  
WTO

WTO

17

18

## 二、232 与其他 区别

1962 “  
” 1980 14 “ 232  
” 19 1986 “ ” Metal Cutting and Forming Machine  
Tools 20 1988 “ ” Antifriction Bearings 21 1992 “  
” Integrated Circuit Ceramic Packaging 22 1962

---

14 Public Law 103-182, 107 Stat. 2060 (1993).

15 Public Law 103-465, 108 Stat. 4813 (1994).

16 2002 “ ” Division B—Bipartisan Trade Promotion Authority Public Law 107-210,  
116 Stat. 933 (2002).

17 202 “ ”

18 351.408 “ ”

19 www.bis.doc.gov/232 2018 4 2

20

21 Buy American Act

22

232

“ ”

a

“

1930

201

a

350

”

“

”

b

232

b

Federal Register

b

2 A

i

ii

iii

b

3

A

270

c

1 A

90

23

c

2

30

24

d

e

f

232

“

”

“

23 2017 4 20

3 8

24

“ 232 ” 4 27

25% 10%

19 1862c 19 U.S.C. §1862c .

“ 232 ” 2018

” 25 “ ”

26

GATT 21 “ ”

b i

ii

iii “ ”

13 WTO

“ WTO

”

“ ” GATT

27 WTO “ ”

28

29

“ ” 1949

30

31 1951

32

---

25 John H. Jackson, William J. Davey and Alan O. Sykes, Jr., LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS—CASES, MATERIALS AND TEXT 1079 (5th ed., 2008).

26 at para 1080.

27 GATT 35 Non-application of the Agreement Between Particular Contracting Parties 1  
2

28 WTO 13 1

29 WTO 10 3

30 20 50

panel

31 John H. Jackson, WORLD TRADE AND THE LAW OF GATT: A LEGAL ANALYSIS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 749(1969).

32 65 Stat. 73, Sec.5 (1951).

“ ” 33

GATT 35 “ ” 34

“ ”

1983

GATT 13 2

“ ”

35

1985

36

“ ”

“ ”

37

“

” “

GATT 21

GATT ” 38

“

” 39

“ ” “ ”

40

232

WTO

“ ”

---

33 note 70 at 749–750.

34 at para 243.

35 , Report of the Panel adopted on 13 March, 1984 (L/5607–31S/67).

36 Executive Order No. 12513, 50 Fed. Reg. 18629 (1985).

37 2 BNA Intl. Trade Rptr. 765 (1985); 3 BNA Intl. Trade Rptr. 380 (1986).

38 GATT 21

“ ” “ ”

GATT 21 2 GATT 21 2

John H. Jackson, William J. Davey and Alan O. Sykes, Jr., *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS—CASES, MATERIALS AND TEXT 1081–1082* (5th ed., 2008).

41 “ ”  
“ 232 ”  
三、301 与 保 主义

1930  
1974  
“ ” 301  
42  
2018 4 4 USTR “ 301 ”  
1 300 43  
25% USTR  
2025 44  
1979 1984 1988  
301 “ 301 ” “ 301 ”  
“ 301 ” “ 301 ”  
3  
45  
“ 301 ” 1974  
Relief from Unfair Trade Practices 1 46  
302 303 304  
305 306 307  
308 309

---

41 “ ” United States—Definitive Safeguard Measures on Imports of Certain Steel Products, DS252.  
2005 3 42  
42 “ 301 ” 2007 2 138  
43 Under Section 301 Action, USTR Releases Proposed Tariff List on Chinese Products. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/april/under-section-301-action-ustr>(last visited April 4,2018).  
44 2025 2015  
2025 2015 28  
45 301 2017 10 19  
46 “ ” Antidumping Duties “ ” Countervailing Duties “  
” Unfair Import Practices



action rules	301 c	a Scope of authority	Mandatory action d	b	Discretionary Definitions and special
	a 1			A	
	B		i		
		ii			
		“ ”			“ ”
		a 1			48
	a 2			A WTO	
i			ii		I
		II			
B		i			
ii	I			II	
				iii	
				iv	
		v			
		301	1 WTO		2
	a 3				
	a	b			
c			c 1	A	
		B			
		WTO			

---

47 “ ” John H. Jackson, William J. Davey and Alan O. Sykes, Jr., LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS—CASES, MATERIALS AND TEXT 493(5th ed., 2008).

48 “ 301 ” Chad P. Bown,

<https://piie.com/blogs/trade-investment-policy-watch/rogue-301-trump-dust-another-outdated-us-trade-law>(last visited April 25,2018).

---

49 C

---

301 d 3 B (iii) WTO WTO “ ” WTO 2  
 301 d 3 B (iii)  
 WTO  
 “ ” 301  
 1974 122 “ 301 ”  
 “ ” “ 301  
 ” “ ”  
 “ 301 ” “ ”  
 WTO “ 301  
 ” 55 “ 301 ”

---

1998

1974

301—310

306

305

WTO

1

306

305

WTO

2

306

305

3

301—310

306 305

DSU

3 21 22 23

WTO

16

4

GATT 1994

1

2

3

8

9

4

1974

GATT

GATT 1994

WTO

<sup>58</sup>

301—310

WTO

<sup>59</sup>

304

WTO

DSU

23

2

a

Ä 4 DSU

23

<sup>60</sup>

306

<sup>61</sup>

SAA

305

<sup>62</sup>

“

WTO

” <sup>63</sup>

2

A

301

a

2

A

“ 301 ”

WTO

---

“ ”

“ ”

“ 301 ”

“ ”

DS542

1

TRIPS

3

71

28

72

TRIPS

28

24

3

27

29

3

2

43

2

4

TRIPS

3

28

1

a

2

TRIPS

28

1

b

TRIPS

1

a

b

TRIPS

WTO

TRIPS

7

8

40

66

WTO

TRIMS

“ 301 ”

a 1 B

“

”

“

” 73

DS542

353

“

”

70  
WT/DS542/11P/D38.

71 TRIPS 3

72 TRIPS 28 “ 1.

b

2.

73

7.3

TRIPS

WTO

24 354 “

61 ”

27 29 3

355 “

” 29 3

54 74 “ ”

TRIPS

43

2 4 “ ..... ”

.....”

“ ” 350

43 2 4 75

2018 4 4 “ 301 ”

1 GATT 1994 1 1

“ ” “ ” 2 GATT 1994 2 1 a

b 3 DSU 23 76

2018 4 5 “ 232 ”

WTO 1 GATT

1994 19 1 a 2 2.1 2.2 4.1 4.2 5.1 7 11.1 a 12.1

12.2 12.3 “

” unforeseen development “ ” in such increased quantities “

” under such conditions “ ” cause or threaten

to cause serious injury to domestic producers

---

74

54

]

WTO

2 GATT 1994 2 1 a b

3 GATT 1994

1 1

“ ” “ ” immediately “ ”  
unconditionally 4 10 3 a  
77

301

WTO

“ 301

”

DS543

WTO

DS544

“ ”

“ ”

2018

4 8

232

“ ”

16%

70%

3%

28

“ ”

78

五、

GATT/WTO

301

WTO

DS543

---

77

, WT/DS544/1G/L/1222/

G/SG/D50/1.

78

“ ” <http://news.sina.com.cn/c/2018-05-09/doc-ihachqy8629301.shtml>

2018 5 9



---

“ 301 ”  
DS544

WTO

232

WTO

232

WTO

“ ”

## **A Critical Analysis on the Domestic Law Sources of Trade Protectionism of the United States** —With Comments on Article 232 and Article 301

HU Jiaxiang

**Abstract:** On March 23, 2018, President Trump of the United States announced that, based on the investigation conclusion under Article 301 of the Trade Act of 1974, his government would impose a massive round of tariffs on the imports from China and limit the mergers of Chinese and American enterprises. On March 8, Trump had already announced that, based on the investigation conclusion under Article 232 of the Expansion Act of 1962, the US government would impose 25% and 10% tariffs respectively on the steel and aluminium products imported from China and other countries. While the impact on the Chinese exports of steel and aluminium products needs further assessment, the investigation conclusion under Articles 301 will influence the exports of 1300 tariff items from China, which are worth 60 billion US dollars. Although both governments have visited each other frequently in order to avoid the trade war between the two countries, the US government often broke its promises. What are the domestic law sources behind the US actions? Whether are the US measures in conformity with the WTO rules? How can other countries react to the US measures? All these are the issues which deserve our serious consideration.

**Keywords:** Trade Protectionism; Domestic Law Sources; Article 232; Article 301