

Biden Admin Probes Chinese Shipbuilders For Unfair Trade

By Alyssa Aquino

Law360 (April 17, 2024, 8:31 PM EDT) -- The Biden administration launched an investigation Wednesday into whether China used unfair practices to gain a competitive edge in the global shipping and maritime services sector, setting the stage for potential new tariffs against Beijing.

U.S. Trade Representative Katherine Tai opened the investigation at the request of five national labor unions who claimed that Beijing engaged in unfair practices, such as providing preferential loans and pricing to Chinese shipbuilding companies, blocking mergers with foreign firms and suppressing prices. These tactics contributed to the emptying of U.S. shipyards and forced the U.S. to rely on predominantly Chinese ships for international shipping, the unions said in their petition last month.

Tai said in a statement that the allegations catalog China's use of "non-market policies" to dominate the maritime sector.

"The allegations reflect what we have already seen across other sectors, where the [People's Republic of China] utilizes a wide range of non-market policies and practices to undermine fair competition and dominate the market," she said.

The 4,000-page petition — filed by the United Steelworkers International Association of Machinists and Aerospace Workers; the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; the International Brotherhood of Electrical Workers; and the AFL-CIO Maritime Trades Department — outlined a purported Chinese maritime policy estimated to be "far more aggressive and interventionist than any other." With its state-owned firms, preferential loans and aggressive investments in global port construction, China has been able to increase its annual shipbuilding output to more than 1,000 ships, the unions said.

China's Ministry of Commerce swiftly denounced that complaint and the resulting investigation on Wednesday, saying the unions had misinterpreted normal trade and investment activities and were lobbying false accusations to blame China for the U.S.' weakened shipbuilding sector.

The investigation was brought under Section 301 of the Trade Act of 1974, a law authorizing the USTR to investigate and redress unfair trade practices. The law had last been used against China by the Trump administration, which blanketed \$300 billion worth of Chinese goods with tariffs **in response to** Beijing's technology transfer policies and intellectual property regime. The Biden administration also announced Wednesday that it will triple the existing 7.5% Section 301 duty on Chinese steel and aluminum.

Although the prior Section 301 proceeding resulted in tariffs, trade attorneys told Law360 that the nature of the unions' claims could spur a different response. If the USTR is able to corroborate the unions' claims, the U.S. could look inward and issue new procurement rules prioritizing the domestic purchase of U.S. ships, or it could press China to eliminate any purported misconduct and provide some type of compensatory trade benefit.

The U.S. could also target Chinese maritime service providers, but Ashley Craig, the chair of Venable LLP's international trade group, said that type of relief would be harder to implement as the U.S. industry cannot currently fill the space China occupies.

"The Chinese dominate shipbuilding, they dominate the actual shipping operations, they dominate third-party logistics providers ... they're nearly end-to-end dominating the maritime sector," Craig said.

Any potential redress will also depend on the petitioning unions, Craig said, noting that the USTR has scheduled a public hearing for May 29 where members of the public can provide feedback on the allegations. There, the unions may offer more insight into the relief they're seeking, Craig said.

Crowell & Moring LLP's trade partner, David Stepp, said the unions have floated "very general and high-level" remedies in their complaint, such as infrastructure support for the domestic shipbuilding industry and port fees for Chinese ships.

Those aren't "tremendously concrete ... but that provides a lot of leeway for the administration to propose what they find appropriate," he said.

Evan Chuck, another Crowell trade partner, noted that the investigation would play out alongside a presidential election, at a time when Republican members of Congress have been pressing the USTR on the amount of time the agency takes to investigate trade matters.

"There will be political pressure if they choose to move forward with this on an expedited basis," Chuck said.

--Additional reporting by Jennifer Doherty. Editing by Andrew Cohen.