

United States Steel Corporation's Section 337 Complaint against China

Background

China is violating international trade law by flooding the U.S. with imports at below-production costs. American steelmakers have initiated numerous dumping and countervailing duty cases against China, resulting in 37 separate antidumping and countervailing orders to date on Chinese mills that have participated in unfair trade activities.

On April 26, 2016, U. S. Steel filed a complaint with the U.S. International Trade Commission (USITC) to initiate an investigation under Section 337 of the Tariff Act of 1930. The complaint alleges three causes of action against Chinese companies:

1. **Conspiracy to illegally fix steel prices** by forming a cartel to set purchase and sale prices, as well as control production and export volumes;
2. **Circumvention of U.S. trade duties** by false designation of origin of steel, marking steel as being manufactured in other countries, then shipping steel products through third countries to evade U.S. antidumping and countervailing duty orders; and
3. **Theft of trade secrets**, and use of those trade secrets to produce new, cutting-edge steel products it could not manufacture on its own. U. S. Steel invested millions of dollars in the development of advanced high-strength steel – the next generation of steel – and those trade secrets were stolen by industrial espionage.

In May 2016, the USITC voted unanimously to initiate a 337 investigation, and an administrative law judge was appointed to oversee the case. The discovery stage of the investigation is currently underway.

“The scale of international theft of American intellectual property (IP) is unprecedented... The annual losses are likely to be comparable to the current annual level of U.S. exports to Asia – over \$300 billion.”

Source: The IP Commission Report: The Report of the Commission on the Theft of Intellectual Property, IP Commission, May 22, 2013

Why is Section 337 a powerful tool in U.S. trade enforcement?

Section 337 provides relief for specific unfair trade actions, including:

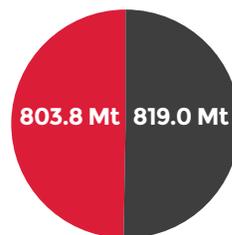
1. the infringement of trade secrets and intellectual property rights such as patents and copyrights;
2. unfair methods of competition; and
3. unfair acts in the importation and sale of products in the United States

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Each of the violations alleged by U. S. Steel is covered under this U.S. trade law. This is a powerful tool for American companies because the USITC remedy under 337 is the exclusion of the unfairly traded products from the U.S. market, not just the imposition of duties.

China vs Rest of World – Crude Steel Production

China accounts for nearly half of the world's total steel production



- China's crude steel production
- Rest of World steel production

Source: World Steel Association, July 5, 2016

Mt = Million Tons

What is United States Steel Corporation asking the U.S. Government to do?

U. S. Steel is asking the USITC for a permanent order to bar unfairly traded Chinese carbon and alloy steel products from the United States. It is also asking for a cease-and-desist order prohibiting the Chinese respondents from conducting certain business activities in the United States, including importing, selling, distributing and marketing unfairly traded Chinese carbon and alloy steel products.

Why is this case important?

When Congress enacted Section 337 of the Tariff Act of 1930, it recognized the need to provide American industry relief from unfair trade practices beyond antidumping duties. Section 337 was designed to be an expeditious procedure to exclude unfair and injurious products from the U.S. market.

For the steel industry, this case will offer the first view of how Chinese steel companies operate, to whom they sell and how they sell steel products. For the first time ever, an American steel company will be able to seek discovery of relevant documents and information and compel the testimony of Chinese manufacturers. To limit the use of the Section 337 claims process to the standard intellectual property cases would conflict with the original intent of the statute, and foreclose a meaningful remedy created by Congress for the American manufacturing industry.

Since U. S. Steel filed its case, the Chinese respondents have filed motions in an attempt to avoid responding to discovery and limit the reach and effectiveness of the 337 statute.

The outcome of this case may set a precedent for other American companies who face similar unfair trade practices.

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