

# US Steel Corporation Files Section 337 Complaint on Chinese Carbon and Alloy Steel Products

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On April 26, 2016, the United States Steel Corporation (“US Steel”) filed a complaint under Section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, seeking the exclusion of Chinese carbon and alloy steel products from entry into the United States. The complaint alleges that more than forty Chinese companies have exported steel products into the United States using the following “unfair” practices, in violation of Section 337: (i) a conspiracy to fix prices and control output and export volumes; (ii) the misappropriation and use of US Steel's trade secrets; and (iii) the false designation of origin or manufacturer for the purpose of evading duties.

The complaint is unusual in that it seeks the exclusion of all Chinese carbon and alloy steel products from the US market, regardless of their source, rather than targeting a narrower subset of products and companies. Moreover, while most complaints arising under Section 337 involve alleged infringement of intellectual property rights (IPR), the US steel complaint alleges antitrust violations and duty evasion – issues not typically of focus in the US International Trade Commission’s (ITC) investigations under Section 337. Given the breadth and unique aspects of the complaint, an investigation resulting in a determination of violation of Section 337 by the ITC could have wide-ranging implications.

## Background

Section 337 makes it unlawful to (i) import articles that infringe on US intellectual property rights; or (ii) engage in “unfair methods of competition and unfair acts” in the importation of articles, the threat or effect of which is to (a) destroy, substantially injure, or prevent the establishment of an industry in the United States or (b) restrain or monopolize trade and commerce in the United States. Complaints arising under Section 337 are investigated by the ITC through a process that involves an initial determination by an Administrative Law Judge and a final determination by the Commission.

If the ITC finds a violation of Section 337, three potential remedies are available – general exclusion orders, limited exclusion orders, and cease and desist orders. A general exclusion order directs US Customs and Border Protection (CBP) to exclude all of the infringing or unfairly traded articles from entry into the United States, regardless of their source, whereas a limited exclusion order directs CBP to exclude articles originating from a respondent in the Commission investigation. The ITC issues general exclusion orders where there is a pattern of violations and it is difficult to identify the source of the articles, or where it is necessary to prevent circumvention. A cease and desist order directs a respondent in the investigation to cease certain actions, such as selling infringing or unfairly traded articles. ITC remedial orders are subject to review by the President, who may disapprove them for policy reasons, but such disapprovals are rare.

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## Details of the US Steel complaint

The complaint proposes more than forty Chinese steel producers and distributors –including many of the largest producers in China – as respondents to the investigation. The complaint alleges that the proposed respondents have engaged in unfair trade practices “across their entire range of carbon and alloy steel products”, and seeks the inclusion of all Chinese carbon and alloy steel products within the scope of the complaint.

US Steel asserts the following causes of action against the proposed respondents: (i) an alleged conspiracy to control production, output, and export volumes in order to injure US competitors (in violation of Section 1 of the *Sherman Act*); (ii) misappropriation and use of US Steel’s trade secrets, including those relating to the manufacture of Advanced High-Strength Steel (AHSS) used by the automotive industry; and (iii) circumvention of US antidumping and countervailing duty orders against Chinese steel products through actions such as transshipment and submission of false documents to CBP (in violation of the *Lanham Act*).

The complaint requests relief in the form of a permanent general exclusion order prohibiting the entry into the United States of the allegedly unfairly traded Chinese steel products, regardless of their source. Instead of a limited exclusion order, which would apply to steel products originating from the proposed respondents, US Steel argues that a general exclusion order is necessary because (i) Chinese steel manufacturers allegedly evade US duties, and therefore would likely evade a limited exclusion order; (ii) the alleged coordination of prices and output decisions is imposed on the entire Chinese steel industry; and (iii) US Steel’s trade secrets were allegedly stolen for the benefit of the entire Chinese steel industry. The complaint also requests permanent cease and desist orders prohibiting the proposed respondents from conducting various activities in the United States such as importing, selling, marketing, or distributing the allegedly unfairly traded Chinese steel products.

## Implications

Given the broad range of issues and products covered by the complaint, the ITC’s findings in the resulting investigation could have a substantial impact on US-China trade relations, and might also encourage similar complaints from other US industries. However, an affirmative finding is far from certain, and any remedy proposed by the ITC following such a finding would be subject to Presidential review and thus could be reversed. Indeed, the last time a 337 complaint involving steel products alleged an antitrust violation based on pricing behavior, then-President Jimmy Carter issued a presidential determination disallowing the ITC’s proposed remedy (a cease and desist order), citing national interest reasons and the need to avoid duplication and conflicts with trade remedy proceedings. The next President might take similar actions, particularly given that many of the products covered by the US Steel complaint are covered by existing AD/CVD orders and investigations against Chinese steel products. Moreover, if the ITC were to find a violation in this case, the resulting determination could be appealed to the US Court of Appeals for the Federal Circuit. An exclusion order issued by the ITC in this case also would likely be challenged by China at the WTO as a potential violation of GATT Article XI:1.

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