

# After IEEPA: Section 301 as the New Core of U.S. Tar- riff Policy and Its Implications for Korea

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## I. Background

On February 20, 2026, the U.S. Supreme Court held, by a 6-3 majority, that the International Emergency Economic Powers Act (“IEEPA”) does not authorize the President to impose tariffs. The ruling invalidated the legal basis for the Trump Administration’s IEEPA-based tariff measures, including the so-called “trafficking tariffs” imposed on imports from Canada, Mexico, and China, as well as the broader “reciprocal tariffs” imposed on imports from almost all U.S. trading partners.

The decision, however, should not be understood as a general judicial repudiation of presidential tariff authority. Its holding was confined to IEEPA and did not directly address

tariffs imposed under other trade statutes, including Section 122 of the Trade Act of 1974, Section 301 of the Trade Act of 1974, and Section 232 of the Trade Expansion Act of 1962.

Accordingly, the central question after the IEEPA decision is not whether U.S. tariff policy will recede, but how it will be reconstructed under alternative statutory authorities. In this respect, Section 301 is emerging as one of the principal legal vehicles for the next phase of U.S. tariff policy. Unlike the IEEPA, Section 301 authorizes the U.S. Trade Representative (“USTR”) to take action, including the imposition of duties or other import restrictions, when the statutory requirements are

\* This article incorporates and updates portions of the author’s earlier works: Cheon-Kee Lee, “The U.S. Supreme Court’s Ruling on IEEPA Tariffs: Key Issues and Subsequent Tariff Measures,” *KIEP World Economy Today*, Vol. 26, No. 8 (in Korean); and Cheon-Kee Lee, “The Linkage between International Trade and Labour Standards: Current Status and Implications,” *KIEP Policy References 22-09* (in Korean).

satisfied. These requirements may be met where a foreign act, policy, or practice is unjustifiable and burdens or restricts U.S. commerce, or where it is unreasonable or discriminatory and burdens or restricts U.S. commerce.<sup>1</sup>

This shift became visible shortly after the Supreme Court ruling. On March 11 and 12, 2026, USTR initiated two major Section 301 proceedings: one concerning structural excess capacity and production in manufacturing sectors of 16 economies, and another concerning the alleged failure of 60 economies to impose and effectively enforce prohibitions on the importation of goods produced with forced labor. Korea is included in both investigations.<sup>2</sup>

## II. Section 301 as the Post-IEEPA Legal Platform

The IEEPA ruling removed the most legally vulnerable foundation of the Administration's global tariff policy. Before 2025, no U.S. President had relied on the IEEPA as a legal basis for imposing tariffs. The Supreme Court's decision therefore closed a novel and expansive route for emergency-based tariff action. It did not, however, eliminate the Administration's ability to pursue tariff measures under statutes specifically designed for trade enforcement.

Section 122 may provide a temporary basis

for an across-the-board import surcharge, but its legal utility is limited by statutory design. It permits temporary import surcharges in balance-of-payments situations, but such measures are subject to a 15 percent ceiling and a maximum duration of 150 days unless extended by Congress. Section 232 remains available for sector-specific national-security tariffs, but it requires a nexus to national security and is better suited to specific industries such as steel, aluminum, autos, semiconductors, pharmaceuticals, and critical minerals.<sup>3</sup>

Unlike Section 122 and Section 232, Section 301 provides a broader and more adaptable statutory framework. It is not confined to a short statutory period, nor is it limited to national-security related sectors. It can be used to address a wide range of foreign acts, policies, and practices, including industrial policy, regulatory inaction, market-distorting practices, labor-related measures, and supply-chain governance. For this reason, Section 301 is likely to provide a more durable legal basis for post-IEEPA tariff policy than Section 122 and to operate as a broader instrument than Section 232.

At the same time, Section 301 operates within a defined procedural framework. USTR must initiate an investigation, request consultations, solicit public comments, hold hearings where

<sup>1</sup> 19 U.S.C. §2411(a)(1), (b)(1), (c)(1).

<sup>2</sup> USTR, "Initiation of Section 301 Investigations: Acts, Policies, and Practices of Certain Economies Relating to Structural Excess Capacity and Production in Manufacturing Sectors," 91 Fed. Reg. 12886, 12886–91 (Mar. 17, 2026); USTR, "Initiation of Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to the

Failure To Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced With Forced Labor," 91 Fed. Reg. 12884, 12884–86 (Mar. 17, 2026).

<sup>3</sup> Cheon-Kee Lee, "The U.S. Supreme Court's Ruling on IEEPA Tariffs: Key Issues and Subsequent Tariff Measures," KIEP World Economy Today, Vol. 26, No. 8, 2026, pp. 35, 74 (in Korean).

appropriate, and make a statutory determination. For instance, in the structural excess-capacity proceeding, USTR opened dockets for written comments and hearing requests, set April 15, 2026 as the deadline for comments, and held public hearings beginning May 5, 2026.<sup>4</sup> In the forced-labor proceeding, USTR likewise requested public comments and held public hearings on April 28 and 29, 2026.<sup>5</sup>

If USTR were to make an affirmative determination, Section 301 would not itself predetermine the specific remedy, but would open the remedial stage in which USTR could consider a range of possible responses under the statute. This remedial flexibility is reflected in the Federal Register notices for the current investigations. The Federal Register notice for the structural excess-capacity investigation specifically requested comments on whether and which action should be taken, including tariff and non-tariff actions.<sup>6</sup> The forced-labor notice likewise placed both duties and import restrictions within the range of potential remedies.<sup>7</sup>

### III. Structural Excess Capacity: Industrial Policy, Market Distortion, and Section 301

USTR situates structural excess capacity within the broader policy agenda of reshoring supply chains and rebuilding U.S. manufacturing employment. The Federal Register notice states that certain trading partners have developed production capacity “untethered from the incentives of domestic and global demand,” resulting in overproduction, large or persistent trade surpluses, and underutilized or unused capacity in manufacturing sectors.<sup>8</sup>

USTR characterizes structural excess capacity as underutilized industrial production capacity sustained through governmental interventions or policies that incentivize firms to maintain or expand unused capacity inefficiently. Its concern is not ordinary fluctuations in supply and demand, but capacity and production that appear to be maintained through state-linked or market-distorting interventions, including subsidies, suppressed wages, non-commercial activities of state-owned or state-controlled enterprises, sustained market-access barriers, subsidized lending, currency

<sup>4</sup> USTR, “Initiation of Section 301 Investigations: Acts, Policies, and Practices of Certain Economies Relating to Structural Excess Capacity and Production in Manufacturing Sectors,” 91 Fed. Reg. 12886, 12886–87 (Mar. 17, 2026); USTR, “Public Hearings Regarding Section 301 Investigations Relating to Structural Excess Capacity,” May 2026; USTR, “Section 301 – Structural Excess Capacity and Production in Manufacturing Sectors, Public Hearing Panel Schedule,” May 5, 2026.

<sup>5</sup> USTR, “Public Hearings Regarding Section 301 Investigations Relating to Failures to Take Action on Forced Labor,” Apr. 24, 2026; USTR, “Initiation of Section 301 Investigations ... Forced Labor,” 91 Fed. Reg. 12884, 12884–86 (Mar. 17, 2026).

<sup>6</sup> USTR, “Initiation of Section 301 Investigations: Acts, Policies, and Practices of Certain Economies Relating to Structural Excess Capacity and Production in Manufacturing Sectors,” 91 Fed. Reg. 12886, 12890–91 (Mar. 17, 2026).

<sup>7</sup> USTR, “Initiation of Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to the Failure To Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced With Forced Labor,” 91 Fed. Reg. 12884, 12886 (Mar. 17, 2026).

<sup>8</sup> USTR, “Initiation of Section 301 Investigations: Acts, Policies, and Practices of Certain Economies Relating to Structural Excess Capacity and Production in Manufacturing Sectors,” 91 Fed. Reg. 12886, 12886–87 (Mar. 17, 2026).

practices, and lax or inadequate environmental, labor, or social-safety-net protections.<sup>9</sup>

The sectoral scope is broad. USTR’s illustrative list includes aluminum, automobiles, batteries, cement, chemicals, electronics, energy goods, glass, machine tools, machinery, paper, plastics, processed food and beverages, robotics, satellites, semiconductors, ships, solar modules, steel, and transportation equipment.<sup>10</sup> The wide sectoral coverage has direct implications for Korea, as many of the listed sectors overlap with Korea’s major export industries and key areas of Korea-U.S. industrial cooperation, including semiconductors, batteries, automobiles, steel, shipbuilding, chemicals, and advanced manufacturing equipment.

For Korea, the overcapacity investigation is best understood as focusing on trade-surplus indicators and sectoral export patterns, rather than as a finding that Korea’s industrial structure is non-market-based or subsidy-driven. USTR’s notice states that evidence of structural excess capacity and production exists for Korea through large or persistent trade surpluses, citing Korea’s global goods trade surplus, exports in sectors such as electronic equipment, automobiles and auto parts, machinery, steel, and ships and marine vessels, its bilateral goods trade surplus with the United States.

<sup>9</sup> USTR, “Initiation of Section 301 Investigations: Acts, Policies, and Practices of Certain Economies Relating to Structural Excess Capacity and Production in Manufacturing Sectors,” 91 Fed. Reg. 12886, 12886–88 (Mar. 17, 2026); USTR, “Fact Sheet: USTR Initiates Section 301 Investigations on Structural Excess Capacity and Production in Manufacturing Sectors,” Mar. 12, 2026.

<sup>10</sup> USTR, “Fact Sheet: USTR Initiates Section 301 Investigations on Structural Excess Capacity and Production in

Korea’s response should be built around sector-specific evidence rather than general statements about market openness. The key point would be to separate ordinary export competitiveness from non-market-driven excess capacity, and to show that production decisions in Korea’s major manufacturing sectors are made on commercial grounds rather than pursuant to government direction. To the extent Korea refers to restructuring efforts in globally oversupplied sectors, such references should be framed as evidence of market-oriented adjustment, not as confirmation of state-supported excess capacity.

This is broadly consistent with Korea’s reported submission to USTR. According to press reports, Korea stressed in its written comments that its industrial structure operates on market-economy principles and that it has pursued restructuring efforts in globally oversupplied sectors, including petrochemicals and steel. This point is also relevant because USTR’s notice specifically refers to Korea’s acknowledged need to cut capacity in the petrochemicals sector. Korea also emphasized that its capital goods exports support U.S. manufacturing, while setting out its legal and institutional framework for eliminating forced labor under ILO conventions and domestic law.<sup>11</sup>

Manufacturing Sectors,” Mar. 12, 2026; USTR, “Initiation of Section 301 Investigations: Acts, Policies, and Practices of Certain Economies Relating to Structural Excess Capacity and Production in Manufacturing Sectors,” 91 Fed. Reg. 12886, 12887–88 (Mar. 17, 2026).

<sup>11</sup> Yonhap News Agency, “Government Submits Comments on U.S. Section 301 Investigations, Citing “Market Principles and Elimination of Forced Labor”, Apr. 16, 2026; Korea

**K**orea may also need to prevent the overcapacity investigation from being framed as a simple trade-balance dispute. A bilateral trade surplus, by itself, should not establish the existence of an unreasonable or discriminatory practice under Section 301. The relevant statutory inquiry is whether a specific Korean act, policy, or practice creates or maintains non-market-driven excess capacity in a particular sector and thereby burdens or restricts U.S. commerce. Korea's response could therefore emphasize the need for USTR to identify the specific policy, sectoral distortion, and trade effect at issue.

**T**he overcapacity investigation raises broader systemic concerns as well. If Section 301 is used to address broad concerns over industrial policy and excess capacity across multiple major economies, it could become a more flexible unilateral route for imposing tariffs on matters that would otherwise be addressed through rule-based trade-remedy disciplines, including countervailing duties, antidumping measures, and safeguards. This would risk extending Section 301 beyond identifiable unfair trade practices and blurring the line between Section 301 and trade-remedy procedures that are subject to more specific evidentiary and procedural requirements. Korea's response should therefore not only rest on a legal defense focused on evidentiary discipline and procedural fairness, but also advance a broader policy

narrative: Korea is not a source of non-market structural overcapacity, but rather a supply-chain partner whose investment and production networks can support U.S. reindustrialization objectives.

#### **IV. Forced Labor and the Expansion of Section 301 Enforcement**

**T**he forced-labor investigation is significant because it shows how Section 301 is being extended beyond conventional trade-policy disputes into supply-chain labor standards and border-enforcement issues. USTR launched investigations into 60 economies concerning their alleged failure to impose and effectively enforce prohibitions on the importation of goods produced with forced labor. USTR states that the investigations cover 60 of the United States' largest trading partners, which collectively accounted for more than 99 percent of U.S. imports in 2024.<sup>12</sup>

**F**or purposes of the Section 301 investigation, USTR's focus is on whether each investigated economy has failed to impose and effectively enforce prohibitions on the importation of goods produced wholly or in part with forced labor. In other words, the inquiry is directed at the investigated economy's import regulation and enforcement framework. The Federal Register notice frames any such failure as a

Times, "Seoul refutes excess capacity, forced labor allegations in letters to USTR," Apr. 16, 2026; KBS World, "S. Korea Highlights Market Principles in Letter to USTR on Section 301," Apr. 16, 2026.

<sup>12</sup> USTR, "Fact Sheet: USTR Initiates 60 Section 301 Investigations Relating to Failures to Take Action on Forced

Labor," Mar. 12, 2026; USTR, "Initiation of Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to the Failure To Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced With Forced Labor," 91 Fed. Reg. 12884, 12884–86 (Mar. 17, 2026).

potential unreasonable or discriminatory act, policy, or practice that burdens or restricts U.S. commerce.<sup>13</sup>

USTR further develops this rationale in competition terms. The Federal Register notice states that, in markets without effective forced-labor import prohibitions, U.S. exports may have to compete with artificially low-cost goods produced wholly or in part with forced labor.<sup>14</sup> This framing is significant because the investigation is presented not only as a human-rights or border-enforcement matter, but also as an issue of market distortion and fair competition.

This is where the forced-labor investigation becomes relevant to the broader post-IEEPA tariff strategy. If Section 301 is used mainly to

encourage stronger forced-labor import regulation, the investigation may operate as a regulatory and enforcement mechanism. If, however, it is used to justify additional duties against economies deemed to have inadequate border control regimes, it could become another channel for tariff measures in the aftermath of the IEEPA ruling. This distinction is particularly important for Korea, given its exposure both to U.S. forced-labor enforcement and to broader Section 301-based tariff risks.

In this context, the following four reference points are particularly relevant to assessing how the forced-labor Section 301 investigation may develop and what it may mean for Korea.

**Table 1. Reference Points for Assessing the Forced-Labor Section 301 Investigation**

Reference	Relevance	Implications for Korea
Taepyung Salt Farm WRO	Product-specific example of U.S. forced-labor border enforcement under 19 U.S.C. §1307	Shows that Korean-origin goods can be subject to U.S. forced-labor detention
TIP Report	Institutional and sectoral indicators concerning trafficking and forced-labor vulnerabilities	Highlights issues such as migrant workers, fishing, recruitment fees, victim identification, and labor-trafficking enforcement
USMCA / CPTPP	Treaty-based models for forced-labor import regulation	Korea is not currently bound by these provisions, but they offer reference points for future trade-agreement obligations
ILAB TVPRA List	Product- and country-level risk indicator for supply-chain due diligence	Signals input-based risk, including downstream exposure through high-risk inputs

Source: Author's compilation based on CBP, U.S. Department of State, USMCA, CPTPP, and U.S. Department of Labor ILAB materials.

<sup>13</sup> USTR, "Initiation of Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to the Failure To Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced With Forced Labor," 91 Fed. Reg. 12884, 12884–85 (Mar. 17, 2026).

<sup>14</sup> USTR, "Initiation of Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to

the Failure To Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced With Forced Labor," 91 Fed. Reg. 12884, 12885 (Mar. 17, 2026); USTR, "Fact Sheet: USTR Initiates 60 Section 301 Investigations Relating to Failures to Take Action on Forced Labor," Mar. 12, 2026.

## 1. The Taepyeong Salt Farm WRO: Product-Specific Enforcement and Section 301 Relevance

While the current Section 301 investigations have not yet resulted in specific measures against Korea, U.S. forced-labor border enforcement has already been applied to Korean-origin products. On April 3, 2025, U.S. Customs and Border Protection (“CBP”) announced a Withhold Release Order (“WRO”) on sea salt products sourced from Taepyeong Salt Farm in South Korea. According to CBP’s Cargo Systems Messaging Service (“CSMS”), effective April 2, 2025, CBP personnel at all U.S. ports of entry were directed to detain sea salt products produced by Taepyeong Salt Farm. CBP stated that the WRO was based on information reasonably indicating the use of forced labor in violation of 19 U.S.C. §1307.<sup>15</sup>

The Taepyeong Salt Farm WRO confirms that Korean-origin products are not outside the reach of U.S. forced-labor border enforcement. It also shows how labor-practice concerns can be converted into product-specific import regulation. Under the WRO, CBP personnel at U.S. ports of entry were instructed to detain sea salt products sourced from the farm.<sup>16</sup>

The episode also illustrates the difference between product-level enforcement under 19 U.S.C. §1307 and the government-level inquiry now being pursued under Section 301. WROs issued under 19 U.S.C. §1307 focus on whether particular merchandise was mined,

produced, or manufactured, wholly or in part, by forced labor. By contrast, the Section 301 investigations focus on whether foreign governments have failed to impose and effectively enforce forced-labor import prohibitions. The inquiry therefore shifts from whether particular goods were produced with forced labor to the adequacy of a government’s import regulation and enforcement framework.

For Korea, this distinction is important. Even if Korea contests the factual basis of a specific WRO or points to subsequent remedial measures, the existence of a WRO involving a Korean-origin product could still be cited in policy discussions as a reason for Korea to explain more clearly how it identifies, prevents, and remedies forced-labor risks. Korea’s response therefore may need to go beyond rebutting isolated allegations and demonstrate that Korea has a credible and coordinated framework for labor inspection, victim identification, customs cooperation, supply-chain due diligence, and remediation.

## 2. The TIP Report and Korea’s Labor-Trafficking Vulnerabilities

Korea’s position should also be assessed in light of the U.S. Department of State’s Trafficking in Persons Report (“TIP Report”). Korea had previously been downgraded from Tier 1 to Tier 2, before being upgraded again. In the 2025 TIP Report, Korea remained in Tier 1. The 2025 country narrative states that

<sup>15</sup> CBP, “CBP Issues Withhold Release Order on Taepyeong Salt Farm,” Apr. 3, 2025; 19 U.S.C. §1307.

<sup>16</sup> CBP, Cargo Systems Messaging Service, CSMS

#64637741, “Withhold Release Order on Sea Salt Products Sourced From Taepyeong Salt Farm,” Apr. 4, 2025.

the Government of the Republic of Korea fully meets the minimum standards for the elimination of trafficking and continued to demonstrate serious and sustained efforts during the reporting period.<sup>17</sup>

At the same time, the report identifies continuing vulnerabilities that are relevant to the forced-labor trade agenda. Its recommendations for Korea include strengthening the investigation and prosecution of trafficking crimes, particularly adult and labor trafficking; increasing protections for migrant fishermen; conducting more frequent and consistent unannounced inspections on Korean-flagged distant-water fishing vessels; developing a specialized victim-identification index for forced-labor indicators among foreign migrants in the fishing industry; and taking steps to eliminate recruitment and placement fees charged to workers. These findings do not suggest that the United States generally regards Korea as a forced-labor economy. Rather, the TIP Report is relevant as an official reference point for specific enforcement and sectoral vulnerabilities that could be invoked in trade-related labor discussions.

For purposes of the Section 301 investigation, this aspect of the TIP Report may provide relevant evidentiary context. USTR's inquiry formally concerns whether investigated economies have imposed and effectively enforced prohibitions on the importation of goods produced with forced labor. In assessing effective

enforcement, however, U.S. authorities and interested stakeholders may look beyond customs law and consider the broader labor-trafficking enforcement environment, including the capacity to identify forced-labor victims and prosecute labor-trafficking cases.

### 3. Forced-Labor Import Rules in Trade Agreements: USMCA and CPTPP

The Section 301 investigation should also be viewed in the broader context of labor-related trade rules. Forced-labor import regulation is increasingly moving beyond unilateral border enforcement and into trade-agreement design, where it may operate as part of market-access governance and supply-chain regulation.

The USMCA and the CPTPP are useful reference points because they show how forced-labor import regulation is entering trade-agreement design. Both agreements address the importation of goods produced by forced or compulsory labor, but with different degrees of legal intensity. USMCA Article 23.6 adopts a mandatory import-prohibition model, whereas CPTPP Article 19.6 uses a softer formulation that leaves greater discretion to each Party. This contrast is important for Korea because future trade negotiations may require Korea to consider not only domestic labor-law compliance, but also customs-level import regulation on goods produced with forced labor.

<sup>17</sup> U.S. Department of State, 2025 Trafficking in Persons

Report, "REPUBLIC OF KOREA (Tier 1)."

Table 2. Forced-Labor Import Regulation Provisions in USMCA and CPTPP

Provision	Relevant text	Regulatory approach
USMCA Art. 23.6	Each Party <b>shall prohibit</b> the importation into its territory of goods from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor.	Mandatory import prohibition; Section 307-style model
CPTPP Art. 19.6	Each Party <b>shall discourage, through initiatives it considers appropriate</b> , the importation of goods from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor. [Footnote omitted]	Softer, discretionary obligation; recognition of forced-labor import regulation

Source: USMCA Art. 23.6, CPTPP Art. 19.6.

The difference between “shall prohibit” in the USMCA and “shall discourage” in the CPTPP is legally significant. The USMCA adopts a more operational import-prohibition model, whereas the CPTPP preserves greater regulatory discretion for each Party. Nevertheless, both provisions confirm that the importation of goods produced with forced labor is no longer treated solely as a domestic labor or human-rights issue.

The existence of such treaty provisions may bear on the Section 301 inquiry for economies that are parties to agreements containing forced-labor import commitments. Where an investigated economy has already undertaken a treaty or trade-agreement commitment to prohibit or otherwise address the importation of goods produced with forced labor, non-implementation or ineffective enforcement of that commitment may provide relevant context for USTR’s assessment of that economy’s import-regulation and enforcement framework. Korea,

however, is not a party to either the USMCA or the CPTPP, and these provisions do not create direct treaty obligations for Korea. Their relevance for Korea is therefore prospective and comparative: they indicate how forced-labor import regulation may be framed in future trade agreements.

At the same time, apart from the USMCA, the CPTPP, and a limited number of recent bilateral trade arrangements addressing forced-labor import prohibitions,<sup>18</sup> many of the 60 investigated economies may not yet be subject to explicit trade-agreement obligations requiring such prohibitions. A key issue to watch, therefore, is whether USTR will make affirmative determinations mainly against economies with pre-existing commitments, or whether it will develop a broader Section 301 theory based on inadequate forced-labor import regulation even in the absence of a specific treaty obligation.

For Korea, these developments have two implications. First, in any future consideration of

<sup>18</sup> See also White House, “Joint Statement on Framework for United States–Ecuador Agreement on Reciprocal Trade,” Nov. 13, 2025; Agreement between the United States of America and the Republic of Guatemala on Reciprocal Trade,

Art. 2.7(1); Agreement between the United States of America and the People’s Republic of Bangladesh on Reciprocal Trade, Art. 2.9(1). The entry into force of these arrangements has not yet been confirmed.

CPTPP accession or similar trade arrangements, Korea may need to assess whether it has the legal framework, administrative capacity, and enforcement mechanisms to identify and at least discourage the importation of goods produced with forced labor. Second, Korea's response to the current Section 301 investigation should proceed in parallel with preparations for the possible incorporation of forced-labor import regulation into future trade agreements as treaty-based obligations. Such preparation would require an assessment of whether Korea's existing legal and administrative framework can support a more trade-facing forced-labor regime, including customs authority to address forced-labor risks, inter-agency coordination among labor, trafficking, and border-enforcement authorities, monitoring of high-risk sectors, and practical guidance for firms on supply-chain due diligence and remediation.

#### 4. The ILAB TVPRA List as a Product-Level Risk Indicator

The Section 301 investigation focuses on whether foreign governments have failed to impose and effectively enforce prohibitions on the importation of goods produced with forced labor. In assessing such government-level failures, product- and country-specific evidence may provide an important reference point by indicating where forced labor has been associated with particular goods and supply chains.

The U.S. Department of Labor's Bureau of International Labor Affairs ("ILAB") maintains the List of Goods Produced by Child Labor or Forced Labor under the Trafficking Victims Protection Reauthorization Act of 2005 ("TVPRA") and subsequent reauthorizations. The list is relevant in this respect because it identifies goods and countries associated with child labor or forced labor and may inform assessments of supply-chain risk. In its most recent TVPRA List, published on September 5, 2024, the U.S. Department of Labor identified 204 goods from 82 countries and areas as being produced by child labor or forced labor.<sup>19</sup>

The TVPRA List is better understood as a risk-identification and public-awareness tool, rather than as an import-restriction mechanism. On its webpage for the List, ILAB explains that it maintains the List primarily to raise public awareness and promote efforts to combat child labor and forced labor, and that the List is not intended to be punitive.<sup>20</sup>

For Korea, the most notable point is that South Korea appears on the ILAB list in connection with indium. The listing should not be read, without more, as a finding that child labor or forced labor occurs directly in Korea. Rather, it reflects ILAB's methodology of identifying goods that may incorporate inputs produced with child labor or forced labor; in the case of indium, the relevant input identified by ILAB is "zinc mined in Bolivia" with child labor.<sup>21</sup>

<sup>19</sup> U.S. Department of Labor, Bureau of International Labor Affairs, "2024 List of Goods Produced by Child Labor or Forced Labor", p. 14.

<sup>20</sup> U.S. Department of Labor, Bureau of International Labor Affairs, "List of Goods Produced by Child Labor or Forced Labor."

<sup>21</sup> Supra note 19, p. 124.

This point is important because U.S. forced-labor scrutiny is increasingly extending beyond direct production sites to downstream goods and input tracing. That logic is consistent with UFLPA enforcement, CBP WRO practice, and the current Section 301 forced-labor investigation. It also means that Korean firms may face risk not only where forced labor occurs within Korea, but also where Korean exports incorporate high-risk inputs from third countries.

The TVPRA list may therefore serve as a useful reference point for anticipating the product- and country-specific evidence that could inform the Section 301 investigation. Although USTR's current inquiry is framed around government failure to impose and enforce import prohibitions, any eventual remedies may be informed by product-level evidence drawn from ILAB, CBP, UFLPA enforcement, NGO submissions, and public hearing testimony.

## V. Possible Remedies under Section 301: Import Prohibitions, Tariffs, or Negotiated Commitments?

The central question going forward is what form any eventual Section 301 remedy will take. Section 301 gives USTR a broad remedial toolkit once it makes an affirmative determination. Potential actions may include the suspension or withdrawal of trade concessions, the imposition of duties or other import restrictions, fees or restrictions on services, and the pursuit of negotiated commitments with the foreign government concerned.<sup>22</sup> In the present investigations, USTR's Federal Register notices also expressly place duties, import restrictions, and other tariff or non-tariff actions within the range of possible responses.

**Table 3. Possible Section 301 Pathways in the Current Investigations**

Subject	Core Issue	Possible Section 301 measures	Implications for Korea
Structural excess capacity	Market-distorting production capacity allegedly maintained beyond demand, with potential effects on U.S. manufacturing, investment, and employment	Tariffs, sector-specific duties, non-tariff measures, consultations, or negotiated commitments	Need to demonstrate market-driven manufacturing and Korea-U.S. supply-chain cooperation
Forced-labor import regulation	Alleged failure to prohibit and effectively enforce restrictions on imports of goods produced with forced labor	Import bans, additional duties, licensing requirements, customs cooperation, or supply-chain due diligence commitments	Need to reinforce forced-labor prevention, customs enforcement, and high-risk supply-chain due diligence

Source: Author's compilation based on USTR Federal Register notices and related materials.

<sup>22</sup> 19 U.S.C. §2411(c)(1)(A)-(D).

In the forced-labor investigation, one possible outcome would be a remedy focused on import regulation. This would be broadly consistent with existing U.S. forced-labor border enforcement tools, including Section 307 of the Tariff Act of 1930, CBP WROs, the UFLPA’s rebuttable presumption mechanism, and USMCA Article 23.6. Under this approach, Section 301 would operate primarily as a mechanism for inducing trading partners to adopt and effectively enforce prohibitions on the importation of goods produced with forced labor.

A second possibility is that USTR may use Section 301 to impose additional duties on imports from investigated economies. This scenario warrants particular attention from Korea. The forced-labor investigation was initiated shortly after the Supreme Court’s IEEPA ruling, and Section 301 appears to be one of the most plausible statutory tools for reconstructing part of the Administration’s tariff leverage after the IEEPA. USTR’s Federal Register notices expressly place duties, import restrictions, and other tariff or non-tariff actions within the range of potential remedies.<sup>23</sup>

The overcapacity investigation is even more directly connected to potential tariff measures.

USTR frames structural excess capacity and production in foreign manufacturing sectors as factors that may displace U.S. production, suppress investment, and undermine U.S. re-industrialization. If USTR makes affirmative determinations, additional duties or sector-specific tariff measures may be presented as a means of offsetting market distortions or restoring fair competition.<sup>24</sup>

The public hearings held in the two proceedings underscore that the remedial stage, if reached, is likely to be contested. In the structural excess-capacity proceeding, press reports indicate that domestic manufacturing interests favored stronger tariff responses, while agricultural and import-dependent groups warned against broad measures. In the forced-labor proceeding, some groups reportedly urged import bans, tariffs, quotas, and proof-of-origin requirements, while others cautioned against using forced-labor concerns as a basis for sweeping tariff measures.<sup>25</sup>

These possibilities raise broader questions about the scope and coherence of Section 301 remedies. In the forced-labor context, if Section 301 moves from strengthening import regulation against forced-labor goods to imposing additional duties on broader categories

<sup>23</sup> USTR, “Initiation of Section 301 Investigations: Acts, Policies, and Practices of Certain Economies Relating to Structural Excess Capacity and Production in Manufacturing Sectors,” 91 Fed. Reg. 12886, 12890–91 (Mar. 17, 2026); USTR, “Initiation of Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to the Failure To Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced With Forced Labor,” 91 Fed. Reg. 12884, 12886 (Mar. 17, 2026).

<sup>24</sup> USTR, “Initiation of Section 301 Investigations: Acts, Policies, and Practices of Certain Economies Relating to Structural Excess Capacity and Production in Manufacturing

Sectors,” 91 Fed. Reg. 12886, 12890–91 (Mar. 17, 2026).

<sup>25</sup> Reuters, “US industries, trade groups split over Trump’s tariff probe on excess factory capacity,” May 5, 2026; Reuters, “Some groups ask US trade agency for new duties, import bans to fight forced labor,” Apr. 28, 2026; USTR, “Public Hearings Regarding Section 301 Investigations Relating to Structural Excess Capacity,” May 2026; USTR, “Public Hearings Regarding Section 301 Investigations Relating to Failures to Take Action on Forced Labor,” Apr. 24, 2026.

of goods from selected economies, questions may arise as to whether a human-rights-based import-regulation concern is being converted into a broader tariff instrument. In the overcapacity context, if broad tariff measures are imposed without a sufficiently specific link to identified policies, sectors, and trade effects, Section 301 could become a more flexible substitute for trade-remedy tools that are normally subject to more specific evidentiary and procedural requirements.

**F**or Korea, this distinction should be central. Korea should carefully contest any remedy that uses forced-labor concerns or overcapacity allegations as a basis for broad tariff reimposition without a sufficiently tailored connection to the specific act, policy, or practice identified by USTR. At the same time, Korea should be prepared to propose more targeted alternatives, including sector-specific consultations, customs cooperation, supply-chain information exchange, and cooperation in high-priority manufacturing sectors.

## **VI. Conclusion: Korea's Response to Post-IEEPA U.S. Trade Enforcement**

**T**he Supreme Court's IEEPA ruling did not bring the Trump Administration's tariff agenda to an end. It instead forced that agenda back onto statutes that were designed for trade enforcement. Section 301 is therefore likely to carry much of the legal and political weight that the IEEPA could no longer bear. For Korea, the current proceedings should be approached less as routine consultations than as

legal and evidentiary processes. The immediate task is to build a record showing that Korea's laws, policies, and practices do not constitute unreasonable or discriminatory measures that burden or restrict U.S. commerce.

**T**he two new Section 301 investigations reveal the emerging structure of this post-IEEPA strategy. The structural excess-capacity investigation brings industrial-policy and reindustrialization concerns into the Section 301 enforcement framework, while the forced-labor investigation brings supply-chain labor standards and border-enforcement concerns into the same framework. Viewed in parallel, they show that Section 301 may become a central platform through which the United States links trade enforcement, tariff leverage, industrial policy, and supply-chain governance.

**W**ith respect to structural excess capacity, Korea's evidentiary record will be important in showing that its major manufacturing sectors operate on market principles, that production decisions are guided by commercial considerations, and that Korea is not maintaining non-market-driven excess capacity in a manner that displaces U.S. production. Korea would also be well advised to emphasize that Korean investment in the United States and Korea-U.S. industrial cooperation in semiconductors, batteries, automobiles, shipbuilding, and advanced manufacturing contribute to U.S. supply-chain resilience and job creation. In this regard, Korea's response should combine rebuttal with affirmative evidence that Korean investment, production networks, and capital-

goods exports support U.S. manufacturing capacity and supply-chain resilience, rather than creating the type of market distortion targeted by the investigation.

**W**ith respect to forced labor, Korea may need to distinguish more clearly between domestic labor-law compliance and forced-labor import-regulation capability. USTR's investigation focuses on whether economies have failed to impose and effectively enforce import prohibitions on goods produced with forced labor. Korea's response therefore may need to go beyond domestic labor-law reforms or general anti-trafficking policy. It could also explain whether and how Korea can identify, prevent, detain, or otherwise address imported goods linked to forced labor. The issue is therefore broader than domestic labor standards. It also concerns whether Korea has border-enforcement and supply-chain due-diligence mechanisms capable of addressing forced-labor risks in imported goods and inputs.

**K**orea may also need to prepare for product- and input-level scrutiny. The Taepyung Salt Farm WRO shows that U.S. forced-labor enforcement can directly reach Korean-origin goods. The TVPRA list further shows that U.S. authorities may also consider downstream goods produced with inputs associated with child-labor or forced-labor risks. Korean firms should therefore pay particular attention to supply-chain documentation where their ex-

ports incorporate upstream inputs or intermediate goods that have been identified in U.S. forced-labor risk materials. This is particularly important because U.S. enforcement practice is increasingly moving beyond direct producers to cover upstream inputs, subcontracting structures, and broader supply-chain exposure.

**M**ore broadly, Korea may need to approach these issues as part of its future trade-agreement strategy. The USMCA and the CPTPP show that forced-labor import rules are increasingly being incorporated into trade agreements. Possible future consideration of CPTPP accession, Korea-U.S. trade discussions, and supply-chain-related economic security arrangements may all require Korea to address forced-labor import regulation more explicitly.

**F**or Korea, the issue is therefore not simply whether the United States will impose additional tariffs. The current proceedings indicate that U.S. trade enforcement is increasingly treating industrial policy, labor standards, supply-chain due diligence, customs enforcement, and market-access conditions as interconnected elements of import regulation. Korea has already experienced, through the Korea-EU FTA labor dispute, that labor-related commitments can move from the realm of domestic regulation into formal trade-law processes and generate pressure for legal and institutional reform.<sup>26</sup> The current U.S. proceedings

<sup>26</sup> For further analysis of the Korea–EU FTA Panel of Experts proceeding and its implications for labor provisions in Korean FTAs, see Cheon-Kee Lee, “Labour Standards in Korean FTAs: Legal Implications of the Korea–EU Panel of

Experts Review,” *The Asian Business Lawyer*, Vol. 35, Spring 2025.

point to a related trend, but with a stronger tariff, customs-enforcement, and supply-chain dimension.

**K**orea's response should be legally precise and evidence-based. The immediate objective is to show that Korea is not an appropriate target for broad Section 301 remedies. At the same time, the present investigations should not be treated as isolated proceedings. They show that U.S. trade enforcement is likely to examine not only market access barriers, but also the industrial-policy, labor-standard, cus-

toms-enforcement, and supply-chain conditions under which imports are produced and regulated. Structural overcapacity concerns and forced-labor import regulation may therefore reappear in future U.S. investigations and in the design of new trade-agreement disciplines. Korea should respond to the current proceedings on their own legal and factual terms, while preparing for a trade-policy environment in which sector-specific concerns are more readily translated into statutory enforcement processes and new regulatory disciplines. **KIEP**