

**INCONSISTENT WITH STATUTORY GOALS, MISUNDERSTANDING  
ECONOMICS: THE TRUMP ADMINISTRATION’S INVESTIGATION  
OF “STRUCTURAL EXCESS CAPACITY IN MANUFACTURING”**

Edward Gresser  
Vice President, Progressive Policy Institute  
“Section 301” Committee Public Hearing

May 8, 2026

Members of the 301 Committee:

Thank you very much for this opportunity to provide comments on behalf of the Progressive Policy Institute on the “Section 301” investigation opened last March 11<sup>th</sup>, alleging “Structural Excess Capacity” in 16 economies and U.S. trading partners, specifically Bangladesh, Cambodia, China, the European Union, India, Indonesia, Japan, Korea, Malaysia, Mexico, Norway, Singapore, Switzerland, Thailand, Taiwan, and Vietnam.

The Progressive Policy Institute (PPI) is a 501(c)(3) nonprofit think-tank, established in 1989 and led by President Will Marshall, and publishes on a wide range of public policy topics. PPI has participated in U.S. trade policy debates since its founding, through public commentary, Congressional testimony, convenings, and participation in TPSC and U.S. Trade Representative Office hearings. I have served as PPI’s Vice President since 2021, and direct research and publishing on trade policy and global economy topics. Before joining PPI, I served as Assistant USTR for Policy and Economics, with responsibility for overseeing agency economic research and use of trade data, chairing the interagency Trade Policy Staff Committee, and administering the Generalized System of Preferences.

My testimony this morning covers four topics:

- The apparent goal of this investigation, as explained by senior administration officials;
- Its core concept of “structural excess capacity”;
- The relevance of the data points presented in USTR’s March 11 *Federal Register Notice* as justifying inclusion of the 16 economies; and
- A more appropriate approach if the administration wishes to create new tariff rates.

## INAPPROPRIATE USE OF SECTION 301

First, this investigation appears to be an inappropriate use of Section 301. Senior administration officials have said its goal is not related to the statute's purpose — to address “unreasonable or discriminatory” “acts, policies, and practices” in foreign countries — but rather to recreate the tariff rates set under last year's “International Emergency Economic Powers Act” Executive Orders, after the Supreme Court's February 20 opinion declared them illegal. Treasury Secretary Bessent previewed this investigation, and announced on March 12 that 60 trading partners' laws on trade in goods possibly produced with the use of forced labor, as follows:

“Six Justices ... ruled that IEEPA authorities cannot be used to raise even one dollar of revenue. This administration will invoke alternative legal authorities to replace the IEEPA tariffs. We will be leveraging Section 232 and Section 301 tariff authorities that have been validated through thousands of legal challenges. Treasury's estimates show that the use of Section 122 authority, combined with potentially enhanced Section 232 and Section 301 tariffs will result in virtually unchanged tariff revenue in 2026.”<sup>1</sup>

The authors of “Section 301” in 1974 clearly did not intend it to be a revenue measure. Still less would they have meant it as a device to enable presidents to nullify Congress' Constitutional authority over “Taxes, Duties, Imposts, and Excises”, and create their own tariff systems. Rather, it is a tool to address specific objectionable policies abroad, which violate trade agreements or in some “unjustifiable” or “unreasonable and discriminatory” way “burden or restrict U.S. commerce.” So both this investigation and that relating to imports of goods produced by forced labor have a basic problem, as their goal seems inconsistent with the purpose of Section 301 — and more generally with the separation of powers.

## “STRUCTURAL EXCESS CAPACITY” CONCEPT IS NOT ECONOMICALLY RATIONAL

Second, the investigation's focus is not the sort of “act, policy, or practice” of a foreign government (or 16 foreign governments) Section 301 is meant to address, but an abstract concept termed “structural excess capacity.” USTR's March 11 release announcing the investigation defines it this way:

“The Trump Administration's reindustrialization efforts continue to face significant challenges due to foreign economies' structural excess capacity and production in manufacturing sectors. Across numerous sectors, many U.S. trading partners are producing more goods than they can consume domestically. This overproduction displaces existing U.S. domestic production or prevents investment and expansion in U.S. manufacturing production that otherwise would have been brought online.”<sup>2</sup>

This is not an economically rational concept, and a brief look at the United States economy quickly shows why. “Producing more goods than [a country] can consume domestically,” even in numerous sectors, is normal and common. Last year, for example, U.S. aerospace factories delivered 600 large commercial aircraft, of which 209

went to American carriers and 391 to overseas customers.<sup>3</sup> American farmers produced 1.4 million tons of almonds and exported over 1 million tons of them, principally to European and Indian customers.<sup>4</sup> Of the 43 trillion cubic feet of natural gas American energy firms produced last year, American customers bought 33.6 trillion cubic feet. Gas companies shipped the remaining 8.9 trillion cubic feet to foreign customers.<sup>5</sup> Outside the goods-producing world, American movie studios earned \$24.9 billion of their \$33.6 billion in total box office receipts from foreign movie showings and streaming.<sup>6</sup>

None of these statistics suggests that these American industries are abnormal or predatory — just that they are successfully serving a world market. Still less do the statistics demonstrate the existence of “unjustifiable” or “unreasonable and discriminatory” U.S. policies burdening other countries with airplanes and almonds, or give foreigners cause to impose tariffs on American films and LNG — let alone across-the-board tariffs on everything Americans make.

In fact, in the daily course of economic life, American cities and states typically produce more of certain things than they need at home and buy other things from other sources — whether different regions of the U.S. or foreign suppliers. This is equally true of foreign countries. Cambodia, for example, does not make airplanes. Norway does not grow almonds. Neither government could reasonably claim that Americans are wronging them by overproducing these goods.

As a policy matter, it is certainly true that if countries specialize in particular things, and produce them increasingly efficiently and at lower prices, competing industries in the U.S. can contract. That can be good reason for Americans (and other countries) to adopt policies to improve productivity so we can compete successfully, and to provide social safety nets and worker support programs to help with adjustment, even when this competition simply reflects absolute or comparative advantage.

It is also true that in some cases, foreign government policies that the U.S. government can plausibly see as “unreasonable” can artificially inflate production. In these cases, Section 301 investigations launched with good reason to believe such policies are burdening U.S. commerce may be useful tools. Other options include the use of domestic trade laws such as Section 201, consultations under the WTO Agreement on Subsidies, and the enforcement of obligations in U.S. trade agreements. If the administration does not believe these are adequate, it can ask Congress to revise U.S. trade law, seek revisions in multilateral rules, or request changes in FTAs and other bilateral or plurilateral trade arrangements. But demonstrating that a country “produces more goods than the domestic economy needs” does not prove that anything is wrong, let alone that this production is the result of objectionable acts, policies, or practices. The Section 301 investigation’s core premise thus appears to us to be mistaken.

## “DATA POINTS” NOT EVIDENCE OF “UNREASONABLE POLICY”

Third, the *Federal Register* Notice opening the investigation asserts that statistics on “capacity utilization” in manufacturing and trade balance (sometimes national, sometimes bilateral, sometimes sectoral) can serve as proxies for showing the existence of the sort of “acts, policies, and practices” Section 301 is meant to address. This is not persuasive. To take one general point and three specific examples:

*General:* The *Federal Register* Notice suggests that a manufacturing capacity utilization rate below roughly 80% is evidence of “structural excess capacity”, and countries at lower capacity utilization levels are likely to be centers of the phenomenon. The precise language is:

*Capacity Utilization:* “[A]ccording to U.S. government estimates, global manufacturing capacity utilization remains between 75.0 and 75.9 percent, below healthy utilization rates for many sectors of approximately 80 percent. This is an indication that, for manufactured goods, although global production is expanding, underlying global supply exceeds underlying global demand. Further, unused foreign capacity can chill production and new investments in the United States. Indeed, many countries with excess capacity problems also have large trade surpluses with the world, or at least with the United States—the world’s consumer market of last resort.”<sup>7</sup>

By this standard, the U.S. itself is an almost precisely representative case of “structural excess capacity” in manufacturing. According to statistics published by the Federal Reserve, our level of capacity utilization was 75.2% as of March 2026 — precisely the global average the Notice claims is problematic. U.S. capacity utilization has not reached 80% since the Clinton administration.<sup>8</sup> Some countries included in the investigation have lower rates; others, such as Norway and Vietnam, higher.

*Norway:* Moving to a specific case, the *Federal Register* Notice explains Norway’s inclusion in the investigation as follows:

“Evidence of structural excess capacity and production exists for Norway. Norway maintains a global goods trade surplus, led by exports in sectors such as mineral fuels and oils, certain electronic equipment, and machinery. In 2024, Norway’s goods trade surplus was 13.8 percent of GDP, or \$67 billion, down from a goods trade surplus of \$79 billion in 2023. Norway’s seafood exports hit a record high in 2025, with Norwegian companies exporting 2.8 million metric tons of seafood worth \$18 billion, representing a 4 percent increase from 2024. At 77.7 percent in Q4 2025, Norway’s rate of capacity utilization was more than a full percentage point below what it was a year ago, and over two percentage points less than it was three years ago. In addition, Norway engages in policies and practices that have the effect of undervaluing its domestic currency, including the use of state-owned or -controlled enterprises to recycle oil revenues into non-domestic currencies, like the U.S. dollar, rather than its domestic currency.”<sup>9</sup>

The “capacity utilization” point thus suggests that Norway is less characterized by “structural excess capacity” than the United States. As to the specific sectors and policies, Norway (in some ways like America) has large energy and fisheries endowments and sells much of its output abroad. Norway produces more fish than it needs because it has a small population, deep-water fjords home to large shoals of

salmon, and well-managed fisheries, and trades energy products in dollars under the “petrodollar” system established by the U.S. government in the 1970s, as virtually all energy exporters do.

*Cambodia:* As another example, the *Federal Register* Notice explains Cambodia’s inclusion on the list of investigated countries this way:

“Evidence of structural excess capacity and production exists for Cambodia. Cambodia maintains a bilateral trade surplus with the United States, which in 2024 was approximately \$12 billion. Evidence indicates its garment, footwear, and travel goods (GFT) sector exported \$11.8 billion in the first nine months of 2025, a 16 percent increase from the same period in 2024. When Cambodia’s GFT industry was facing uncertainty with U.S. tariffs, Cambodia’s Deputy Secretary-General stated that enhancing capacity along the product chains was an option to further boost the manufacturing sector and create lucrative opportunities.”<sup>10</sup>

Here, the Notice’s focus shifts from Norway’s global goods-trade surplus to a bilateral Cambodian surplus with the United States. This is presumably because Cambodia has a long-time national goods-trade deficit, at  $-\$0.82$  billion in 2025 and  $-\$2.35$  billion in 2024.<sup>11</sup> The 2024 figure is equivalent to 5.6% of GDP, equal to the highest U.S. trade deficit on record. As the Notice says, Cambodia is a large exporter of clothes, shoes, purses, luggage, and backpacks. This reflects the fact that Cambodia can produce light-industry goods at high quality and low cost, and ship them out through an efficient seaport. On the other hand, the U.S. maintains modest but steady trade surpluses vis-à-vis Cambodia in automobiles, medicine, and chemicals. Both the Cambodian exports and the U.S. exports appear to be normal cases of comparative advantage. As to “acts, policies, or practices” that might be relevant to a Section 301 case, the Notice simply cites an unnamed official (by title, apparently a senior civil servant rather than a Minister or senior political leader), floating an idea rather than identifying any specific action.

*Bangladesh:* The passage relating to Bangladesh is especially mystifying:

*Bangladesh:* Evidence of structural excess capacity and production exists for Bangladesh, which has a bilateral goods trade surplus of \$6.15 billion with the United States. This bilateral surplus is led by exports in the textiles sector. The government provides cash incentives for exports across forty-three sectors, including domestic textiles and leather products. Furthermore, Bangladesh’s cement industry is wrestling with significant excess capacity in the midst of the industry’s worst downturn in years, with Bangladesh’s national consumption of cement dropping to 38MT in 2024—less than 40% of total capacity—and declining further in 2025.”<sup>12</sup>

As with Cambodia, Bangladesh has run a long-term goods-trade deficit, at \$20.5 billion in 2025,<sup>13</sup> and according to the World Bank, unbroken since Bangladesh became independent in 1975.<sup>14</sup> The reference to the Bangladeshi cement industry is especially startling, and useful in assessing the relevance of capacity utilization rates to an allegation of acts, policies, or practices thought both unreasonable and burdensome to U.S. commerce.

According to the U.S. trade data published by the U.S. International Trade Commission in its “Dataweb,” Americans have bought cement from Bangladesh only twice — one shipment of 1,455 tons in April of 2003 and a second of 2,215 tons in February of 2004

— and none since.<sup>15</sup> Bangladesh, meanwhile, appears to export cement only in small quantities to neighboring northeastern Indian provinces, Nepal, and the Maldives. The United States does not export cement in any significant quantity to South Asia. Fully 96% of the U.S.’s \$183 million cement exports in 2025 went to Canada, Mexico, the Bahamas, and smaller Caribbean littoral countries. None went to Bangladesh, and only 73 tons valued at \$65,000 to other South Asian countries.<sup>16</sup> As the U.S. neither imports any cement from Bangladesh nor competes with Bangladesh as a cement exporter, Bangladesh’s cement industry cannot possibly be imposing any sort of “burden” on American commerce.

In sum, neither the *Federal Register* Notice’s general assertion that capacity utilization rates of 75% indicate “excess capacity,” nor its specific passages about countries like these, appear to be meaningful evidence of acts, policies, or practices that are unreasonable and burden American commerce. In fact, they are not necessarily evidence of problems at all.

## THE CONSTITUTION EXPLAINS HOW TO CHANGE U.S. TARIFF RATES

PPI’s strong view, therefore, is that this investigation is misguided. Its aim, as described by top administration economic officials, is at odds with the purpose of “Section 301.” Its core premise, that a country which produces more of a good than it needs at home has “structural excess capacity,” is mistaken. And the data points it cites as evidence of “structural excess capacity” are frequently irrelevant, in a few cases erroneous, and do not help identify the kinds of “acts, practices, or policies” a Section 301 must address.

Where might we go from here? We do not share the administration’s view that a generally higher U.S. tariff rate is good policy. Tariffs are regressive taxes, burdening lower-income households much more heavily than wealthy families. As business taxes they are inequitable, imposing much higher costs on goods-using industries such as farming, manufacturing, restaurants, retail, and construction than on less goods-intensive industries such as financial services, law, education, and media. And in practical terms, we note that — contrary to the administration’s hopes a year ago that higher tariffs would create a larger U.S. manufacturing sector — the U.S. now has fewer manufacturing jobs and a smaller manufacturing share of GDP than in 2024.

Assuming, however, that the administration’s core goal is to create a new tariff system with higher rates, the appropriate method is clear. USTR alludes to this in its 2026 “President’s Trade Agenda” report, which terms the U.S. Constitution “our most important trade agreement”.<sup>17</sup>

The Constitution says unambiguously that Congress has “the power to lay and collect Taxes, Duties, Imposts, and Excises.”<sup>18</sup> It does not suggest that presidents can bypass Congress and set tariff rates by decree, whether to raise them or to lower them. Accordingly, when 19th- and early 20th-century presidents, most recently Presidents Harding and Hoover in 1921 and 1929, wanted higher tariff rates, their practice was to

ask Congress for legislation. Often, they succeeded. When they did not, they accepted that under the Constitution, Congress has the final say on tariff rates. If the Trump administration likewise wants a higher tariff, it should not attempt to substitute inappropriate use of trade laws for that legitimate approach, and should instead follow their example.

---

<sup>1</sup> Scott Bessent, “Remarks Before the Economic Club of Dallas—Economic Security First,” U.S. Department of the Treasury, February 20, 2026, at <https://home.treasury.gov/news/press-releases/sb0403>.

<sup>2</sup> “USTR Initiates Section 301 Investigations Relating to Structural Excess Capacity and Production in Manufacturing Sectors,” Office of the U.S. Trade Representative, March 11, 2026, at <https://ustr.gov/about/policy-offices/press-office/press-releases/2026/march/ustr-initiates-section-301-investigations-relating-structural-excess-capacity-and-production>.

<sup>3</sup> “Commercial Aircraft Finance Market Outlook 2026,” Boeing Corp., accessed April 2026, at <https://www.boeing.com/commercial/market/current-aircraft-financing-market>

<sup>4</sup> “Market Profile: United States,” Almond Board of California, accessed April 2026, at [https://www.almonds.org/sites/default/files/2025-11/2025GTRA0018\\_MarketProfile\\_USA\\_GTRA\\_October2025.pdf](https://www.almonds.org/sites/default/files/2025-11/2025GTRA0018_MarketProfile_USA_GTRA_October2025.pdf)

<sup>5</sup> “Natural Gas Summary,” Energy Information Administration databases, accessed April 2026, at [https://www.eia.gov/dnav/ng/ng\\_sum\\_lsum\\_dcu\\_nus\\_a.htm](https://www.eia.gov/dnav/ng/ng_sum_lsum_dcu_nus_a.htm).

<sup>6</sup> “Studio Profit Report: Warner Bros. and Sony Rise, Paramount is Rebuilding,” *Hollywood Reporter*, March 17, 2026, at <https://www.hollywoodreporter.com/business/business-news/studio-profit-report-warner-bros-sony-paramount-1236514522/>.

<sup>7</sup> U.S. Trade Representative Office, “Initiation of Section 301 Investigations: Acts, Policies, and Practices of Certain Economies Relating to Structural Excess Capacity and Production in Manufacturing Sectors,” Federal Register, March 17, 2026, at <https://www.federalregister.gov/documents/2026/03/17/2026-05214/initiation-of-section-301-investigations-acts-policies-and-practices-of-certain-economies-relating>.

<sup>8</sup> “Capacity Utilization: Manufacturing,” Federal Reserve FRED database, accessed April 2026, at <https://fred.stlouisfed.org/series/MCUMFN>

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> International Monetary Fund, International Trade in Goods Database, accessed April 2026, at <https://data.imf.org/en/datasets/IMF.STA:IMTS>.

<sup>12</sup> U.S. Trade Representative Office, op. cit.

<sup>13</sup> International Monetary Fund, op. cit.

<sup>14</sup> World Bank, “Trade Balance in Goods and Services” database, accessed April 2026, at <https://data.worldbank.org/indicator/BN.GSR.GNFS.CD>.

<sup>15</sup> Data from U.S. International Trade Commission Dataweb, accessed April 2026, at [dataweb.usitc.gov](http://dataweb.usitc.gov).

<sup>16</sup> Ibid.

<sup>17</sup> “The President’s 2026 Trade Policy Agenda,” Office of the U.S. Trade Representative, March 2, 2026, pg. 1, at <https://ustr.gov/sites/default/files/files/Press/Releases/2026/2026%20Trade%20Policy%20Agenda.pdf>.

<sup>18</sup> U.S. Constitution Transcript, National Archives, at <https://www.archives.gov/founding-docs/constitution-transcript>.