political goals. With control over ports and logistics equipment and information, the Government of China could quickly disrupt critical supply chains. Together, the acts and policies China has deployed in the maritime and logistics sector give it the tools to inflict severe economic coercion or damage against commercial or state actors that do not align with China's geopolitical goals.

The result of these policies is a rapidly growing network of Chinese-built vessels, owned and operated by Chinese shipping companies and others, financed by Chinese state-owned banks, and favored by a spreading web of global ports and terminals owned by Chinese firms. From 2000 to 2022, China's share of new vessels built each year on a global basis rose from less than 10 percent to 47 percent. In 2022, China built more new ships than the next two countries (Japan and Korea) combined. While Chinese shipyards now produce over 1,000 ocean-going vessels a year, the United States produces less than ten. China's rapid expansion in the sector has created overcapacity and suppressed global prices for commercial vessels, making it impossible for U.S. shipbuilders to invest and expand in the world market. Since China's expansion into the world's dominant shipbuilder began in the early 2000s, U.S. commercial shipyards have closed, the number of shipbuilding and repair jobs in the United States has shrunk, the number of commercial vessels constructed and delivered by the remaining shipyards has fallen, and supporting supply chains have been decimated.

The scarcity of U.S-built and U.S.-flagged ships raises important national security concerns about the availability of sufficient merchant marine resources and skills to support the military in the event of a conflict or national emergency. Indeed, of the more than 60 ships enrolled in the Maritime Administration's Maritime Security Program ("MSP") and Tanker Security Program ("TSP") – U.S.-flagged vessels that agree to be available to the Department of Defense when needed in return for an annual stipend – not a single one was produced in the United States, and the last three tankers enrolled in the program were built in China.

In short, it will simply not be possible for the U.S. shipbuilding industry to recover and operate sustainably until China's unfair policies are addressed. The Petition urges the administration to assess a port fee on Chinese-built ships that dock at a U.S. port, create a Shipbuilding Revitalization Fund to help the domestic industry and its workers compete, and take other policy measures to stimulate demand for, and the capacity to construct, commercial vessels built in the United States. The commercial shipbuilding and repair industry in the United States can compete and grow if the massive market distortions that the Government of China has created are remedied. The restoration of America's commercial shipbuilding industrial base will create high-skilled jobs, drive demand for key upstream technologies and inputs, and ensure a sufficient domestic fleet to safeguard national security. Section 301 is the right tool at the right time to counteract China's predatory and destructive practices, rebuild a vibrant domestic shipbuilding industry and supplier base, and protect America's economic and national security for years to come.

USTR Mistakenly Blames China for Long-Standing US Shipbuilding Woes

By Colin Grabow, Cato Institute

Last March, several unions submitted a petition to the US Trade Representative (USTR) requesting that it, acting under section 301 of the Trade Act of 1974, address alleged "unreasonable and discriminatory acts, policies, and practices" by China aimed at dominating the maritime, logistics, and shipbuilding sectors. The petition claimed that such policies burden and restrict US commerce—language that, if confirmed by a USTR investigation, would clear the path for tariffs or other trade restrictions.

In April, following vows from US Trade Representative Katherine Tai and President Biden that the petition would be examined thoroughly, the USTR announced that it would proceed with an investigation. Approximately nine months later and only days before the Biden administration left office, the USTR released its report rendering judgment on the matter. China's policies, it found, were both unreasonable and a burden and restriction on US commerce.

In making this determination, the USTR has set the stage for the Trump administration to impose fresh punitive trade measures on Beijing. The contours of such action are unclear. Tariffs would seem one obvious response given President Trump's enthusiasm for import duties, but there are other possibilities as well.

Indeed, one idea floated in last year's petition was a fee on every Chinese-built ship that visits US ports, the proceeds of which would be funneled into a proposed US Commercial Shipbuilding Revitalization Fund. An example given was a $1 million port fee on a 20,000 TEU container ship. The impact of such a fee, whose use is unprecedented, is unclear. At least theoretically, carriers could avoid the penalty by swapping their Chinese-built ships with those constructed in other countries that are currently deployed on non-US trade routes.

Before the Trump administration imposes new tariffs, the proposed port fee, or some other measure, incoming officials may want to take a fresh look at the new USTR report. While it provides voluminous documentation of Chinese market abuses and accurately notes the depressed state of the US shipping and shipbuilding industries, it fails to establish any causal relationship between the two.

Instead, the report's findings are based on scant relevant evidence and questionable logic. Rather than first establishing facts to inform a carefully considered judgment, the USTR report smacks of a document hastily released to advance a predetermined conclusion beneficial to the outgoing administration's political allies.

Even the report's press release betrays a lack of diligence. In it, US Trade Representative Tai states that the United States currently ranks 19th in the world in commercial shipbuilding, while in 1975, it ranked number one with an annual production of over 70 ships.

None of these numbers is correct.

In 2023 (the most recent year for which data are available), the United States ranked 14th. Notably, Tai's 19th place figure is mirrored in the 2024 petition's first page (the US position in 2015), while her own USTR report placed the US at 16th (the US position in 2022). As for US performance in 1975, that year's US Maritime Administration's annual report shows the United States ranked twelfth—a far cry from first place—with 20 ships delivered.

Tai's inaccurate numbers are sloppy, but they're small beer compared to the report itself, which—while mangling some facts of its own—fundamentally errs in concluding that China plays a meaningful role in US maritime misfortunes. For example, according to the report, *"China's targeted dominance of the maritime, logistics, and shipbuilding sectors"* is a key factor that contributes to the United States' inability to maintain sufficient shipbuilding capacity to

- *"carry the waterborne domestic commerce and a substantial part of the waterborne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of the waterborne domestic and foreign commerce at all times."* (page 4)
- *"maintain sufficient domestic shipbuilding, shipping, and logistics capacity to sustain US commerce, as directed by US law."* (page 63)

In addition, the report asserts that China's dominance in this area *"burdens or restricts US commerce because it undercuts business opportunities for and investments in the US maritime, logistics, and shipbuilding sectors…"* (page 116)

The core flaw in the USTR's causal argument is that US shipping and shipbuilding firms aren't merely uncompetitive with China; they're uncompetitive with every country of maritime significance. If China's maritime industries ceased operations today, their business would simply shift to other countries with competitive shipping and shipbuilding firms — a group that decidedly *does not* include the United States.

For all the teeth-gnashing about China, US shipbuilders' lack of competitiveness is such that their output trails that of even much smaller countries such as the Netherlands and Norway.

Despite this, the USTR report places considerable blame on China for US maritime travails. It states, for example, that in the year 2000 "glimmers of hope" had begun to appear for the US shipping and shipbuilding industries, but that—like other sectors of the economy—they fell victim to the so-called "China shock" stemming from the country's 2001 accession to the World Trade Organization. As the report states:

> *A number of US shipyards have been forced to close as cheap Chinese ships have flowed into the global market. For example, Bender*

Shipbuilding in Mobile, Alabama declared bankruptcy and was sold in 2009, and delivered its last ship in 2012. Avondale Shipyards in New Orleans, Louisiana announced it was closing in 2010 and delivered its last ship in 2014. US shipbuilding employment has seen a corresponding impact. From 2008 to 2021, the number of shipbuilding and repair production workers in the United States fell by 14.9 percent and the number of production hours worked fell by 19.5 percent.

Later, the report quotes Scott Paul, the president of the union-aligned Alliance for American Manufacturing, stating that "US shipbuilding production has declined as artificially low prices of ships flood the market. China's unfair production practices have made it impossible for American shipbuilders to compete on an even playing field."

But the global market has little bearing on the fortunes of uncompetitive US shipbuilders, who have long subsisted on the protected Jones Act market for commercial vessels and military sales reserved for domestic shipyards. Indeed, a 2023 Congressional Research Service brief noted that no large US-built ship has been sold to an overseas buyer in *decades*, while a 1992 US International Trade Commission report noted that the US shipbuilding industry "had not produced a commercial vessel for export (that is, to be foreign-flagged) since 1960."

The Avondale and Bender shipyards cited by the USTR report offer good examples of the lack of exposure to international competition (itself a notable contributor to the industry's problems). For at least 30 years before its closure, the Avondale shipyard exclusively built ships for Jones Act and defense customers (and, before being defunded in 1981, a federal shipbuilding subsidy program). Bender was similarly dependent on building vessels for a captive domestic commercial market as well as occasional Navy contracts.

Put simply, neither Avondale nor Bender lost contracts to Chinese firms (or any foreign shipyard) because *they never competed with them*.

Beyond claims that China has contributed to US maritime struggles since 2000, the USTR report also alleges that Chinese policies are hindering efforts to revitalize the US maritime industry. It credulously quotes, for example, a letter from the Shipbuilders Council of America holding Chinese subsidies responsible for an inability of "private-industry US shipyards to compete for contracts to build or repair ships for international commerce."

To substantiate these claims, the report offers the example of specialized vessels to construct offshore wind turbines. As it states:

Despite this strong demand signal [for offshore wind vessels], few US vessels are in development or construction. For example, while the [National Renewable Energy Laboratory] report indicates that four to six wind turbine installation vessels are needed, only one purpose-built offshore wind installation vessel has been launched in the United States. This is in part due to China's flooding the market with offshore wind installation vessels, which decreases US shipyards' perceived cost competitiveness and artificially restricts the ability of shipowners to compete for available work.

Such language creates the impression that, but for China, US shipyards could compete in the construction of highly sophisticated wind turbine installation vessels. But such an outcome beggars belief as US shipyards can't compete with other foreign shipbuilders that construct WTIVs either.

While the report highlights the construction of a wind turbine installation vessel for $715 million in the United States compared to $400 million for a "similar" vessel in China, it neglects to mention that a South Korean shipyard contracted to build the exact same model vessel as the one currently under construction in a US shipyard for $330 million—less than half the US price and less than the China price.

Thus, even in China's absence, vastly uncompetitive US shipyards would still be out in the cold.

Perhaps with this in mind, the report attempts to justify its finding by employing yet another argument. Beyond alleged past and current damage inflicted, the report claims that Chinese targeting of the maritime and shipbuilding sectors for dominance *"burdens or restricts US commerce because it creates economic security risks from dependence and vulnerabilities in sectors critical to the functioning of the US economy."*

A disparate set of facts are mustered to substantiate this claim. The report points out, for example, that 22 percent (hardly an overwhelming number) of the non-US flagged ships that entered US ports in 2022 were Chinese-built.

This fact is soon followed by the assertion that "Over-reliance on a single economy for shipping, shipbuilding, and logistics increases the cost of any disruption," and a digression into the costs of disruptions to shipping in the Red Sea, their knock-on effects, and a claim that similar disruptions in the South China Sea could cause a $5 trillion decline in global GDP.

How this relates to Chinese subsidies in shipbuilding and related maritime industries, however, is a mystery. Would a Red Sea-style shipping disruption be less damaging if the vessels involved were constructed outside of China? The report never says.

The report is perhaps on firmer ground with its argument that China's shipbuilding dominance could allow it to prioritize the orders of Chinese and other shipowners over those of US shipowners. Even so, this is a hypothetical outcome rather than one borne out in practice. Furthermore, Chinese shipyards still aren't the only game in town with numerous capable shipyards remaining in South Korea, Japan, and elsewhere.

Such odd argumentation feeds a sense that the report's conclusion was determined long before evidence was compiled, with much argumentative pasta flung at a wall in the hope that some would stick. That the report's sources include an op-ed published just 48 hours before the report's release only adds to such suspicions.

To be clear, the report's flaws do not absolve China of distorting the global maritime market. That Beijing lavishes substantial subsidies on its shipping and shipbuilding industries is well documented. But the real question is whether such policies have even the slightest explanatory power for the US shipping and shipbuilding industries' moribund state and lack of competitiveness — a situation that long predates China's maritime rise.

The answer is a clear no.

The incoming Trump administration's temptation to seize on the new USTR report as a justification for new tariffs or other trade restrictions on China will no doubt be great. But if administration officials seek to reverse US maritime fortunes, their time would be better spent examining possible reforms to address US policy failures than blaming others for long-standing ills.

"Over? Did You Say 'Over'?" Determining the Preclusive Effect of an Earlier Arbitration Award*

By Daniel Lund, III, Partner, Phelps Dunbar LLP, New Orleans, Louisiana

In *Nat'l Cas. Co. v. Cont'l Ins. Co., 2024 U.S. App. LEXIS 29826 (7th Cir. Nov. 22, 2024)*, the United States Seventh Circuit Court of Appeals recently held that under the Federal Arbitration Act, an arbitrator – and not a court – is to determine the preclusive effect of an arbitrator's earlier ruling.

In the case, insurers engaged in three reinsurance agreements had previously arbitrated concerning one of the insurer's billing methodologies. When a similar dispute occurred years later, the victors in the first arbitration – rather than pursuing arbitration – filed in federal court in Chicago seeking to have the court declare that the prior arbitration award precluded re-arbitration of the latest dispute. The insurer on the other side of the dispute moved to compel arbitration, a motion granted by the district court. The plaintiff insurers appealed.

The Court of Appeals affirmed: "Our case law establishes that the preclusive effect of an arbitral award is an issue for the arbitrator to decide, not a federal court. In no uncertain terms, we have held that '[a]rbitrators are entitled to decide for themselves those procedural questions that arise on the way to a final disposition, including the preclusive effect (if any) of an earlier award.' …

"Indeed, the Court has repeatedly instructed that, under the FAA, arbitrators presumptively decide procedural issues that 'grow out' of an arbitrable dispute and 'bear on its final disposition.' … Preclusion is one such procedural issue that can grow out of an arbitrable dispute. … [T]he relevant presumption here [is] that procedural questions growing out of arbitrable disputes are themselves arbitrable. … To our knowledge, no court has ever interpreted § 13 [of the FAA, declaring that an arbitration award "shall have the same force and effect, in all respects as, and be subject to all the provisions of law relating to, a judgment in an action"] to require federal courts to determine the preclusive effect of arbitral awards."