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USTR Opens Comment Process to Continue, Modify, Remove, or Expand Section 301 China Tariffs

Detailed questionnaire also seeks extensive information on economic impacts of the tariffs

On November 1, 2022, the Office of the United States Trade Representative (“USTR”) released a [questionnaire](#) (the “Questionnaire”) to be used by interested parties for submitting comments to USTR about the tariffs imposed on Chinese goods under Section 301 of the Trade Act of 1974 (“Section 301”). The Questionnaire was created to help USTR gather data as part of its statutorily-required four-year review of the Section 301 tariffs, and it provides a unique opportunity for companies to comment on the Section 301 tariff regime on China, including requests that the tariffs on specific products should be continued, modified, or removed or that the tariffs should be extended to new products.

USTR will open a portal for the submission of the Questionnaire on November 15, 2022, and responses must be received by January 17, 2023. The USTR portal will allow for the submission of business confidential information.

The Questionnaire allows the public to comment on: (1) the effectiveness of the Section 301 tariffs; (2) other measures that could be effective in obtaining USTR’s goals; and (3) the economy-wide, sector-wide, and Harmonized Tariff Schedule (“HTS”) number-specific impacts of the Section 301 tariffs on the U.S. economy. Commentors can use the Questionnaire to voice support or opposition for the Section 301 tariffs and request the imposition of additional Section 301 tariffs or the removal of existing Section 301 tariffs.

BACKGROUND

On August 24, 2017, USTR initiated an investigation under Section 301 to determine whether China’s acts, policies, and practices related to technology transfer, intellectual property, and innovation are



unreasonable or discriminatory and burden or restrict U.S. commerce and, therefore, are actionable under Section 301. On April 6, 2018, USTR announced its determination that China's acts, policies, and practices are unreasonable or discriminatory and burden or restrict U.S. commerce. Specifically, USTR cited the following as the basis for the Section 301 tariffs:

1. China uses foreign ownership restrictions, such as joint venture requirements and foreign equity limitations, and various administrative review and licensing processes, to require or pressure technology transfer from U.S. companies to Chinese entities.
2. China's regime of technology regulations forces U.S. companies seeking to license technologies to Chinese entities to do so on non-market-based terms that favor Chinese recipients.
3. China directs and unfairly facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and enable the transfer of technology to Chinese companies.
4. China conducts and supports unauthorized intrusions into, and theft from, the computer networks of U.S. companies to access their sensitive commercial information and trade secrets.

As noted in the Questionnaire, USTR later determined that unfair trading practices related to China's licensing regime violated obligations under the World Trade Organization ("WTO") agreements. As a result, USTR addressed this act, policy, and practice through WTO dispute settlement. USTR determined that the other measures, however, should be addressed under Section 301 responsive actions.

As a result of its determination, USTR took the following actions:

1. On July 6, 2018, USTR imposed tariffs on approximately \$34 billion of annual imports of Chinese-origin goods (List 1).
2. On August 23, 2018, USTR imposed tariffs on approximately \$16 billion of annual imports of Chinese-origin goods (List 2).

In addition, after retaliation by China in response to List 1 and List 2, USTR modified the List 1 and List 2 actions to impose tariffs on approximately \$200 billion of additional annual imports of Chinese-origin goods (List 3) and \$300 billion of Chinese-origin goods (List 4A).

Chinese-origin products on Lists 1, 2, and 3 are subject to a 25 percent tariff above and beyond the most-favoured nation tariffs set forth in the HTS of the United States. Chinese-origin products on List 4A are subject to an additional 7.5 percent tariff.

On May 5, 2022, USTR announced that it was initiating a statutorily required four-year review of the List 1, 2, 3, and 4A Section 301 tariffs. USTR requested comments from parties benefiting from the Section 301 tariffs regarding whether to extend the Section 301 tariffs beyond the four-year anniversary. On September 8, 2022, USTR announced that the Section 301 tariffs would remain in effect beyond the four-year anniversary and that USTR would publish a separate notice for a review process. On October 17, 2022, USTR announced that it would seek public comments as part of its four-year review.

THE QUESTIONNAIRE

The Questionnaire is divided into three sections for comments on the Section 301 tariffs: the economy-wide level, the sector-wide level, and the HTS-specific product level. Each of these sections of the Questionnaire seeks input on: (1) the effectiveness of the Section 301 tariffs in eliminating or counteracting China's trade practices that gave rise to the Section 301 tariffs; (2) other measures that could be effective in eliminating or counteracting China's trade practices that



were the basis for the Section 301 tariffs; and (3) the impact of the Section 301 tariffs on the U.S. economy. Commentors can submit comments in all three sections or only selected sections.

Section A of the Questionnaire asks commentors to provide their views regarding the economy-wide effectiveness of the Section 301 tariffs on “obtaining the elimination of China’s acts, policies, and practices related to technology transfer, intellectual property and innovation;” any changes in China’s acts, policies, and practices the commentor has observed; and whether there are any other actions USTR could take pursuant to Section 301 that would be more effective in eliminating or counteracting China’s acts, policies, and practices. Section A also asks commentors for their views on the economy-wide impacts of the Section 301 tariffs on the U.S. economy, including impacts on domestic manufacturing, U.S. technological leadership, U.S. workers, small businesses, supply chain resilience, and U.S. consumers.

Section B of the Questionnaire asks commentors to provide “the sector or industry of the U.S. economy upon which” they would like to comment and any relevant North American Industry Classification System (“NAICS”) code associated with that sector. Section B then asks whether the Section 301 tariffs are effective in eliminating or counteracting China’s acts, policies, and practices in the commentors’ sector, and whether there are other actions that could be taken pursuant to Section 301 that would be effective in eliminating or counteracting China’s acts, policies, and practices. Section B also invites commentors to describe the effects of the Section 301 tariffs on their sector.

Section C of the Questionnaire asks commentors to address HTS codes currently subject to Section 301 tariffs and HTS codes currently not subject to the Section 301 tariffs. As with Sections A and B, Section C asks whether the imposition of tariffs on HTS codes currently subject to Section 301 tariffs has been effective in eliminating or counteracting China’s acts, policies, and practices, and Section C also asks for comments concerning the impact of the Section 301 tariffs on the U.S. economy. In addition, Section C requests comments on whether any additional HTS codes should be subject to Section 301 tariffs, how adding the HTS codes would make the Section 301 tariffs more effective, and how the additional tariffs would impact the U.S. economy.

Certain questions in Section B and C allow commentors to submit business confidential information. However, nonconfidential versions also must be filed (from which any business confidential information has been redacted).

KEY TAKEAWAYS

Public reports indicate that there is an ongoing debate within the Biden Administration about how to address the Section 301 tariffs. USTR’s four-year review offers the public an important opportunity to provide substantive and impactful input for use by the Biden Administration in determining its ultimate course of action. The content of the Questionnaire suggests that USTR is considering possible modifications to the tariff regime against China, providing opportunities for companies to identify unintended consequences of the tariff regime that have disrupted supply chains, protect domestic production against any continuing violations of international obligations by China, and advocate for targeted relief. Companies also should continue to monitor USTR announcements for additional opportunities to provide input in the future because, in its notice requesting comments, USTR stated that it will “evaluate whether to provide additional opportunities for public comment through additional written comments or through public hearings.”



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