

Client Alert

International Trade

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USTR Releases the Results of Its Four-Year Review of China Section 301 Tariffs

The existing Section 301 duties will continue, with tariff increases on \$18 billion of Chinese imports in strategic sectors (to be implemented by forthcoming regulations following a notice and comment process)

On May 14, 2024, the Office of the U.S. Trade Representative (“USTR”) **announced** the conclusion of its statutorily-required four-year review of the tariffs imposed on imports of Chinese goods under Section 301 of the Trade Act of 1974 (“Section 301”). This represents the culmination of a review process that **began** on May 5, 2022. The report is available **here**.

As a result of this review, USTR will take the following actions regarding the Section 301 measures:

- Continue Section 301 duties at the same levels on the vast majority of covered imports from China;
- Increase the rate of Section 301 duties on goods in certain strategic sectors;
- Allocate additional funds to U.S. Customs and Border Protection for greater enforcement of Section 301 actions; and
- Establish an exclusion process targeting machinery used in domestic manufacturing, with specific exclusion proposals for certain solar manufacturing equipment.

USTR established an electronic **portal** on November 15, 2022, to solicit public comments regarding the effectiveness of the Section 301 tariffs on Chinese goods and their overall economic effect on the U.S. economy, including on consumers. USTR also provided an opportunity for



companies to request that the tariffs on specific products be continued, modified, or removed or that the tariffs be extended to new products. USTR received nearly 1,500 comments from the public. Modifications to USTR's Section 301 tariffs on Chinese-origin products reflect USTR's consideration of public comments and an attempt to address China's continuing violations of international obligations by targeting key industries in which China has made significant investments or which are critical to domestic supply chains, while complementing other government initiatives. USTR's announcement does not indicate whether USTR will extend any of the remaining exclusions still in effect but that are scheduled to expire on May 31, 2024.

USTR will issue a Federal Register notice next week, which will provide an opportunity for interested persons to comment on the proposed modifications and the new exclusion process for machinery used in domestic manufacturing.

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.

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.

Following from 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-favored 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. The tariffs on Chinese-origin products on List 4B – which were scheduled to take effect January 1, 2020 – were suspended in December 2019 following the announcement of the Phase One agreement between the United States and China.

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. USTR accepted public comments until January 17, 2023 but did not hold public hearings.

MODIFICATIONS TO THE CHINESE-ORIGIN PRODUCTS SUBJECT TO SECTION 301 TARIFFS

USTR's report increases the tariffs on goods in key strategic sectors. These sectors include those targeted by China or those in which the United States recently has made significant investments (including through the Inflation Reduction Act and the Bipartisan Infrastructure Law). The modifications to the tariffs will take effect in phases specific to the product at issue. The report provides that the tariff modifications are being made to complement existing government initiatives and address comments received that proposed while U.S. companies have shifted sourcing and production out of China at an increasing pace since the imposition of the Section 301 duties, those actions have not been sufficient to address China's unfair practices.

USTR is increasing tariffs on the following Chinese-origin products:

- **Certain steel and aluminum products.** The tariff rate will increase from 7.5 percent to 25 percent in 2024.
- **Semiconductors.** The tariff rate will increase from 25 percent to 50 percent by 2025.
- **Electric vehicles (“EV”).** The tariff rate will increase from 25 percent to 100 percent in 2024.
- **Lithium-ion EV batteries.** The tariff rate will increase from 7.5 percent to 25 percent in 2024.
- **Lithium-ion non-EV batteries.** The tariff rate will increase from 7.5 percent to 25 percent in 2026.
- **Battery parts.** The tariff rate will increase from 7.5 percent to 25 percent in 2024.
- **Solar cells (whether or not assembled into modules).** The tariff rate will increase from 25 percent to 50 percent in 2024.
- **Medical products.** The tariff rate on certain personal protective equipment, including certain respirators and face masks, will increase from 0-7.5 percent to 25 percent beginning in 2024. The tariff rate on rubber medical and surgical gloves will increase from 7.5 percent to 25 percent in 2026.

The following Chinese-origin products – which were previously exempt – will now be subject to Section 301 tariffs:

- **Ship-to-shore cranes.** These goods will be subject to a 25 percent tariff beginning in 2024
- **Medical products.** Syringes and needles will be subject to a 50 percent tariff beginning in 2024.



FURTHER OPPORTUNITIES TO COMMENT

USTR will establish an exclusion process for machinery used in domestic manufacturing, specifically falling under chapters 84 and 85 of the Harmonized Tariff Schedule of the United States, which covers machinery, mechanical appliances, and electrical machinery, among other items. USTR's report additionally proposes a list of 19 specific temporary exclusions related to certain solar manufacturing equipment to support investment in U.S. solar manufacturing. Next week, USTR also will issue a Federal Register notice that will provide an opportunity for interested persons to comment on the proposed modifications and the exclusion process for machinery used in domestic manufacturing.

KEY TAKEAWAYS

USTR concluded that the tariff actions have been effective in encouraging China to take some positive steps in eliminating many of its technology transfer-related acts, policies, or practices at issues. Many issues still remain, however, and in some cases China has become more aggressive. USTR explained, for example, that China continues to pursue technology and IP from U.S. companies through cyber theft and cyber intrusions. USTR reasons that the proposed modifications to the Section 301 action against China are necessary to maintain the current leverage against China and to encourage that China eliminate the technology transfer-related acts, policies, and practices from which the Section 301 action stems.

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