

Client Alert

Government Matters & Regulation

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USTR Initiates Section 301 Investigation on China's Semiconductors

On December 23, 2024, the Office of the United States Trade Representative (USTR) initiated an investigation under Section 301 of the Trade Act of 1974, as amended (Section 301), into Chinese “acts, policies, and practices related to targeting of the semiconductor industry for dominance” and risks to the U.S. industry, economy, and national security. Section 301 authorizes USTR to remedy acts, policies, or practices of a foreign country that are unreasonable or discriminatory and burden or restrict U.S. commerce.

Written comments are due by February 5, 2025, and a public hearing will be held on March 11 and 12, 2025. A complete schedule of investigation deadlines is set forth at the end of this client alert.

While USTR is conducting this Section 301 investigation, it also will be accepting requests for exclusions from Section 301 tariffs for certain Chinese machinery used in domestic manufacturing. Exclusion requests must be filed by March 31, 2025. See our previous client alert [here](#).

THE CHINESE ACTS, POLICIES, AND PRACTICES UNDER INVESTIGATION

In its Notice of Institution (NOI), USTR stated that the People's Republic of China (PRC) has taken actions targeting the semiconductor industry for dominance, undertaking “extensive anticompetitive and non-market means,” threatening and undermining the competitiveness of the U.S. industry, workers, critical U.S. supply chains, and economic security.

USTR cited extensive evidence of the PRC's “acts, policies, and practices relating to targeting of the semiconductor industry for dominance.” First, the PRC's “Made In China 2025” policy document sets “numerical targets for the PRC's domestic semiconductor capacity and production[.]” Second, the PRC engages in an “extensive range of

anticompetitive and non-market means” to achieve those targets, including:

- Chinese Communist Party guidance, directives, and control of state and private enterprises;
- State-owned or state-controlled enterprise activities;
- Market access restrictions;
- Opaque regulatory preferences, and discrimination;
- Wage suppressing labor practices;
- Massive and persistent state financial support of industry, such as the provision of government guidance funds; and
- Forced technology transfer, such as state-directed cyber intrusions and cybertheft of intellectual property.

These actions have had significant consequences on the U.S. semiconductor industry. According to the NOI, Chinese targeting has led to “significant capacity expansion in China, artificially and unsustainably lower domestic and global prices, a protected Chinese domestic market, and emerging overconcentration of production in the PRC.” For example, China’s share of projected new semiconductor fabrication plants (fabs) is projected to account for approximately one-half of the world’s capacity by 2029, and China will lead in production capacity for other types of legacy semiconductors, *i.e.*, power chips. The NOI noted that “the PRC’s non-market-oriented expansion of capacity is already discouraging investment by market-oriented actors.”

PRODUCTS COVERED BY THE INVESTIGATION

The investigation will initially focus on China’s manufacturing of foundational semiconductors (also known as legacy or mature node semiconductors), and how “they are incorporated as components into downstream products for critical industries, like defense, automotive, medical devices, aerospace, telecommunications, and power generation and the electrical grid.” The investigation will also assess the impact of Chinese actions on the production of silicon carbide substrates or other wafers used as inputs into semiconductor fabrication. Finally, USTR will examine the “existing or threatened non-market excess capacity or overconcentration of semiconductor production in” China, and the corresponding “dependencies and vulnerabilities that create risk to U.S. critical downstream industries,” and their “harm to U.S. semiconductor producers and foundries.”

PUBLIC COMMENTS AND HEARING

The [USTR docket](#) for public comments will open on January 6, 2025. USTR encourages stakeholders, including industry participants, trade associations, and other interested parties to provide detailed written comments addressing the Section 301 investigation’s scope, evidence of harm, and suggestions of tariff and non-tariff actions against China. In particular, USTR is inviting comments on the following topics:

- China’s acts, policies, and practices related to its targeting of the semiconductor industry for dominance;
- Anticompetitive and non-market means employed by the PRC in pursuit of its semiconductor industry targeting objectives, specifically those anticompetitive activities identified above;
- Whether China’s acts, policies, and practices are unreasonable or discriminatory;
- Whether China’s acts, policies, and practices burden or restrict U.S. commerce and, if so, the nature and level of the burden or restriction, including economic assessments of the burden or restriction on semiconductors, semiconductor manufacturing facilities, and downstream products; and

- The action, if any, that should be taken, including tariffs and non-tariff actions.

As noted above, interested parties must submit comments by February 5, 2025.

A public hearing has been scheduled for March 11-12, 2025. Parties wishing to testify must submit a request to participate, with a summary of their testimony, by February 24, 2025. Post-hearing rebuttal comments may be submitted within seven calendar days from the last day of the public hearing.

KEY TAKEAWAYS

This Section 301 investigation is a key step in addressing longstanding U.S. concerns about the semiconductor sector. It could result in significant trade measures, including tariffs or other remedies. Industry participants should carefully evaluate how these measures may impact their supply chains, operations, and strategic plans.

With the incoming Administration expected to maintain a strong focus on semiconductor and technology policies, we anticipate that this investigation will continue to be a priority in 2025 and beyond. Stakeholders are advised to actively engage in the public comment and hearing processes, to ensure their interests are represented.

Our team is closely monitoring this Section 301 investigation and has extensive experience advising clients on trade policy matters. If you have any questions or would like to discuss written comments, hearing participation, and developing strategic responses to potential trade actions related this investigation, please contact us.

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