

USTR Seeks Comments Regarding Continuation of Section 301 Tariffs

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On November 1, 2022, the Office of the United States Trade Representative (“USTR”) took the next step in its statutory four-year review of the duties levied on Chinese-origin goods pursuant to Section 301 of the Trade Act of 1974 (“Section 301”). Following its earlier [notice](#) announcing the process by which it will conduct this review, USTR published a [questionnaire](#) seeking public comments regarding the effectiveness of the tariffs in achieving the objectives of the Section 301 investigation.

The questionnaire is split into three sections addressing the effects of the Section 301 tariffs at the economy-wide level, sector/industry level, and tariff heading level. Among other things, USTR is seeking input on the impact of the tariffs on supply chain resilience, domestic manufacturing, and technological innovation, in addition to whether the tariffs should be continued, modified, removed, or extended to new products.

Section A asks for views on the effectiveness of the tariffs at **the economy-wide level** to counteract China’s discriminatory policies and practices related to technology transfer and intellectual property, their impact on the U.S. economy (including on domestic manufacturing, capital investment, industry pricing and profits, workers’ jobs and wages, small businesses, U.S. technological leadership, and critical supply chains), how the tariffs could be modified to be more effective, and whether any additional actions could be taken under Section 301 that would be more effective.

Section B allows parties to comment on the effectiveness of the tariffs on eliminating China’s discriminatory practices with respect to **specific sectors or industries**, identified at the level of the North American Industry Classification System (“NAICS”) code. Section B seeks information on which goods within the industry or sector are covered by the tariffs. This section also requests comment on the tariffs’ effectiveness regarding China’s practices and their impact on specific elements of the sector or industry: domestic manufacturing, capital investment, industry pricing, profits, and product availability, workers’ jobs and wages, small businesses, and supply chain resilience.

Section C asks for parties’ views on **specific Harmonized Tariff Schedule (“HTS”) subheadings** subject to the Section 301 tariffs and whether those tariffs should be maintained, eliminated, or modified. Section C also seeks detailed information on, including quantification of, the impact of the tariffs on specific HTS subheadings with respect to many of the same topics identified in Sections A and B. In addition, Section C asks about whether the HTS codes being described cover inputs used for additional manufacturing in the United States, and whether tariff inversion is occurring (where the duties on inputs are higher than the duties on the finished good incorporating those inputs). The

second part of Section C allows comments on whether the tariff program should be modified to cover additional goods not currently covered by 301 tariffs, and the likely effectiveness and impact of such additions.

Interested parties can submit responses to one or more of the three sections and can also supplement their responses with attachments, including business confidential attachments.

The questionnaire will go live on USTR's [public portal](#) on November 15, 2022, and interested parties will have until January 17, 2023, to submit written comments. USTR will post the submissions on its docket for public inspection (except business confidential information) and parties can view the submissions through docket number USTR-2022-0014. While there is currently no indication of whether parties will be allowed to submit rebuttal comments, USTR has indicated it will evaluate whether to provide the opportunity for additional written comments or public hearings.

Background

Section 301 grants USTR the authority to investigate and take action to enforce U.S. rights under trade agreements and respond to certain foreign practices. Pursuant to this authority, President Trump directed USTR to take action against China's "unfair and harmful acquisition of U.S. technology." After initiating a Section 301 investigation in 2017, USTR announced on April 6, 2018, its [determination](#) that 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.

USTR's determination notice listed Chinese imports that would be subject to a proposed tariff of 25 percent. Beginning in July 2018, USTR imposed four rounds of tariffs on billions of dollars of annual imports of Chinese goods. The first three rounds (List 1, List 2, and List 3) impose duties of 25 percent and the fourth round (List 4A) imposes duties of 7.5 percent. For each round of tariffs, USTR established a process by which U.S. stakeholders could request the exclusion of particular goods subject to the tariffs. Currently, the tariffs cover over \$300 billion in annual imports of Chinese goods.

In May 2022, USTR [initiated](#) its statutory four-year review of the Section 301 tariffs. The [statute](#) provides that the tariffs must terminate after four years unless requests for continuation are made by domestic companies that benefit from the tariffs. When USTR receives requests for continuation, it is required to maintain the tariffs while performing a "review of necessity" that examines the effectiveness of those tariffs. On September 8, 2022, USTR announced a [continuation](#) of the Section 301 tariffs on Chinese goods after receiving requests for continuation from domestic industries that benefit from the tariffs.

As part of its "review of necessity" USTR is seeking comments from the public regarding the effectiveness of the Section 301 tariffs and parties may submit such comments in response to the questionnaire discussed above.

Conclusion

The Biden administration has been considering easing the Section 301 tariffs to curb inflation, but plans to announce tariff cuts have been repeatedly postponed in favor of the regular statutory review process that is playing out now. There is some thinking within the Administration to reconfigure the tariffs to be more strategic, including by raising tariffs on industrial machinery and transportation equipment, while lowering tariffs on consumer goods.

Additionally, a new set of products could be subject to the Section 301 tariffs as the White House is

considering a [Section 301 investigation](#) into China's industrial subsidies on high technology, robotics, and biopharmaceutical items (the beneficiaries of China's Made in China 2025 industrial strategy). The comments USTR receives in this review process are likely to inform and shape those ideas.

Beyond the broader policy considerations, USTR's questionnaire presents an important opportunity for parties to impact the future of the Section 301 tariffs as they affect U.S. companies on a day-to-day basis. The list-specific exclusion procedures are long closed, and without new exclusion opportunities on the horizon, this comment period offers the next best chance for those seeking removal of tariffs to affect the status quo. For others, USTR's review presents an opening to advocate for the value of the tariff program to domestic production and technology, and to urge its maintenance. In addition, companies or industries that have not previously benefitted from Section 301 tariffs also have an opportunity to identify additional products not currently covered by the tariffs - a signal that the Administration is open to expanding the existing tariffs or substituting certain covered goods for others.

The Kelley Drye International Trade Group has extensive experience with Section 301 matters and our lawyers are available to assist with any questions you may have.