



International Trade & Regulatory ADVISORY ■

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USTR Revisits China Tariffs

Following its September 2022 announcement that the Section 301 tariff measures on Chinese products will remain in place pending its review, the Office of the U.S. Trade Representative (USTR) [announced the next steps](#) in the statutory four-year review of the tariff actions (including Lists 1 – 4A). The USTR will soon seek public comments on the effectiveness of the actions in achieving the objectives of the investigation, other actions that could be taken, and the effects of such actions on the U.S. economy (including impact of the actions on U.S. consumers, workers, small businesses, manufacturing, critical supply chains, and technological leadership, and whether the measure has resulted in higher additional tariffs on inputs for U.S. manufacturing than the additional tariffs on finished goods).

This provides opportunities for companies to suggest eliminating or adding tariff codes to the existing tariff lists. The comment period will be open from *November 15, 2022 to January 17, 2023*.

Background on the Section 301 Investigation of Chinese Unfair Trade Practices

In 2018, the USTR concluded an investigation and decided to impose tariffs under Section 301 of the Trade Act of 1974 to counter a number of China's acts and practices, including: (1) China's use of foreign ownership restrictions, administrative reviews, and licensing processes to force technology transfers from U.S. companies; (2) China's direct and unfair facilitation of Chinese purchases of U.S. companies and assets to obtain cutting-edge technologies and IP; and (3) China's support of unauthorized intrusions into U.S. computer networks to access sensitive commercial information and trade secrets.

A Breakdown of the Section 301 Tariffs

Beginning in July 2018, the USTR imposed the Section 301 tariffs in four waves: (1) a \$34 billion trade action (List 1) with a 25% duty effective July 6, 2018; (2) a \$16 billion trade action (List 2) with a 25% duty effective August 23, 2018; (3) a \$200 billion trade action (List 3) starting with a 10% duty effective September 24, 2018, increased to a 25% duty effective May 10, 2019; and (4) a \$300 billion trade action (List 4A) starting with a 15% duty effective on September 1, 2019, reduced to 7.5% effective February 14, 2020. The tariffs on Lists 1, 2, 3, and 4A all remain in effect.

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In September 2020, HMTX Industries LLC filed suit in the Court of International Trade (CIT) challenging the legality of the Lists 3 and 4A tariffs. More than 6,000 other importers then filed similar lawsuits. As a result of this litigation, the CIT reported a 1,546% increase in its caseload from 2019 to 2020. See more on the background and developments of the Section 301 investigation and tariffs in our previous advisory [here](#).

Current Opportunity to Comment – USTR Questionnaire Sections A, B, and C

In May 2022, four years after imposition of these tariffs, the USTR invited parties to submit requests to keep the tariffs in place. The current opportunity to comment now requests broader feedback on the tariffs on Chinese products. [The USTR proposed a number of questions](#) to guide the comments, dividing the questions into three sections of increasing levels of specificity. Section A's focus is economy-wide, Section B's focus is at the sector/industry level, and Section C's focus is at the level of tariff headings.

Section A invites commentors to address the economy-wide impacts of the Section 301 tariffs, such as whether the tariffs caused China to eliminate any discriminatory practices or caused any other changes in China's practices since 2018. Interested parties can also comment on how the tariffs could be more effective, the impact the tariffs have had on the U.S. economy, and the potential alternative policy options the USTR should consider.

Section B invites comments on a specific industrial sector or on categories based on product use. Within any industry, commentors should address whether the tariffs were effective in eliminating unfair Chinese practices. The USTR also asks whether policy options – other than tariffs – would impact U.S. employment, wages, domestic manufacturing, capital investment, supply chain shifts and resiliency, and consumer goods.

Section C invites comments on whether tariffs on specific tariff subheadings should be maintained, eliminated, or changed. Commentors are encouraged to analyze the tariff impacts on specific goods in domestic manufacturing, U.S. employment and wages, small businesses, inventory practices for products or downstream products, and supply chain shifts. Commentors may also identify goods that are *not subject to the Section 301 tariffs* but should be, along with an explanation of how new tariffs would counter discriminatory Chinese policies.

Commentors may request business confidential treatment of certain information.

Conclusion

Companies that have been paying Section 301 tariffs should consider participation in this comment process because these public comments can show how the tariffs affect business and the U.S. economy as a whole. Considering the questions on which the USTR is soliciting comments, there is a slight possibility that the USTR might eventually adjust the existing tariff measures, potentially by renewing expired exclusions or creating new ones. In the meantime, companies should also consider alternative sourcing options or duty minimization strategies.

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