

CLIENT ALERT

U.S.-China Trade: USTR Restarts Tariff Exclusion Process for Section 301 Duties

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On October 4, 2021, United States Trade Representative (USTR) Katherine Tai delivered a speech at the Center for Strategic and International Studies (CSIS) detailing the Biden Administration's new strategy for managing U.S.-China trade relations. Tai announced that the USTR will restart a **targeted tariff exclusion process** for Section 301 duties. Today (October 6) the USTR published a request for comments regarding possible reinstatement of certain exclusions to the Section 301 tariffs visible [here](#). The exclusion process covers 549 products for which the prior Administration granted exclusion extensions, most of which expired on December 31, 2020. See [here](#) for the list of covered products. The USTR is seeking public comments on whether or not to further extend the exclusion from 301 tariffs on these products. The comment period opens **October 12** and closes **December 1 and 11:59 PM EST** and can be accessed [here](#).

The factors the USTR will consider in deciding whether or not to extend exclusions are similar to those considered in the prior Administration, including:

1. whether the particular product is available in the United States or other countries;
2. how changes in the global supply chain since September 2018 or any other relevant industry developments have impacted product availability;
3. the efforts the importers or U.S. purchases have undertaken since September 2018 to source the product from the U.S. or other countries; and
4. domestic capacity for production in the United States.

The USTR is also considering additional criteria for granting exclusions, such as whether or not reinstating the exclusion will impact or result in severe economic harm to the commenter or to other U.S. interests, such as small businesses, employment, manufacturing, or critical supply chains. It remains to be seen if other criteria, possibly relevant to broader administration goals such as promoting efforts to advance climate change, might also be considered.

If the USTR reinstates exclusions, then such exclusions would be reinstated retroactively. Importers may seek 301 duty refunds on all subject entries that are not "liquidated" by U.S. Customs and Border Protection (CBP) at the time the importer makes a claim for a refund with CBP. CBP typically liquidates an entry 314 days after entry, so the sooner importers file for and receive an exclusion extension the greater the potential duty refunds.

It is not clear if the USTR will open up a broader exclusion processes, but in her speech at the CSIS, Ambassador Tai stated that "we will keep open the potential for additional exclusion processes, as warranted." While Ambassador Tai focused her remarks on President Biden's vision for a worker-centered trade policy for the U.S.-China trade relationship, the policy details from her speech indicated that the Biden Administration will continue utilizing key elements from the Trump Administration's toolkit. Ambassador Tai stated that the U.S. will continue to seek enforcement of the existing Phase One trade deal from January 2020. She made little indication that the Section 301 tariffs targeting the vast majority of Chinese imports will be removed

imminently. Crowell calculates that for List 1 USTR granted 33.8% of all exclusion requests while for the larger List 3 the number dipped to 4.9% granted. Ambassador Tai also stressed that the United States is not seeking to further inflame ties with China.

Now is a critical time for constructive dialogue between industry and government. Implementing a broader, more transparent, reasoned and fair exclusion process will help meet these goals, and reduce the harm caused by the 301 tariffs. If the USTR implements a new exclusion processes, they should heed the critique of the prior USTR-administered process by the U.S. Government Accountability Office (GAO) readable [here](#). It will be vital that the USTR consider the lessons learned from previous exclusion processes, and enact a framework that is objective, predictable and considers the reality of domestic manufacturing's reliance on global supply chains.

Ambassador Tai's full speech on US-China trade can be read [here](#).

For video of her speech as well as the Q&A that followed, the Center for Strategic and International Studies has made available this [link](#).

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