

INTERNATIONAL BUSINESS ALERT

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Lower trade costs on the horizon? U.S. importers invited to discuss reinstating tariff exclusions for Chinese products

The Office of the United States Trade Representative (USTR) [published](#) its "Request for Comments on the Possible Reinstatement of Certain Exclusions in the Section 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation" on Oct. 12, 2021. USTR is requesting comments on whether to reinstate previously granted Section 301 tariffs exclusions for certain products from China. If reinstated, U.S. companies who import such goods will realize lower trade costs and, in turn, pass that savings along to consumers and businesses

The appeal of reinstating tariff exclusions

If exclusions are reinstated, future imports of eligible products will be exempted from Section 301 tariffs and such exclusions should be retroactive from the previous expiration date. This means importers who already paid Section 301 tariffs could seek a refund on eligible products not liquidated by U.S. Customs and Border Protection (CBP) at the time the importer submits the claim for refund. Also, as U.S. Treasury Secretary Janet Yellen shared recently, the lowering of tariffs has a [disinflationary effect](#) and would help the U.S. to cope with inflation, because tariffs tend to boost domestic prices and raise costs to consumers and businesses.

At this time, comments on possible reinstatement are limited to the [549 products](#) that previously received both an initial product exclusion and an exclusion extension. With the exception of the Section 301 tariff exclusions related to COVID-19, for which the extension was addressed separately, all of the other exclusions granted have expired. USTR is now requesting the

public to file comments as to whether it should reinstate previously-granted Section 301 tariff exclusions for the 549 products from China, as well as the appropriate length of the reinstated exclusions.

Who should consider filing comments?

Businesses that import products within the category of the previously-granted exclusions should consider filing comments with USTR, particularly to address:

- changes in the global supply chain that have improved or further constrained supply of specific products;
- whether those 549 products remain available only from China;
- any identifiable positive or negative impacts such tariffs may have on U.S. businesses; and
- whether or not the continued imposition of Section 301 tariffs for those particular products would meet the policy goals to force China to change its practices and policies.

Each comment shall only address one product exclusion, and parties seeking to comment on more than one exclusion must submit a separate comment for each exclusion. Comments must be submitted no later than Dec. 1, 2021, via the [USTR Comments Portal](#). All submissions must be identified by docket number USTR-2021-0019.

Opportunity for dialogue on tariffs

This opportunity to file public comments came after USTR Representative Katherine Tai made her speech at the Center for Strategic and International Studies (CSIS) on Oct 4, 2021, where she discussed the Biden Administration's new strategy for managing U.S.-China trade relations and further announced USTR will restart a targeted tariff exclusion process for Section 301 tariffs. Prior to such announcement, various trade groups, including the U.S. Chamber of Commerce, the U.S.-China Business Council and Americans for Free Trade, have long called for the removal of the Section 301 tariffs, calling the tariffs [misguided](#) and [hurting American companies, consumers and the overall economy](#).

While we are still far away from the removal, or even the reduction of the Section 301 tariffs, the opportunity to file comments to the USTR provides the industry and trade communities a way to engage in constructive dialogue with the U.S. government.

USTR's evaluation of comments

USTR will review comments and evaluate "whether, despite the imposition of additional duties beginning in September 2018, the particular product remains available only from China." In addressing this factor, commenters should address specifically:

- Whether the particular product and/or a comparable product is available from sources in the U.S and/or in third countries;

- Any changes in the global supply chain since September 2018 with respect to the particular product or any other relevant industry developments;
- The efforts, if any, the importers or U.S. purchasers have undertaken since September 2018 to source the product from the U.S or third countries; and
- Domestic capacity for producing the product in the U.S.

USTR also will consider whether reinstating or not reinstating an exclusion “will impact or result in severe economic harm to the commenter or other U.S. interests, including the impact on small businesses, employment, manufacturing output, and critical supply chains in the United States” and the overall impact of the exclusions on the goal of forcing China to change its unfair trade practices.

Companies should carefully monitor the exclusion process and related legislative developments, particularly on the Trade Act of 2021, which was inserted into the U.S. Innovation and Competition Act. The Trade Act of 2021 calls for a more broad and consumer-focused Section 301 exclusion process, including criteria such as whether the tariff would “unreasonably increase consumer prices for day-to-day items consumed by low or middle-income families.” If passed, the Trade Act of 2021 would provide businesses further opportunity to seek exclusions for products not within the original 549 products list, as well as to seek refund for the Section 301 tariffs already paid.

Porter Wright International Business & Trade attorney Sunny Yang, who is licensed to practice law in New York, Pennsylvania and the People’s Republic of China, regularly advises on issues related to tariffs and international trade. For more information on how to file comments, contact [Sunny Yang](#) or any member of Porter Wright’s [International Business & Trade practice group](#).

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