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# Section 301: Tariff Exclusions on U.S. Imports from China

In 2018, the U.S. Trade Representative (USTR) determined, pursuant to an investigation under "Section 301" (Title III of the Trade Act of 1974, 19 U.S.C. §§2411-2420), that China's acts, policies, and practices related to technology transfer, intellectual property (IP), and innovation were unreasonable or discriminatory and burdened or restricted U.S. commerce. To counter them and obtain their elimination, the Trump Administration imposed, under Section 301, four rounds of increased tariffs on about two-thirds of U.S. imports from China. However, to avoid harm to U.S. interests, the USTR instituted "tariff exclusions" for certain U.S. imports that would otherwise be subject to tariffs. This is the first time that the agency has established an exclusion request process, and several Members of Congress have raised concerns about its implementation.

Some Members have questioned USTR's ability to "pick winners and losers" through granting or denying requests or have pushed for broad tariff relief amid concerns about the negative impact of tariffs on the U.S. economy. Others, not wanting to undermine the use of Section 301 to address China's unfair trade practices, have discouraged the USTR from granting tariff exclusions at all. The agency established an exclusion process for each of the four stages of tariff increases under Section 301—all of which have now closed. The USTR's recent actions have been limited in scope to medical supplies related to the Coronavirus Disease 2019 (COVID-19) pandemic, and not aimed at providing broader tariff relief.

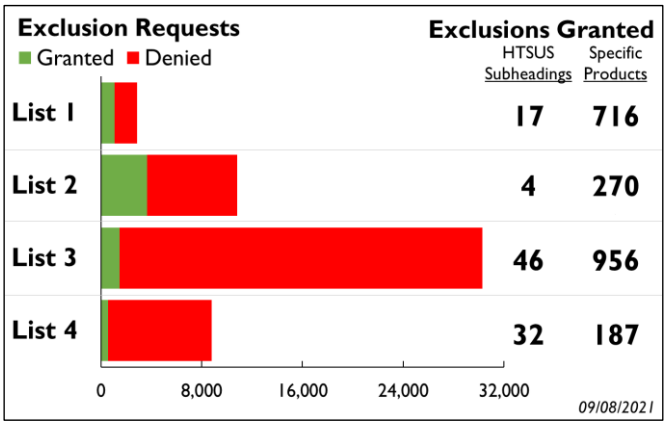
## Background

In August 2017, long-standing concerns over China's policies on IP, subsidies, technology, and innovation led the USTR to launch an investigation—under Section 301—into those policies and their impact on U.S. stakeholders. The investigation concluded that four broad policies or practices justified U.S. action: (1) China's forced technology transfer requirements, (2) cyber-enabled theft of U.S. IP and trade secrets, (3) discriminatory and non-market-based licensing practices, and (4) state-funded strategic acquisition of U.S. assets. Subsequently, as part of its efforts to pressure China to change these practices, the United States imposed additional tariffs, of up to 25%, on certain U.S. imports from China under four separate actions (per Lists 1-4).

During the Section 301 notice, hearing, and comment period on proposed tariff increases, the USTR heard numerous U.S. stakeholders who expressed concerns about how additional tariffs could affect their businesses, as well as U.S. consumers. In response, for each Section 301 action regarding a new list of covered products, the USTR created a process whereby interested parties could request that a particular product be excluded from the tariffs, subject to certain criteria. Title III of the Trade Act of 1974 does not outline a formal process for exclusions or require the USTR to establish one. The determination to do so appears to be solely at the USTR's discretion.

With the COVID-19 pandemic, the agency began to prioritize the review of exclusion requests concerning medical products in short supply. Separately, the USTR also requested public comments on whether to remove additional products covered by any list that were relevant to the U.S. response to the pandemic. As a result, it granted new exclusions for certain medical-care products, such as personal protective equipment (PPE).

**Figure 1. Section 301 Exclusions**




**Source:** CRS with information from the Office of the USTR.

**Note:** Figures may not reflect amendments to product-specific exclusions and do not include requests submitted on or after March 25, 2020, in response to 85 FR 16987. However, exclusions granted through December 2020 and noted here may have been informed by those requests.

## Section 301 Tariff Exclusion Process

The tariff exclusion process enabled interested parties—including law firms and trade associations—to petition for an exemption from the Section 301 tariff increases for specific imports classified within a 10-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading. The time window to submit requests is closed, but the USTR is reportedly reviewing all actions related to the investigation, including decisions on whether and how to accept new exclusion requests. While the USTR approved, on average, 35% of new requests under the first two actions, the approval rates under the third and fourth actions were 5% and 7%, respectively.

According to the USTR, all requests were evaluated on a case-by-case basis. The agency indicated that, in determining which requests to grant, it considered the following: (1) availability of the product in question from non-Chinese sources, (2) attempts by the importer to source the product from the United States or third countries, (3) the extent to which the imposition of Section 301 tariffs on the particular product will cause severe economic harm to the importer or other U.S. interests, and (4) the strategic importance of the product to "Made in China 2025" or other Chinese industrial programs. Past exclusions were also granted for reasons that are thought to include, among others, U.S. national security interests and demonstrable economic hardship from the tariffs for small businesses.

There was no timetable for providing responses to filed requests, but the agency periodically announced decisions on pending requests through *Federal Register* notices. The "index" on the "USTR Exclusion Portal" also indicated the status of each request in the review process. When the USTR issued an exclusion, it was generally valid for one year after the exclusion notice was published in the *Federal Register* and retroactive to the imposition of the tariffs (with the starting date varying by applicable list). Exclusions are not specific to the requestor, so any party importing a product covered by an exclusion may do so under the exclusion and request retroactive tariff refunds from U.S. Customs and Border Protection (CBP).

Through January 31, 2020, the USTR received a total of 52,746 exclusion requests, pertinent to all four actions. Of these, 6,804 (13%) were granted and 45,942 (87%) were denied. (CRS could not determine the total number of specific requests submitted between March and June 2020 or how many of these were granted or denied.) Specifically, the exclusions are reflected in 99 10-digit HTSUS tariff subheadings and 2,129 specially prepared product descriptions—all of which cover at least 6,804 separate requests (**Figure 1**). Because most exclusions apply to specific products within a relevant subheading—not to entire subheadings, CRS could not determine the exact amount of trade covered by the exclusions. The USTR also issued extensions to certain exclusions. They apply to 52 (of the 99) HTSUS subheadings and 516 (of the 2,129) specially prepared product descriptions. These extensions have expired or are set to expire in September 2021.

## COVID-19 and Medical-Care Products

The USTR announced in March 2020 that, prior to the COVID-19 outbreak, the agency had been working with the U.S. Department of Health and Human Services "to ensure that critical medicines and other essential medical products were not subject to additional Section 301 tariffs." Consequently, the United States had not imposed tariffs on certain critical products, such as ventilators, oxygen masks, and nebulizers. At the time, the USTR indicated that it had been prioritizing the review of requests for exclusions on medical care products, resulting in exclusions granted on basic medical supplies (e.g., gloves and hospital gowns).

In March 2020, the USTR began to exempt certain medical products from Section 301 tariffs in several rounds of exclusions. CRS could not determine exactly how many of them were exempted on the basis of COVID-19 concerns, as the USTR does not specify the rationale for granting exclusions in its announcements. While some products can be easily identified, there are others with known or potential medical uses—or inputs for the manufacture thereof—that received exclusions but whose ultimate purpose cannot always be ascertained from HTSUS subheadings or the provided product descriptions (e.g., organic chemicals or textiles for the manufacture of pharmaceuticals or PPE).

### Recent New Exclusions and Extensions

In March 2020, the USTR published a *Federal Register* notice seeking comments to determine if further modifications to the Section 301 tariffs on U.S. imports of from China were necessary to respond to the COVID-19 pandemic in the United States. The new comment period closed in June 2020. Comments could be submitted regarding any medical product subject to Section 301 tariffs, whether or not it was subject to a pending or denied exclusion request.

In response to these comments and the advice from advisory committees, in December 2020, the USTR determined to extend 80 product exclusions on medical-care products that were set to expire at the end of 2020 (until March 2021) and to grant new tariff exclusions on additional medical-care products. These new exclusions (originally effective from January 1 through March 31, 2021) were reflected in 10 10-digit HTSUS tariff subheadings and 9 specially prepared product descriptions, including clinical thermometers, disinfectants, surgical gowns, and face shields. In March 2021, the USTR extended—through September 30, 2021—the 99 product exclusions included in the December 2020 announcement.

In light of the recent spread of the Delta variant and developments in the production capacity of U.S.-based manufacturers to satisfy various national needs, the USTR published a *Federal Register* notice in August 2021 requesting public comments on whether any of these 99 exclusions should be further extended for six months. The agency will collect comments through its comments portal until September 27, 2021. The USTR will evaluate each extension request on a case-by-case basis, taking into account continuing U.S. efforts in the battle against the COVID-19 pandemic and the potential impact that further extensions could have in countering or eliminating China's trade practices covered in the Section 301 investigation.

## Issues for Congress

In recent years, some Members have introduced legislation to amend Title III of the Trade Act of 1974, while also raising the issue of establishing or streamlining an exclusion process during hearings and in letters to the USTR. Some of the legislative proposals have included measures to require greater congressional consultation or approval before trade restrictions are imposed, modified, or waived pursuant to Section 301 or to establish a formal product exclusion process (e.g., the American Business Tariff Relief Act of 2019 and the Import Tax Relief Act of 2019). More recently, on June 8, 2021, the Senate passed the United States Innovation and Competition Act of 2021 (S. 1260), which, if enacted, would suspend tariffs—including those imposed under Section 301—on certain goods needed to combat the COVID-19 pandemic and would formalize the general process for excluding imports from Section 301 tariffs.

As the Biden Administration reviews the Section 301 actions against China and possibly makes use of Section 301 authorities in a number of ongoing investigations initiated under the Trump Administration, Congress could also engage with the Administration to develop and implement specific guidelines for when and how to grant and extend exclusions. This could potentially promote transparency, consistency, and proper application of standards in reviewing exclusion requests, thereby helping to ensure that the USTR carries out Section 301 objectives as prescribed by Congress.

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