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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 used Section 301 authorities to impose 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 introduced a new policy allowing stakeholders to request "tariff exclusions" for U.S. imports that would otherwise have been subject to tariffs. Some policymakers and stakeholders have raised concerns about the implementation of the exclusion request process.

In particular, some Member of Congress 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. This has been the case particularly in the aftermath of the Coronavirus Disease 2019 (COVID-19) pandemic, which has affected the United States' ability to obtain certain products domestically or from countries other than China. Other Members oppose granting any exclusions on the ground that doing so may undermine Section 301's effectiveness at addressing China's unfair trade practices or hinder U.S. efforts to incentivize domestic manufacturing of certain critical goods. The agency established an exclusion process for each of the four stages of tariff increases under Section 301, as well as opportunities for interested parties to submit comments on whether to extend or reinstate exclusions—all of which have now closed.

The Biden Administration continues to review its trade strategy for China, thus far announcing potential renewal of the Section 301 tariff exclusion process and focusing on enforcement of the U.S.-China "Phase One" trade agreement. However, the USTR's 2021 actions were not aimed at providing broader tariff relief. They were limited to extending unexpired exclusions on medical supplies relevant to combatting the COVID-19 pandemic and requesting comments on whether to reinstate exclusions that were previously extended.

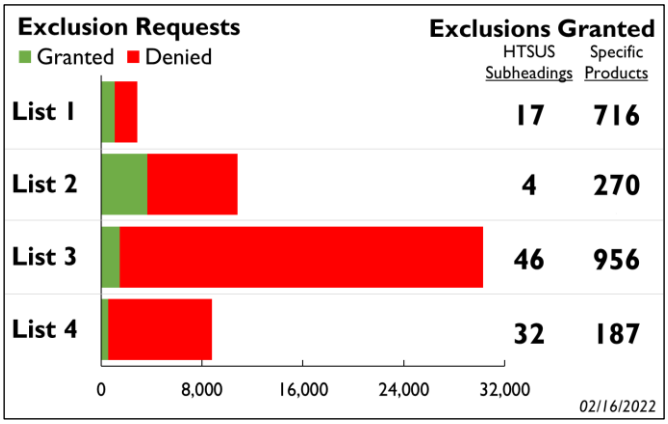
Background

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 U.S. businesses and 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, in 2020 and 2021, it granted new exclusions or extensions for certain medical care products.

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.

Through January 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 were 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 applied to specific products within a relevant subheading, not to entire subheadings, CRS could not determine the exact amount of trade covered by the exclusions. Separately, the USTR also issued extensions to certain exclusions. They applied 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 May 2022.

COVID-19 and Medical-Care Products

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).

At the same time, the USTR requested comments to determine if further modifications to the Section 301 tariffs on U.S. imports from China were necessary to respond to the COVID-19 pandemic in the United States. In response to these comments and input from advisory committees, in December 2020, the USTR determined to extend 80 existing exclusions and grant 19 new ones—all on medical-care products. These 99 exclusions (originally effective January-March 2021) were subsequently extended through the end of November 2021, and 81 of them were recently extended again through May 31, 2022.

Reinstating Previous Tariff Exclusions

In October 2021, the USTR published a *Federal Register* notice seeking comments on whether to reopen the process by which U.S. stakeholders could apply for exclusions from Section 301 tariffs on U.S. imports from China. Interested parties could submit comments through December 1, 2021, supporting (or opposing) the reinstatement of a specific exclusion extension, including for how long it should be reinstated. The 549 exclusions eligible for reinstatement—all of which were previously extended and had expired or were set to expire soon—are reflected in 563 specially prepared product descriptions ("specific products") or 10-digit HTS subheading ("product categories"). Some of these exclusions covered products with known or potential medical uses related to the U.S. response to the COVID-19 pandemic. Notably, parties were not able to petition the USTR for new exclusions or extensions to expired exclusions that were not previously extended.

The USTR indicated that it would evaluate each extension request on a case-by-case basis, applying some of the same criteria it used for granting exclusions during 2018-2020. While it did not announce a timetable for providing responses to filed comments, the agency indicated that it will publish decisions on reinstated exclusions through *Federal Register* notices and that the exclusions will be retroactive to October 12, 2021. Exclusions apply generally to specified products, so any party importing a product covered by a reinstated exclusion may file a claim. Importers whose goods entered or were withdrawn from warehouse for consumption on or after that date may request tariff refunds from U.S. Customs and Border Protection (CBP), provided that CBP has not already calculated the final duties owed by the time the importers file the refund claim.

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, in June 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 a 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 (e.g., to counter or obtain the elimination of other Chinese practices that may disadvantage or discriminate against U.S. exports, firms, and workers), 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.

Andres B. Schwarzenberg, Analyst in International Trade and Finance

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