Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated September 22, 2023

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. 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 was the case particularly in the aftermath of the COVID-19 pandemic, which 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.

The Biden Administration continues to review its trade strategy for China. Actions by the USTR in 2021 and 2022 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 reinstating certain exclusions that were previously extended. In May 2022, the agency announced a review of all Section 301 actions against China.

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 in four separate lists (Lists 1-4A).

During the Section 301 notice, hearing, and comment period on proposed tariff increases, the USTR heard from numerous stakeholders who expressed concerns about how additional tariffs could affect U.S. firms and consumers. In response, for each 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 or extensions for certain of these products.

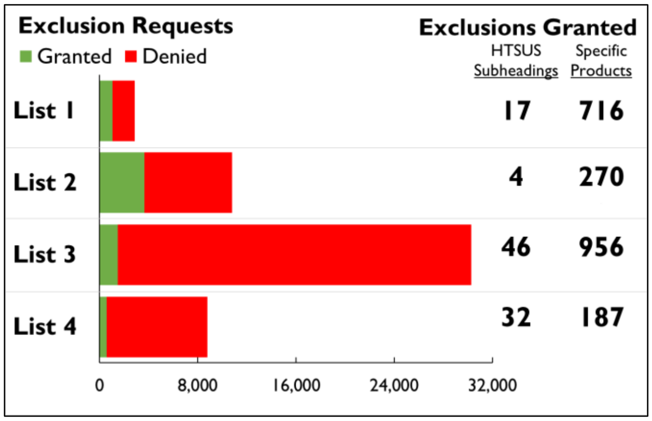
Section 301 Tariff Exclusion Process

The tariff exclusion process enabled interested parties 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 reviewing all actions related to the investigation, including decisions on whether and how to accept new exclusion requests (see "Four-Year Review Process" discussion below). 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 new exclusion requests, pertinent to all 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 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 about 52 (of the 99) HTSUS subheadings and 516 (of the 2,129) specially prepared product descriptions. These extensions expired or are set to expire in December 2023.

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.

COVID-19 and Medical-Care Products

In light of the spread of the Delta variant in summer 2021 and developments in the production capacity of U.S.-based manufacturers to satisfy various national needs, the USTR sought and reviewed public comments on whether 99 exclusions on COVID-19 response products—originally announced in December 2020—needed to be extended. In response to comments and the advice from advisory committees, the USTR extended many of them in November 2021. The agency has extended these exclusions further on several occasions, most recently in September 2023 through December 2023. (Some of the 77 current COVID exclusions also have been extended separately as part of the reinstatement process announced in October 2021—see below.)

Reinstating Previous Tariff Exclusions

In October 2021, the USTR requested comments on whether to reinstate 549 exclusions that had expired or were set to expire soon. (Parties were not able to petition the USTR for new exclusions or extensions to expired exclusions that were not previously extended.) In response to these comments and the advice from advisory committees, the agency announced in March 2022 that it would reinstate or further extend 352 of the 549 eligible exclusions. The exclusions—retroactive to October 12, 2021 and originally set to expire at the end of 2022—have been extended twice, most recently in September 2023 through December 2023.

Exclusions apply generally to specified products, so any party importing a product covered by an exclusion may file a claim. Importers whose goods entered or were withdrawn from a warehouse for consumption on or after October 12, 2021, 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.

Four-Year Review Process

In May 2022, the USTR began the statutory four-year review of the Section 301 actions taken against China. The agency determined that two separate actions had been taken as part of the investigation (Lists 1 and 2), and that they had been subsequently modified by imposing additional duties on supplemental lists of products (Lists 3 and 4A), as well as by temporarily removing or suspending duties on some of them through exclusions. It announced that the first step of this review process would be to notify representatives of domestic industries that benefit from the trade actions (as modified) of their possible termination, and to offer them the opportunity to request their continuation. The agency announced in September 2022 that it had received several such requests and that as a result, it would keep the actions in place—subject to possible further modifications—and proceed with the second phase of the review process.

To aid in this review, the USTR opened a separate portal (public docket) for interested parties to submit comments on, among other matters, (1) the effectiveness of the action in achieving its objectives, (2) the effects of such actions on the U.S. economy, including on consumers, and (3) other potential actions that could be taken. Parties could submit comments between November 2022 and January 2023. Through January 18, 2023, the agency received 1,498 separate submissions.

In July 2023, the USTR informed Congress that it "expects to complete the four-year review in the fall of 2023."

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 (e.g., §73001 in S. 1260). Some policymakers and analysts contend that the tariffs should be "recalibrated" so they are better aligned with U.S. economic and strategic priorities or that they be partly lifted to ease the financial burden on certain U.S. firms and consumers. Others have emphasized the importance of maintaining the tariffs, which in their view provide "leverage" for future U.S.-China trade negotiations or pressure China to reform its unfair trade practices. Some have also touted them as an effective tool for promoting supply chain "resiliency" or incentivizing domestic manufacturing.

As the Biden Administration reviews the 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. firms and workers), Congress could also engage with the Administration to develop and implement guidelines for when and how to grant and extend exclusions. This could potentially promote transparency, consistency, and proper application of standards in reviewing requests, thereby helping to ensure that the USTR carries out Section 301 objectives as prescribed by Congress.

Andres B. Schwarzenberg, Specialist in International Trade and Finance

IF11582

Disclaimer