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ALERT

Biden Administration Seeks to Increase Section 301 Duties on Imports from China – Including of Steel, Aluminum, Electric Vehicles, Semiconductors, Solar Cells, and Other Products

May 15, 2024

On May 14, 2024, the Biden Administration announced that it will seek to increase tariffs on $18 billion in imports from China under Section 301 of the Trade Act of 1974. The Administration's action is based on recommendations in the Office of the U.S. Trade Representative's (USTR) four-year review report, which concludes that further measures are necessary "[i]n light of the increased burden on U.S. commerce" and China's continued unfair trade practices. Many of these tariff increases are substantial and are designed to go into effect before the year's end.

The increased tariff rates target critical U.S. industries and industries where China has announced an intent to expand production capacity and exports. The tariffs are only applicable to imports with China as the country of origin. Notable tariff increases include:

- Steel and Aluminum: Tariff rates on certain products will increase from 0-7.5% to 25% in 2024.
- Semiconductors: Tariff rates will increase from 25% to 50% by 2025.
- Electric Vehicles (EV): The tariff rate will increase from 25% to 100% in 2024.
- Batteries and Battery Components and Parts: The tariff rate for lithium-ion EV batteries will increase from 7.5% to 25% in 2024.

Authors

Timothy C. Brightbill
Partner
202.719.3138
tbrightbill@wiley.law

Alan H. Price
Partner
202.719.3375
aprice@wiley.law

Hon. Nazak Nikakhtar
Partner
202.719.3380
nnikakhtar@wiley.law

Robert E. DeFrancesco, III
Partner
202.719.7473
rdefrancesco@wiley.law

Christopher B. Weld
Partner
202.719.4651
cweld@wiley.law

John Allen Riggins
Associate
202.719.4493
jriggins@wiley.law

Practice Areas

Antidumping and Countervailing Duties/ Trade Remedy Cases

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Lithium-ion batteries for non-electric vehicles will also increase this amount, but in 2026. The tariff rate for non-lithium-ion battery parts will increase from 7.5% to 25% in 2024.

- Critical Minerals for Batteries: The tariff rates on natural graphite and permanent magnets will increase from zero to 25% in 2026 and the tariff rates for certain critical minerals will increase from zero to 25% in 2024.
- Solar Cells (Whether or Not Assembled into Modules): The tariff rate will increase from 25% to 50% in 2024.
- Medical Products: Tariff rates will increase on syringes and needles (0% to 50% in 2024), certain personal protective equipment (0-7.5% to 25% in 2024), and rubber medical and surgical cloves (7.5% to 25% in 2026).

In addition to increasing tariff rates in the sectors identified above, USTR also issued the following recommendations to the President:

- Establishing an exclusion process for machinery used in domestic production;
- Increasing U.S. Customs and Border Protection's Section 301 enforcement capabilities with additional funding (citing recent Section 301 duty evasion cases);
- Encouraging U.S. companies to prioritize cyber defense capabilities; and
- Promoting intergovernmental action on shifting supply chains away from China.

USTR also recommends that products currently subject to the Section 301 measures should remain subject. However, USTR's report does not address the numerous Section 301 exclusion requests currently set to expire on May 31, 2024.

Next week, USTR will publish further detail in the *Federal Register*, including an opportunity for notice and comment on the proposed modifications. USTR's notice will also include product-level information about the Harmonized Tariff Codes subject to the tariff rate increases. USTR anticipates that the effective date for the modifications will be approximately 90 days from today.

Customs Law and Compliance
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Background: Under Section 301, USTR may take action to encourage foreign countries to abandon or mitigate unfair trade practices affecting U.S. commerce. The Trump Administration first instructed USTR to investigate China's trade practices in 2017, and USTR ultimately concluded that a variety of China's unfair trade practices burdened U.S. commerce. At the President's direction, USTR imposed Section 301 tariffs ranging from 7.5% to 25% through four successive rounds between July 6, 2018, and September 1, 2019.

USTR was required to assess the effectiveness and necessity of the Section 301 measures as part of its *Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property and Innovation*. USTR's investigation considered nearly 1,500 comments from interested parties, covering 6,000 product categories.

In its investigation, USTR concluded that, while the Section 301 measures have generated several "positive" changes to China's policies, there has not been a "systematic and sustained" change in China's technology transfer-related acts, policies, and practices. USTR also found that the Section 301 measures have driven diversification and resilience in the U.S. supply chain.

Wiley has robust International Trade, Supply Chain, and Customs practices with extensive experience helping clients navigate Section 301 and broader trade issues. For more information about the implications of the Administration's announcement and USTR's Section 301 report, please contact one of the listed attorneys.