

USTR Announces New Process for Reinstating Expired Section 301 Tariff Exclusions

October 6, 2021

On October 5, 2021, the Office of the U.S. Trade Representative (USTR) posted a draft *Federal Register* notice soliciting comments regarding the reinstatement of certain previously-expired exclusions from the Section 301 tariffs on Chinese-origin goods. The comment opportunity covers 549 exclusions, all of which expired on or after December 31, 2020.

USTR is asking for comments on whether to reinstate these expired exclusions, and if so, for how long. USTR requests that commenters address the following:

- Whether the exclusion relevant to a particular product should be reinstated or not.
- Whether the particular product and/or a comparable product is available from sources in the United States 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 United States or third countries.
- Domestic capacity for producing the product in the United States.

USTR will also consider whether or not reinstating the exclusion will impact or result in severe economic harm to the commenter or other U.S. interests, as well as the overall impact of the exclusion(s) on the goal of eliminating China's harmful trade practices.

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It appears that any reinstated exclusions will not be retroactive to the date on which the exclusions expired. Rather, USTR has stated that any reinstatements will only be retroactive as to entries made on or after October 12, 2021, so long as the entries have not liquidated by the time that USTR makes its determination. This is somewhat of a departure from past exclusion and exclusion extension processes, in which the benefits of the exclusions were made retroactive to the original date on which Section 301 duties were first imposed. As a result, while USTR's new process provides an opportunity for importers to obtain relief from Section 301 duties as to imports going forward, it does not appear to permit for refunds of duties paid so far in 2021.

A full copy of the form through which USTR is requesting information can be found here. It is very similar to the exclusion request forms that USTR has previously used. In addition to information relevant to the issues described above, it also requests data on company purchases of excluded products of both Chinese and non-Chinese-origin, and company gross revenue data. The comment process allows for the confidential submission to USTR of certain business proprietary data, such as company purchase and revenue figures.

Comments may either support or oppose reinstatement of particular exclusions. So far, USTR has not indicated that there will be an opportunity to specifically rebut other parties' comments.

Comments will be collected beginning next Tuesday, October 12 and the commenting docket will remain open for 50 days, or until December 1, 2020.

USTR has not yet announced an opportunity to request reinstatement of exclusions that expired prior to December 31, 2020, or to request entirely new exclusions. However, in an October 4, 2021 speech, U.S. Trade Representative Katherine Tai left the door open to additional exclusion processes in the future.

Wiley has robust International Trade, Supply Chain, and National Security practices and extensive experience helping clients to navigate trade enforcement and Section 301 product exclusion matters. For more information about these issues, please contact one of the attorneys listed on the alert.