

ALERT

USTR Announces Process for Section 301 Review of Necessity

October 13, 2022

On Wednesday, October 12, 2022, the Office of the U.S. Trade Representative (USTR) announced the process by which it will conduct a much anticipated statutory review of the necessity of the Section 301 tariffs applicable to imported Chinese goods.

Starting on July 6, 2018, the U.S. government imposed four separate rounds of additional tariffs on billions of dollars in annual imports of Chinese goods pursuant to Section 301 of the Trade Act of 1974. The law provides that these tariffs must terminate after four years, unless a domestic beneficiary of the tariffs requests their extension within 60 days of the tariffs' four-year anniversary. Where an extension is requested, the statute directs USTR to continue the tariffs while it performs a "review of necessity" in which it examines their effectiveness.

In May of this year, prior to the four-year anniversary of the tariffs, USTR invited beneficiaries to come forward and request the tariffs' extension. Last month, USTR announced that it:

- (1) had received such requests,
- (2) would maintain the tariffs while it conducted the larger "review of necessity," and
- (3) would publish a separate notice regarding the process by which the "review of necessity" would be conducted.

Wednesday's notice outlines the process. In brief, USTR will provide an opportunity for interested parties to comment on the duties but has not yet stated that it will conduct a hearing, or whether there will be supplementary comment opportunities (such as an opportunity to

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rebut other parties' comments).

Relevant dates and information are as follows:

- November 15, 2022: USTR will open a docket on which interested parties may submit comments regarding the effectiveness of the duties.
- USTR is asking that comments address the following topics:
 - The effectiveness of the duties in obtaining the elimination of the Chinese trade practices at which they are aimed;
 - The effectiveness of the duties in counteracting the impact of the Chinese trade practices at which they are aimed;
 - Any other actions or modifications to the duties that would be more effective in addressing the relevant Chinese trade practices;
 - The effects of the duties on:
 - the U.S. economy, including consumers;
 - U.S. manufacturing;
 - U.S. technology, including U.S. technological leadership and development;
 - U.S. workers;
 - U.S. small businesses;
 - U.S. supply chain resilience; and
 - The goals outlined in Executive Order 14017 (regarding critical supply chains) and in subsequent reports and findings.
 - Whether the duties are higher for inputs used for additional manufacturing in the United States than the duties on downstream products or finished goods incorporating those inputs.
- Comments are due by January 17, 2023.
- USTR's comment docket will allow parties to submit confidential data that will not be publicly viewable. Instructions on how to submit such data will be provided on the commenting portal.

Wiley has a robust International Trade practice and extensive experience helping clients navigate issues surrounding the Section 301 tariffs. For more information about these issues, please contact the attorneys listed in the alert.