

The What and How Behind the USTR's Review of the China Section 301 Tariffs



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Section 301 Duties

❖ Overview of Section 301

- Title III of the Trade Act of 1974 (Sections 301 through 310, 19 U.S.C. §§2411-2420), titled “Relief from Unfair Trade Practices,” is often collectively referred to as “Section 301”
- Section 301 provides a statutory means by which the United States imposes trade sanctions on foreign countries that violate U.S. trade agreements or engage in acts that are “unjustifiable” or “unreasonable” and burden U.S. commerce
- In August of 2017, the Office of the United States Trade Representative (USTR) initiated an investigation, at the request of the President, whether certain acts, policies, and practices of the government of China related to technology transfer, intellectual property, and innovation are actionable under the Trade Act
- Federal Register Notice of August 24, 2017, highlighted four areas of concern

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- ❖ China uses a variety of tools, including opaque and discretionary administrative approval processes, joint venture requirements, foreign equity limitations, procurements, and other mechanisms to regulate or intervene in U.S. companies' operations in China, in order to require or pressure the transfer of technologies and intellectual property to Chinese companies
 - ❖ Deprives U.S. companies of the ability to set market-based terms in licensing and other technology-related negotiations with Chinese companies and undermines U.S. companies' control over their technology in China

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- ❖ Chinese government directs and/or unfairly facilitates the systematic investment in, and/or acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and generate largescale technology transfer
 - ❖ Chinese government is conducting or supporting unauthorized intrusions into U.S. commercial computer networks or cyber-enabled theft of intellectual property, trade secrets, or confidential business information, and whether this conduct harms U.S. companies or provides competitive advantages to Chinese companies or commercial sectors

Section 301 China Timeline

- ❖ In March of 2018, following several months of investigation, including hearings and submission of written testimony, a report was issued affirmatively finding that the acts engaged in China were “unjustifiable” or “unreasonable” and a burden U.S. commerce.
- ❖ In April of 2018, USTR issued a notice of proposed appropriate action in response to these acts, policies, and practices, including an additional duty of 25 percent on a proposed list of products from China.



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Issue Areas » Enforcement » Section 301 Investigations » Section 301- China Technology Transfer » Investigation: Technology Transfer, Intellectual Property, and Innovation

Investigation: Technology Transfer, Intellectual Property, and Innovation

Section 301- China Technology Transfer

Investigation: Technology Transfer, Intellectual Property, and Innovation

China Section 301-Tariff
Actions and Exclusion Process
Section 301 Hearings

Initiation – August 24, 2017

Hearing – October 10, 2017

Report on China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation – March 22, 2018

Executive Summary of Report – March 22, 2018

Notice of Determination and Proposed Action - April 6, 2018

Update to March 22, 2018 Report – November 20, 2018

<https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china/investigation>

Section 301 China Timeline

❖ USTR Actions

- June 20, 2018, issues list of products subject to 25% punitive duties, effective on or after [July 6, 2018](#) ([List 1](#)) with an approximate annual trade value of \$34 billion
 - List 1 Products containing industrially significant technology, including technologies and products related to the “Made in China 2025” program
- June 20, 2018, USTR issues a 2nd list of proposed products important to China’s goals with an estimated trade value of \$16 billion (284 tariff subheadings)
- August 16, 2018, USTR notice implements the 25% punitive duties on List 2 products, effective on or after [August 23, 2018](#) ([List 2](#))

Section 301 China Timeline

- ❖ July 17, 2018: Because of China's response to U.S. action by imposing increased duties on goods of the United States, USTR Issues 3rd Proposed Tariff Action – estimated \$200 billion trade action (**List 3**) – but with 10% additional duties (Tranche 3 covered 5,733 tariff subheadings)
- ❖ September 21, 2018, announces affective date of **List 3 duties** to be **September 24, 2018** – duties to increase from 10% to 25% on January 1, 2019
- ❖ May 17, 2019 – notice of proposed \$300 billion trade action (**List 4**)
- ❖ August 20, 2019, notice splits List 4 into 4A and 4B lists – List 4A is **effective September 1, 2019**. List 4B to be effective December 15, 2019.
- ❖ List 4b suspended December 18, 2019

China Section 301 Duties – What Next?



- ❖ 19 U.S. Code § 2417 - Modification and termination of actions (Section 307(c)(2) of the Trade Act 1974)

(c) Review of necessity

(1) If— (A) a particular action has been taken under section 2411 of this title during any 4-year period, and

(B) neither the petitioner nor any representative of the domestic industry which benefits from such action has submitted to the Trade Representative during the last 60 days of such 4-year period a written request for the continuation of such action,

such action shall terminate at the close of such 4-year period.

China Section 301 Duties – What Next?



- ❖ Thursday, May 5, 2022 – USTR published notice it was commencing the statutory four-year review of the **two actions** taken under Section 301 against China
- ❖ Requesting “representatives of domestic industries” which benefit from the trade actions, to request continuation of the actions
- ❖ The two actions were effective, respectively, on July 6, 2018 (**list 1**) and August 23, 2018 (**List 2**)
- ❖ What about lists 3 and 4a?

“To ensure comprehensive coverage of the review, USTR will consider the List 3 and List 4A modifications as applicable to both the July 6, 2018, action and August 23, 2018, action”

China Section 301 Duties – What Next?



❖ What does this mean?

- “Representatives of domestic industries” which benefit from the trade actions, have 60 days prior to the 4-year termination date of the particular action to request continuation of the actions.
- Between May 7, 2022, and July 5, 2022, for the **July 6, 2018 (List 1)** action, and
- Between June 24, 2022, and August 22, 2022, for the **August 23, 2018 (list 2)** action.

❖ What about Lists 3 and 4?

“To ensure comprehensive coverage of the review, USTR will consider the List 3 and List 4A modifications as applicable to both the July 6, 2018, action and August 23, 2018, action.”

- In other words – There is no separate submission date for Lists 3 and 4a – a request to continue these actions may be submitted within either the list 1 or 2 submission window.



USTR Comments Portal

PUBLIC DOCKETS

July 6, 2018 Action, as Modified – Request for Continuation of Action

Submitter Information

Additional Information/Attachments

Using the space provided below, please identify and describe the industry you represent, as well as how the industry benefits from the List 1 action, as modified. You may also submit an attachment. (REQUIRED) *

Check the box below to request continuation of the List 1 action, as modified. (REQUIRED) *



Upload Attachments

Please attach any supporting documents. Files may be .pdf, .png, .jpg, .jpeg, .doc, .docx



Files (0)



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China Section 301 Duties – What Next?



❖ 19 U.S. Code § 2417 - Modification and termination of actions

(3) If a request is submitted to the [Trade Representative](#) under paragraph (1)(B) to continue taking a particular action under [section 2411 of this title](#), or if a request is submitted to the [Trade Representative](#) under [section 2416\(c\)\(2\) of this title](#) to reinstate action, the [Trade Representative](#) shall conduct a review of—

(A) the effectiveness in achieving the objectives of [section 2411 of this title](#) of—

(i) such action, and

(ii) other actions that could be taken (including actions against other products or services), and

(B) the effects of such actions on the United States economy, including consumers.

❖ The statute gives the USTR substantial discretion in deciding whether to maintain, modify or terminate the particular action.

China Section 301 Duties – What Next?



- ❖ Phase One –
 - Notification and submission of requests to continue actions
 - Requests to continue “an action” will not be posted immediately, but will be summarized in the notices announcing [whether the two trade actions under Section 301 will be continued](#)
 - No timeframe specified for publication of decision by USTR on whether to continue, modify or terminate the specific action

China Section 301 Duties – What Next?



- ❖ Phase II of the review
 - USTR will announce in subsequent notices whether it has received a request for continuation from a representative of a domestic industry which benefits from an action.
 - If USTR receives such a request, the USTR will announce the continuation of the action and will **then** undertake a review of the action as described in Section 307(c)(3)(A) and (B).
 - Through the portal interested persons may submit comments on, among other matters:
 - the effectiveness of the action in achieving the objectives of Section 301,
 - other actions that could be taken, and
 - the effects of such actions on the United States economy, including consumers.

China Section 301 Duties – What Next?



❖ Comments

- Timing is a significant challenge as domestic industry has up until the last day to submit request to continue duties
- If a request is received USTR would likely have to continue duties until it complete is review and evaluation under 307(c)(3)
- Sometime later USTR will publish it decision to continue, modify or terminate action.
- The lists will likely not be reinstated in their entirety but rather, based on the specific tariff provision or part thereof that was described on the particular list which the domestic party can support and justify.
- At the end of the review process, if the determination is to not extend or to exclude, then we would anticipate that it would be retroactive, however, no one really knows the answer yet

China Section 301 Duties – What Next?



- ❖ Reuters Article -- White House adviser Singh suggests U.S. could lower tariffs on Chinese goods
 - *"A White House adviser on Thursday suggested the United States could lower tariffs imposed on a host of non-strategic Chinese goods such as bicycles or apparel to help combat inflation."*
 - *"It could be that in this moment of elevated inflation and China having its own very serious supply chain concerns ... maybe there's something we can do there."*
 - *"For product categories that are not implicated by those objectives, there's not much of a case for those tariffs being in place," he said. "Why do we have tariffs on bicycles or apparel or underwear?"*
 - Here is the source: <https://www.reuters.com/business/white-house-adviser-singh-suggests-us-could-lower-tariffs-chinese-goods-2022-04-21/>