

# PUBLICATION

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## Ambassador Tai States Section 301 Tariff Exclusion Process to Re-Open

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**The Biden Administration announced the re-opening of the tariff exclusion process for Section 301 tariffs on goods from China, pursuant to its new approach to the U.S.-China Trade Relationship.**

### **President Biden's Targeted Exclusion Process**

The United States Trade Representative (USTR) is considering reinstating previously granted and extended exclusions on a case-by-case basis. Similar to the previous exclusion process, USTR has three considerations:

1. Whether the particular product remains available only from China
2. Whether reinstating the exclusion, or not reinstating the exclusion, will impact or result in severe economic harm to the commenter or other U.S. interests, including the impact on small businesses, employment, manufacturing output, and critical supply chains in the United States
3. The overall impact of the exclusions on the goal of obtaining the elimination of China's acts, policies and practices covered in the Section 301 investigation

In accordance with a [USTR statement](#) made on October 5, 2021, companies may submit comments either in support or opposition of the restatement of a particular exclusion. A list of the over 500 exclusions covered by the notice is posted separately on the USTR website [here](#). The reinstated exclusions will be retroactive to October 12, 2021. The commenting period opens on October 12, 2021 and closes December 1, 2021.

### **Biden Administration's New Approach to the U.S.-China Trade Relationship**

The reopening of the Section 301 tariff exclusion process is the first action in the Biden Administration's New Approach to the U.S.-China Trade Relationship. Ambassador Katherine Tai, the USTR, outlined the Biden Administration's New Approach in remarks at the Center for Strategic and International Studies (CSIS) on October 4, 2021. Ambassador Tai identified four items as the starting point of this new approach:

4. enforcement of the Phase One Agreement;
5. a new targeted Section 301 tariff exclusion process;
6. addressing concerns with China's state-centered and non-market trade practices; and
7. working with allies to shape the rules for fair trade in the 21st century.

Following up on the second item, USTR issued its request for comments on the reinstatement of certain Section 301<sup>1</sup> exclusions on October 5, 2021. Baker Donelson's trade professionals expect additional actions as a result of the Biden Administration's new approach to China and will continue to keep clients informed.

### **Background on the Section 301 Tariffs**

In August 2017, the Trump Administration initiated a Section 301 investigation into China's unfair policies and practices related to technology transfer, intellectual property, and innovation.<sup>2</sup> In March 2018, USTR issued its Section 301 Report<sup>3</sup> and determined that China's actions related to intellectual property were unreasonable or discriminatory and burdened or restricted U.S. commerce. After unproductive engagement with China, USTR imposed tariffs on China's imports as a response to China's unfair trade practices related to the forced transfer of American technology and intellectual property. USTR, however, established a process where companies could seek an exclusion from these tariffs and granted numerous exclusions for one year. USTR allowed companies to extend certain exclusions by written request. On December 31, 2020, all exclusions expired, except COVID pandemic-related exclusions.

Please contact [P. Lee Smith](#) with any questions or for further information.

<sup>1</sup> 19 U.S.C. §§ 2411-2417; "Section 301" refers generally to Chapter 1 of Title III of the Trade Act of 1974.

<sup>2</sup> Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 82 Fed. Reg. 40, 213 (Aug. 24, 2017).

<sup>3</sup> USTR, Findings Of The Investigation Into China's Acts, Policies, And Practices Related To Technology Transfer, Intellectual Property, And Innovation Under Section 301 Of The Trade Act Of 1974 (Mar. 22, 2018) (Section 301 IP Report).