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Section 301 Review Raises Tariffs in Key Sectors, Keeps Existing Tariffs, and Increases Enforcement

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May 20, 2024

The Biden administration announced that it will increase tariffs in key product areas, largely focusing on electric vehicles, batteries, solar cells, and supporting industries. This increase in tariffs results from the U.S. Trade Representative's (USTR) statutory four-year review of Section 301 action against China. These actions are to encourage China to eliminate its trade-restrictive actions which largely remain in place and to counteract China's harmful technology transfer-related policies. The report also calls for more enforcement by U.S. Customs and Border Protection (CBP). Finally, USTR signaled that it may be taking action against Chinese EVs that are manufactured or assembled in Mexico or third countries in the near future.

USTR will release a Federal Register Notice this week which will provide further details on the actions, the opportunity for interested parties to provide comments, and a discussion of the potential for limited exclusions.

Tariffs Target Strategic Sectors

In its report, USTR stated that it was increasing tariffs in strategic sectors. These sectors are either targeted by China for dominance or are sectors where the U.S. has recently made significant investments. The report noted that China was aggressively pursuing the high-tech "new three" sectors - solar products, lithium-ion batteries, and electric vehicles. Exports from China to the U.S. in these sectors have surged both in 2022 and in 2023.

The administration has recommended these new Section 301 tariffs or tariff increases, to be implemented in 2024, 2025, and 2026, depending on the product area:

Battery parts (non-lithium-ion batteries)	Increase rate to 25% in 2024
Electric vehicles	Increase rate to 100% in 2024
Facemasks	Increase rate to 25% in 2024
Lithium-ion electrical vehicle batteries	Increase rate to 25% in 2024
Lithium-ion non-electrical vehicle batteries	Increase rate to 25% in 2026
Medical gloves	Increase rate to 25% in 2026

Natural graphite	Increase rate to 25% in 2026
Other critical minerals	Increase rate to 25% in 2024
Permanent magnets	Increase rate to 25% in 2026
Semiconductors	Increase rate to 50% in 2025
Ship-to-shore cranes	Increase rate to 25% in 2024
Solar cells (whether or not assembled into modules)	Increase rate to 50% in 2024
Steel and aluminum products	Increase rate to 25% in 2024
Syringes and needles	Increase rate to 50% in 2024

The report provides context for these actions. The administration seeks to increase U.S. production in these sectors for a variety of reasons. For critical minerals, the report specifically signaled its targeting of graphite, and not necessarily all of the minerals where China dominates. Ship-to-shore cranes have been included primarily due to the potential cyber risk to something so intrinsic to the operation of the U.S.' supply chain.

Existing Exclusions Will Expire; Limited New Exclusions Proposed

The limited number of existing exclusions are set to expire by May 31, 2024. However, new exclusions have been proposed. These proposed exclusions cover two broad areas: (1) machinery used in the manufacturing process; and (2) machinery or products used in specifically manufacturing solar products. USTR has identified 19 temporary exclusions for certain solar manufacturing equipment to support investment in U.S. solar manufacturing. More details on the new exclusions and the application process will be provided in the Federal Register Notice. USTR will be accepting comments on this process. Once USTR finalizes the new exclusion process, an interested company may submit an application for its specific product. The evaluation process for exclusion applications will be further developed after all comments have been received.

USTR Recommends More Enforcement and Funding to Support

CBP has taken actions to enforce the existing Section 301 duties by issuing information requests to importers and proposing reclassifying merchandise to capture Section 301 duties. USTR's report recommends stronger enforcement efforts. The report states that it has become apparent that in numerous cases importers are evading the tariffs by purposefully misclassifying the imported product under an incorrect Harmonized Tariff (HTS) Code. These new enforcement efforts will impact previously imported products that should have paid the Section 301 tariffs as well as the new products where tariffs are set to increase.

Potential Action Against Chinese Manufacturers in Mexico and Third Countries

During the press conference related to the Section 301 action, the issue was raised relating to Chinese EV manufacturers establishing operations in Mexico or other third countries to circumvent the new and existing Section 301 duties. USTR stated that "we were talking to our industry, our workers, and our partners about" how to address Chinese EV manufacturers that are setting up shop in Mexico to import merchandise with high Chinese content into the United States as Mexican imports. USTR noted that it is a "fact pattern that's developing" and "is one that is of serious concern to us." The administration is looking at its existing "tools to see how we can address the problem."

What to Do and What Comes Next?

To implement these actions and recommendations, USTR will publish a notice next week in the Federal Register. USTR will implement these actions after a review of the comments received during the comment period.

Importers should confirm whether existing tariffs have increased or coverage has increased to include their products. Concerned companies can provide comments to USTR to raise their issues. Baker Donelson's International Trade and National Security team has worked on Section 301 duties since its inception and can assist with classification, compliance, filing comments with USTR, and responding to information requests from CBP.

If you have any questions or would like more information, please reach out to P. Lee Smith or a member of Baker Donelson's International Trade and National Security Team.