

USTR Invites Comments in Four Year Review of Section 301 Duties on Chinese Goods



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On October 12, 2022, the Office of the United States Trade Representative (USTR) announced that it is seeking public comments in connection with its review of Section 301 duties on Chinese goods. The comment period will run from November 15, 2022, through January 17, 2023. As a result of the review, USTR could decide to alter the product-targeting of the tariffs, removing or adding products or categories of products.

Background

Following an investigation pursuant to Section 301 of the Trade Act of 1974, USTR determined in April 2018 that Chinese acts, policies, and practices related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory and burden or restrict U.S. commerce, and are therefore actionable. On July 6, 2018, USTR took action under Section 301 by imposing additional duties on a list of Chinese products (List 1). On August 23, 2018, USTR imposed additional duties on a second list of products (List 2). Lists 1 and 2 covered products with an approximate annual trade value of \$50 billion. USTR subsequently modified its July 6 and August 23, 2018, actions by imposing additional duties on two supplemental lists of products (Lists 3 and 4A) and by temporarily removing duties on certain products through product exclusions. List 3 covered products with an approximate annual trade value of \$200 billion; List 4A covered products with an approximate annual trade value of \$120 billion.

This year, domestic industries sought continuation of the Section 301 additional duties during statutorily-established windows for doing so. Pursuant to Section 307 of the Trade Act, on September 8, USTR accordingly continued the Section 301 duties and announced that it will proceed to conduct a review of them.

The Review

Under Section 307, USTR's review must consider: the effectiveness of the additional duties in achieving the objectives of Section 301; the effectiveness of other actions that could be taken, including actions against other products or services; and the effects of the existing additional duties and of the other potential actions on the United States economy, including consumers.

The statutory considerations leave room for USTR both to consider the duties broadly and to look narrowly at specific aspects of the way the duties are targeted. USTR could decide to remove duties on specific products or categories of products. Given the mandate to consider other actions, including "against other products or services," USTR could also decide to target products not currently subject to additional duties.

What USTR is Asking About

While noting that comments with respect to any aspect of the statutory considerations are allowed, USTR's notice announcing the comment window highlights the possibility of commenting on: the effectiveness of the additional duties both in "obtaining the elimination" of and in "counteracting" China's acts, policies, and practices related to technology transfer, intellectual property, and innovation; "other actions or modifications" that would be more effective in accomplishing these goals; and the effects of the additional duties on the U.S. economy, including consumers.

USTR's notice proceeds to highlight the possibility of commenting on a series of specific types of effects on the U.S. economy:

- The effects of the actions on domestic manufacturing, including in terms of capital

investments, domestic capacity and production levels, industry concentrations, and profits.

- The effects of the actions on U.S. technology, including in terms of U.S. technological leadership and U.S. technological development.
- The effects of the actions on U.S. workers, including with respect to employment and wages.
- The effects of the actions on U.S. small businesses.
- The effects of the actions on U.S. supply chain resilience.
- The effects of the actions on the goals of U.S. critical supply chains outlined in Executive Order 14017 and in subsequent reports and findings.
- Whether the actions have resulted in higher additional duties on inputs used for additional manufacturing in the United States than the additional duties on particular downstream product(s) or finished good(s) incorporating those inputs.

The effects on which USTR seeks comment are consistent with the Administration's past statements about its trade policy priorities, including promotion of resilience, employment and wage growth, and domestic manufacturing. The identification of these effects in USTR's notice points to the likelihood that they will play a prominent role in the Administration's evaluation of the additional duties.

Next Steps

USTR plans to post questions for the docket on November 1. These will provide further insight into USTR's thinking and priorities in the review. The docket for submitting comments will open on November 15. To be assured consideration, comments must be submitted no later than January 17, 2023.

Significance

The extent, if any, to which USTR's review will lead to modifications to the Section 301 duties is unclear. However, the review has the potential to impact a broad array of companies and other entities, including users and importers of goods now subject to Section 301 duties, and producers of competing goods. The review could even impact users and importers of Chinese goods not now subject to Section 301 duties, and producers of goods in competition with goods not presently facing these additional duties. Many companies and others may wish to share information about the impacts of current and potential tariffs, and to monitor carefully the comments that others submit to the docket.
