

Client Alert

International Trade

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USTR Initiates New Process To Request Exclusions From The Section 301 China Tariffs For “Certain Machinery Used In Domestic Manufacturing”

Exclusion requests must be filed by March 31, 2025 and granted exclusions would be available through May 31, 2025

On October 15, 2024, the Office of the U.S. Trade Representative (“USTR”) established an electronic [portal](#) for companies to submit requests to exclude certain machinery used in domestic manufacturing from the tariffs imposed on imports of Chinese goods under Section 301 of the Trade Act of 1974 (“Section 301”). USTR [published](#) the procedures that companies must follow when submitting such requests in the Federal Register on October 17, 2024.

USTR’s action was taken in accordance with directions from the President to establish an exclusion process for certain designated machinery used in domestic manufacturing that is classifiable under chapters 84 and 85 of the Harmonized Tariff Schedule of the United States (“HTSUS”), which cover machinery, mechanical appliances, and electrical machinery, among other items.

On [May 28, 2024](#), USTR released an initial list of proposed 8-digit subheadings eligible for consideration in the machinery exclusion process and sought comments on whether to add or remove subheadings from the list. On [September 18](#), USTR announced additional modifications to the Section 301 action, including a final list of subheadings that would be eligible for potential exclusion from the Section 301 tariffs. (*Additional*



background on the Section 301 China tariffs is available at the end of this Client Alert).

USTR's procedures state that exclusion requests must include the following information, along with supporting documentation:

- The HTSUS subheading of the machinery for which an exclusion is being sought;
- A detailed description of the machinery for which an exclusion is being sought;
- Whether the machinery is subject to an antidumping or countervailing duty order when imported to the United States;
- An explanation of how the machinery will be used in domestic manufacturing and for what sector;
- Documentation regarding funding or requests for funding from the federal government related to the industry in which the machinery intends to be used;
- Availability of the machinery for which an exclusion is being sought (or comparable machinery) in the United States or third countries, with an explanation of the requesting party's attempts to source that machinery outside of China;
- A statement regarding the requesting party's purchases of the machinery outside of China in the past five years. If such purchases have been made, the requesting party should explain why sources outside of China are no longer available; and
- A discussion of whether the machinery is strategically important, related to "Made in China 2025," or related to other Chinese industrial programs.

All exclusion requests must be submitted by March 31, 2025, and submissions will be examined by USTR on a rolling basis. Any exclusions granted by USTR will be published in the Federal Register. Granted exclusions will take effect on the date that USTR's determination is published in the Federal Register and will be available through May 31, 2025.

ONLY CERTAIN SPECIFIED HTSUS SUBHEADINGS ARE ELIGIBLE FOR EXCLUSION REQUESTS

USTR published a list of the 317 8-digit subheadings that are eligible for this exclusion process in its [September 18](#) Federal Register notice. See *Notice of Modification: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation*, 89 Fed. Reg. 76581, 76609-76614 (Annex E) (Sept. 18, 2024). This underscores the need for interested parties to validate their tariff classifications before submitting any exclusion requests to USTR.

EXCLUSION REQUESTS WILL BE SUBJECT TO A COMMENT AND REBUTTAL PROCESS

Interested parties may respond in support or opposition to exclusion requests. Comments must be filed 30 days from the date that a request is posted on USTR's [online portal](#). The party who requested the applicable exclusion will be able to reply to any such comments within the later of 15 days after the posting of a response or 15 days after the closing of the 30-day response period.

KEY TAKEAWAYS

This new process provides interested parties with the opportunity to request exclusions from the tariffs on certain specified Chinese-origin machinery that will be used in domestic manufacturing in the United States. USTR will



consider exclusion requests on a rolling basis and submissions must be filed by March 31, 2025. Any granted exclusions will not be retroactive and would only be available until May 31, 2025. Thus, interested parties seeking an exclusion should submit the request to USTR expeditiously and be prepared to ensure shipment and entry of the manufacturing equipment within the applicable time frame. Likewise, U.S. equipment manufacturers and other interested parties should actively monitor USTR's online docket so that comments (in support or opposition to the request) may be timely filed.

APPENDIX (ADDITIONAL BACKGROUND MATERIALS)

On August 24, 2017, USTR initiated an investigation under Section 301 to determine whether China's acts, policies, and practices related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory and burden or restrict U.S. commerce and, therefore, are actionable under Section 301. On April 6, 2018, USTR announced its determination that China's acts, policies, and practices are unreasonable or discriminatory and burden or restrict U.S. commerce. Specifically, USTR cited the following as the basis for the Section 301 tariffs:

1. China uses foreign ownership restrictions, such as joint venture requirements and foreign equity limitations, and various administrative review and licensing processes, to require or pressure technology transfer from U.S. companies to Chinese entities.
2. China's regime of technology regulations forces U.S. companies seeking to license technologies to Chinese entities to do so on non-market-based terms that favor Chinese recipients.
3. China directs and unfairly facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and enable the transfer of technology to Chinese companies.
4. China conducts and supports unauthorized intrusions into, and theft from, the computer networks of U.S. companies to access their sensitive commercial information and trade secrets.

USTR later determined that unfair trading practices related to China's licensing regime violated obligations under the World Trade Organization ("WTO") agreements. As a result, USTR addressed this act, policy, and practice through WTO dispute settlement. USTR determined that the other measures, however, should be addressed under Section 301 responsive actions.

Following from its determination, USTR took the following actions:

1. On July 6, 2018, USTR imposed tariffs on approximately \$34 billion of annual imports of Chinese-origin goods (List 1).
2. On August 23, 2018, USTR imposed tariffs on approximately \$16 billion of annual imports of Chinese-origin goods (List 2).

In addition, after retaliation by China in response to List 1 and List 2, USTR modified the List 1 and List 2 actions to impose tariffs on approximately \$200 billion of additional annual imports of Chinese-origin goods (List 3) and \$300 billion of Chinese-origin goods (List 4A).

Chinese-origin products on Lists 1, 2, and 3 are subject to a 25 percent tariff above and beyond the most-favored nation tariffs set forth in the HTS of the United States. Chinese-origin products on List 4A are subject to an additional 7.5 percent tariff. The tariffs on Chinese-origin products on List 4B – which were scheduled to take effect January 1, 2020 –



were suspended in December 2019 following the announcement of the Phase One agreement between the United States and China.

On May 5, 2022, USTR announced that it was initiating a statutorily-required four-year review of the List 1, 2, 3, and 4A Section 301 tariffs. USTR requested comments from parties benefiting from the Section 301 tariffs regarding whether to extend the Section 301 tariffs beyond the four-year anniversary. On September 8, 2022, USTR announced that the Section 301 tariffs would remain in effect beyond the four-year anniversary and that USTR would publish a separate notice for a review process. On October 17, 2022, USTR announced that it would seek public comments as part of its four-year review. USTR accepted public comments until January 17, 2023 but did not hold public hearings.

On May 14, 2022, USTR announced the conclusion of its statutorily-required four-year review of the tariffs imposed on imports of Chinese goods under Section 301. The President also issued a Memorandum directing USTR to take certain actions related to the tariffs imposed on imports of Chinese goods under Section 301. In addition to increasing the tariffs on goods in key strategic sectors, the President directed USTR to establish an exclusion process for machinery used in domestic manufacturing that are classified under chapters 84 and 85 of the HTSUS, which covers machinery, mechanical appliances, and electrical machinery, among other items. On May 28, 2024, USTR released an initial list of proposed subheadings eligible for consideration in the machinery exclusion process and sought comments on whether to modify the list. On September 18, USTR announced additional modifications to the Section 301 action, including 14 temporary exclusions for solar manufacturing equipment and a final list of manufacturing equipment subheadings that would be eligible for this new exclusion process.

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