



The Bottom Line

MARCH 2022 | VOL. 127

SOME EXEMPTIONS TO CHINA TARIFFS REINSTATED

Summary

Following public notice and comment, the U.S. Trade Representative has determined to reinstate 352 previously extended exclusions through December 31, 2022, as specified in the Annex to this notice.

Background

The Trade Act of 1974 (Section 301) authorizes the President to take all appropriate action, including retaliation, to obtain the removal of any act, policy, or practice of a foreign government that violates an international trade agreement or is unjustified, unreasonable, or discriminatory, and that burdens or restricts U.S. commerce.

Accordingly, in August 2017, the President instructed the U.S. Trade Representative to investigate China's unfair trade practices. The results, announced in March 2018, concluded that China does engage in activities including foreign ownership restrictions on business in China, requirements for technology transfer to Chinese entities, investment in U.S. firms to obtain cutting-edge technology and intellectual property, supporting and conducting unauthorized intrusions into computer networks of U.S. companies, and manipulation of Chinese currency to inflate the cost of U.S.-manufactured goods in China. As a result, starting in June 2018, punitive tariffs have been levied against Chinese products.

The U.S. Trade Representative established a process by which U.S. stakeholders could request the exclusion of products subject to this action. Since December 28, 2018, the U.S. Trade Representative (USTR) granted over 2,200 product-specific exclusions across the four Section 301 tariff actions. Most exclusions expired December 31, 2020, except those for certain COVID-19 related products. The USTR notice stated that, in light of ongoing efforts to combat COVID-19, maintaining or re-imposing additional duties on certain products subject to the action was not appropriate. In addition, applying additional duties to these products could impact U.S. preparedness to address COVID-19. Therefore, the remainder of the exemptions expired, leaving imports subject to 7.5% to 25% punitive duties.

Current Status

On October 8, 2021, the U.S. Trade Representative invited the public to comment on whether to reinstate specific exclusions previously granted and extended under the four tranches (the October 8 notice). The October

8 notice set out the following factors to be considered in decisions on possible reinstatement and invited public comment:

- Whether the particular product or a comparable product is available from sources in the United States or third countries.
- Any changes in the global supply chain since September 2018 concerning the particular product or any other relevant industry developments.
- The efforts, if any, the importers or U.S. purchasers have undertaken since September 2018 to source the product from the United States or third countries.
- Domestic capacity for producing the product in the United States.

In addition, USTR considered whether or not reinstating the exclusion would result in severe economic harm, including the impact on small businesses, employment, manufacturing output, and critical supply chains in the United States. The office evaluated the overall effect of the exclusions on the goal of obtaining the elimination of China's acts, policies, and practices covered in the Section 301 investigation. Based on evaluation of the factors set out in the October 8 notice, and according to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, the U.S. Trade Representative has determined to reinstate specific exclusions. The reinstated exclusions are available for any product that meets the description in the product exclusion, governed by the scope of the ten-digit Harmonized Tariff Schedule of the United States (HTSUS) subheadings and product descriptions.

Impact

The reinstated exclusions are retroactive to October 12, 2021. In particular, the reinstated exclusions will apply to goods entered for consumption or withdrawn from a warehouse for consumption on or after 12:01 a.m. eastern daylight time on October 12, 2021. The U.S. Trade Representative has determined to extend the reinstated exclusions through December 31, 2022, and may consider further extensions as appropriate.

RESOURCES

[Notice of Reinstatement of Certain Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property and Innovation](#) (US Trade Representative)