

Trade Compliance Flash: USTR to Consider Reinstating Over 500 Section 301 Tariff Exclusions: Expect a Worker-Centric Focus

International Alert
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The Office of the U.S. Trade Representative (USTR) posted a [Federal Register Notice](#) inviting public comments on whether to reinstate 549 product-specific exclusions to the Section 301 tariffs, most of which expired on December 31, 2020. The list of products which were granted both an exclusion and an extension to the exclusion – and are therefore eligible to be reinstated – can be found [here](#). The list includes specific products covered by Tariff Lists 1, 2, 3, and 4A.

Key Points

In response to public comments received, USTR will determine on a case-by-case basis whether a product-specific exclusion should be reinstated and if so, for how long. Comments should focus on whether the product at issue is still only available from China and should address, in particular:

- Whether the product or a comparable product is available from sources in the U.S. and/or in third countries
- Any changes in the global supply chain since September 2018 with respect to 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 U.S. and/or third countries
- Domestic capacity for producing the product in the U.S.

USTR will also consider whether reinstating the exclusion will impact or result in severe economic harm to the commenter or other U.S. interests (*e.g.*, the impact on small businesses, employment, manufacturing output, and critical supply chains in the United States) as well as the overall impact of the exclusions of addressing the USTR's concerns with China's trade practices.

A recent [Government Accountability Office \(GAO\) Report](#) found that the USTR's primary reason for denying exclusion requests was the failure to show that the tariffs would cause the requester severe economic harm. Given the Biden-Harris administration's focus on [protecting workers through trade policy](#), we anticipate that the most effective way to demonstrate severe economic harm will be to demonstrate that the tariffs hinder the hiring and retention of U.S. workers.

Key Dates and Instructions

- USTR will begin accepting comments on October 12. Comments are due by **December 1** and must be submitted on [USTR's portal](#). A summary of the information that must be submitted to USTR can be viewed [here](#).
- If granted, exclusions will be retroactive to October 12. The exclusions will be available to merchandise (1) entered, or withdrawn from warehouse, for consumption on or after October 12, and (2) for which entries are not liquidated at the time the claim to apply the reinstated exclusion is made to U.S. Customs and Border Protection (CBP).

Looking Forward

The 549 exclusions under consideration are a subset of the more than 2,200 exclusions that were granted between 2018 and 2020. Although USTR Katherine Tai has not yet confirmed whether her agency will open a broader exclusion process that would enable importers to request exclusions on other products, her speech this week on the [new approach to the U.S.-China trade relationship](#) suggests that it is just a matter of time. Ms. Tai stated that in her speech that "[USTR] will start a targeted tariff exclusion process. We will ensure that the existing enforcement structure optimally serves our economic interests. We will keep open the potential for additional exclusion processes, as warranted." We will continue to monitor the situation and report when more information is available.

Please contact us if you have questions regarding the exclusion process or would like assistance in submitting an exclusion request.

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