

USTR Announces “Reviews of Necessity” of Section 301 Duties on Chinese Goods

May 4, 2022

On May 3, 2022, the Office of the U.S. Trade Representative (USTR) announced a process for considering the extension of the Section 301 tariffs against Chinese goods, pursuant to a provision of Section 301 of the Trade Act of 1974 that requires such tariffs to expire on the four-year anniversary of their imposition (July 6, 2022 and August 23, 2022) unless domestic beneficiaries of the tariffs request their extension.

USTR also published a draft *Federal Register* notice outlining the process for filing a request for an extension of the tariffs. The two documents indicate that, to the extent that USTR receives requests for extension of the tariffs, it will conduct a review of the necessity and effectiveness of the Section 301 tariffs on Chinese goods – and will open up a separate comment process for interested parties to submit information on these questions.

- Starting on July 6, 2018, the U.S. Government has imposed additional tariffs on four separate lists of Chinese-origin goods, as identified by their classification under the U.S. tariff schedule, pursuant to Section 301 of the Trade Act of 1974. The law provides that the tariffs must terminate after four years unless a domestic beneficiary of the tariffs requests their extension within 60 days of the tariffs’ four-year anniversary. The law also requires USTR to advise domestic beneficiaries of the upcoming request deadline. Where an extension is requested, USTR continues the tariffs while it performs a “review of necessity” in which it examines the tariffs’ effectiveness.

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Practice Areas

International Trade
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- Prior to the four rounds of Section 301 tariffs imposed against China, Section 301 was rarely used. There was accordingly very little clarity regarding how the Biden Administration intended to administer and implement the statutory "review of necessity" with respect to the Section 301 action against China. For example, it was unclear whether the Biden Administration would consider the four successive rounds of tariffs to require individual reviews of necessity (*i.e.*, four total). Further, it was unclear whether the Administration would allow domestic beneficiaries to request an extension of the tariffs generally, or whether it would allow duties on specific items – as identified by their tariff classification – to expire unless a company filing a request for extension could show that it benefitted from the continuation of duties on those specific goods.
- The May 3 announcement and draft *Federal Register* notice confirm that USTR intends to conduct two reviews of necessity. USTR explains that it views its imposition of tariffs on July 6, 2018 and August 23, 2018 as the "original" Section 301 actions against China and that these actions were merely modified or amended by the subsequent imposition of the third and fourth rounds of tariffs on September 24, 2018 and September 1, 2019. USTR's announcements also require domestic beneficiaries to identify the industry to which they belong and to identify why the continuation of tariffs would benefit them, but do not appear to require that the company/industry filing a request for extension of the tariffs make a case for benefitting from the extension of the tariffs on individual, specific tariff classifications.
- USTR's press release and draft *Federal Register* notice also state that, to the extent that USTR receives requests for extension of the tariffs, it will conduct a review of the necessity and effectiveness of the Section 301 tariffs on Chinese goods – and will open up a separate comment process for interested parties to submit information on these questions.

Wiley has a robust International Trade practice and extensive experience helping clients navigate issues surrounding the Section 301 tariffs. For more information about these issues, please contact the attorney listed in the alert.