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# Uncertainty Abounds with Regard to Biden Administration China Trade Policy

When President Biden assumed office on January 20, 2021, he inherited the tariffs the previous Administration levied on imports of most products from China based on the United States Trade Representative's (USTR) investigation of China's practices related to Technology Transfer, Intellectual Property, and Innovation. These duties, known as the Section 301 tariffs, were implemented in four tranches beginning in July 2018 and cover more than \$300 billion of Chinese products. Because of the broad range of merchandise impacted by the tariffs, USTR initiated an exclusion process that allowed interested parties to petition for an exemption from the Section 301 tariff increases for specific imports classified within a given Harmonized Tariff Schedule of the United States (HTSUS) subheading. Exclusion requests were evaluated based on the availability of

the product outside of China, the extent of the economic harm caused to the importer and the strategic importance of the product to China's industrial policy or programs. Ultimately, the USTR granted over 6,800 exclusions. However, virtually all of these exclusions expired at the end of December 2020.

## Differing Viewpoints on China Trade Policy

The Administration now finds itself at an inflection point with regard to the Section 301 tariffs. Given the high inflation rate due to many factors, including the residual effects of the COVID-19 pandemic and the Russian incursion into Ukraine, some in the Administration are advocating for the slashing of most if not all of the Section 301 tariffs in an effort to reign in consumer prices. This position is led by Treasury Secretary Janet Yellen who argues that tariffs serve little strategic purpose and lifting them, in whole or in part, would ease financial burdens on U.S. companies and consumers.

However, others in the Administration, including USTR Katherine Tai, oppose removing the tariffs. This group argues that removing the tariffs, which were implemented to punish China for its economic practices, would be a unilateral disarmament since China has not addressed many of the policies regarding intellectual property, forced technology transfers, etc. Tai advocates maintaining the tariffs for leverage in further negotiations with China regarding its economic policies even though she has conceded that nothing will likely change that country's non-market economic practices. In addition, removing the tariffs may be perceived as weakness by the Biden Administration in a crucial midterm election cycle with control of Congress at stake. Unions, which are critical to Democrats in elections, oppose the elimination of tariffs at this time.

Still others in the Administration appear to favor the lifting of certain tariffs on goods not considered to be strategic, - including sports equipment and apparel,- while increasing other trade penalties on China. This could include a separate Section 301 investigation into China's use of industrial subsidies.

President Biden on a recent trip to Asia indicated that he is considering cutting tariffs on Chinese goods.

It is noteworthy that a bipartisan group of senators have sent a letter to President Biden asking him

to “substantially maintain” the tariffs on Chinese imports. The letter notes that much of the inflation being experienced relates to sectors unrelated to Chinese imports, i.e., fuel and food. The senators argue that “rolling back tariffs on China would undermine the U.S. position in negotiations, expose many U.S. companies and workers to a sudden flood of imports, and signal to China that waiting out the United States is preferable to changing their non-market behavior ...”

## Renewal of the Exclusion Process

One possibility under consideration is the reinstatement of the exclusion process for the Section 301 tariffs. USTR previously reinstated a limited number (352) of exclusions retroactive to October 12, 2021, and these are set to expire at the end of 2022. A statutory framework for the establishment of a general exclusion process is included in the Senate-passed U.S. Innovation and Competition Act, which is currently being reconciled in conference with the House of Representatives-passed America COMPETES Act. At this time, it is impossible to predict what the final bill will look like and if this provision will remain in the version ultimately sent to the President for signature, or when this will occur.

## Quadrennial Review of the Tariffs

Another factor impacting the tariffs is that by statute, Section 301 actions expire after four years unless a petition is filed by a domestic party requesting a continuation of the action. If the USTR receives a request for continuation of a Section 301 action, it must conduct a review of the action that assesses the action’s effectiveness in achieving the objectives of the Section 301 statute, as well as “the effect of such actions on the United States economy, including consumers.” The USTR has commenced the quadrennial review of the Section 301 tariffs on Chinese goods as required by law. This allows representatives of domestic industries benefitting from the List 1 or List 2 actions to request continuation of the action. Since List 1 went into effect on July 6, 2018, and List 2 on August 23, 2018, these will come up for renewal first. List 3 went into effect on September 24, 2018, and List 4A entered into effect on September 1, 2019. The USTR has started the statutory review of the tariffs and states its analysis is on track. USTR Tai has stated, “[w]e need to make sure that whatever we do right now, first of all, is effective and, second of all, doesn’t undermine the medium-term design and strategy that we now we need to pursue.”

# Indo-Pacific Trade Strategy

The Administration has provided some insight into its trade strategy with the announcement by the President on May 23 of an intention to develop a new economic framework in the Indo-Pacific region with 12 countries, not including China, which would form an economic block that would provide an early warning system for supply chain issues, encourage decarbonization and offer U.S. businesses reliable Asian partners outside of China. This is in its nascent stage and few details regarding this framework have been announced.

## Comments

All of this points to an unsettled and undefined U.S. trade policy with regard to China and no clear indication of what action the Administration will take with regard to the Section 301 tariffs which, at this point remain in effect with a very limited exclusion process. A much anticipated speech by Secretary of State Anthony Blinken on May 26th regarding China did not specifically address the tariff issue and instead focused on the Administration's strategy to confront China, which he described as "invest, align, compete," with the goal of forcing China to adhere to fair and transparent global rules, led by the U.S. and bolstered by international allies and partners.

Accordingly, importers should continue to monitor the USTR website for future developments regarding the Section 301 tariffs, including any decisions to eliminate tariffs, implement new tariffs or reinstate the exclusion process.

## How BDO can help

Customs duties, VAT and trade policy present unique challenges that business face when conducting regulated cross-border transactions. BDO's Customs and International Trade Services practice can help businesses navigate the complex rules governing cross-border product movements to minimize duty and tax payments and maximize import and export compliance. BDO can assist importers with the preparation and filing of administrative protests for the refund of duties covered by the currently reinstated exclusions. BDO can also review the tariff classifications for products to determine if either a reinstated or previous tariff exclusion is or was available and if

any refunds can be claimed based on the entry date of the merchandise.

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  - ▶ FTA qualification
  - ▶ Customs valuation and transfer pricing analysis
  - ▶ Import and export compliance assessments
  - ▶ Supply chain planning
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