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Biden Administration Announces Final Results of Section 301 Tariff “Sunset Review” and Increases Duty on Many Goods of Chinese Origin

In a long-awaited development, United States Trade Representative (USTR) Katherine Tai announced on May 13, 2024, the results of the Biden administration's "sunset review" of the Section 301 China tariffs first imposed in 2018. This Section 301 investigation that began in August 2017 was specifically directed at "China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation."

By law, USTR is required to conduct a review every four years of the necessity for continuing tariffs levied under Section 301 of the Trade Act of 1974 by which the U.S. imposes trade sanctions on foreign countries that violate U.S. trade agreements or engage in unfair trade practices that are "unjustifiable" or "unreasonable" and burden U.S. commerce. The purpose of these sunset reviews is to evaluate whether the tariffs have achieved the objectives of the original investigation; specify other actions that could be taken to further these objectives; and evaluate the overall effects of the tariff actions on the U.S. economy. The current sunset review began in late 2022 and has now concluded with publication of the results.

In her statement announcing the results, Ambassador Tai indicated that further action was needed to halt China's continuing unfair trade practices in the area of forced technology transfers. The initial further action will increase tariffs on many goods of Chinese origin. USTR stated: "[w]e serve our statutory goal to stop the PRC's harmful technology transfer-related acts, policies, and practices, including its cyber intrusions and cyber theft [with these new tariffs]." The biggest increase will raise Section 301 tariffs on electric vehicles to 100% before the end of 2024.

The new increased tariffs will be imposed for specific manufactured goods deemed "strategic" to U.S. interests over the following time periods:

Battery parts (non-lithium-ion batteries)	Increase rate to 25% in 2024
Electric vehicles	Increase rate to 100% in 2024
Facemasks	Increase rate to 25% in 2024
Lithium-ion electrical vehicle batteries	Increase rate to 25% in 2024
Lithium-ion non-electrical vehicle batteries	Increase rate to 25% in 2026
Medical gloves	Increase rate to 25% in 2026
Natural graphite	Increase rate to 25% in 2026
Other critical minerals	Increase rate to 25% in 2024

Permanent magnets	Increase rate to 25% in 2026
Semiconductors	Increase rate to 50% in 2025
Ship to shore cranes	Increase rate to 25% in 2024
Solar cells (whether or not assembled into modules)	Increase rate to 50% in 2024
Steel and aluminum products	Increase rate to 25% in 2024
Syringes and needles	Increase rate to 50% in 2024

In addition, the tariffs imposed in four “tranches” that began in early 2018 will remain in place across the board. These Section 301 tariffs are levied at either 25% or 7.5% ad valorem (based on the Harmonized Tariff Schedule of the U.S. code corresponding to the covered merchandise items), in addition to the Normal Trade Relations tariffs, antidumping/countervailing duties, and any other trade remedy tariffs (such as “safeguard tariffs” imposed under Section 201 of the Trade Act of 1974).

Notably, the announcement did not mention whether any of the remaining exclusions from paying the Section 301 tariffs that were granted to certain importers for narrow categories of merchandise would be extended. All of the current exclusions are set to expire on May 31, 2024. However, the announcement also noted that USTR will be establishing an exclusion process for machinery used in domestic manufacturing and will prioritize, in particular, exclusions for certain solar manufacturing equipment.

Next week, USTR will issue a Federal Register notice announcing procedures for interested persons to comment on the proposed tariff modifications and information concerning an exclusion process for machinery used in domestic manufacturing.

How BDO Can Help

BDO can assist clients in reviewing their exposure to the Section 301 “China tariffs,” as well as assess the impact of future tariff increases by performing tariff code reviews, country of origin assessments, implement duty mitigation strategies (i.e., drawback, first sale), and supply chain planning in the context of an ever-changing international trade regulatory environment.