

USTR Reinstates Certain Exclusions from Section 301 China Tariffs

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On March 23, 2022, the Office of the United States Trade Representative ("USTR") announced its determination ("**Determination**") to reinstate 352 of the 549 eligible previously granted, extended, and later expired Section 301 tariff exclusions on China-origin goods. Most of the 549 previously extended exclusions expired by December 31, 2020. The 352 reinstated tariff exclusions will apply retroactively to October 12, 2021, and extend through December 31, 2022.

According to USTR, the exclusion process is a key part of the Biden Administration's deliberate, long-term vision for realigning the U.S.-China trade relationship. The Trump Administration initially granted more than 2,200 Section 301 China tariff exclusions. Most were allowed to expire, and only 549 were extended for a certain period and then expired. For those exclusions that have never been extended, there is no current process open for filing extensions.

In October 2021, USTR started a targeted tariff exclusion process and **invited comments** on whether to reinstate the 549 previously granted and extended exclusions. USTR's determination was made after consideration of the public comments and in consultation with other U.S. agencies including the Small Business Administration. USTR's evaluation of the reinstatement focused on: (1) whether the particular product remains available only from China, (2) whether reinstating the exclusion will impact or result in severe economic harm to the importer or other U.S. interests, and (3) the overall impact of the exclusions on the goal of eliminating China's acts, policies and practices covered in the Section 301 investigation.

The Annex to the Determination ("**Annex**") contains a full list of the 352 categories of China-origin products that are subject to reinstated tariff exclusions. These are organized into four groups and cover a wide variety of machinery, manufacturing components and consumer goods, such as gas engines, automotive parts, motors, electrical equipment, bicycles, motorcycles, chemicals, plastics, textiles, vacuum cleaners and medical supplies. The reinstated exclusions are available for any China-origin product that meets the description and is within the scope of the 10-digit Harmonized Tariff Schedule of the United States ("HTSUS") subheadings provided in the Annex, regardless of whether the U.S. importer filed an exclusion request with USTR.

As to the timing for the exclusion process, these reinstated exclusions will apply to (1) goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on October 12, 2021, that are not liquidated; or (2) to entries that are liquidated, but within the period for protest described in section 514 of the Tariff Act of 1930, as amended. USTR has determined to extend the reinstated exclusions through December 31, 2022, and may consider further extensions as appropriate.

China-origin products that are classified under the 10-digit HTSUS subheadings and meet the descriptions in the Annex are now eligible for entry without payment of the additional Section 301 duties through the end of 2022. To claim the tariff exclusion, customs brokers of U.S. importers should input the appropriate HTSUS subheadings of the goods upon entry. U.S. importers could seek refunds for Section 301 duties paid on entries made since 12:01 a.m. on October 12, 2021, on the covered products by filing with the U.S. Customs and Border Protection for unliquidated entries, or by filing protests against liquidated entries within the applicable due dates. It is expected that U.S. Customs and Border Protection will issue guidance on these processes.

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If you have any questions about the Determination or Section 301 China tariff exclusions, please contact the authors or your Miller Canfield attorney.