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301 Exclusions Continue Through May; Comments to Reopen

More than 400 products that are excluded from Section 301 tariffs will continue to enter under normal duties through May 31, the Office of the U.S. Trade Representative announced Dec. 26. The exclusions had been scheduled to end at the end of this year.

When last extended, in September, the agency said the time was needed “to provide a transition period for the expiring exclusions and to allow for further consideration under the four-year review” (see [ITT 09/06/2023](#)).

USTR Katherine Tai told senators earlier this year that the review would be completed in the fall (see [ITT 07/20/2023](#)), and added, “as part of this review, we are considering the existing tariffs structure and how to make the tariffs more strategic in light of impacts on sectors of the U.S. economy as well [as] the goal of increasing domestic manufacturing.”

This time, the agency said extending the extension will “facilitate the alignment of further decisions on these exclusions with the ongoing four-year review,” and could help the agency identify which products could shift production to other countries or the U.S., given more time.

To identify which products deserve a longer exclusion from the tariffs, the agency is soliciting comments. The notice said it decided comments are necessary “in light of public comments submitted in the four-year review.”

In those comments, AdvaMed, the trade group that represents medical device companies, said that about 40% of all medical equipment or consumables imported from China owe Section 301 duties, with about \$1.25 billion of the imports subject to a 25% tariff, and \$1.25 billion subject to a 7.5% tariff.

The tariffs have not countered China’s ambition to dominate in advanced medical equipment, the group said. It

said that China is moving up the value chain in categories covered by Section 301, such as CT scans, MRIs, ventilators and cardiac pacemakers.

“We provide this analysis because we want USG officials to understand that we are not underestimating the competitiveness of the Chinese industry nor the potential threat posed by the power and resources of the Chinese government. Rather, we think the Section 301 tariffs have not been the most effective tool to meaningfully respond to these challenges and have had the unintended consequence of undermining U.S. competitiveness in our sector,” AdvaMed said.

Medline, a medical equipment manufacturer and importer, said it was more expensive to move production to Southeast Asia, Mexico, Central America, the U.S. or Canada, and, for some products, it either couldn’t source outside China, or it couldn’t find enough supply outside China. Again and again, it wrote, “there is currently not enough international capacity available to move out of China.”

“The focus of the evaluation will be on the availability of products covered by the exclusion from sources outside of China, efforts undertaken to source products covered by the exclusion from the United States or third countries, why additional time is needed, and on what timeline, if any, the sourcing of products covered by exclusion is likely to shift outside of China. In addition, USTR will consider whether extending the exclusion will affect U.S. interests, including the overall impact of the exclusion on the goal of obtaining the elimination of China’s acts, policies and practices covered in the Section 301 investigation,” a [pre-publication notice](#) said.

The new comment period is Jan. 22 to Feb. 21. The portal to submit comments is [here](#) (and will not open until Jan. 22).

Americans for Free Trade said the continuance of the exclusions provides economic relief, but added: “However, we

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are frustrated that USTR announced this short-term extension with little notice, making it difficult for businesses to plan."

The trade group also said USTR should create a robust exclusion request process for all products covered by Section 301 tariffs. The group also complained the review that began in May 2022 of the overall program is taking too long. — *Mara Lee*

Ways and Means Trade Leader Says Section 301 Tariff Changes 'Constructive'

Rep. Earl Blumenauer of Oregon, the top Democrat on the House Ways and Means Trade Subcommittee, acknowledged in a hallway interview at the Capitol that he has been briefed that the Biden administration will lift Section 301 tariffs from some products as part of its review of the action against Chinese trade abuses.

"I think it's a step in the right direction. I think, you know, it is a balancing act, and I don't think this is the last step. But I think it's constructive."

Trade Subcommittee Chairman Rep. Adrian Smith, R-Neb., said he needs to review the information more before he can say if he thinks it strikes the right balance of ending some non-strategic tariffs and continuing to keep pressure on China. "It's no secret that I'm concerned that USTR is as active as they need to be. Is this an area where maybe they're going to focus? Maybe."

US Renews EU Steel, Aluminum TRQs for 2 Years

Presidential proclamations for Section 232 [steel](#) tariff rate quotas for EU countries, and for tariff rate quotas for [aluminum](#), were published Dec. 28, with no changes to aggregate volume from the last two-year deal. The new quotas will last through the end of 2025.

The White House said the U.S. and the EU over the last two years have made "substantial progress to identify the sources of non-market excess capacity and the actions needed to address distortions resulting from that non-market excess capacity." The two sides are "continuing their discussions on global steel and aluminum arrangements to restore market-oriented conditions in their steel and alumi-

num sectors and support the reduction of the greenhouse gas emissions intensity of steel and aluminum across all modes of production," the proclamation said.

The U.S. continues to allow 3.3 million metric tons of steel annually under the quota, and exclusions don't count toward that total. Exclusions granted in fiscal year 2021 and in the first quarter of calendar year 2022 will be extended for two years.

Amounts over the quota (which is administered quarterly, by product and by country) are still subject to the 25% tariff for steel, but the proclamation said the commerce secretary, in consultation with the U.S. trade representative, can recommend to the president "updates to the in-quota volumes contained in this proclamation."

Imports of aluminum above the quota pay 10%; exclusions still count against the in-quota volume. The proclamation said the in-quota volumes for aluminum also could be updated.

U.S. Trade Representative Katherine Tai issued a [statement](#) that said in part that the U.S. is "committed to defending workers, communities, and domestic industries from global non-market overcapacity and excessive carbon emissions." Extending the TRQs for another two years will allow both sides to "continue negotiations on a forward-looking, high-standard arrangement, while providing predictability and stability to steel and aluminum workers and their families on both sides of the Atlantic." — *Mara Lee*

China Select Committee Argues for End of MFN, Lower de Minimis, FTA With Taiwan

Congress should remove permanent normal trade relations status for China, but rather than move Chinese imports into Column 2, it should create a China-specific tariff schedule "that restores U.S. economic leverage to ensure that the [Chinese government] abides by its trade commitments and does not engage in coercive or other unfair trade practices and decreases U.S. reliance on [Chinese] imports in sectors important for national and economic security," the House Select Committee on China wrote as one of its dozens of legislative recommendations in its "Strategy to Win America's Economic Competition with the Chinese Communist Party." The [report](#), released Dec. 12, also recommended:

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- Renewing a China-specific safeguard that ended in 2013, which allowed the ITC to restrict or tariff Chinese goods that threaten to cause “market disruptions,” with no need to prove unfair trade.
- Reducing the de minimis threshold “with particular focus on foreign adversaries including the PRC.” The committee didn’t say if the threshold should be lowered for everyone but lower still for adversaries, or only affect adversaries. It also didn’t put out a number. PRC stands for the People’s Republic of China.
- Updating Section 337 so that it can be used “to address unfair trade practices and unfair methods of competition from a wide-array of market-distorting unfair trade practices.”
- Passing customs modernization based on CBP’s 21st Century Customs Framework, and adding funding for customs.
- Reauthorizing the Generalized System of Preferences benefits program, and modernizing it “to accelerate supply chain shifts out of the PRC market, enhance rules of origin to limit PRC transshipment, and provide certainty for industry as they contemplate supply chain investment decisions” outside of China.
- Passing Level the Playing Field Act 2.0, a rewrite of trade remedy law.
- Passing an anti-economic-coercion law.
- Expanding the rebuttable presumption in the Uyghur Forced Labor Prevention Act to include some Chinese seafood exports.
- Expanding the Seafood Import Monitoring Program (SIMP) to cover all Chinese-origin seafood “to ensure the United States is not complicit in the PRC’s practice of illegal, unreported, and unregulated fishing.”
- Passing Trade Promotion Authority for comprehensive free trade agreements, starting with Taiwan.
- Renewing Trade Adjustment Assistance for workers displaced by import competition.
- Passing Strengthening the Uyghur Forced Labor Prevention [Act](#), which asks the Forced Labor Enforcement Task Force to create a list of factories outside Xinjiang” that source material from the Xinjiang Uyghur Autonomous Region or from persons or entities working with regional, prefectural, county, or local government agencies of the Xinjiang Uyghur Autonomous Region or the Xinjiang Production and Construction Corps or receive labor” transfers of minorities.
- Passing “legislation to encourage sectoral agreements with key trading partners and allies with strong rules of origin and high standards on critical minerals and other critical goods (e.g., semiconductors, electronic vehicle batteries/components, active pharmaceutical ingredients) that the United States identifies as critical for resilient supply chains.”
- Amending the Lacey Act to allow for a three-year emergency ban on the importation of invasive and injurious wildlife from foreign countries that poses imminent threats to human health, as well as a ban on new species imports until they are found to not be invasive in the United States.

In addition to those legislative recommendations, the committee said Congress should make a number of funding priorities, including increasing funding for DOJ’s Trade Fraud Task Force, considering “providing financial assistance or other substantive support to small- and medium-sized businesses or first-time petitioners who are pursuing an unfair trade case,” and considering additional appropriations to offset retaliation for U.S. exporters that would come after China was removed from PNTR. The committee said the new tariffs on Chinese goods “should be phased in over a relatively short period of time to give our economy the time necessary to adjust without avoidable disruptions.”

However, the 53-page report also acknowledged that decoupling or derisking “will require hard tradeoffs and will not be without cost. However, the near-term costs of protecting our national economic security ultimately pale in comparison to the long-term consequences of failing to act now.”

Although the report was approved by nearly all the committee members, some members—including the only member

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who also serves on the House Ways and Means Committee that would handle tariff changes—said they were concerned that elements of the report were more protectionism than truly safeguarding national security.

Rep. Darin LaHood, R-Ill., the only committee member who serves on Ways and Means, which would write much of the legislation listed in the report, said he “initially” had concerns about changing PNTR, but suggested that other elements that favor farmers who rely on exports swayed his views.

Rep. Jake Auchincloss, D-Mass., whom Select Committee on China Chairman Mike Gallagher, R-Wis., credited with shaping the GSP language, said he couldn’t approve the report. “I continue to think threads of industrial policy and protectionism run too strong in it,” he said.

The House Ways and Means Committee chairman did not respond to the report in the first eight hours after its release; the top Democrat on that committee, Rep. Richard Neal, D-Mass., said that while he shares the committee’s concerns on China’s anticompetitive actions, “unfortunately, many of their proposals are better suited for headlines than guidelines. When confronting these challenges, Congress must take a cohesive approach where one policy does not undermine the goal of another.”

Senate Finance Committee Chairman Ron Wyden, D-Ore., in a hallway interview at the Capitol, said he was pleased that the committee recognized granting China PNTR 23 years ago was a mistake, since China didn’t meet its WTO obligations. However, he didn’t say whether he supported reversing the policy, saying it was too complex to talk about in a brief interview.

In addition to the legislative recommendations, the committee also said Congress should ask the executive branch to take a variety of actions to either confront Chinese economic aggression or build up relations with allied trading partners.

It said that Congress should direct CBP to examine the use of de minimis for goods made in China but shipped from other countries. The report said Congress should direct the administration to limit Section 232 tariffs and quotas to non-ally trading partners. “Under congressional guidance,

the Secretary should act on the importation of an article in such quantities or under such circumstances when a country of concern threatens to impair our national security. This would allow Commerce to focus its efforts on imports from a country of concern, including through third countries, while encouraging, rather than undermining, work with U.S. partners and allies.”

Congress should direct the Commerce Department to initiate an antidumping investigation on permanent magnets and rare earth elements, the report suggested. Commerce should conduct a Section 232 investigation into Chinese medical device exports, including needles and syringes, it said.

The report said that if the World Trade Organization cannot constrain China’s mercantilist practices, perhaps a new multilateral system of like-minded countries should be formed.

“While economic exchange with the PRC will continue, the United States government and the private sector can no longer ignore the systemic risks associated with doing business in the PRC or allow companies’ pursuit of profit in the PRC to come at the expense of U.S. national security and economic resilience,” the report said.

A variety of groups that support U.S. manufacturing and trade restrictionist policies hailed the report.

Alliance for American Manufacturing President Scott Paul called the recommendations “game-changing,” and said he hopes they become law, except the changes to Section 232. “We oppose any efforts to dilute Section 232 national security trade actions or initiate a fast-track free trade agreement with Japan, with its history of currency interventions and other market distortions that skew markets such as autos. We will urge the House of Representatives to set aside those aspects of the committee’s report,” he said.

Coalition for a Prosperous America CEO Michael Stumo praised the recommendation to hike tariffs on Chinese goods by ending its PNTR, and the recommendation of changes to de minimis, which he said is similar to the bill from Rep. Earl Blumenauer, D-Ore., which would end Chinese eligibility for de minimis.

“De minimis allows for duty-free shipment of goods to the United States if priced under \$800. This has created what

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one Customs official referred to as the China free trade agreement,” the group [said](#).

But he warned: “Although the report does not make note of this, the de minimis reformers are not without their enemies on Capitol Hill. Some bills are likely to be poisoned by the interests of customs brokers, importers and large delivery companies. The Committee, and Congress, would be wise to understand the opposition’s interest in keeping de minimis as is”

The National Foreign Trade Council’s senior director of international supply chain policy, John Pickel, said in a statement that lowering the de minimis threshold would tax consumers and small businesses, putting inflationary pressures into the economy without improving enforcement. He noted that CBP has said that it does screen de minimis shipments for forced labor and contraband. “Reducing de minimis would double the cost of a \$50 package, costing taxpayers millions and undoubtedly causing unnecessary delays for businesses and consumers without improving enforcement,” he said.

American Compass, a think tank allied with Trump’s views on tariffs, spending on entitlements and industrial policy, hailed the report. Executive Director Oren Cass said: “The need to confront the China challenge has been obvious for at least a decade, but the American ship of state has been turning too slowly. Politicians wedded to an outmoded Washington Consensus and special interests profiting from the status quo resist even the slightest change of course. This report marks the first time that congressional leaders have grabbed the wheel and pulled hard, clear-eyed about the peril and prepared to act. Their courage is commendable, their warnings must be heeded, and their call to reset the nation’s economic relationship with its primary adversary is correct.”

Farmers for Free Trade issued a [letter](#) on Dec. 12, hoping to change the report that was already written. They said they didn’t want China to lose its tariff treatment.

They said before China had permanent normal trading status, 23 years ago, its consumers bought 3% of U.S. agricultural exports. In 2022, the country bought 19% of ag exports—more than \$38 billion worth.

“A recent Oxford Economics Report estimated that China’s retaliation would result in more than a 30% reduction in U.S. agriculture exports to China,” they wrote. “While we share the Committee’s concerns about many of China’s practices, passing the burden on to farmers to address those concerns is the wrong approach.” — *Mara Lee*

Portal for UFLPA Admissibility Reviews, WRO Modification Requests Coming in 2024, CBP Says

CBP hopes to deploy a “centralized website portal” by mid-2024 for importers to submit requests for exception, applicability, and admissibility reviews under the Uyghur Forced Labor Prevention Act, the Countering America’s Adversaries Through Sanctions Act, and Withhold Release Orders, the agency said.

The portal, which will also handle forced labor allegations from the public and requests for the modification of WROs and forced labor findings, was mentioned in a [document](#) released Dec. 4 ahead of the upcoming Commercial Customs Operations Advisory Committee meeting scheduled for Dec. 13 (see [ITT 12/04/2023](#)).

According to the document, in FY 2023, CBP stopped 4,415 shipments suspected of having been made with forced labor totaling \$1.46 billion, the agency said in the same document. This is a 78% increase in value and 21% increase in the number of shipments stopped compared with FY 2022, CBP said. Of those shipments stopped in FY 2023, 4,053 shipments with a value of \$1.44 billion were stopped under UFLPA. — *Noah Garfinkel*

Southern Shrimp Alliance Supports Select Committee Recommendation on Seafood

The Southern Shrimp Alliance cheered the House Select Committee on China’s recommendation that seafood from China should be subject to a presumption that it was caught or processed with forced labor.

“If the Select Committee’s recommendation regarding the UFLPA was adopted, U.S. importers would no longer be able to exploit the human rights violations occurring in Shandong province to obtain higher profit margins on their shrimp products,” the trade group [said](#).

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However, they raised the issue that the legislation would have to be written carefully, since while some fish that is caught in Alaska and fileted and frozen in China comes back as a Chinese product, shrimp caught in Argentina but processed in China remains of Argentinian origin.

"There is no reasonable justification for shipping shrimp across an ocean to be processed in a plant that has the same capabilities as shrimp processing plants around the world," John Williams, executive director of the Southern Shrimp Alliance, said. "Creating supply chains to profit off of human suffering is reprehensible and the Southern Shrimp Alliance is grateful to the Select Committee for focusing on this issue and proposing meaningful, effective solutions."

APHIS Phase VII Delayed Until Early 2024, but Importers Should Start Preparing, Official Says

Wrangling over the federal budget has delayed an announcement of the particulars of phase VII of Lacey Act enforcement, as well as the subsequent six-month count-down until new declaration requirements are enforced, said Erin Otto, part of the Animal and Plant Health Inspection Service's Lacey Act team, during a [webinar](#) hosted by the National Customs Brokers & Forwarders Association of America.

APHIS had hoped to issue a *Federal Register* notice by the end of 2023 listing the Harmonized Tariff Schedule codes that will require Lacey Act declarations under phase VII (see [ITT 09/20/2022](#)). Now, as a result of "some things that are out of our control," including the staggered continuing resolutions under which the government is now operating (see [ITT 11/16/2023](#)), Otto said the notice will come in "early 2024."

Otto is "hoping personally" that the notice is published in January or February, she said. "I may be disappointed, but c'est la vie."

Lacey Act phase VII will cover all non-composite plant products that remain untouched by Lacey Act requirements, said Otto, who called it a "junk drawer" of HTS codes. "It's going to include all sorts of random stuff," she said. "Just think about everything in your house or garage or yard that may contain a plant or plant product." Among products Otto mentioned during the webinar as covered in phase VII

are wicker baskets, furniture, Christmas ornaments, pencils, sporting goods, lamps and kitchenware.

Otto and the rest of the four-person APHIS Lacey Act team "spent all summer combing through the HTS codes," looking at thousands of them and "trying to pick out the ones that are remaining that contain plant material that is not 100% composite," she said. Otto said they ended up identifying about 200 HTS codes.

As a result of phase VII's complexity, APHIS is telling stakeholders to "check your supply chains" and "get the information now, so that you are ready to fill out those Lacey Act declarations" once the requirements take effect six months following publication of the phase VII *Federal Register* notice.

After APHIS finishes phase VII, it will begin work on phase VIII, which will cover composite materials, Otto said. Examples include paper, cardboard, books and composites of plant materials and plastics, she said.

As previously noted by Otto (see [ITT 09/20/2022](#)), the phase will require regulatory changes to the definition of "composite," because "the current definition of composite doesn't really cover all the types of composites that are out there," including liquids and materials with mechanical bonds, Otto said. Once the definition is "nailed down," APHIS will begin its process of listing HTS codes that will require a Lacey Act declaration under phase VIII.

What will go on that list remains uncertain, Otto said. "There's a lot of discussion to be had, including how far away from the plant are we getting? There's a lot of things that are derived from plants and plant parts, like latex," she said. "How far down from the rubber tree are we going to get?"

While Otto said latex gloves will not be covered by declaration requirements, "these are the things that we need to think about as regulators," she said. APHIS will be "asking a lot of questions" of manufacturers, she added.

Otto said she doesn't yet have a timeline for phase VIII, which she said is "hopefully the last phase" of implementation of Lacey Act declaration requirements. The timing depends on when APHIS gets phase VII done so "we can really start working" on the rulemaking.

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In the meantime, Otto’s Lacey Act team has been working on analytics that will allow the agency to “be better at tracking compliance with the Lacey Act declarations,” she said. That includes an “in-house tool” that will allow APHIS to analyze its own internal data “to help us with targeting and help our law enforcement partners with some of their targeting and their investigations,” she said.

APHIS also has been involved with “Wood ID,” an initiative to collect samples “from around the world” that laboratories can use to determine species, Otto said. “There’s a lot of trees out there, and from a lot of places, and not all the places in the world are easy to get to because of logistics, because of topology or topography, and also because of international affairs,” she said. The reference samples will be able to be used “not only by governments,” but also “by industry to really test their products to make sure that the products actually match the paperwork. That the species is what it says it is,” Otto said. — *Brian Feito*

ITC to Consider General Exclusion of Imported Disposable Vaping Devices

The International Trade Commission is beginning a Section 337 investigation to consider a potential general exclusion order on imported disposable vaporizers, the commission said in a notice [released](#) Dec. 19. R.J. Reynolds filed the underlying complaint in October (see [ITT 10/18/2023](#)), accusing 20 manufacturers and six distributors of importing and selling vaporizers using false and misleading advertising, in addition to violating regulations on the sale of tobacco products and violating federal customs laws and regulations. The ITC named 25 companies as respondents, then said it would also consider cease and desist orders against those companies.

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