
THE GLOBAL TRADE LAW JOURNAL

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Publishing Staff

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Production Editor: Sharon D. Ray

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Editorial Office

729 15th Street, NW, Suite 500, Washington, D.C. 20005

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Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc.,
26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@
meyerowitzcommunications.com, 631.291.5541.

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Leanne Battle, Publisher, Full Court Press at leanne.battle@vlex.com or at
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U.S. Trade Representative Finalizes Action on New and Increased Section 301 Tariffs

Ronald A. Oleynik, Andrew K. McAllister, and Sophie Jin*

In this article, the authors discuss final modifications announced by the Office of the United States Trade Representative concerning the statutory review of the tariff actions in the Section 301 investigation of the People's Republic of China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation on September 13, 2024.

The Office of the United States Trade Representative (USTR) announced final modifications concerning the statutory review of the tariff actions in the Section 301 investigation of the People's Republic of China's (PRC) Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation on September 13, 2024.¹

New and Increased Section 301 Tariffs

In response to the proposed modifications announced in May 2024,² USTR received and considered more than 1,100 public comments. The May 2024 proposed modifications were largely adopted (with the exception of face masks, medical gloves, ship-to-shore cranes, and syringes and needles where there were different rates, implementation dates, and/or availability of exclusions):

- *Battery Parts (Non-Lithium-Ion Batteries)*. Increase rate to 25 percent in 2024.
- *Electric Vehicles (EV)*. Increase rate to 100 percent in 2024.
- *Face Masks*. Increase rate to 25 percent in 2024 or 2025 and 50 percent in 2026.
- *Lithium-Ion EV Batteries*. Increase rate to 25 percent in 2024.
- *Lithium-Ion Non-EV Batteries*. Increase rate to 25 percent in 2026.

- *Medical Gloves*. Increase rate to 50 percent in 2025 and 100 percent in 2026.
- *Natural Graphite*. Increase rate to 25 percent in 2026.
- *Other Critical Minerals*. Increase rate to 25 percent in 2024.
- *Permanent Magnets*. Increase rate to 25 percent in 2026.
- *Semiconductors*. Increase rate to 50 percent in 2025.
- *Ship-to-Shore Cranes*. Increase rate to 25 percent in 2024 (with certain exclusions).
- *Solar Cells (Whether or Not Assembled into Modules)*. Increase rate to 50 percent in 2024.
- *Steel and Aluminum Products*. Increase rate to 25 percent in 2024.
- *Syringes and Needles*. Increase rate to 100 percent in 2024 (with certain exclusions).

Tariff increases in 2024 are applicable to products imported on or after September 27, 2024. Tariff increases in 2025 are applicable to products imported on or after January 1, 2025. Tariff increases in 2026 are applicable to products imported on or after January 1, 2026.

Importers should refer to the exact language in Harmonized Tariff Schedule of the United States (HTSUS) modifications contained in Annex C to the Federal Register notice for the purposes of assessing Section 301 duties and exclusions.³ (The descriptions in Annex A are informal, summary descriptions.)

Temporary Exclusions for Solar Manufacturing Equipment

USTR also adopted 14 exclusions to temporarily exclude wafer and cell manufacturing equipment from the Section 301 tariffs but determined not to adopt the five proposed exclusions covering solar module manufacturing equipment. The exclusions are retroactive and applicable to products imported on or after January 1, 2024, and through May 31, 2025.

Machinery Exclusion Process

With respect to machinery exclusion, USTR determined to add five subheadings in addition to the proposed 312 subheadings (for a total of 317) to be eligible for consideration of temporary exclusions. USTR has determined not to add subheadings outside

of Chapters 84 and 85 or subheadings that include only parts, accessories, consumables or general equipment that is unable to physically change a good. USTR has published the procedures for requesting exclusions of products under these eligible subheadings in a Federal Register notice on October 17, 2024.⁴

Proposed Tariff Increases on Tungsten Products, Polysilicon and Wafers

USTR also proposed increasing tariffs to 25 percent for three subheadings—8101.94.00, 8101.99.10, and 8101.99.80—covering certain tungsten products and proposed increasing tariffs to 50 percent for two subheadings—2804.61.00 and 3818.00.00—covering wafers and polysilicon. USTR plans to set out a public comment process via a separate notice. These proposed tariff increases were confirmed in a Federal Register notice issued on December 16, 2024, and will take place on January 1, 2025.⁵

In Summary

- USTR largely adopted proposed modifications announced in May 2024 (with the exception of face masks, medical gloves, ship-to-shore cranes, and syringes and needles where there were different rates, implementation dates, and/or availability of exclusions).
- Fourteen exclusions have been granted to temporarily exclude wafer and cell manufacturing equipment from Section 301 duties, and 317 HTSUS tariff subheadings for machinery have been identified as eligible for consideration of temporary exclusions.
- Companies and consumers should expect to see increased pricing for Chinese-origin products and inputs as a result of the tariff hikes, as well as the Biden administration's plan to exclude from the de minimis exemption all shipments containing products covered by Section 301 tariffs.

Looking Forward

On a separate but related note, on September 13, 2024, the Biden administration also announced its plan to issue a notice of proposed

rulemaking that would exclude from the de minimis exemption all shipments containing products covered by Section 301, Section 201, or Section 232 trade enforcement actions.⁶ If finalized, these goods would no longer be eligible for the de minimis exemption, which currently allows merchandise valued at \$800 or less to be imported free of duties and taxes.

As a result, companies and consumers should expect to see increased pricing for Chinese-origin products and inputs and may want to consider altering their supply chain to limit exposure to such Chinese-origin products and inputs.

Notes

* The authors, attorneys with Holland & Knight LLP, may be contacted at ron.oleynik@hklaw.com, andrew.mcallister@hklaw.com, and sophie.jin@hklaw.com, respectively.

1. Notice of Modification: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation, [https://ustr.gov/sites/default/files/Section%20301%20Modifications%20Determination%20FRN%20\(Sept%2012%202024\)%20\(FINAL\).pdf](https://ustr.gov/sites/default/files/Section%20301%20Modifications%20Determination%20FRN%20(Sept%2012%202024)%20(FINAL).pdf).

2. <https://www.govinfo.gov/content/pkg/FR-2024-05-28/pdf/2024-11634.pdf>.

3. Notice of Modification: China's Acts, Policies and Practices Related to Technology, [https://ustr.gov/sites/default/files/Section%20301%20Modifications%20Determination%20FRN%20\(Sept%2012%202024\)%20\(FINAL\).pdf](https://ustr.gov/sites/default/files/Section%20301%20Modifications%20Determination%20FRN%20(Sept%2012%202024)%20(FINAL).pdf).

4. Notice of Modification: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (Oct. 17, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-10-17/pdf/2024-23880.pdf>.

5. Notice of Modification: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (Dec. 16, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-12-16/pdf/2024-29462.pdf>.

6. Biden administration, Sept. 13, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/09/13/fact-sheet-biden-harris-administration-announces-new-actions-to-protect-american-consumers-workers-and-businesses-by-cracking-down-on-de-minimis-shipments-with-unsafe-unfairly-traded-products/>.