

President Biden Will Keep Section 301 Tariffs and Increase Duty Rates Sharply on Certain Chinese-Origin Goods

by Dave Townsend, T. Augustine Lo, Lawrence Ward, and Justin T. Huff

On May 14, 2024, the Biden Administration proposed to maintain the existing tariffs on Chinese-origin goods imposed by the Trump Administration under Section 301 of the Trade Act of 1974 (“Section 301”). At the same time, the Biden Administration proposes to significantly increase the Section 301 tariff rates on electric vehicles; batteries; graphite and other critical minerals; medical gloves, facemasks, and syringes; solar cell products; semiconductors; steel and aluminum products; and certain other commodities. The Biden Administration made this announcement after the Office of the U.S. Trade Representative (“USTR”) completed its full review of the Section 301 tariff action that the Trump Administration imposed to address China’s alleged unfair trade policies and practices.

After receiving USTR’s recommendations, President Biden also directed USTR to initiate an exclusion process to allow affected parties to apply for limited relief from the Section 301 tariffs with respect to imports of machinery used in domestic manufacturing activities, with a particular emphasis on tariff relief for solar manufacturing equipment. USTR’s recommendations also call for increased enforcement of the Section 301 duties by U.S. Customs and Border Protection (“CBP”); enhanced collaboration between the private sector and U.S. Government concerning intellectual property (“IP”) violations; and diversification of U.S. supply chains away from China through a combination of import tariffs and other policies. The USTR’s report and President Biden’s related memorandum directing USTR’s actions conclude a Section 301 review process that began in 2022. The Biden Administration’s proposed modifications to the Section 301 tariff action will be subject to a public comments process.

Summary of Biden Administration Decision

Since July 2018, the United States has included the vast majority of imports of Chinese-origin merchandise under the Section 301 tariff action. These tariffs are specified under a series of tariff lists that the Trump Administration instituted (Lists 1, 2, 3, and 4A), which identify the tariffed commodities by their classification codes under the Harmonized Tariff

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Schedule of the United States (“HTSUS”). Goods on Lists 1, 2, and 3 are subject to 25% tariffs, while goods on Lists 4A are subject to 7.5% tariffs. As an inducement for continued trade negotiations to address China’s policies and practices, the Trump Administration suspended the proposed Section 301 tariffs for goods specified on a final List 4B. The Section 301 tariffs apply in addition to the general import duties that normally apply to imported goods.

Because of President Biden’s directive to USTR, the tariff rates under Lists 1, 2, 3, and 4A will remain in place, except for the following increases (subject to USTR’s forthcoming Federal Register notice and consideration of public comments).

Battery parts (non-lithium-ion batteries)	Increase from 7.5% to 25% in 2024
Electric vehicles	Increase from 25% to 100% in 2024
Facemasks	Increase from zero or 7.5% to 25% in 2024
Lithium-ion electrical vehicle batteries	Increase from 7.5% to 25% in 2024
Lithium-ion non-electrical vehicle batteries	Increase from 7.5% to 25% in 2026
Medical gloves	Increase from 7.5% to 25% in 2026
Natural graphite	Increase from zero to 25% in 2026
Other critical minerals	Increase from zero to 25% in 2024
Permanent magnets	Increase from zero to 25% in 2026
Semiconductors	Increase from 25% to 50% in 2025
Ship to shore cranes	Increase from zero to 25% in 2024
Solar cells (whether or not assembled into modules)	Increase from 25% to 50% in 2024
Steel and aluminum products	Increase from zero or 7.5% to 25% in 2024
Syringes and needles	Increase from zero to 50% in 2024

In addition, USTR is requesting public comments on the manufacturing equipment that should be exempt from the Section 301 duties. USTR states that this public comments process will include proposals for tariff exclusions that specifically benefit 19 types of solar manufacturing equipment. By implication, it appears that the Biden Administration will not consider exclusions for other products that are subject to the Section 301 tariffs despite requests to do so from many U.S. importers and some Members of Congress.

When the Trump Administration imposed its Section 301 tariffs under Lists 1, 2, 3, and 4A, it also granted many importers' applications for tariff exclusions for particular goods that were subject to expiration and potential renewal. Most of those exclusions have expired since then, but the USTR is considering potentially extending 429 exclusions that have remained in effect. Aside from the USTR's anticipated decision with respect to those remaining exclusions, the Biden Administration appears to be limiting future tariff relief just to equipment for domestic manufacturing in the United States.

The forthcoming *Federal Register* notice will describe in detail the scope of the proposed modifications to the Section 301 tariff action, including the opportunity to seek tariff exclusions. That notice will include the procedures and deadline for interested parties to comment on the proposal. After reviewing the submitted comments, USTR will finalize the modifications and announce any tariff exclusions.

Background of Section 301 Tariff Action

President Biden's actions follow a statutorily mandated review of the Section 301 tariffs previously imposed under President Trump. In 2018, the Trump Administration began imposing the Section 301 tariff lists, commencing with List 1, after President Trump had directed the USTR to investigate China's trade policies and practices. USTR's investigation focused on Chinese laws and practices relating to IP and technology transfers. In particular, USTR found in its original investigation that Chinese joint ventures, state-directed investment, and transfers of U.S. IP imposed an unfair burden on U.S. commerce. The Trump Administration initially described the Section 301 tariff action as a means to induce Chinese reforms relating to IP and technology transfers and to encourage bilateral trade negotiations to resolve those tensions. However, after successive rounds of tariff lists with notice and public comments, the Section 301 tariff action also appeared to advance U.S. policies that favored diversification of supply chains away from reliance on China.

Upon taking office in 2021, the Biden Administration maintained the Section 301 tariffs with the same scope and rates imposed by the Trump Administration. While the Biden Administration allowed the vast majority of the tariff exclusions granted under the Trump Administration to expire, USTR extended 429 exclusions pending its review of the Section 301 tariff action. Section 301 required USTR to engage in this review and to consider any appropriate modifications with respect to the Section 301 tariffs. USTR published its latest Section 301 findings in a [publicly available report](#).

In its latest report, USTR found that the tariffs on Chinese-origin products have been effective in encouraging China to take steps to address some of the irritants that prompted the Section 301 tariff action, including reduced exposure of U.S. businesses to China's trade policies and practices. USTR also found that the Section 301 tariffs have helped to diversify some U.S. supply chains away from China. At the same time, USTR found that China's trade policies and practices cited in the original investigation continue, justifying the continuation of the Section 301 tariffs. Citing certain economic analyses, USTR determined that the Section 301 tariffs had only small negative effects on U.S. economic welfare while benefiting U.S. manufacturing activity in ten sectors.

Conclusion

USTR's latest Section 301 report leaves in place the U.S. tariffs that target Chinese-origin goods and that have been costly for many U.S. importers, including U.S. businesses that rely on manufacturing inputs from China. The Section 301 tariff action has spanned two presidential administrations, one Republican and one Democratic, and has become a new cornerstone of U.S.-China trade policy. Indeed, the Biden Administration has increased the tariff rates on product categories that support the Biden Administration's focus on protection and promotion of certain key American industrial sectors. Accordingly, it appears that the Section 301 tariffs will remain for the foreseeable future and could further expand, regardless of which party controls the White House after January 2025. Notably, former President Trump, who is seeking re-election this November, already has indicated a willingness to raise tariffs on most goods from China to 60% or more if he assumes office.

Businesses that rely on U.S. imports of Chinese origin goods therefore should consider the potential effects of the continuation of the Section 301 tariff action on operations and any potential applications for tariff relief. U.S. importers and downstream customers should review the forthcoming *Federal Register* notice for any potential modifications to the tariffs that already affect their businesses, and consider submitting comments on the proposed modifications. They also should consider whether they rely on imported manufacturing equipment that could benefit from the USTR's tariff exclusion process, including a review of the HTSUS classification of the imports. Relatedly, importers may wish to confirm the HTSUS classification declared to CBP. U.S. businesses also may wish to monitor any retaliatory action by the Chinese Government that could impose costs on U.S. exports to and operations in China.

Finally, we note that the proposed increases on the above-listed Section 301 tariffs are the most significant changes that President Biden has made to this tariff action since he entered the White House. However, it is certainly possible that a second Biden or Trump Administration could increase tariffs even further or implement other changes that would broadly affect U.S. trade policy towards China. In particular, some Members of Congress, including the House Select Committee on the Chinese Communist Party, have called for a reconsideration of China's permanent normal trade relations status under U.S. law and would apparently support the eventual decoupling of the U.S. and Chinese economies. Because of such potentially far-reaching effects from trade law changes on the U.S.-China trade relationship, interested parties should monitor these developments closely and make their supply chain sourcing plans accordingly. Now, more than ever before, even if U.S. companies want to remain with their established Chinese suppliers, they may nonetheless wish to adopt a "*China plus one*" model to mitigate their exposure to such supply chain risks in the coming years.