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密等及解密條件或保密期限：

附件：如文（經美1100001255_Attach1.pdf, 經美1100001255_Attach2.pdf, 經美1100001255_Attach3.pdf）



主旨：有關美國貿易代表署(USTR)就是否恢復豁免部分中國產品301條款關稅，徵求公眾意見事，敬請查照。

說明：

- 一、本組本(110)年10月4日經美字第1100001244號函諒達。
- 二、USTR於本(10)月5日宣布，就是否恢復豁免部分中國產品301關稅徵求公眾意見，要點如下：

(一)USTR戴琪大使本月4日曾表示，該署將啟動中國產品301關稅之關稅豁免程序(exclusion process)。USTR本月5日於聯邦公報公告，就過去曾延長豁免301關稅之549項產品(註，多數延長已屆期失效)是否恢復豁免，徵求公眾意見。

(二)戴琪大使表示將與中國討論中方對於美中第一階段貿易協定之履行情形，對中國非市場之政策及措施表示關切，並將與盟友合作確保公平之競爭條件。

(三)美方曾給予2,200項中國產品豁免301關稅，並延長其中549項產品豁免，惟大多數豁免已於去年12月31日屆期失效。由於該549項產品豁免曾被認定應予延長，USTR

國際貿易局 110/10/07



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將個案(case-by-case)評估恢復該等產品之豁免。

(四) USTR評估標準包括該產品是否僅能從中國取得、恢復該產品豁免(或不恢復豁免)是否將對評論人或其他美國利害關係人造成經濟損害，如對中小企業、就業、製造產出、美國關鍵供應鏈之影響。USTR亦將評估產品豁免對於301調查目標之整體影響，即促使中國停止相關政策及措施。

(五) 本案公眾評論期間為本(10)月12日至本年12月1日，共50日。USTR將審查公眾評論，諮詢中小企業署之意見，並將確保中國產品301條款關稅符合拜登政府經濟優先事項。USTR並就恢復豁免之期間，尋求公眾意見。恢復豁免產品(reinstated exclusions)將公布於聯邦公報，並溯及於本月12日生效。

三、有關該產品是否僅能從中國取得，公眾評論應就以下事項加以說明：

- (一) 該產品或類似產品是否可在美國或中國以外國家取得；
- (二) 自2018年9月以來，該產品全球供應鏈之變化，以及其他相關產業調整；
- (三) 自2018年9月以來，進口商或美國採購商就在美國或中國以外國家取得該產品所作之努力；
- (四) 美國國內生產該產品之產能。

四、檢送USTR新聞稿、本案公告及相關報導，併請查參。

正本：經濟部國際貿易局

副本：行政院經貿談判辦公室、經濟部、經濟部部長室、陳政務次長室(請經濟部代陳)、經濟部工業局(均含附件)

電子公文交換章
2021/10/07 08:56:27



October 5, 2021

CONTACT: media@ustr.eop.gov

USTR Requests Comments on Reinstatement of Targeted Potential Exclusions of Products of China Subject to Section 301 Tariffs

WASHINGTON – Following Ambassador Katherine Tai’s announcement on October 4, 2021 that the Office of the United States Trade Representative (USTR) will start a targeted tariff exclusion process, today USTR is posting a Federal Register notice inviting public comments on whether to reinstate previously extended exclusions. The exclusions process is a key part of the Biden-Harris Administration’s deliberative, long-term vision for realigning the U.S. – China trade relationship around our priorities and making trade work for American workers and businesses.

In her speech outlining the Administration’s new approach, Ambassador Tai also announced that she will discuss with China its performance under the Phase One Agreement, raise our broader concerns with Beijing’s non-market policies and practices, and work with allies and partners who share our strong interest in ensuring that the terms of competition are fair.

Of the more than 2,200 exclusions that were granted, 549 were extended. Most of these exclusions expired by December 31, 2020. As these exclusions were previously found to warrant additional time, USTR will evaluate, on a case-by-case basis, the possible reinstatement of each exclusion.

The focus of the evaluation will be whether, despite the first imposition of these additional duties in September 2018, the particular product remains available only from China. In addition, USTR will consider whether reinstating the exclusion, or not reinstating the exclusion, will impact or result in severe economic harm to the commenter or other U.S. interests, including the impact on small businesses, employment, manufacturing output, and critical supply chains in the United States, as well as the overall impact of the exclusions on the goal of obtaining the elimination of China's acts, policies and practices covered in the Section 301 investigation.

The public comment period will last for 50 days, from October 12 through December 1. USTR will then review the public comments, and consult with other agencies, including the Small Business Administration. As part of the exclusion review process, USTR will work to ensure the China 301 tariffs align with the Biden-Harris Administration's economic priorities. The reinstated exclusions will be retroactive to October 12. USTR is seeking comments on the appropriate length for the reinstated exclusions. Reinstated exclusions will be published in the Federal Register.

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Billing Code 3390-F2

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**Request for Comments on the Possible Reinstatement of Certain Exclusions in the
Section 301 Investigation of China's Acts, Policies, and Practices Related to
Technology Transfer, Intellectual Property, and Innovation**

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice and request for comments.

SUMMARY: In prior notices, the U.S. Trade Representative modified the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by excluding certain products from additional duties in multiple tranches. From the various tranches of granted exclusions, the U.S. Trade Representative subsequently extended 549 exclusions. Most of these extensions expired by December 31, 2020. The remainder expired earlier this year. USTR invites specific comments on whether to reinstate particular product exclusions.

DATES:

October 12, 2021 at 12:01 a.m. EDT: The public docket on the web portal at <https://comments.USTR.gov> will open for parties to submit comments on the possible reinstatement of particular exclusions.

December 1, 2021 at 11:59 PM EST: To be assured of consideration, submit written comments on the public docket by this date.

ADDRESSES: You must submit all comments through the online portal:

<https://comments.USTR.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice and request for comments, contact Associate General Counsel Philip Butler or Assistant General Counsel David Salkeld at (202) 395-5725.

SUPPLEMENTARY INFORMATION:

A. Background

In the course of this investigation the U.S. Trade Representative imposed additional duties on products of China in four tranches. *See* 83 FR 28719 (June 20, 2018); 83 FR 40823 (August 16, 2018); 83 FR 47974 (September 21, 2018), as modified by 83 FR 49153 (September 28, 2018); and 84 FR 43304 (August 20, 2019), as modified by 84 FR 69447 (December 18, 2019); and 85 FR 3741 (January 22, 2020). Each tranche is commonly known as a ‘List’, *e.g.*, List 1, List 2, etc. The fourth tranche is contained in Lists 4A and 4B. No tariffs on List 4B currently are in effect.

For each tranche, the U.S. Trade Representative established a process by which U.S. stakeholders could request the exclusion of particular products subject to the action. The first tranche of exclusions expired in December 2019 and the final tranche of exclusions expired in October 2020. Starting in November 2019, the U.S. Trade Representative established processes for submitting public comments on whether to extend particular exclusions. *See, e.g.*, 85 FR 6687 (February 5, 2019) and 85 FR 38482 (June 26, 2020). Pursuant to these processes, the U.S. Trade Representative determined to extend 137 exclusions covered under List 1¹, 59 exclusions on List 2², 266 exclusions on

¹ *List 1 Notices:* 84 FR 70616 (December 23, 2019); 85 FR 15849 (March 19, 2020); 85 FR 20332 (April 10, 2020); 85 FR 29503 (May 15, 2020); 85 FR 33775 (June 2, 2020); 85 FR 41267 (July 9, 2020); 85 FR 59587 (September 22, 2020); 85 FR 62782 (October 5, 2020).

² *List 2 Notices:* 85 FR 45949 (July 30, 2020); 85 FR 59595 (September 22, 2020); 85 FR 62786 (October 5, 2020).

List 3³, and 87 exclusions on List 4.⁴ With the exception of exclusions related to the COVID pandemic, all of these 549 exclusions have expired. In particular, the exclusions for most of these products expired by December 31, 2020, and the remaining exclusions expired on March 25, and April 18, 2021. *See* 85 FR 15849 and 85 FR 20332. USTR is separately addressing the possible extension of current COVID exclusions. *See* 86 FR 48280 and 86 FR 54011.

B. Possible Reinstatement of Previously Extended Product Exclusions

The U.S. Trade Representative is considering the possible reinstatement of previously extended exclusions granted under the notices referenced in notes 1-4 above. Accordingly, USTR invites public comments on whether to reinstate particular exclusions that previously were extended. Additionally, USTR invites public comments on the appropriate length of the reinstated exclusions.

USTR will evaluate the possible reinstatement of each exclusion on a case-by-case basis. The focus of the evaluation will be whether, despite the imposition of additional duties beginning in September 2018, the particular product remains available only from China. In addressing this factor, commenters should address specifically:

- Whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- Any changes in the global supply chain since September 2018 with respect to the particular product or any other relevant industry developments.

³ *List 3 Notices*: 85 FR 48600 (August 11, 2020); 85 FR 57925 (September 16, 2020); 85 FR 63332 (October 7, 2020).

⁴ *List 4a Notices*: 85 FR 54616 (September 2, 2020); 85 FR 63330 (October 7, 2020).

- The efforts, if any, the importers or U.S. purchasers have undertaken since September 2018 to source the product from the United States or third countries.
- Domestic capacity for producing the product in the United States.

In addition, USTR will consider whether or not reinstating the exclusion will impact or result in severe economic harm to the commenter or other U.S. interests, including the impact on small businesses, employment, manufacturing output, and critical supply chains in the United States, as well as the overall impact of the exclusions on the goal of obtaining the elimination of China's acts, policies, and practices covered in the Section 301 investigation.

USTR will seek advice and consult with the agencies that make up the interagency Section 301 Committee, including the Small Business Administration.

Exclusions reinstated pursuant to this review would be retroactive with respect to merchandise entered, or withdrawn from warehouse, for consumption on or after the opening of the docket on October 12, 2021, for which the entries are not liquidated at the time the claim to apply the reinstated exclusion is made to U.S. Customs and Border Protection in accordance with their procedures.

C. How to Comment on the Reinstatement of Exclusions

The 549 previously-extended product exclusions can be found in the notices cited in notes 1-4 above. For ease of reference, USTR also is publishing a list of the previously extended exclusions on its website at:

[https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china-technology-transfer/china-section-301-tariff-actions-and-exclusion-process/reinstatement-certain-exclusions-previously-extended.](https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china-technology-transfer/china-section-301-tariff-actions-and-exclusion-process/reinstatement-certain-exclusions-previously-extended)

To submit a comment either supporting or opposing the reinstatement of a particular exclusion, commenters first must register on the portal at <https://comments.USTR.gov>. As noted above, the public docket on the portal will be open for 50 days, starting October 12, 2021. After registration, the commenter may submit an exclusion reinstatement comment to the public docket.

A facsimile of the form containing the questions to be addressed on the comment docket is available on USTR's website at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china-technology-transfer/china-section-301-tariff-actions-and-exclusion-process/reinstatement-certain-exclusions-previously-extended>. Set out below is a summary of the information to be submitted.

- Contact information, including the full legal name of the organization making the comment, and whether the commenter is a third party.
- The previously extended exclusion you are commenting on.
- Whether the product or products covered by the exclusion are subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce.
- Whether you support or oppose reinstating the exclusion and an explanation of your rationale.
- Whether the commenter meets the size standard for a small business, as established by the Small Business Administration.
- The number of employees your business employs in the United States.

- Whether the products covered by the exclusion or comparable products are available from sources in the U.S. or in third countries.
- The efforts you have undertaken since September 2018 to source the product from the U.S. or third countries.
- As a domestic producer, your capacity to produce the product in the United States, your production in the United States, your efforts to produce domestically, and any constraints.
- The value and quantity of the Chinese-origin product covered by the specific exclusion request purchased over the last three years.
- Whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties.
- The value and quantity of the product covered by the exclusion purchased from domestic and third country sources over the last three years.
- If applicable, the commenter's gross revenues for the last three years.
- Whether the Chinese-origin product of concern is sold as a final product or as an input.
- Whether or not reinstating the exclusion will result in severe economic harm to the commenter or other U.S. interests.
- Whether the additional tariffs had an impact on employment at your company.
- Any additional information in support of or in opposition to reinstating the exclusion.

Commenters also may provide any other information or data that they consider relevant.

D. Submission Instructions

To be assured of consideration, you must submit your comment during the 50-day period following the opening of the public docket on the portal. Parties seeking to comment on more than one exclusion must submit a separate comment for each exclusion. USTR's portal allows for the submission of Business Confidential Information (BCI). Fields with a (BCI) notation are for BCI and the information entered will not be publicly available. By submitting a comment, the commenter certifies that the information provided is complete and correct to the best of their knowledge.

Greta Peisch
General Counsel
Office of the United States Trade Representative.

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USTR request comments on Section 301 exclusion process restart

October 5, 2021 at 5:15 PM

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The Office of the U.S. Trade Representative on Tuesday took the first step toward reinstating an exclusion process for Section 301 tariffs on Chinese goods, requesting public comments on whether to reinstate previously extended exclusions.

USTR Katherine Tai on Monday announced the administration would relaunch the exclusion process as part of its broader China trade strategy.

"The exclusions process is a key part of the Biden-Harris Administration's deliberative, long-term vision for realigning the U.S.-China trade relationship around our priorities and making trade work for American workers and businesses," USTR said in a statement announcing the request for comment.

The Trump administration instituted an exclusion process to allow companies lead time to adjust their supply chains to the tariffs it imposed, which initially covered roughly \$370 billion worth of Chinese goods. After that early exclusion process ended, then-USTR Robert Lighthizer pushed back against calls to continue granting exclusions because, he said, it would discourage companies from shifting production -- and jobs -- from China to the U.S.

Lighthizer's stance was unpopular with industry and among many lawmakers who clamored for an exclusion process under both Trump and President Biden.

According to the draft notice, more than 2,200 exclusions were granted under the Trump administration-initiated process. Most of those expired on Dec. 31, 2020, with only 549 granted extensions. USTR also published a list of the products that were granted extensions.

"As these exclusions were previously found to warrant additional time, USTR will evaluate, on a case-by-case basis, the possible reinstatement of each exclusion," the notice states.

USTR will consider tariff exclusions based on whether products are available in the U.S. or third countries; changes in the supply chain since September 2018, the last time new tariffs were imposed on China; efforts by importers since September 2018 to source products from the U.S. or third countries; and the domestic capacity for producing products.

"In addition, USTR will consider whether or not reinstating the exclusion will impact or result in severe economic harm to the commenter or other U.S. interests, including the impact on small businesses, employment, manufacturing output, and critical supply chains in the United States, as well as the overall impact of the exclusions on the goal of obtaining the elimination of China's acts, policies, and practices covered in the Section 301 investigation," the notice states.

The comment period will open on Oct. 12 and last until Dec. 1.

Tai on Monday said the impact the Section 301 tariffs have had on small and medium-sized businesses was critical to the decision to restart the exclusion process. "We place a lot of weight in what we hear from our businesses, especially our small- and medium-sized businesses that certainly have been impacted by the tariffs," she said following her speech at the Center for Strategic and International Studies. "That is certainly why we are restarting a tariff exclusion process." -- *Brett Fortnam* (bfortnam@iwppnews.com)

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