

US Announces New Tariffs on Chinese-Origin Goods, With an Exclusion Process

Skadden

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On May 14, 2024, President Joe Biden announced that he had directed the Office of the U.S. Trade Representative (USTR) to add or increase tariffs on a range of goods originating from China, including electric vehicles (EVs), EV batteries, battery parts, semiconductors, solar cells, permanent magnets, and certain steel and aluminum products. Newly targeted strategic sectors include critical minerals and medical supplies.

President Biden also announced a new product exclusion process for machinery used in U.S. manufacturing, which allows interested parties to petition for an exemption from the tariffs.

The announcement follows the conclusion of USTR's long-running review of the tariffs that were imposed on a range of Chinese-origin goods under President Donald Trump. These tariffs are imposed under Section 301 of the Trade Act of 1974 and must be reviewed every four years.

President Biden's announcement will come as a disappointment to some U.S. importers, given previous speculation that the review might yield targeted reduction of Section 301 rates or the elimination of certain tariff lines. Instead, all existing Section 301 tariffs have been either maintained at their current levels or increased, and certain products are now subject to Section 301 tariffs for the first time. No tariffs were reduced or eliminated.

The new and increased tariffs complement a range of other Biden administration policies, including policies designed to encourage domestic production of these products. Companies should carefully assess the extent to which new and increased tariffs impact their operations, and the extent to which they may be able to benefit from new exclusion opportunities. Likewise, we recommend that companies closely monitor China's reaction to the U.S. measures and assess the impact of any retaliation.

New and Increased Tariffs on Chinese-Origin Goods

USTR's review covered the entire universe of products that were subject to Section 301 duties based on USTR's 2018 determination that China was engaging in unfair or discriminatory policies and practices related to technology transfer, intellectual property and innovation. These duties, which range from 7.5% to 25% and apply to roughly \$550 billion in Chinese imports, were levied to induce China to change these practices.

USTR initiated its four-year review of the Section 301 tariffs in May 2022. As part of the review process, USTR considered approximately 1,500 comments from interested parties and chaired numerous interagency meetings to consider the effect of the tariffs on the U.S. economy, as well as the tariffs' efficacy in eliminating unfair or discriminatory Chinese trade practices.

Based on its review, USTR concluded that the tariffs have been effective in encouraging China to eliminate these unfair policies and practices, but that further action is required. This conclusion is the basis for President Biden's directive to add or increase tariffs, some of which go into effect this year. (Others will go into effect by 2025 or 2026.)

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Summary of Changes to Section 301 Tariffs on Chinese-Origin Goods

Category	Prior Section 301 Tariff	New Section 301 Tariff	Effective Year
Battery Parts (Non-Lithium-Ion Batteries)	7.5%	25%	2024
EVs	25%	100%	2024
Face Masks	0-7.5%	25%	2024
Lithium-Ion EV Batteries	7.5%	25%	2024
Lithium-Ion Non-EV Batteries	7.5%	25%	2026
Medical Gloves	7.5%	25%	2026
Natural Graphite	-	25%	2026
Other Critical Minerals	-	25%	2024
Permanent Magnets	-	25%	2026
Semiconductors	25%	50%	2025
Ship-to-Shore Cranes	-	25%	2024
Solar Cells (whether or not assembled into modules)	25%	50%	2024
Steel and Aluminum Products	0-7.5%	25%	2024
Syringes and Needles	-	50%	2024

In addition to its tariff recommendations, USTR also recommended:

- allocating additional funds to U.S. Customs and Border Protection to better enforce and combat evasion of Section 301 actions;
- greater collaboration and cooperation between private companies and government authorities to prevent Chinese state-sponsored cyber intrusions and intellectual property theft; and
- a continued assessment of how to promote U.S. supply chain diversification and resilience.

Exclusion Process for Machinery Used in Domestic Manufacturing

Critically, USTR also announced that it will launch an exclusion process for machinery used in domestic manufacturing and will prioritize, in particular, exclusions for certain solar manufacturing equipment. The exclusion process enables interested parties to petition for an exemption from the Section 301 tariff increases for specific imported products, generally for a defined period of time.

In previous exclusion processes, USTR has taken into account a range of factors, including the extent to which the imported goods are available in the United States or from countries other than China.

In its report outlining the results of its four-year review, USTR proposed 19 temporary exclusions for certain solar manufacturing equipment to support investment in U.S. solar manufacturing. The proposed exclusions are listed in [the report's Appendix L](#) and include silicon growth furnaces, certain saws, certain printing machines, certain lamination machines, and certain machines designed for lifting, handling, loading or unloading solar wafers or for use in the assembly of solar modules.

USTR has announced that it will issue a notice in the *Federal Register* with procedures for interested persons to comment on the proposed tariff modifications and information concerning the exclusion process for machinery used in domestic manufacturing.

The exclusion process will be important for a range of companies, including those seeking to invest in U.S. manufacturing operations that require Chinese-origin inputs and machinery.

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