

BPE Global Hot Topic – November 2021

China Section 301 Exclusions – Where do we stand?



If you've been on the import side of this industry for a while, then you might agree that keeping up with the section tariffs, specifically the China Section 301 tariffs, over the past few years has felt like an Olympic endeavor. We've had to sharpen our tactical skills—deeply analyzing our products and our supply chain, modeling new strategies to withstand the deep impact to our bottom lines. We've had to build our endurance—imbed processes into our daily workflow to monitor and react swiftly in the long game of exclusion tracking.

There was the scramble to decipher the exclusion process, the disappointment when exclusions weren't granted, then elation for those that were...Then the exclusions expired. As they expired, certain items were granted COVID exclusions. Now, some of those exclusions have expired and there's an updated list of COVID exclusions. The Section 301 Playbook has been re-written endlessly these past few years and we've paced ourselves, stayed flexible and have adapted. That said, to train effectively for the latest round of updates, it's worth knowing—where exactly DO we stand?

Currently subject to China Section 301 Tariffs

If imported from China, items classified under the USHTS subheadings as identified on Lists 1, 2, 3, 4a and 4b are currently subject to additional ad valorem duty rates as follows:

- Lists 1, 2 and 3: 25 percent
- List 4a: 7.5 percent

Currently excluded from the China Section 301 Tariffs

If imported from China, there are currently 99 exclusions available for COVID response medical-care products. No other exclusions are currently available for listed items subject to the China Section Tariffs.¹

- 18 of these products will expire on November 30th, 2021
- The remainder of these products are set to expire May 31, 2022.

Exclusions Expiring Soon!

The following 18 currently excluded items will no longer be excluded from the China Section Tariffs effective November 30, 2021. Effective December 1, 2021, U.S. importers of the following items will be subject to the China Section Tariffs:

1. 3401.30.5000
Hand soaps and hand sanitizers in the form of liquid or cream, put up for retail sale, other than hand sanitizers of heading 3808.
2. 3401.30.5000
Organic surface-active liquid for washing the skin, not containing any aromatic or modified aromatic surface-active agent, put up for retail sale in a bottle of plastics with pump-action top, each bottle measuring not more than 17cm in width, not more than 27 cm in height and not more than 6.5 cm in length and with a net weight of not more than 0.5 kg.
3. 3808.94.5050
Hydrogen peroxide put up in disinfectant preparations for sanitizing or disinfecting surfaces.
4. 3808.94.5090

¹ https://ustr.gov/sites/default/files/enforcement/301Investigations/COVID_Extensions_December_2020.pdf

- Other disinfectants or similar products, put up in forms or packings for retail sale, other than alcohol based hand sanitizer containing 60 percent or more by weight of ethanol, or hydrogen peroxide put up in disinfectant preparations for sanitizing, or wipes impregnated with alcohol or other disinfectants
5. 3919.90.5060
Polyethylene film, 20.32 to 198.12 cm in width and 30.5 to 2000.5 m in length, coated on one side with solvent acrylic adhesive, clear or in transparent colors, whether or not printed, in rolls.
 6. 3926.20.9010
Aprons, of plastics, of a kind used as personal protection equipment.
 7. 4015.19.0510
Natural rubber medical gloves (not surgical).
 8. 4015.19.0550
Rubber medical gloves (not of natural rubber, nor surgical).
 9. 4015.19.1010
Seamless rubber gloves of any type.
 10. 4015.19.1010
Seamless disposable gloves of acrylonitrile butadiene rubber, other than for surgical or medical use.
 11. 4015.19.1010
Seamless disposable gloves of natural rubber latex, other than for surgical or medical use.
 12. 5603.12.0090
Nonwoven fabrics of man-made fibers, weighting more than 25 g/m², but not more than 70 g/m², with a smooth or embossed texture (not impregnated, coated or covered with material other than or in addition to rubber, plastics, wood pulp or glass fibers), in rolls that are pre-slitted in lengths of not less than 15 cm to not more than 107 cm, for use in the manufacture of personal care wipes.
 13. 6116.10.6500
Gloves, containing less than 50% by weight of textile fibers, coated with rubber or plastics, designed for enhanced grip.
 14. 6307.90.6090
Surgical drapes, of fabric formed on a base of paper or covered or lined with paper, other than perineal towels.
 15. 6307.90.6800
Surgical drapes, spunlaced or bonded fiber fabric disposable surgical drapes of man-made fiber.
 16. 6307.90.9891
Disposable shoe and boot covers of man-made fiber fabrics.
 17. 6307.90.9845, 6307.90.9850, 6307.90.9870, 6307.90.9875
Face masks and particulate facepiece respirators, of textile fabrics.
 18. 6307.90.9845, 6307.90.9850, 6307.90.9870
Single-use medical masks of textile material.

Call to Action

To keep your China Section 301 tariff playbook updated, be sure to:

1. Know what list your product is on.
Reference the [USTRs website](#) to review.
2. Comment on the reinstatement of previously granted exclusions.
From October 12, 2021 through December 1, 2021, the public can submit comments on the possible reinstatement of a previous exclusion on the USTR public docket, <https://comments.USTR.gov>. For ease of reference, the USTR has published a list of previously extended exclusions on its [website](#)

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.
- 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.

3. Evaluate the open litigation against USTR section 301 List 3 and 4a to assess relevance to your organization.

Importers who have paid USTR Section 301 tariffs on List 3 and 4a have an opportunity to seek refunds via litigation that is ongoing in the Court of International Trade. The pending litigation asserts that the USTR exceeded its authority under U.S. statute by expanding the scope of section 301 tariffs in an unmitigated trade war with China.

- Filings are time-sensitive. The deadline to join the suit is two years after the cause of action accrues. Contact us to know more information about how to join the suit.

As always, BPE Global is in your corner and will continue to monitor and share the developments surrounding the ever-evolving China Section 301 tariffs. BPE Global is a global trade consulting and training firm. Gabrielle Griffith is a Director of BPE Global. You can reach Gabrielle by email at ggriffith@bpeglobal.com. You can follow us on [LinkedIn](#) where we publish topical opinions on the ever-changing rules and regulations governing the landscape of global trade.