



# Reading the Trade Tea Leaves: The Elusive China Section 301 Exclusion Process

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As the Congressional and economic drumbeat grows louder, will the Biden administration finally initiate a full exclusion process for all United States stakeholders impacted by the China Section 301 tariffs imposed by the United States government? We predict that the Biden administration will take action – and here's why.

## Background

On August 27, 2021 USTR opened a docket for public comments on the possible extension of the 99 exclusions for COVID-19 response products. On October 5, 2021, USTR announced that it was starting a review to possibly reinstate 549 previously-extended exclusions. Of the 549 exclusions USTR is reviewing for possible reinstatement, 80 of the exclusions also appeared on the COVID-19 extension docket, as they were identified as products needed to combat COVID-19. The docket was only open to those entities seeking renewed exclusions on the 549 previously-extended exclusions. This resulted in an extremely limited process denying hundreds of United States businesses, manufacturers and stakeholders the ability to seek exclusions or even allow them to simply comment on exclusions that should be extended or reinstated.

## What's Changed?

Congress is now fully invested – in a bipartisan and bicameral manner – in starting a full exclusion process for impacted United States stakeholders. The Senate in 2021, led by former United States Trade Representative (USTR) Senator Rob Portman, requested a restart of the original exclusion process. Since a process has not started, on February, 7, 2022, the Senate Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies (CJS Committee), Chaired by Senator Jeanne Shaheen, sent a letter to USTR requesting a new exclusion process. This is significant because the CJS Committee controls the budget and funding for USTR. In addition, more than 140 Members, including Members from the House

Ways and Means Committee and the Appropriations Committee, issued a bipartisan letter in January asking for a new exclusion process.

Besides the increased Congressional interest, the growing pressures from United States businesses and other stakeholders are pushing the Biden administration into a corner. The latest economic news indicates that the United States' self-imposed tariffs could actually be harming the American economy and American consumers.

### **Why is the Change Important?**

The renewed and growing interest within Congress will likely lead to a new exclusion process starting soon. With more than 40 United States Senators and more than 140 United States Representatives in support of a new exclusion process, on a bipartisan basis covering the country from coast to coast, USTR and the Biden administration have a choice to make – start a new exclusion process or one will be started for you.

Congressional interest increased because USTR took such a limited approach in its October 5, 2021, process. The October exclusion process was only available to those stakeholders who had an exclusion that was previously granted and extended. There are many in Congress that want USTR to begin a new exclusion process and, possibly, a new Section 301 Investigation to allow all impacted stakeholders an opportunity to participate in the process.

With the Biden administration struggling to deliver on the previous administration's China agreement and the inability to force China to meet its obligations under that agreement, the timing for action on China is now. The Biden administration is left with minimal options to address the self-inflicted impact of United States tariffs. These tariffs are hampering American businesses and consumers and the Biden administration would be wise to claim victory for American industries by restarting a new exclusion process and simultaneously starting a new Section 301 investigation.

As history has shown, if the Biden administration is unwilling to launch a new exclusion process, Congress will likely require one. This happened during the previous administration with the inclusion of legislative or report language in one of the Congressional appropriations (*i.e.*, funding) bills, specifically, the funding bill for USTR. With more than 40% of the Senate and more than 30% of the House supporting change, the choice belongs to the Biden administration, at least for now, to either choose a process that allows for full stakeholder participation or soon be told what to do by Congress.