

Billing Code 3390-F3

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Number USTR-2022-0014

Request for Comments in Four-Year Review of Actions Taken in the Section 301

Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

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

ACTION: Request for comments.

SUMMARY: USTR is conducting a four-year review of the July 6, 2018 action, as modified, and the August 23, 2018 action, as modified, in the Section 301 investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation. As part of the review, USTR is seeking public comments on the effectiveness of the actions in achieving the objectives of the investigation, other actions that could be taken, and the effects of such actions on the United States economy, including consumers.

DATES:

November 15, 2022 at 12:01 a.m. EST: The public docket on the web portal at <https://comments.USTR.gov> will open for interested persons to submit comments.

January 17, 2023 at 11:59 p.m. 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 questions about this notice, contact Associate General Counsels Philip Butler or Megan Grimball at (202) 395-5725.

SUPPLEMENTARY INFORMATION:

A. Background

On August 24, 2017, the U.S. Trade Representative initiated an investigation into certain acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation under Section 301 of the Trade Act of 1974, as amended (Trade Act). *See* 82 FR 40213. In a notice published on April 6, 2018, the U.S. Trade Representative determined that acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory, and burden or restrict U.S. commerce, and are thus actionable under section 301(b) of the Trade Act. *See* 83 FR 14906 (the April 6 notice).

In particular:

1. China uses foreign ownership restrictions, such as joint venture requirements and foreign equity limitations, and various administrative review and licensing processes, to require or pressure technology transfer from U.S. companies.
2. China's regime of technology regulations forces U.S. companies seeking to license technologies to Chinese entities to do so on non-market-based terms that favor Chinese recipients.
3. China directs and unfairly facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and generate the transfer of technology to Chinese companies.

4. China conducts and supports unauthorized intrusions into, and theft from, the computer networks of U.S. companies to access their sensitive commercial information and trade secrets.

Following a notice and comment process on the proposed action to be taken in the investigation, the U.S. Trade Representative took two actions under Section 301 of the Trade Act: the July 6, 2018 action, covering an approximate annual trade value of \$34 billion (List 1) and the August 23, 2018 action, covering an approximate annual trade value of \$16 billion (List 2). *See* 83 FR 28710 (July 6, 2018 action) and 83 FR 40823 (August 23, 2018 action). These actions were subsequently modified by imposing additional duties on supplemental lists of products, known as Lists 3 and 4, as well as by the temporary removal of duties on certain products through product exclusions.

On May 5, 2022, USTR announced that under Section 307(c)(2) of the Trade Act (19 U.S.C. 2417(c)(2)), the July 6, 2018 action, as modified, and the August 23, 2018 action, as modified, were subject to possible termination on their respective four-year anniversary dates (*i.e.*, July 6, 2022 and August 23, 2022, respectively) and of the opportunity for representatives of domestic industries which benefit from the trade actions to request continuation of the actions during the last sixty days of such four-year periods. *See* 87 FR 26797 (May 5 notice).

On September 8, 2022, USTR announced that the July 6, 2018 action, as modified, and the August 23, 2018 action, as modified, would remain in effect because at least one representative of a domestic industry which benefits from each action, as modified, submitted to the U.S. Trade Representative a request for continuation of the action, as modified. *See* 87 FR 55073 (September 8, 2022). The notice also announced

that, in accordance with Section 307(c)(3) of the Trade Act (19 U.S.C. 2417(c)(3)), the U.S. Trade Representative would conduct a review of the July 6, 2018 and August 23, 2018 actions, as modified, and that USTR would publish a separate notice or separate notices describing the review process. *See* 87 FR 55073.

B. Four-Year Review of the Actions Taken Under Section 301, As Modified

Following receipt of an appropriate request to continue an action taken under Section 301, Section 307(c) requires the U.S. Trade Representative to conduct a review of: (A) the effectiveness in achieving the objectives of section 301 of (i) such action, and (ii) other actions that could be taken (including actions against other products or services), and (B) the effects of such actions on the United States economy, including consumers. *See* 19 U.S.C. 2417(c)(3)(A) and (B).

To aid in this review, USTR is opening a docket on November 15, 2022 for interested persons to submit comments with respect to any aspect of the above considerations, including comments on:

- The effectiveness of the actions in obtaining the elimination of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
- The effectiveness of the actions in counteracting China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
- Other actions or modifications that would be more effective in obtaining the elimination of or in counteracting China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
- The effects of the actions on the U.S. economy, including U.S. consumers.

- The effects of the actions on domestic manufacturing, including in terms of capital investments, domestic capacity and production levels, industry concentrations, and profits.
- The effects of the actions on U.S. technology, including in terms of U.S. technological leadership and U.S. technological development.
- The effects of the actions on U.S. workers, including with respect to employment and wages.
- The effects of the actions on U.S. small businesses.
- The effects of the actions on U.S. supply chain resilience.
- The effects of the actions on the goals of U.S. critical supply chains outlined in Executive Order 14017 and in subsequent reports and findings.
- Whether the actions have resulted in higher additional duties on inputs used for additional manufacturing in the United States than the additional duties on particular downstream product(s) or finished good(s) incorporating those inputs.

In order to facilitate preparation of comments prior to the November 15 opening of the web portal, USTR intends to post a copy of questions for the docket by November 1, 2022. The questions will be posted at <https://comments.USTR.gov>.

In the course of the review, USTR will evaluate whether to provide additional opportunities for public comment through additional written comments or through public hearings. Any further opportunities for public comment will be addressed in subsequent notices.

C. Submissions Instructions

To be assured of consideration in this stage of the four-year review, interested parties should submit comments following the November 15, 2022 opening of the public docket on the portal, and by no later than January 17, 2023. This includes interested parties that previously provided responses in the prior stage of the review regarding continuation.

By submitting a comment, the commenter certifies that the information provided is complete and correct to the best of their knowledge.

USTR's portal will allow for the submission of Business Confidential Information (BCI). Information regarding the procedures for submitting BCI will be specified on the portal.

USTR will post submissions in the docket for public inspection, except business confidential information. You can view submissions on USTR's web portal at <https://comments.USTR.gov> through docket number USTR-2022-0014.

Greta Peisch
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Office of the United States Trade Representative.