



July 2021

# U.S.-CHINA TRADE

## USTR Should Fully Document Internal Procedures for Making Tariff Exclusion and Extension Decisions



A Century of Non-Partisan Fact-Based Work

# GAO@100 Highlights

Highlights of [GAO-21-506](#), a report to congressional requesters

## Why GAO Did This Study

In July 2018, USTR placed tariffs on certain products from China in response to an investigation that found certain trade acts, policies, and practices of China were unreasonable or discriminatory, and burden or restrict U.S. commerce. As of December 2020, the U.S. imposed tariffs on roughly \$460 billion worth of Chinese imports under Section 301 of the Trade Act of 1974, as amended. Because these tariffs could harm U.S. workers and manufacturers that rely on these imports, USTR developed a process to exclude some products from these additional tariffs. U.S. businesses and members of Congress have raised questions about the transparency and fairness of USTR's administration of this process.

GAO was asked to review USTR's tariff exclusion program. This report (1) examines the processes USTR used to review Section 301 tariff exclusion requests and extensions and (2) describes how USTR evaluated those tariff exclusion requests and extensions, and the outcomes of its decisions.

GAO analyzed USTR's public and internal documents relating to the exclusion and extension processes, including 16 randomly selected nongeneralizable case files, and data from USTR and the U.S. Census Bureau. GAO also interviewed agency officials.

## What GAO Recommends

GAO recommends that USTR fully document the internal procedures it used to make Section 301 tariff exclusion and extension decisions. USTR concurred with these recommendations.

View [GAO-21-506](#). For more information, contact Kimberly Gianopoulos at (202) 512-8612 or [gianopoulosk@gao.gov](mailto:gianopoulosk@gao.gov).

July 2021

## U.S.-CHINA TRADE

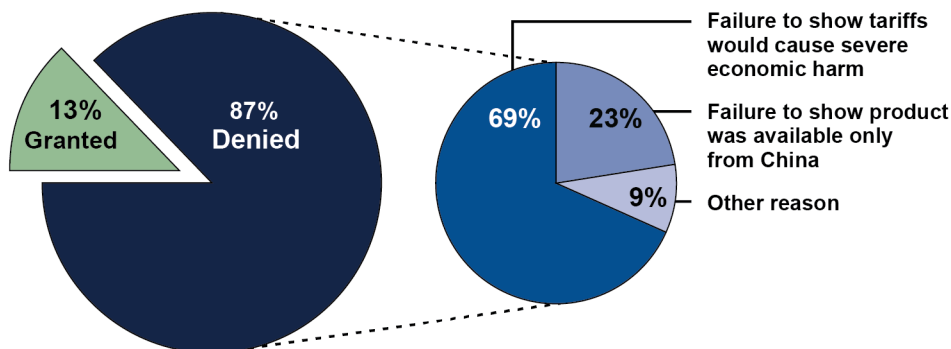
### USTR Should Fully Document Internal Procedures for Making Tariff Exclusion and Extension Decisions

## What GAO Found

The Office of the U.S. Trade Representative (USTR) developed a process in July 2018 to review tariff exclusion requests for some imported products from China and later developed a process to extend these exclusions. From 2018 to 2020, U.S. stakeholders submitted about 53,000 exclusion requests to USTR for specific products covered by the tariffs. USTR's process consisted of a public comment period to submit requests, an internal review, an interagency assessment, and the decision publication. USTR documented some procedures for reviewing exclusion requests. However, it did not fully document all of its internal procedures, including roles and responsibilities for each step in its review process. GAO reviewed selected exclusion case files and found inconsistencies in the agency's reviews. For example, USTR did not document how reviewers should consider multiple requests from the same company, and GAO's case file review found USTR performed these steps inconsistently. Another case file lacked documentation to explain USTR's final decision because the agency's procedures did not specify whether such documentation was required. Federal internal control standards state that agencies should document their procedures to ensure they conduct them consistently and effectively, and to retain knowledge. Without fully documented internal procedures, USTR lacks reasonable assurance it conducted its reviews consistently. Moreover, documenting them will help USTR to administer any future exclusions and extensions.

USTR evaluated each exclusion request on a case-by-case basis using several factors, including product availability outside of China and the potential economic harm of the tariffs. According to USTR officials, no one factor was essential to grant or deny a request. For example, USTR might grant a request that demonstrated the tariffs would cause severe economic harm even when the requested product was available outside of China. USTR denied about 46,000 requests (87 percent), primarily for the failure to show that the tariffs would cause severe economic harm to the requesters or other U.S. interests (see figure). Further, USTR did not extend 75 percent of the tariff exclusions it had granted.

#### USTR's Primary Reasons for Denying Exclusion Requests for Section 301 Tariffs on Products from China, 2018-2020



Source: GAO analysis of the Office of the U.S. Trade Representative (USTR) data. | GAO-21-506

Note: Totals may not sum due to rounding.

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## Abbreviations

CBP	U.S. Customs and Border Protection
Census	U.S. Census Bureau
HTSUS	Harmonized Tariff Schedule of the United States
TCE	Tariff Classification Expert
USITC	U.S. International Trade Commission
USTR	Office of the U.S. Trade Representative

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July 28, 2021

The Honorable Ron Wyden  
Chairman  
Committee on Finance  
United States Senate

The Honorable Thomas R. Carper  
Chairman  
Subcommittee on International Trade, Customs, and Global  
Competitiveness  
Committee on Finance  
United States Senate

The Honorable Tim Kaine  
United States Senate

The U.S. imported about \$500 billion worth of goods from China in 2017, amounting to about 20 percent of all U.S. imports. To help obtain the elimination of certain Chinese trade practices, the Office of the U.S. Trade Representative (USTR), at the direction of the President, placed additional tariffs on certain products from China starting in July 2018.<sup>1</sup>

According to USTR, to mitigate the potential harm of these tariffs on U.S. companies and workers, the agency created, for the first and only time, a process for firms and other stakeholders to apply for specific products to be excluded from these tariffs. U.S. companies and members of Congress, however, have raised questions about the transparency and fairness of USTR's administration of this process. We estimate that by the end of 2020, the U.S. government had collected almost \$71 billion in such tariffs, while importers were able to forgo paying about \$14 billion because of tariff exclusions.

You asked us to review how USTR decided to exclude products from China from tariffs under Section 301 of the Trade Act of 1974, as

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<sup>1</sup>83 Fed. Reg. 28,710 (Jun. 20, 2018). The products from China that are subject to the Section 301 tariffs are classified within certain 8-digit Harmonized Tariff Schedule of the United States (HTSUS) subheadings that were announced in the following USTR tariff action notices: 83 Fed. Reg. 28,710; 83 Fed. Reg. 40,823 (Aug. 16, 2018); 83 Fed. Reg. 47,974 (Sept. 21, 2018); 83 Fed. Reg. 49,153 (Sept. 28, 2018); and 84 Fed. Reg. 43,304 (Aug. 20, 2019).

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amended (Section 301).<sup>2</sup> In this report, we (1) examine what processes USTR used to review exclusion requests and extensions and (2) describe how USTR evaluated tariff exclusion requests and extensions, and the outcomes of its decisions.

To examine USTR's processes to review exclusion requests and extensions, we reviewed the agency's internal training materials, as well as external guidance, such as *Federal Register* notices and USTR's "Frequently Asked Questions" documents published on its website. We interviewed officials at USTR, U.S. Customs and Border Protection (CBP), and the U.S. International Trade Commission (USITC) about their roles in this process. We analyzed a non-generalizable selection of 16 case files as illustrative examples to determine how USTR documents and follows its processes. We randomly selected the cases from 31,664 exclusion requests and extension public comments submitted between June 2019 and August 2020 based on the various reasons USTR cited in deciding exclusion requests and extensions. For more details on our case file selection, see appendix I. Results from nongeneralizable samples cannot be used to make inferences about a population, but can be used as illustrative examples. We assessed USTR's implementation of the exclusion and extension processes against federal internal control standards related to documenting organizational responsibilities in policies.<sup>3</sup>

To describe how USTR evaluated exclusion requests and extensions, and the outcomes of these decisions, we reviewed internal and external documentation about the factors USTR considered for these decisions. We reviewed case file examples to understand how USTR applied these factors. We also calculated relevant summary statistics on exclusion decisions using application and decision data from Regulations.gov and USTR's exclusion portal. We also examined trade statistics from the U.S. Census Bureau (Census) and collected data on the requests and decisions for exclusions to examine how different product category characteristics, such as in end-use types, are associated with exclusion approval rates. We found the data to be reliable for our purposes by conducting several validity and sensibility checks before conducting our

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<sup>2</sup>Pub. L. No. 93-618, tit. III, § 301, 88 Stat. 1978, 2041 (1975) (codified as amended at 19 U.S.C. § 2411).

<sup>3</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

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analysis. For more details on our objectives, scope, and methodology, see appendix I.

We conducted this performance audit from February 2020 to July 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

In August 2017, USTR initiated an investigation into certain trade practices of China under Section 301 of the Trade Act of 1974, as amended. The Act grants USTR a range of responsibilities and authorities to investigate and take action to enforce U.S. rights under trade agreements and respond to certain foreign trade practices.<sup>4</sup> In March 2018, USTR found that certain acts, policies, and practices of the Chinese government related to intellectual property, innovation, and technology were unreasonable or discriminatory, and burden or restrict U.S. commerce.<sup>5</sup> For example, USTR found that the Chinese government deprived U.S. companies of the ability to set market-based terms in licensing and other technology-related negotiations with Chinese companies. According to USTR, this action undermined U.S. companies' control over their technology in China.

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## Four Lists of Section 301 Tariffs on Products from China

To help obtain the elimination of China's trade practices identified in the investigation, in July 2018, USTR began imposing additional tariffs on products from China under Section 301. The additional ad valorem tariffs were applied into four lists. Each list included different product categories subject to the tariffs.<sup>6</sup> See the sidebar for a description of product categories based on the Harmonized Tariff Schedule of the United States (HTSUS).

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<sup>4</sup>19 U.S.C. §§ 2411 – 2420.

<sup>5</sup>Office of the United States Trade Representative, *Findings of the Investigation Into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974* (March 22, 2018).

<sup>6</sup>For the purpose of this report, we refer to HTSUS subheadings as "product categories."

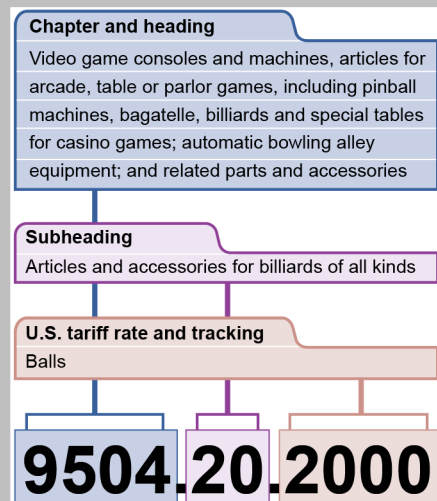
### Product Categories Based on the Harmonized Tariff Schedule of the United States (HTSUS)

The HTSUS is a hierarchical system that describes all imported products for duty, quota, and statistical purposes. The schedule classifies goods into broad categories using 4- and 6-digit codes, which it further subdivides into specific categories using 8- and 10-digit codes.

The Office of the U.S. Trade Representative generally applied the Section 301 tariffs to products from China at the 8-digit HTSUS level, which is the legal product category where classification and duty assessment occurs.

It granted tariff exclusions at the 10-digit HTSUS level or more narrowly for specific products described within a 10-digit HTSUS product category, which is where the goods are described for statistical purposes.

Example of an HTSUS Code from Chapter 95 on Toys, Games, and Sports Equipment



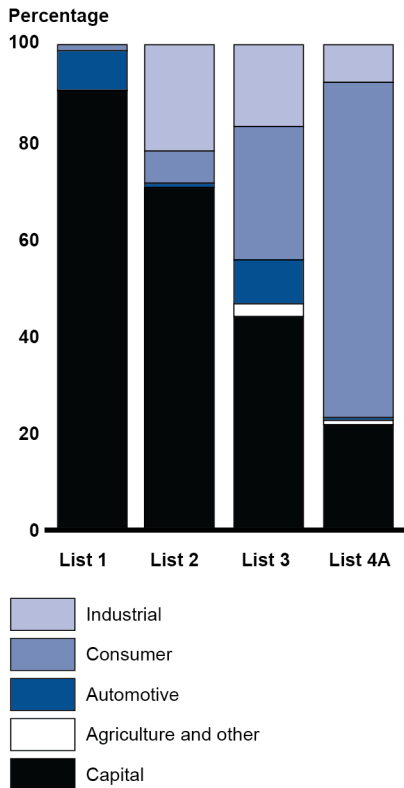
Source: International Trade Commission Harmonized Tariff Schedule of the United States (2021) Revision 1. | GAO-21-506

- **List 1:** In July 2018, USTR imposed a tariff of 25 percent on 818 product categories worth approximately \$34 billion in imports, according to USTR.
- **List 2:** In August 2018, USTR imposed a tariff of 25 percent on 279 product categories worth approximately \$16 billion in imports, according to USTR.
- **List 3:** In September 2018, USTR imposed a tariff of 10 percent. In May 2019, it increased the tariff rate to 25 percent.<sup>7</sup>
  - List 3 covered 5,733 product categories worth approximately \$200 billion in imports, according to USTR, covering over half of the total product categories subject to these tariffs.
- **List 4:** USTR split List 4 into List 4A and List 4B. In September 2019, USTR imposed a tariff of 15 percent as part of List 4A. In February 2020, as part of ongoing trade negotiations, USTR decreased the tariff rate to 7.5 percent.
  - List 4A covered 3,207 products categories worth approximately \$120 billion in imports, according to USTR.
  - List 4B covered 538 product categories worth approximately \$160 billion in imports, according to USTR. In December 2019, USTR suspended the imposition of tariffs for List 4B, as part of ongoing trade negotiations.

Census assigns products into six end-use product types (agriculture, industrial, capital, automotive, consumer, and other products not specified elsewhere) defined by the Bureau of Economic Analysis. As shown in figure 1, we found that the four lists covered imports that fell into one of five broad product types according to their end-use in the production process. In particular, the lists primarily consisted of the following imports: List 1, capital goods, such as computers and generators; List 2, industrial goods, such as various chemicals used in manufacturing, along with capital goods; List 3, consumer goods, such as sporting goods and cell phones, along with capital and industrial goods; List 4A, consumer goods.

<sup>7</sup>On May 15, 2019, USTR delayed the tariff increase for products exported to the U.S. before May 10, 2019, and entered the U.S. before June 1, 2019. See 84 Fed. Reg. 21,892 (May 15, 2019). On June 10, 2019, USTR delayed the tariff increase for goods exported to the U.S. prior to May 10, 2019, and that entered the U.S. prior to June 15, 2019. See 84 Fed. Reg. 26,930 (Jun. 10, 2019).

**Figure 1: Composition by Import Value of Five Broad End-Use Product Types Covered by Each List of Tariffs on Imports from China under Section 301 of the Trade Act of 1974**



Source: GAO analysis of *Federal Register* notices and data from the U.S. Census Bureau (Census) and the Office of the U.S. Trade Representative. | GAO-21-506

Notes: USTR imposed tariffs on products from China under Section 301 of the Trade Act of 1974, as amended, in four different lists between July 2018 and September 2019. Each list covered a different set of products. Census assigns products into six end-use product types (agriculture, industrial, capital, automotive, consumer, and other products not specified elsewhere) defined by the Bureau of Economic Analysis. The figures above reflect the percentage import value of each product type from China in 2017 according to Census import data. Less than 1 percent of products covered by each list did not fall into one of the five broad category types mentioned above.

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## Exclusions and Extensions of Section 301 Tariffs on Products from China

In July 2018, USTR established an exclusion process<sup>8</sup> for U.S. stakeholders, such as importers and industry associations, to request to exclude particular products from the additional tariffs. The exclusion process concluded in August 2020. USTR has discretion under Section 301 to take and modify a tariff action.<sup>9</sup> In announcing exclusion decisions, USTR indicated that it was taking action pursuant to specified provisions in the Trade Act of 1974, as amended.<sup>10</sup> These provisions authorize the Trade Representative to, among other things, take certain actions to eliminate the act, policy, or practice identified by USTR's investigation, and modify the action, as appropriate.<sup>11</sup> USTR developed the exclusion process due to concerns that stakeholders raised during the notice and comment process for the first tariff list. For example, stakeholders expressed concerns that specific products were only available from China and the imposition of additional tariffs on specific products would cause severe economic harm to a U.S. interest.

The length of time USTR needed to conduct its exclusion processes for each of the four lists varied from between about 10 and 19 months and overlapped. USTR took between 2 and 10 months from when it announced the exclusion process to when it granted the first exclusions for each list. As shown in figure 2, this process occurred from July 2018 to August 2020. USTR announced exclusion decisions across 37 separate *Federal Register* notices. The exclusions remained valid between 12 and 27 months, depending on the tariff list. These exclusions were product-based, and as such, could be used by any importer.

- **List 1:** USTR's exclusion process for List 1 extended over 19 months, from July 2018 through February 2020.
  - USTR began granting exclusions for the list, in December 2018, 5 months after it announced the process. These exclusions were

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<sup>8</sup>For the purpose of this report, "exclusion process" refers to the actions undertaken by USTR to review exclusion requests and determine whether to grant or deny them. For our analysis, the exclusion process began when USTR announced the process for submitting exclusion requests in July 2018 and ended when it made its last exclusion decision in August 2020.

<sup>9</sup>19 U.S.C. §§ 2411(b)-(c), 2414(a), and 2417(a).

<sup>10</sup>See e.g. 83 Fed. Reg. 67,464 (Dec. 28, 2018); 84 Fed. Reg. 37,381 (July 31, 2019); 84 Fed. Reg. 38,717 (Aug. 7, 2019); and 85 Fed. Reg. 13,971 (Mar. 10, 2020). These announcements cited to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended. See 19 U.S.C. §§ 2411(b)-(c), 2417(a).

<sup>11</sup>19 U.S.C. §§ 2411(b)-(c), 2417(a).

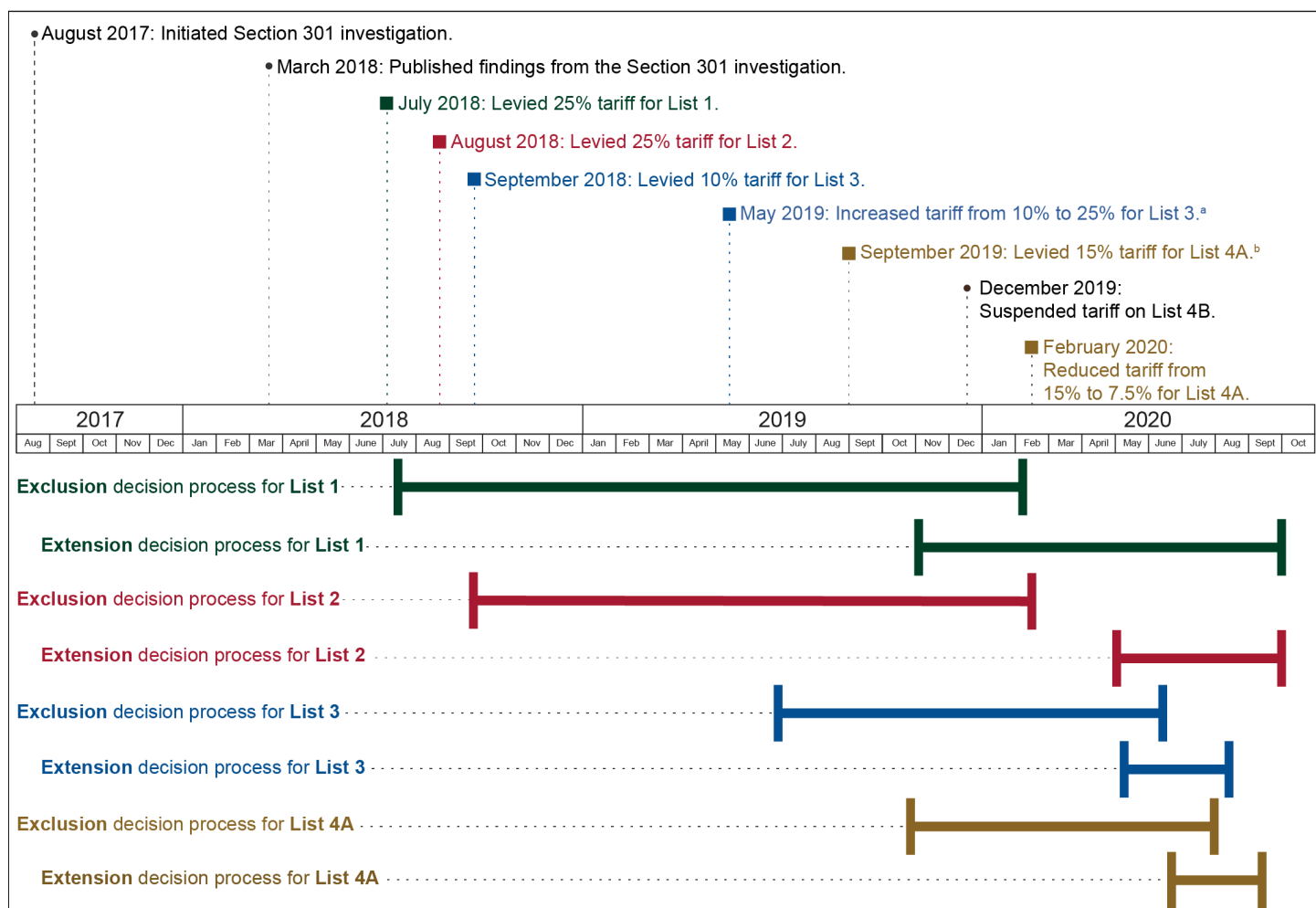
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retroactive to July 2018, allowing importers to seek refunds for tariffs paid on imports that entered the country after July 2018.

- USTR announced 10 separate exclusion decisions for List 1. These exclusions remained valid between 18 and 27 months, depending on when USTR announced the exclusions.
- **List 2:** USTR's exclusion process for List 2 extended over 17 months, from September 2018 through February 2020.
  - USTR began granting exclusions for the list, in July 2019, 10 months after it announced the process, which were retroactive to August 2018.
  - USTR announced four separate exclusion decisions for List 2. These exclusions remained valid for between about 24 and 26 months for List 2, depending on when USTR announced the exclusions.
- **List 3:** USTR's exclusion process for List 3 extended over 12 months, from June 2019 through June 2020.
  - USTR began granting exclusions for the list, in August 2019, 2 months after it announced the process, which were retroactive to September 2018.
  - USTR announced 15 separate exclusion decisions for List 3. All of these exclusions remained valid for about 22 months.
- **List 4A:** USTR's exclusion process for List 4A extended about 10 months, from October 2019 through August 2020.
  - USTR began granting exclusions for the list in March 2020, 5 months after it announced the process, which were retroactive to September 2019.
  - USTR announced eight separate exclusion decisions for List 4A. All of these exclusions remained valid for 12 months.



**Figure 2: Timeline of USTR Exclusion and Extension Decision Process for Section 301 Tariffs on Products from China**



Source: Federal Register notices and documents from the Office of the U.S. Trade Representative (USTR). | GAO-21-506

Note: USTR imposed tariffs on products from China under Section 301 of the Trade Act of 1974, as amended, between July 2018 and September 2019 into four different lists. Each list covered a different set of products. USTR also solicited public comments on excluding COVID-19 related products such as personal protective equipment and other medical care products. In December 2020, USTR excluded 19 additional COVID-19 related products and extended 80 exclusions for COVID-19 related products, through March 31, 2021. In March 2021, USTR extended these 99 exclusions for COVID-19 related products through September 30, 2021.

<sup>a</sup>On May 15, 2019, USTR delayed the tariff increase for products that were exported to the U.S. before May 10, 2019, and entered the U.S. before June 1, 2019. See 84 Fed. Reg. 21,892 (May 15, 2019). On June 10, 2019, USTR again delayed the tariff increase for goods that were exported to the U.S. prior to May 10, 2019, and entered the U.S. prior to June 15, 2019. See 84 Fed. Reg. 26,930 (Jun. 10, 2019).

<sup>b</sup>In August 2019, USTR announced a fourth round of tariffs separated into two lists, known as List 4A and List 4B, to go into effect September 1, 2019, and December 15, 2019, respectively.

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USTR accepted exclusion requests for Lists 1 and 2 through Regulations.gov, and officials said they initially used an internal SharePoint platform to organize the internal review of exclusion requests. Officials noted that using Regulations.gov posed challenges since staff had to manually post each exclusion request and enter the submitter's data into SharePoint. USTR later developed an online portal to accept and process exclusion requests electronically beginning for List 3 in June 2019, which it also used for List 4A beginning in October 2019.<sup>12</sup> The online portal contained an electronic filing system to receive exclusion requests and public comments, known as a docket, and an internal database to organize USTR's review and record decision-making activities. USTR officials said the online portal automated the posting of requests, allowed for better tracking of exclusion requests, and digitized request data.

USTR also extended the duration of some of the exclusions based on a public comment process, using the same authorities it cited for the exclusion process.<sup>13</sup> USTR began soliciting public comments for extensions through Regulations.gov for exclusions from List 1 in October 2019. USTR processed extensions for the first four sets of the List 1 exclusions on Regulations.gov before shifting all other extensions to its online portal. Most extensions expired on December 31, 2020.<sup>14</sup>

USTR received about 53,000 exclusion requests, covering 4,485 different product categories across the four lists. Each exclusion request covered one product. According to USTR, less than half of the product categories covered across the four lists received a request. For product categories with exclusion requests, USTR received an average of 12 requests per

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<sup>12</sup><https://comments.ustr.gov/s/?tabset-a7e8a=2>.

<sup>13</sup>For the purpose of this report, "extension process" refers to the actions undertaken by USTR to determine whether to extend tariff exclusions. For our analysis, the extension process began when USTR announced the process for submitting public comments about extensions in October 2019 and ended when it made its last extension decision in September 2020. USTR cited to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, in its extension decision announcements. See e.g. 84 Fed. Reg. 70,617 (Dec. 23, 2019); 85 Fed. Reg. 45,949 (Jul. 30, 2020); 85 Fed. Reg. 48,600 (Aug. 11, 2020); and 85 Fed. Reg. 54,617 (Sept. 2, 2020).

<sup>14</sup>Nineteen extensions for products in List 1 expired in March and April 2021. In March 2021, USTR extended 99 exclusions for COVID-19 related products, such as personal protective equipment and other medical care products, through September 30, 2021.

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10-digit HTSUS product category; however, the majority received less than three requests.<sup>15</sup>

The types of products requested for exclusion largely reflected the distribution of the five broad end-use product types covered in each list. For example, capital goods made up over 90 percent of imports from China covered in List 1 and over 91 percent of exclusion requests for products in that list. USTR received over half of the exclusion requests under List 3 (see fig. 3). USTR completed all of its exclusion decisions by August 2020.<sup>16</sup> USTR also received over 3,600 public comments on extending exclusions.<sup>17</sup>

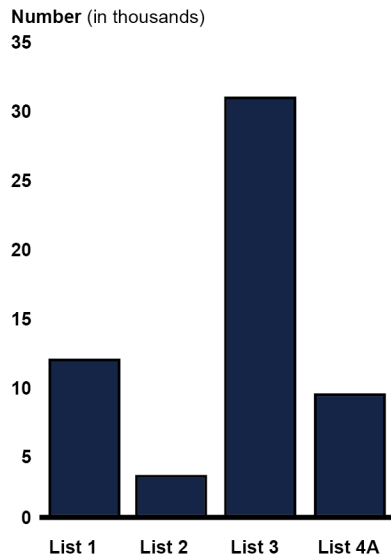
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<sup>15</sup>In contrast, 761 of those HTSUS product categories had more than 10 requests and two HTSUS product categories had more than 3,000 requests.

<sup>16</sup>In December 2020, USTR excluded an additional 19 COVID-19 related products from these tariffs. We did not include these additional exclusions because USTR's comment and decision-making process were separate from the four tariff lists.

<sup>17</sup>This calculation does not include public comments USTR solicited for List 1 through Regulations.gov about extending exclusions it had granted under the first four sets of exclusions. USTR solicited public comments about extending all other exclusions through its portal. Because USTR used a public comment process to decide whether to extend particular exclusions, and did not accept individual requests, as it did for the exclusion process, we could not extract comparable data for the extension requests as we did for the exclusion requests.

**Figure 3: Total Number of Exclusion Requests USTR Received by List for Section 301 Tariffs on Products from China**



Source: GAO analysis of the Office of the U.S. Trade Representative (USTR) data. | GAO-21-506

Note: USTR imposed tariffs on products from China under Section 301 of the Trade Act of 1974, as amended, between July 2018 and September 2019 in four different lists. Each list covered a different set of products. List 3 covered over half of all product categories covered by these tariffs.

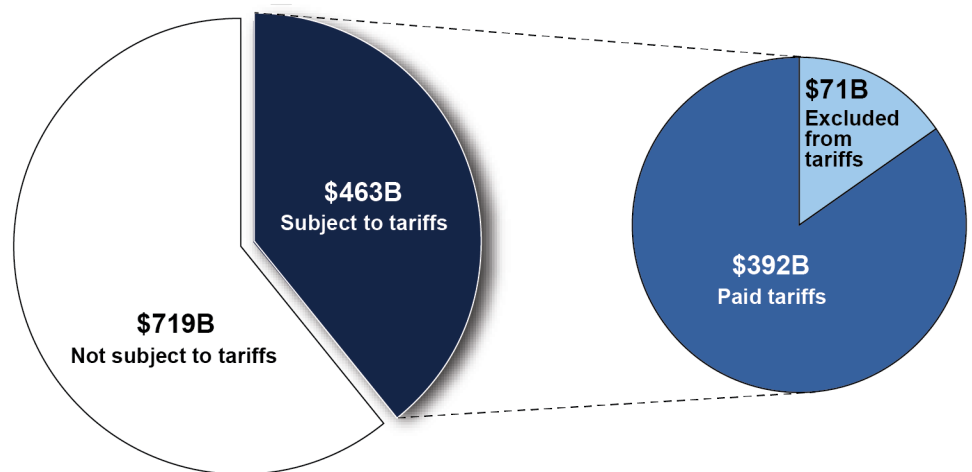
## Imports from China before and after Section 301 Tariffs

We found that \$463 billion of U.S. imports from China were subject to Section 301 tariffs from July 2018 through December 2020, while \$719 billion were not subject to these tariffs.<sup>18</sup> We estimate that USTR excluded approximately \$71 billion of U.S. imports from China from the tariffs as part of its exclusion process.<sup>19</sup> See figure 4.

<sup>18</sup>Using annual trade values prior to the trade action, USTR estimated the tariffs would cover about \$370 billion worth of goods imported from China.

<sup>19</sup>Our estimates used Census trade statistics as of March 2021 and are based on imports in those product categories covered by the Section 301 tariffs on China. We calculated the value of these products subject and not subject to additional temporary tariffs using available (Chapter 99 in the HTSUS) data fields. These data do not account for subsequent retroactive tariff refunds provided to importers in 2020, nor refunds for which importers did not file for post-summary corrections in 2018 and 2019, and, therefore, may understate the value of tariff-excluded imports.

**Figure 4: Total Estimated Values of Imports from China by Section 301 Tariff Status, July 2018 through December 2020**

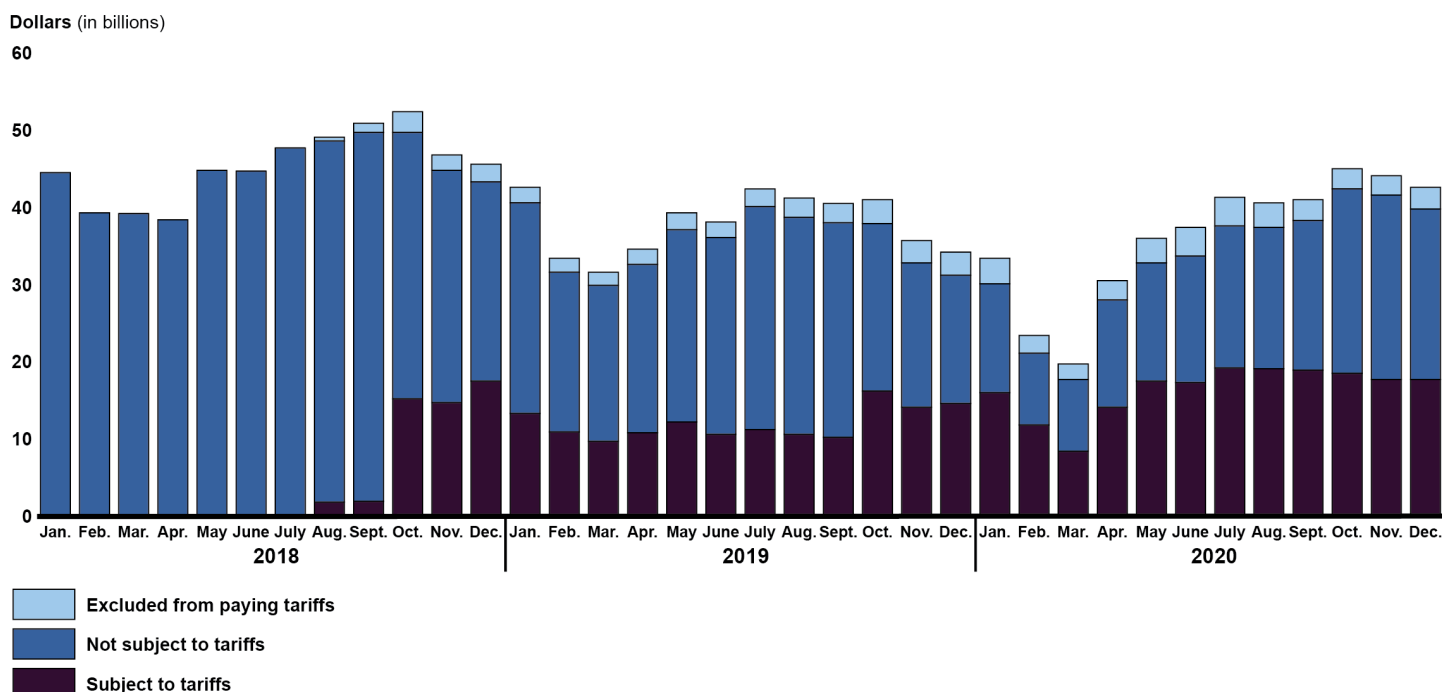


Source: GAO analysis of *Federal Register* notices and data from the U.S. Census Bureau (Census) and the Office of the U.S. Trade Representative (USTR). | GAO-21-506

Notes: Imports excluded from paying Section 301 tariffs do not include imports with retroactive tariff exemptions in 2020 or imports without filed post-summary corrections that reflect the tariff refunds. Therefore, we may understate the value of imports excluded from paying the Section 301 tariffs.

Imports from China decreased after the imposition of the Section 301 tariffs in July 2018. According to Census import data, average monthly U.S. imports from China declined from \$42 billion to \$37 billion in the first 6 months of 2018 compared with the first 6 months of 2019. The average monthly U.S. imports from China continued to decline to \$30 billion in the first 6 months of 2020. Annual U.S. imports from China declined from \$544 billion in 2018 to \$455 billion in 2019 and \$435 billion in 2020. Imports fluctuated from July 2019 to July 2020, decreasing by over 50 percent from \$42 billion in July 2019 to \$20 billion in March 2020, the start of the COVID-19 pandemic in the U.S. They more than doubled from March 2020 to \$43 billion in December 2020. See figure 5.

**Figure 5: Estimated Value of Imports from China by Section 301 Tariff Status by Month, January 2018 through December 2020**



Source: GAO analysis of *Federal Register* notices and data from the U.S. Census Bureau (Census) and the Office of the U.S. Trade Representative (USTR). | GAO-21-506

Notes: Imports excluded from paying Section 301 tariffs do not include imports with retroactive tariff exemptions in 2020 or imports without filed corrections that reflect the tariff refunds. Therefore, we may understate the value of imports excluded from paying the Section 301 tariffs. The imposition of these tariffs began in July 2018. We accounted for the starting dates when the tariffs were imposed for each of the product categories. Since imports became subject to the Section 301 tariff at different times, some imports became subject to them in earlier months and others in later months.

We found that the share of imports from China subject to the tariffs rose from about 4 percent in August 2018 to over 50 percent in February 2020, as USTR added tariff lists and imposed tariffs on products from the four lists. After February 2020, the share of imports from China subject to the tariffs fell from 50 to 42 percent in December 2020, as imports from China not subject to the tariffs increased. We also found that the share of imports from China excluded from paying tariffs increased from roughly 1 percent in August 2018 to 10 percent in January 2020. After January 2020, the share of imports from China excluded from paying tariffs fell from roughly 10 percent to 7 percent in December 2020.

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## USTR Developed a Process to Decide Tariff Exclusions and Extensions, but Did Not Fully Document Its Internal Procedures

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### USTR Developed an Exclusion Process in 2018

USTR developed a four-stage multi-level process to grant or deny exclusion requests. This process included (1) a public comment period for companies and other parties to submit requests, (2) an initial substantive USTR review, (3) an interagency administrability review, and (4) the publication of decisions. USTR officials said they used this general framework for all four lists, but their specific process evolved over time as the agency gained experience with the process and in response to increased exclusion requests from the public.<sup>20</sup>

USTR began accepting List 1 exclusion requests in July 2018 and List 2 exclusion requests in September 2018. For Lists 1 and 2, officials told us that five or six attorneys in the Office of General Counsel performed the substantive review of over 14,000 exclusion requests and made the initial recommendation to grant or deny each request, based on the factors set out in *Federal Register* notices. USTR officials said these attorneys collaborated on each request to help ensure consistency in the application of factors. USTR's exclusion review process for Lists 1 and 2 also included reviews by the General Counsel, U.S. Trade Representative, CBP, and USITC.

In 2019, USTR anticipated receiving a larger number of requests under List 3, and took steps to increase its staffing and further develop its

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<sup>20</sup>We focused our review on the process USTR used in 2019 and 2020 for List 3 exclusion requests, which officials said also applied to List 4A requests. Under the four tariff lists, in total, about three-quarters of the exclusion requests were subject to this process. Unless otherwise noted, our discussion of USTR's exclusion process reflects the process they used for List 3 and List 4A.

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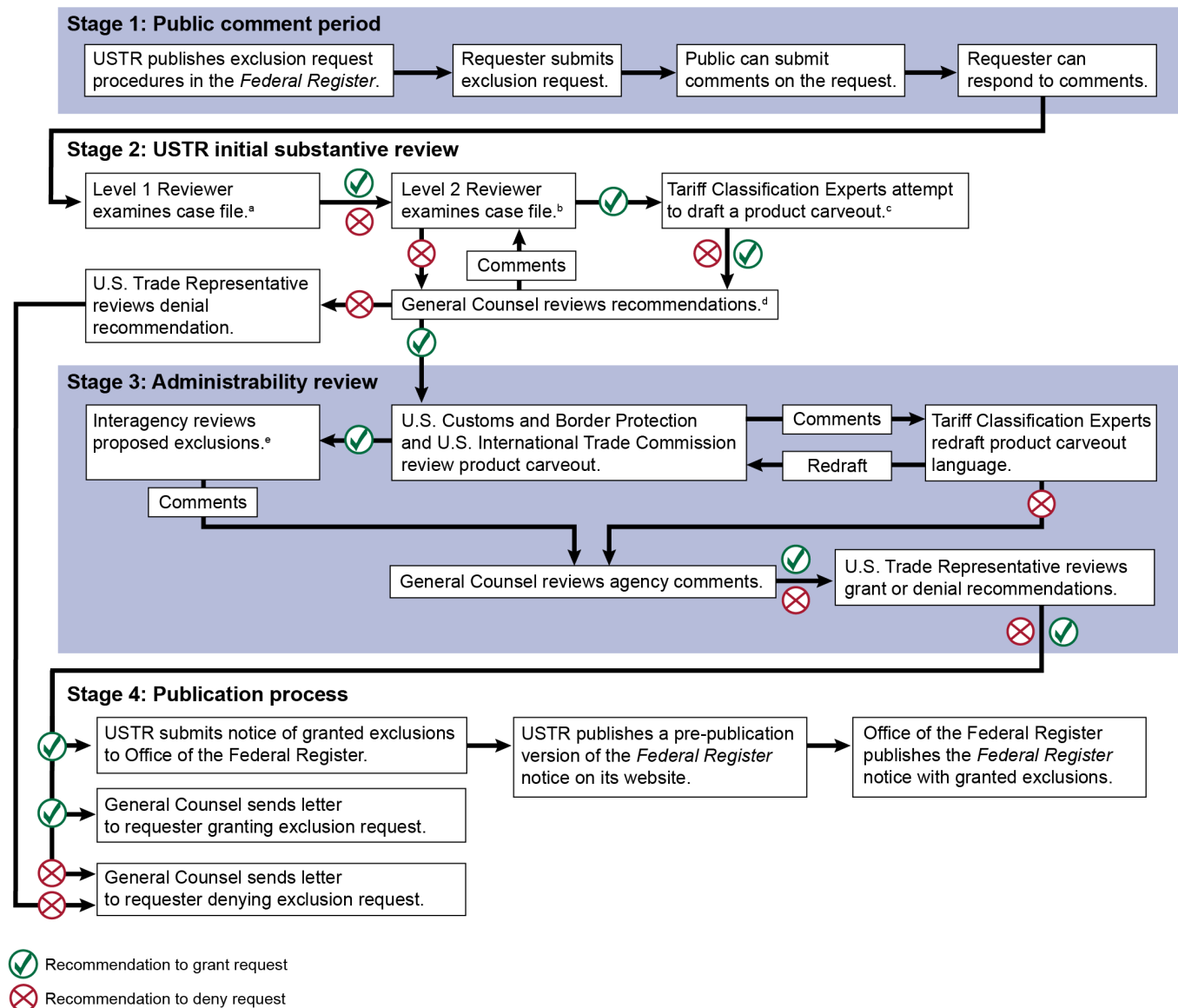
review process.<sup>21</sup> USTR hired dedicated contractors to conduct certain parts of the review process and acquired additional office space. USTR received over 30,000 exclusion requests under List 3, over twice the amount of exclusion requests for Lists 1 and 2 combined. USTR officials said they developed their new online exclusion portal to receive and process requests, conducted training for new staff, and further developed the review process to ensure quality control among a larger group of reviewers. Figure 6 illustrates the review process that USTR developed for List 3, which officials said they also used for List 4A. According to USTR officials, it took an average of 143 days to review and publish a decision for each request submitted under List 3.

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<sup>21</sup>USTR officials said they anticipated receiving more requests under List 3 because the tariffs covered an estimated \$200 billion in imports from China, while the Lists 1 and 2 tariffs covered an estimated \$50 billion combined.



**Figure 6: USTR's Exclusion Decision Process for Section 301 Tariffs on Lists 3 and 4A Products from China**



Source: GAO analysis of *Federal Register* notices and information provided by the Office of the U.S. Trade Representative (USTR). | GAO-21-506

<sup>a</sup>Contractor staff and detailees from other agencies, such as the Departments of Commerce and Treasury, conduct the Level 1 reviews. Case files consist of an individual requester's request, attachments, and public comments (including responses to these comments).

<sup>b</sup>Contractor attorneys conduct the Level 2 reviews. USTR officials said Level 2 reviewers were generally more experienced than Level 1 reviewers, and reviewed both the case file and recommendation of the Level 1 reviewer.

<sup>c</sup>Tariff Classification Experts are contractor staff with experience in tariff nomenclature and Harmonized Tariff Schedule of the United States (HTSUS) classification. A carveout is a product

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description that is defined more precisely than the HTSUS 10-digit product category. The HTSUS is a hierarchical system that describes all imported products for duty, quota, and statistical purposes. The schedule classifies goods into broad categories using 4- and 6-digit codes, which it further subdivides into specific categories using 8- and 10-digit codes.

<sup>d</sup>Prior to the General Counsel's review, a Level 2 reviewer considered staff recommendations on exclusion requests from companies that submitted multiple requests in the aggregate to ensure consistency.

<sup>e</sup>Twenty-two agencies are involved in the interagency review process and can send comments on exclusion requests during Stage 2 through the interagency review step in Stage 3.

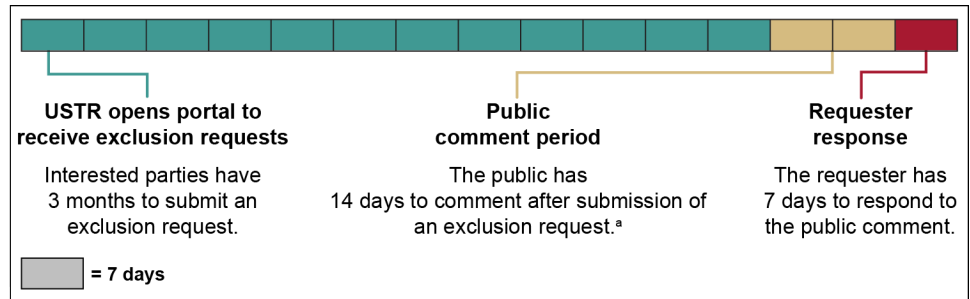
**Stage 1, Public Comment Period:** USTR published a notice in the *Federal Register* announcing the exclusion request process, which contained the factors USTR would consider in reviewing exclusion requests and the specific procedures and deadlines for companies to submit an exclusion request through an electronic filing system for each list in USTR's exclusions portal.<sup>22</sup> USTR asked companies to provide a detailed product description, the applicable 10-digit HTSUS product category, revenue and other product sales data, and a rationale for the exclusion based on the factors published in the *Federal Register* notice, among other information. In addition to guidance published in the *Federal Register*, USTR published a Frequently Asked Questions (FAQ) document on its website, and administered a "Section 301 Hotline" telephone service to answer questions from the public.

Companies and other interested parties had 3 months to submit an exclusion request once USTR opened the exclusions portal to accept requests. Once an exclusion request was submitted through the portal, other interested parties had 14 days to submit public comments to support or oppose an exclusion request. For example, a domestic producer may have opposed a request that alleged the product was available only from China. The original requester had 7 days to respond to any public comments. USTR considered the public comments and responses in its decision-making. See figure 7 for the timeframes associated with Stage 1.

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<sup>22</sup>USTR announced the exclusion process for List 3 on June 24, 2019. 84 Fed. Reg. 29,576 (Jun. 24, 2019). USTR began accepting requests through its exclusions portal <http://exclusions.USTR.gov> on June 30, 2019. We discuss these factors below in detail.

**Figure 7: Time Frames for Stage 1 of the USTR Exclusion Request Process for Section 301 Tariffs on Products from China**



Source: GAO analysis of *Federal Register* notices and information provided by the Office of the U.S. Trade Representative (USTR).  
| GAO-21-506

<sup>a</sup>Public comments can be submitted for 14 days following submission of an exclusion request, even if the 3-month period to submit exclusion requests is still ongoing.

**Stage 2, Initial Substantive Review:** According to USTR, after Stage 1, USTR staff began its internal process of reviewing requests based on the factors published in the *Federal Register* and made an initial determination on whether to grant or deny the exclusion request. This stage involved up to seven reviews by different staff—two by contractors called Level 1 and Level 2 reviewers; up to three by contractors with tariff expertise called Tariff Classification Experts (TCEs); one by the USTR General Counsel; and, if the request was recommended for denial, one by the U.S. Trade Representative, the deciding official on exclusion requests.<sup>23</sup> USTR officials used the exclusion portal’s internal database to organize this review process and record recommendations and decisions. They did not establish deadlines for this and subsequent stages, but USTR officials provided us the average number of calendar days for each step in the review process, as discussed below.

A Level 1 reviewer examined the case file in the exclusions portal against the published factors. The case file included the request, any company-provided attachments, such as product specifications, and any public comments in support of or opposition to the request, and responses to these comments. The Level 1 reviewer then made a recommendation to grant or deny the request and provided an analysis in the internal exclusions portal database.

<sup>23</sup>USTR officials said the Level 1 and Level 2 reviewers also included detailees from other agencies, such as the Departments of Commerce and Treasury.

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Next, a Level 2 reviewer further evaluated the request, based on the factors, taking into consideration the recommendation from the Level 1 reviewer. USTR officials said the Level 2 reviewer was generally more experienced than the Level 1 reviewer. The Level 1 and 2 reviewers would discuss the request and recommendation, as needed. The Level 2 reviewer then made a recommendation to grant or deny the request and provided any additional analysis in the internal portal database. USTR officials said that during the period they reviewed exclusion requests for Lists 3 and 4A, they had up to 18 Level 1 reviewers and 15 Level 2 reviewers. USTR officials said that together the Level 1 and 2 reviews were completed within about 30 days.<sup>24</sup>

USTR officials said that Level 1 and Level 2 reviewers analyzed each request individually on a case-by-case basis. However, when they received multiple requests from the same company, officials tried to assign all the requests to the same Level 1 and Level 2 reviewers. Officials explained that this step allowed the reviewers to take a more comprehensive review of the cumulative effect of the tariffs on a company. The officials added that this step was not always possible as they reviewed requests on a rolling basis and requesters did not necessarily submit all exclusion requests at the same time.

Furthermore, USTR officials took specific steps to consider multiple requests from the same company in the aggregate, such as:

- **Company profile.** USTR officials said the company profile was a tool to help the Level 2 reviewer analyze the requests more efficiently when requesters submitted the same or similar rationales for multiple requests and to quickly identify products for which arguments regarding availability and sourcing may have differed.<sup>25</sup> The Level 2 reviewer aggregated the rationales provided by the requester into a table to identify whether they contained different information across multiple products and requests. The Level 2 reviewer created a company profile during the review when a company submitted 30 or more requests.

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<sup>24</sup>According to USTR, Level 1 reviewers spent 10 to 15 minutes reviewing each exclusion request and Level 2 reviewers spent 7.5 to 15 minutes reviewing each request, on average.

<sup>25</sup>USTR officials said they developed the company profile in response to a single company that submitted over 10,000 exclusion requests. USTR officials noted that companies that submitted a large number of requests often provided the same rationale for each exclusion request.

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- **Consistency check.** USTR officials said the consistency check was a quality control step to ensure that they viewed multiple requests from one company in the aggregate and consistently applied the factors. A second Level 2 reviewer, apart from the Level 2 reviewer that reviewed the request, assessed the recommendations for a company's exclusion requests to ensure the previous reviewers followed USTR's procedures. This reviewer also ensured that differences in recommendations were not due to different Level 1 and Level 2 reviewers examining the company's requests. The Level 2 reviewer could discuss the recommendations with the original Level 1 or Level 2 reviewer, if necessary. A Level 2 reviewer performed the consistency check for companies that submitted more than one request when preparing the recommendations for the General Counsel's review.

USTR officials said the preparation of recommendations for the General Counsel took about 45 days.

For those requests recommended for approval, a TCE was next responsible for writing draft language for the potential exclusion, which USTR called a carveout.<sup>26</sup> USTR used the carveout to define the scope of the exclusion within a particular HTSUS product category. USTR officials said they assigned requests to TCEs based on their industry expertise. Up to three TCEs worked as a team to draft the carveout from the information provided in the case file. The TCEs noted potential issues with administering an exclusion for the request, such as misclassification of the product. USTR officials said they hired up to 12 contractors with experience in tariff nomenclature and HTSUS classification to serve as TCEs during Lists 3 and 4A.<sup>27</sup> Officials said that, on average, the TCEs completed the review within about 16 days.

In some cases, the TCEs were unable to draft an exclusion based on the information provided and would recommend denying the request. Such a denial could occur if the requester failed to provide a sufficient product description, including product dimensions, material composition, and other defining characteristics. In other cases, the TCEs would note that granting the exclusion would require USTR to grant an exclusion at the

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<sup>26</sup>A "carveout" is a specific product description within the 10-digit HTSUS product category.

<sup>27</sup>For Lists 1 and 2, USTR officials said USITC assisted them to draft the exclusion carveouts.

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10-digit HTSUS product category level, which would apply to all products in the category.<sup>28</sup>

Next, the General Counsel reviewed a summary of proposed approvals and denials, which included the recommendations from the Level 1 and Level 2 reviewers and the TCEs, along with their comments, and a summary of the information from the requester. This step provided the General Counsel an opportunity to ask clarifying questions about recommendations before staff finalized them in a memorandum to the U.S. Trade Representative for the Ambassador review. To the extent possible, the General Counsel reviewed all requests from a requester at the same time to ensure full consideration of a company's requests, according to USTR officials. USTR officials said this review took 5 to 10 days to complete. Those requests that the General Counsel recommended for denial were then summarized in a decision memo for the U.S. Trade Representative to review and indicate approval or disapproval of the denial recommendations.<sup>29</sup>

**Stage 3, Administrability Review:** According to USTR, if the General Counsel recommended granting an exclusion, then the request moved to the Administrability Review. USTR considered an exclusion request to be administrable if CBP could consistently and correctly classify the covered product at the time of entry. During this stage, USTR officials sent the draft exclusion language for requests recommended for approval to CBP and USITC for review.<sup>30</sup>

CBP officials said they attempted to identify draft exclusions that were incorrectly classified under the HTSUS 10-digit product category

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<sup>28</sup>USTR officials said they most commonly granted exclusions as carveouts as opposed to exclusions that applied to all products covered by a 10-digit HTSUS product category. USTR officials said that 10-digit HTSUS product categories vary in their level of granularity. For example, USITC officials noted that some 10-digit HTSUS product categories describe one product, while others may describe 20 or more products. As a result, some product categories were more easily subdivided into carveouts than others. In certain cases, USTR issued exclusions that applied to the 10-digit HTSUS product category, such as when the product category was granular or it was difficult to distinguish products within the category.

<sup>29</sup>Exclusion requests that USTR denied in Stage 2 did not go through the Stage 3 administrability review.

<sup>30</sup>If USTR grants an exclusion, CBP is responsible for implementing the tariff exclusion either by not assessing Section 301 tariffs on the excluded import or by refunding the tariffs previously assessed on an excluded import, as appropriate. USITC is responsible for incorporating the exclusions contained in the *Federal Register* notice in the HTSUS.

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provided. However, CBP officials said they did not typically review the underlying exclusion requests, and therefore did not determine whether the draft exclusions had accurately described the products from the requests, or that the requesters had provided USTR with the correct HTSUS classification for their products. CBP officials said they identified instances where the exclusion language did not fit the product category, possibly due to a requester misclassifying the product. For example, CBP officials noted manufacturers might assume that the HTSUS classifies all components of their product as part of that product, when in fact the components may be common to various manufactured goods and classified otherwise in the HTSUS.

USITC staff also reviewed USTR's proposed exclusion language. USITC staff said they provided technical comments on the product descriptions in the draft exclusions. These staff added that they deferred to CBP on determining the administrability of a proposed exclusion. USTR officials said the CBP and USITC reviews took about 7 days to complete. If CBP or USITC staff had comments or questions on drafted exclusions, the TCEs redrafted the carveout, as needed. The TCEs then returned redrafted carveouts to CBP and USITC. If the TCEs were unable to redraft the carveout, they recommended that the General Counsel deny the request.

During this stage, USTR's Office of Trade Policy and Economics also sent those exclusion requests recommended for approval to the Trade Policy Staff Committee for review and comment.<sup>31</sup> In some circumstances, USTR officials said they would proactively seek the expertise of certain agencies, such as the Department of Health and Human Services, on specific exclusion requests related to COVID-19 related products. USTR officials said this review took about 2 days.<sup>32</sup>

The U.S. Trade Representative then received a memorandum containing a list of staff recommendations to grant or deny particular exclusions for the Ambassador review. The Office of General Counsel prepared a memorandum containing a summary of details on each request, including a product description, summary of the requester's rationale, and the

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<sup>31</sup>Twenty-two agencies were involved in the review process as part of the Trade Policy Staff Committee and the Section 301 Committee. These agencies could provide input on exclusion requests beginning in Stage 2.

<sup>32</sup>USTR also obtained the views of trade advisory committees during the exclusion process. USTR noted that the trade advisory committees provided general views and did not comment on any specific product exclusion request.

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General Counsel's recommendation. USTR officials combined the recommendations for multiple exclusion requests into a single memorandum. For example, one memorandum for List 3 contained a recommendation of denials for 4,416 separate exclusion requests. As previously stated, officials said the U.S. Trade Representative was the deciding official for each exclusion request and made determinations based the General Counsel's recommendations. USTR officials said this review took 1 to 4 days.

**Stage 4, Publication Process:** Granted requests next moved to this stage, where USTR submitted the exclusion for publication in the *Federal Register*. USTR published granted exclusions in batches on a rolling basis. Once published, the exclusions became available for any product that met the description in the annex to the *Federal Register* notice, regardless of whether the importer submitted an exclusion request.<sup>33</sup> USTR defined the exclusion by the product description in the *Federal Register*, and subsequently as amended in the HTSUS, and not by the product description in the original request.

USTR notified requesters by letter whether it granted or denied the request, which it published on the exclusion portal. The letter also provided the primary reason for why USTR denied a request, but not for why it granted one. USTR officials said the publication process took 4 to 8 days.

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## USTR Developed an Extension Process in 2019

USTR developed a separate, simplified version of the exclusion process in 2019 to determine whether to extend tariff exclusions for the four tariff lists (see fig. 8). USTR considered all exclusions for possible extension. To inform its decision-making, USTR solicited public comments on whether to extend particular exclusions, rather than specific requests from individual companies as it did for exclusions. Public commenters had 30 days to submit their comments regarding extending any particular exclusion. If USTR declined to extend an exclusion, it let the exclusion expire and re-imposed the tariff on the particular product. USTR managed the first four extensions from List 1 through dockets on Regulations.gov,

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<sup>33</sup>Once granted by USTR, CBP published guidance for importers on how to claim the exclusions by entering the appropriate HTSUS Chapter 99 number into CBP's system for reporting imports and exports. Since exclusions were retroactive, CBP also provided guidance to importers on how to request reimbursement of Section 301 tariffs paid on previous imports of products for which USTR later granted exclusions.



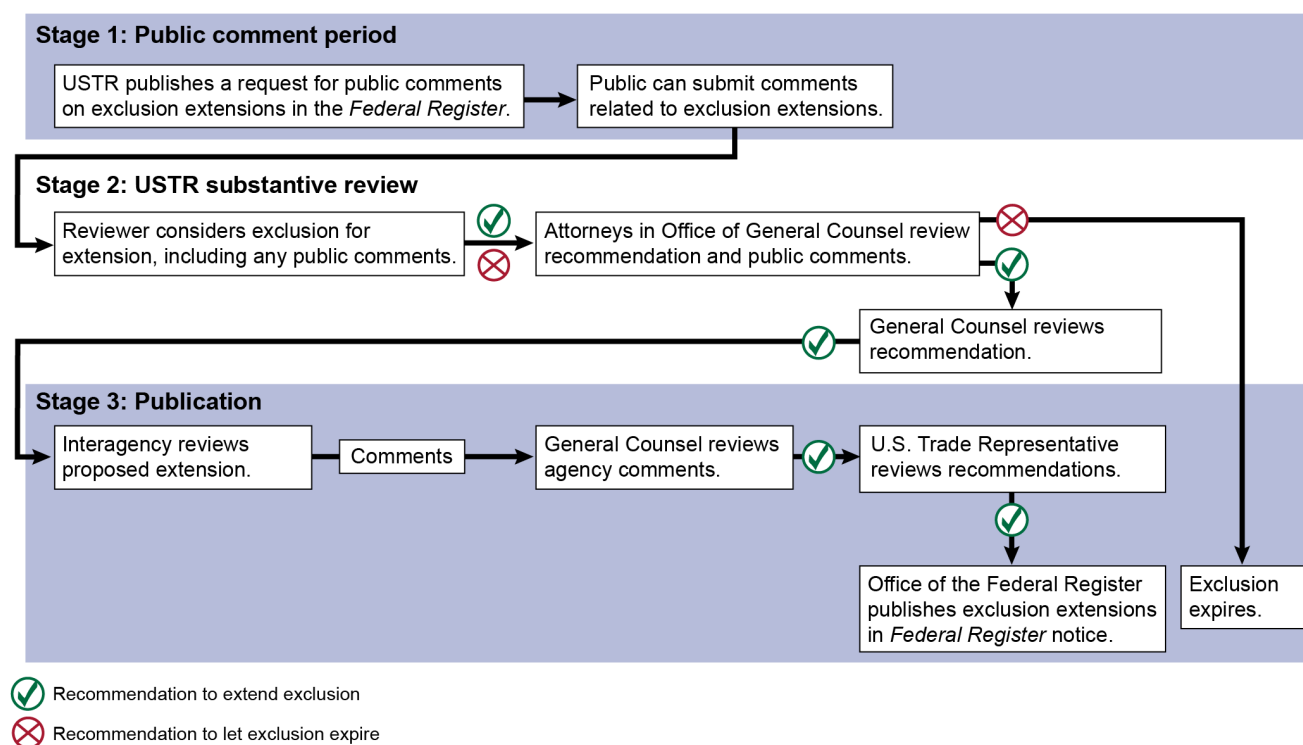
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and then transitioned to using the exclusion portal it had developed for receiving exclusion requests in April 2020.

The extension process had fewer reviews than the exclusion process. USTR officials said an initial reviewer, an experienced contractor, examined all public comments related to a single product exclusion and made a recommendation. The reviewer only referred to the original case file for the exclusion if there were no public comments related to the extension. USTR officials said that attorneys in the Office of General Counsel then reviewed the initial reviewer's recommendation, along with the public comments. USTR officials said they did not take further action on exclusions not recommended for extension, which resulted in the reapplication of the tariff on the product.

Officials said that exclusions recommended for extension were then sent to the General Counsel for review, and if approved, then to the interagency Trade Policy Staff Committee for comments. Extensions did not require TCE or administrability reviews because USTR did not adjust the product description or carveout during this process. After receiving any comments from the interagency committee, the General Counsel sent recommendations to extend exclusions to the U.S. Trade Representative for review and final decision before submitting any extended exclusions to the *Federal Register* for publication. USTR also notified commenters by email when it extended exclusions or declined to do so. Unlike with the exclusion decisions, USTR did not publish a reason for its decisions on extensions.

**Figure 8: USTR's Extension Process for Exclusions of Section 301 Tariffs on Products from China**



Source: GAO analysis of *Federal Register* notices and information provided by the Office of the U.S. Trade Representative (USTR). | GAO-21-506

## USTR Did Not Fully Document Its Internal Procedures for the Exclusion Process

While USTR documented its Stage 1 procedures for the public to submit exclusion requests in *Federal Register* notices, USTR did not fully document its procedures for internal decision-making. USTR provided a broad description of its four-stage exclusion process on its website, and documented certain internal procedures for its Stage 2 initial substantive review, but it did not fully document all internal procedures, including its procedural steps, a timeline, and roles and responsibilities for all the stages in the process.

**Initial Substantive Review:** USTR documented certain internal procedures for its Stage 2 initial substantive review. In particular, USTR documented certain internal procedures for Level 1 reviewers, Level 2 reviewers, and TCEs in training materials it developed as it began hiring dedicated contractors to handle the anticipated increase in exclusion requests for List 3. The training materials for Level 1 and Level 2 reviewers provided guidance on how to use the internal exclusions portal,

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apply USTR's factors to each exclusion request, and record their analysis and recommendation. Similarly, the training materials for TCEs provided guidance on how to draft carveout language in the internal exclusion portal. USTR officials said they also used the training materials for List 4A exclusion requests.

In reviewing a nongeneralizable sample of 16 case files from List 3, including 12 exclusion requests and four extensions, we found that USTR's practices were generally consistent with its documented procedures in the training materials.<sup>34</sup> For example:

- In each of the 12 exclusion case files, we found that USTR recorded the recommendation of the Level 1 reviewers to grant or deny the request and the rationale, as indicated by the training materials.
- In each of the exclusion case files that were recommended for approval by the Level 2 reviewer, we found that USTR recorded the TCE review and carveout drafting process.

While USTR documented some internal procedures for its Stage 2 initial substantive review in training materials, it did not document all its internal procedures for that stage. For example, while USTR officials said that Level 2 reviewers were responsible for creating the company profile, the training materials used to train Level 2 reviewers did not mention this tool. USTR officials said they started using the company profile while reviewing List 3 exclusion requests. In addition, the training materials did not describe the consistency check, such as who was responsible for doing it, when it was supposed to occur, or how they were to perform it.

In our case file review, we found inconsistencies in areas where USTR lacked documented procedures to explain these steps. For example:

- Three of the 12 exclusion case files we reviewed were from companies that submitted 30 or more exclusion requests, which USTR officials said would trigger the Level 2 reviewer to create a company profile. We could not find evidence that USTR created a company profile for one of the three cases. USTR's case file indicated that USTR reviewed this case after it initially started using the company profile as a tool to help Level 2 reviewers.

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<sup>34</sup>Information from the sample of 16 case files cannot be generalized to the total population of List 3 exclusion requests.

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- Of the 12 exclusion case files, 11 were from companies that submitted multiple exclusion requests, which USTR officials said would prompt a consistency check of the company's requests prior to the General Counsel's review. In two of the 11 cases, the consistency check occurred after the General Counsel had reviewed and recommended a decision. In another two cases, the Level 2 reviewers did not record when they performed the consistency check.<sup>35</sup>

Similarly, USTR's TCE training materials did not describe the timing, roles, or responsibilities of the multiple TCEs that reviewed carveout language. USTR officials told us that up to three TCEs reviewed each exclusion request recommended for approval by the Level 2 reviewer and attempted to draft a carveout.

- In one exclusion case file we reviewed, two TCEs reviewed the request and recorded they could not draft a carveout for the product because the requester had provided insufficient product information and likely misclassified the product. The General Counsel then recommended denial of the request. Instead of it going to the U.S. Trade Representative for a final decision, however, the request went back to the TCEs 2 months later, and a third TCE drafted a product carveout.<sup>36</sup>

Officials said that they documented certain procedures in training materials primarily for contractors that performed the Level 1, Level 2, and TCE reviews rather than for existing USTR staff. As a result, USTR did not document procedures for other steps in its decision-making process, including the General Counsel or U.S. Trade Representative's reviews in the Stage 2 initial substantive review and Stage 3

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<sup>35</sup>USTR officials said the consistency check could occur after the General Counsel recommended a decision if they received multiple requests from a company at different times, if they assigned requests to different reviewers, or if the company submitted requests under variant organization names. Officials also noted the consistency check was an evolving process, in which they initially did not instruct the reviewers to record the date they performed the check.

<sup>36</sup>USTR officials explained that the TCE process evolved over time to add a third TCE review. In this case, which USTR officials said also occurred with 72 other exclusion requests recommended for denial, the General Counsel had already made a recommendation, which it returned to the TCEs after the process changed. USTR subsequently denied the request after CBP confirmed the requester had misclassified the product.

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administrability review. Further, USTR did not document procedures for the interagency reviews in the Stage 3 administrability review.<sup>37</sup>

**General Counsel Review:** The case files we reviewed contained the summary information USTR officials said the General Counsel reviewed—the General Counsel’s recommendation as captured in the exclusions portal and a decision memo from the General Counsel to the U.S. Trade Representative. Officials said that USTR’s longstanding practice is that the General Counsel reviews every staff recommendation for a formal determination under Section 301. However, without any documented procedures to explain these steps, including roles and responsibilities, we could not assess what information the case files should contain.

- For example, USTR’s internal portal database contained a box for the General Counsel to record a narrative comment on the General Counsel’s recommendation for each exclusion request, similar to other reviewers. However, the General Counsel’s comment box was empty for each case file we reviewed, including one case file in which the General Counsel’s recommendation to grant the request changed the prior reviewer’s recommendation for denial. USTR did not have any documented procedures for the General Counsel’s review that stated whether the General Counsel was required to record anything in the portal. USTR officials told us that the General Counsel was not required to record a comment or reason for the recommendation. As a result, the prior recommendation and associated analysis in the case file differed from the agency’s final decision.

**U.S. Trade Representative Review:** As the deciding official on exclusions, the U.S. Trade Representative received a memorandum from the General Counsel to review and record approval or disapproval of proposed exclusions and denials. USTR officials told us the U.S. Trade Representative made determinations based the General Counsel’s recommendations. USTR officials said that the U.S. Trade Representative’s review never resulted in changes to the General Counsel’s recommendations to grant or deny exclusion requests. Officials said that these steps are reflected in each decision memorandum, and they have no need for written procedures detailing the process.

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<sup>37</sup>We did not assess USTR’s Stage 4 procedures because they were the administrative steps the agency took to publish its exclusion decisions, rather than the decision-making steps in Stages 2 and 3.

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**Administrability Review:** USTR did not have any written procedures detailing steps for the Stage 3 administrability review, including roles and responsibilities for CBP, USITC, or the up to 22 agencies that could provide comments on USTR's proposed exclusions as part of the interagency review process. We found the agencies' descriptions of their roles and responsibilities to be inconsistent. For example, while USTR officials broadly characterized the roles of CBP and USITC as determining the administrability of each proposed exclusion, CBP and USITC officials noted the scope of their reviews was more limited to providing technical comments on draft exclusion language.

Without fully documenting its internal procedures for this and other steps in its exclusion process, USTR lacks reasonable assurance it consistently conducted its reviews. During the course of our review, USTR took steps to outline the four stages of the exclusion process. However, USTR officials said they created the document for our purposes and did not use it internally as guidance or for any management purpose. While we used this document, training materials, and the contents of the List 3 case files as a basis to illustrate the exclusion process depicted in figure 6, agency documents were not comprehensive. Without fully documenting the details for each step in the process, including who is responsible for each one and when they should occur, USTR lacks reasonable assurance it consistently conducted its reviews.

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### USTR Did Not Document Any Internal Procedures for the Extension Review Process

USTR never documented its internal procedures for deciding any extensions. USTR officials said that it was not necessary to document any of the extension procedures because only experienced staff reviewed extensions and the process and factors were similar to exclusions.

In our review of four of the extension case files, we found that USTR recorded the initial reviewer's recommendation and rationale for the decision. USTR officials said that attorneys in the Office of General Counsel reviewed the recommendation after the initial reviewer, but USTR did not record that step in the case files we reviewed. Next, USTR officials said the General Counsel reviewed the recommendations. For the two case files we reviewed that USTR extended, the General Counsel's recommendation was recorded in a decision memo to the U.S. Trade Representative. On the other hand, in the two cases files we

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reviewed that USTR declined to extend, there was no record of the General Counsel's recommendation.<sup>38</sup>

*Standards for Internal Control in the Federal Government* states that having control activities like documented procedures helps ensure that operational processes are consistent and effective. Documentation establishes and communicates the who, what, when, where, and why of internal control execution to personnel, and helps achieve the agency's objectives. Moreover, documentation can help retain organizational knowledge and mitigate the risk of having knowledge limited to a few personnel, as well as communicate that knowledge to external parties.<sup>39</sup>

USTR said it intended to administer a fair and efficient system for considering exclusion and extension requests and to mitigate the harm that U.S. companies and workers could incur from certain tariffs. Without fully documenting its procedures as called for by federal internal control standards, USTR lacks reasonable assurance that it conducted the exclusion and extension processes consistently to effectively mitigate any potential harm from the tariffs.<sup>40</sup> Moreover, without documented procedures for the processes, USTR risks losing organizational knowledge to manage the programs. While USTR is not currently reviewing additional exclusion or extension requests, the tariffs are still in effect. Members of Congress have called on USTR to consider restarting the exclusion and extension processes, and USTR has committed to reexamine the existing tariffs and exclusion process as part of its broader review of U.S.-China trade policy.<sup>41</sup> By taking steps to fully document its internal procedures, USTR will be in a better position to consistently

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<sup>38</sup>USTR officials explained that since not extending the exclusion was not a modification of the Section 301 action, it was not necessary to record the recommendation in a decision memo for the U.S. Trade Representative to review.

<sup>39</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

<sup>40</sup>[GAO-14-704G](#).

<sup>41</sup>Specifically, in a bipartisan letters from April 2021, over 140 members of Congress called for the establishment of a new exclusion process to allow U.S. importers to request relief from the Section 301 tariffs on imports from China. Further, in Congressional hearings in May 2021, the U.S. Trade Representative said that USTR is undertaking a comprehensive review of U.S.-China trade policy for completion before December 2021. *The President's 2021 Trade Policy Agenda, Before the S. Comm. On Finance, 117th Cong. (May 2021) (statement of U.S. Trade Representative Katherine Tai). Ways and Means Committee Hearing on the Biden Administration's 2021 Trade Policy Agenda. 117th Cong. (May 2021) (statement of U.S. Trade Representative Katherine Tai).*

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administer the tariff exclusion and extension processes in the future, if necessary.

Fully documenting its internal procedures would also help policymakers and other external parties understand USTR's process for determining which exclusion requests to grant, deny, and extend.

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## USTR Used Several Factors to Evaluate Tariff Exclusions and Extensions and Denied Most Requests

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### USTR Used Five Factors to Evaluate Exclusion Requests on a Case-by-Case Basis

USTR evaluated each exclusion request on a case-by-case basis using five factors (see table 1). According to USTR officials, they examined the totality of the evidence when considering these factors and no one factor was essential to grant or deny an exclusion request. As such, an exclusion request did not have to meet all of the factors for USTR to grant an exclusion. For example, officials said they might have granted an exclusion request that demonstrated additional tariffs would cause severe economic harm to U.S. interests, even when the requested product was strategically important to certain Chinese industrial programs.



**Table 1: USTR’s Factors for Evaluating Exclusion Requests for Section 301 Tariffs on Products from China**

Factor	Description
Availability	Whether the particular product is available only from China.
Severe economic harm	Whether the imposition of additional tariffs on the particular product would cause severe economic harm to the requester or other U.S. interests.
Strategic importance to China	Whether the particular product is strategically important or related to “Made in China 2025” <sup>a</sup> or other Chinese industrial programs.
Objective of the Section 301 investigation	Whether the exclusion would undermine the objective of the Section 301 investigation to obtain the elimination of China’s acts, policies, and practices that USTR found unreasonable or discriminatory, and burden or restrict U.S. commerce. <sup>b</sup>
Administrability	Whether the request defines the product with sufficient precision for the exclusion to be administrable by U.S. Customs and Border Protection.

Source: GAO summary of the Office of the U.S. Trade Representative (USTR) documents and information. | GAO-21-506

Note: According to USTR officials, the agency examined all of the evidence when considering these factors and no one factor was essential to grant or deny an exclusion request.

<sup>a</sup>According to USTR, “Made in China 2025” is a Chinese industrial policy that is part of China’s strategy to become a global leader in advanced technology manufacturing.

<sup>b</sup>According to USTR, the Section 301 tariffs on products from China aim to address China’s unfair acts, policies, and practices related to technology transfer, intellectual property, and innovation identified in the investigation, such as China’s foreign ownership restrictions to require or pressure technology transfer from U.S. companies.

According to USTR officials, the agency primarily, but not exclusively, relied on information provided by the requester when considering the factors, largely by reviewing the requester’s responses to various questions in the request form.<sup>42</sup> USTR training materials noted that requests might differ in the level of detail and explanation provided. If a requester failed to submit required information relevant for each factor, USTR might deny the request because it did not provide a complete rationale for exclusion, according to USTR officials. In particular, USTR training materials noted it was the burden of the requester to demonstrate why the particular product was available only from China or if the additional tariffs would cause severe economic harm.

In addition, USTR officials said they considered other information such as public comments submitted in response to the request and replies to such

<sup>42</sup>Questions in the exclusion request forms vary by list. In particular, USTR included additional questions in exclusion request forms for Lists 3 and 4A. USTR officials said these additional questions supported their review of the factors and did not change or establish additional factors. For example, USTR asked requesters to provide information about whether they had attempted to source the product from the United States or third countries for List 3 and List 4A, which related to the availability factor.

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comments.<sup>43</sup> USTR also conducted its own analysis for specific factors, such as whether the product was related to “Made in China 2025” or other Chinese industrial programs. These officials said USTR also considered interagency input if provided, as well as trade statistics published by Census in its review of exclusion requests.

**Availability.** USTR examined whether the requester adequately demonstrated that the product was unavailable from sources outside of China. To do so, USTR officials said they reviewed information submitted by the requester in response to questions, such as whether the:

- Particular product was available only from China,
- Particular product or comparable product was available from sources in the U.S. or third countries, and
- Requester attempted to source the product from the U.S. or third countries.

USTR officials said they also reviewed the requesters’ data on the annual quantity and value of the same domestic and third-country products the requester purchased during the specified time frame. For exclusion requests submitted for List 4A, USTR reviewed if the product was subject to an antidumping or countervailing duty because officials said products subject to such duties indicate the product was available from the United States.<sup>44</sup> USTR training materials noted that officials would also examine the product’s availability in the context of the individual request.

If the requester demonstrated that the product was available only from China, USTR considered granting the request. USTR training materials noted cases might exist in which a company manufactured the product outside of China, but the product was unavailable to the specific requester. For example, separate companies in both Thailand and China might manufacture a specific product, but the company in Thailand might

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<sup>43</sup>As discussed earlier, public comments expressed support of or opposition to an exclusion request. We found that 5 percent of the approximately 14,100 requests submitted for Lists 1 and 2 received public comments and 15 percent of the approximately 39,000 requests submitted for Lists 3 and 4A received public comments.

<sup>44</sup>The U.S. assesses antidumping duties on products imported at unfairly low prices and countervailing duties on products subsidized by foreign governments. These duties assessed by the U.S. Department of Commerce are intended to address injury to domestic companies or markets from these practices. See GAO, *Antidumping and Countervailing Duties: Information on Actions by Commerce and CBP to Address Reported Weaknesses in Duty Collection Processes*, [GAO-20-50R](#) (Washington, D.C.: November 7, 2019).

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be the requester's competitor or be unwilling to sell the product to the requester.

If the requester did not demonstrate that the product was available only from China, USTR considered denying the request. For example, in a case file we reviewed, USTR denied the request because it failed to show the product was available only from China. One of the reviewers noted that while the request highlighted the economic infeasibility of domestic sourcing, it failed to provide a sufficient explanation about a lack of third-country sourcing.

**Severe economic harm.** USTR examined whether the requester provided sufficient information to support a claim that additional tariffs on the product would result in severe economic harm to the requester or other U.S. interests. To do so, USTR officials said they reviewed the explanation the requester provided related to this factor in the request form, as well as information submitted by the requester covering specified time frames such as:

- Data on the annual quantity and value of the Chinese-origin product, domestic product, and third-country product the requester purchased;
- The company's gross revenues;
- Whether the company met the Small Business Administration's size standard for a small business;
- For imports sold as final products, the percent of the company's gross sales that the sales of the Chinese-origin product accounted for;
- For imports used in the production of final products, the percent of the total costs of producing the final product that the Chinese-origin input accounted for and the percent of the company's gross sales that sales of the final product accounted for; and
- Information about any exclusion requests submitted under previous lists and the value of the company's imports applicable to previous tariff lists.

USTR officials said they did not specifically define what they meant by "severe economic harm." Instead, they applied their judgment by considering the size of the requesting company's operations, level of imports, and ability to absorb the tariffs. USTR training materials noted that a company might be more likely to suffer severe economic harm when importing final products (covered by the tariffs) that account for a significant percentage of its gross sales. However, the training materials

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did not specify thresholds to indicate when a percentage was significant enough to constitute severe economic harm.

USTR, according to training materials, also considered the possible cumulative effects of these tariffs for a company. As noted above, USTR officials said they reviewed multiple requests from a company to determine whether the combined effect of the tariffs on the products for which it was seeking exclusion demonstrated severe economic harm to the company. For example, USTR officials said that when they reviewed multiple exclusion requests from a company on an individual basis, each request might represent a small value of imports and not show severe economic harm. However, when reviewed together, the multiple requests might account for a significant share of the company's total imports and demonstrate that the cumulative effects of the tariffs would cause the company severe economic harm. According to USTR training materials, officials would also consider information submitted by the requester about the value of other imports covered by previous tariff lists and exclusion requests submitted under previous tariff lists.

In addition, USTR officials said they considered possible harm to other U.S. interests. For example, a requester might demonstrate that the additional tariffs on a particular product, such as a health-care product, would negatively affect public health, welfare, or safety, or result in severe economic harm to a specific U.S. industry.

USTR officials told us they considered denying an exclusion request if the totality of the evidence did not demonstrate the tariffs would result in severe economic harm to the requester. For example, in a case file we reviewed, USTR denied the request because it failed to show severe economic harm. One of the reviewers noted that the requester discussed the increased costs and potential downstream economic impact of the tariffs, but failed to present sufficient evidence supporting severe economic harm and in particular, its claim of job loss. USTR officials told us that in another case, the requester applied for an exclusion, but reported no recent imports of the product from China, and USTR denied the request for failure to show severe economic harm.

**Strategic importance to China.** USTR examined whether the requested product was strategically important or related to "Made in China 2025" or other Chinese industrial programs. According to the Section 301 investigation findings, China's strategy to become a leader in advanced technologies involves the acquisition of foreign technologies through acts, policies, and practices of the Chinese government that burden U.S.

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commerce, such as “Made in China 2025.”<sup>45</sup> According to USTR, this policy outlines various actions, including government intervention to foster technology transfer and substantial government funding to the following 10 strategic industries:

- Advanced information technology,
- Robotics and automated machine tools,
- Aircraft and aircraft components,
- Maritime vessels and marine engineering equipment,
- Advanced rail equipment,
- New energy vehicles,
- Electrical generation and transmission equipment,
- Agricultural machinery and equipment,
- New materials, and
- Pharmaceuticals and advanced medical devices.

According to USTR officials, while requesters had an opportunity to comment on this factor, USTR relied on its own analysis to determine if the particular product was strategically relevant or related to “Made in China 2025” or other Chinese industrial programs. USTR officials said that a product might be strategically important to “Made in China 2025” if the requested product fell under one of the 10 strategic industries, was an important component of related products, or referenced by Chinese policy documents. According to USTR training materials, officials would review all of the evidence to determine if the requested product contained industrially significant technology. USTR officials said they reviewed the requester’s explanation for this factor and information submitted by the requester related to product information, including the:

- Product category,
- Product name and detailed description, and
- Product function, application, and any unique physical features.

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<sup>45</sup>Office of the United States Trade Representative, *Findings of the Investigation Into China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974* (Washington, D.C.: March 22, 2018).

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If the requested product was strategically important to “Made in China 2025” or other Chinese industrial programs, USTR considered denying the request. For example, in a case file we reviewed, USTR denied the request because the product was strategically important or related to the “Made in China 2025” policy. The reviewer noted that the product fell under the policy’s advanced information technology industry.

**Objective of the Section 301 investigation.** USTR examined whether granting an exclusion would undermine the objective of the Section 301 investigation to obtain the elimination of China’s acts, policies, and practices that USTR found unreasonable or discriminatory, and burden or restrict U.S. commerce. According to USTR, the Section 301 tariffs on products from China aim to address these practices identified in the investigation. USTR officials said they did not frequently deny exclusion requests based on this factor.

USTR officials said they generally denied exclusion requests based on this factor if they determined the requesters were Chinese state-owned entities, since approving such requests might undermine the objective of the tariffs. These officials said if they suspected the requester was a state-owned enterprise, they conducted additional research to determine whether the requester was an entity either partially or wholly owned by the Chinese government and recorded their determination. For example, in a case file we reviewed, one of the reviewers noted that the requester was a partially state-owned enterprise and USTR denied the request for that reason.

**Administrability.** To evaluate whether the request adequately defined the product for exclusion or if the exclusion would be administrable, USTR reviewed product information submitted by the requester, including physical characteristics and product function.<sup>46</sup> It then drafted product carveouts for CBP to review.

According to USTR training materials, the agency aimed to draft exclusions specific to the requested product that CBP could administer. To do so, the TCEs reviewed product information submitted by the requester and the scope of the tariff code to determine if the requester

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<sup>46</sup>As discussed earlier, USTR considered an exclusion request to be administrable if CBP could consistently and correctly classify the covered product at the time of entry.

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provided the correct HTSUS classification for the product. TCEs also considered whether:

- The product name was recognized by importers and exporters;
- It was possible to distinguish the requested product from the others within the same HTSUS product category;
- The product was designed for a specific application; and
- The product could be defined using dimensional criteria, such as size or weight when drafting a product carveout.

If the requester did not describe the product with sufficient information, USTR considered denying the request. For example, in a case file we reviewed, USTR determined the requester had not provided sufficient information on the product, such as its weight or length, to draft a carveout that would distinguish the requested product from others under the same product category.

As discussed above, if TCEs were able to draft a carveout, CBP then reviewed the carveouts to determine whether they were administrable. CBP officials said they reviewed draft exclusions to identify product descriptions that did not fit within the product categories specified in the draft exclusions. If CBP determined that it could not administer the exclusion, USTR considered denying the request. For example, in a case file we reviewed, CBP determined the product described in the draft exclusion could not be classified within the product category specified and as such, the draft exclusion was not administrable. As a result, USTR denied the exclusion request.

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## USTR Denied Most Exclusion Requests, Primarily for the Failure to Show Severe Economic Harm

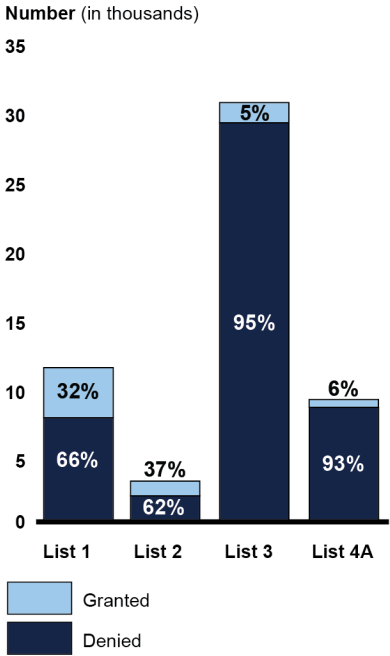
Overall, USTR denied 87 percent of the approximately 53,000 exclusion requests.<sup>47</sup> USTR granted approximately 6,700 requests, resulting in a

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<sup>47</sup>We collected exclusion request data from Regulations.gov on July 2, 2020, and USTR's portal on August 10, 2020. This data differ by approximately 1 percent with data from USTR's final public index of exclusion requests for each list. See appendix I for more information.

little more than 2,200 exclusions.<sup>48</sup> USTR’s denial rate increased from 66 percent for Lists 1 and 2 combined to 95 percent for Lists 3 and 4A combined. See figure 9 for USTR’s denial rate for each list. USTR officials said they had no specific targets for denial rates and the increased denial rate might reflect the differences in products among lists. We analyzed the relationship between the product characteristics and the outcomes of exclusion requests, which we describe the results of later in this report.

**Figure 9: USTR’s Grant and Denial Rate for Exclusion Requests for Each List of Section 301 Tariffs on Products from China**



Source: GAO analysis of the Office of the U.S. Trade Representative (USTR) data. | GAO-21-506

Notes: Withdrawn requests and requests that did not have a decision as of August 10, 2020, which made up less than 1 percent of the exclusion request data, were included in our calculations, but not depicted in the figure. As such, percent totals may not add to 100 percent. USTR imposed tariffs on certain products from China in four product lists. Lists 1, 2, and 3 went into effect between July and September 2018, and List 4A in September 2019.

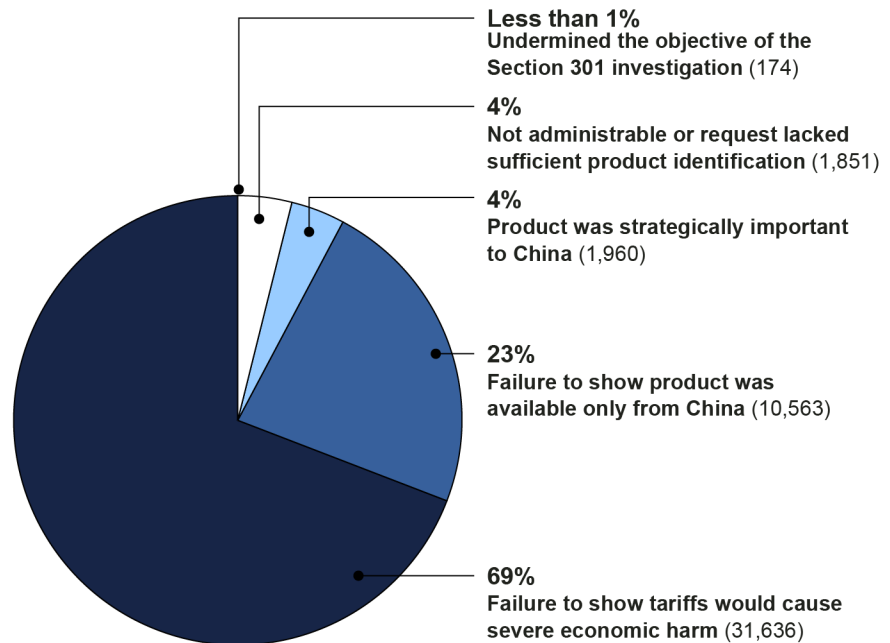
According to officials, USTR examined all possible reasons for denying an exclusion request based on the factors. However, it cited only the

<sup>48</sup>Of the exclusions for Lists 1 to 4A, USTR established 89 as 10-digit HTSUS product categories and 2,120 as carveouts (also known as specially prepared product descriptions). In December 2020, USTR granted 19 additional tariff exclusions for medical-care products related to the COVID-19 response.



strongest reason for denial in its notification letters to requesters. In the letters, USTR most frequently denied exclusion requests for the failure to show that the additional tariffs would cause severe economic harm to the requester or other U.S. interests. Of the approximately 46,000 denied exclusion requests, USTR denied 69 percent for the failure to show severe economic harm and 23 percent for the failure to show that the product was available only from China. See figure 10.

**Figure 10: USTR's Primary Reasons for Denying Exclusion Requests for Section 301 Tariffs on Products from China**



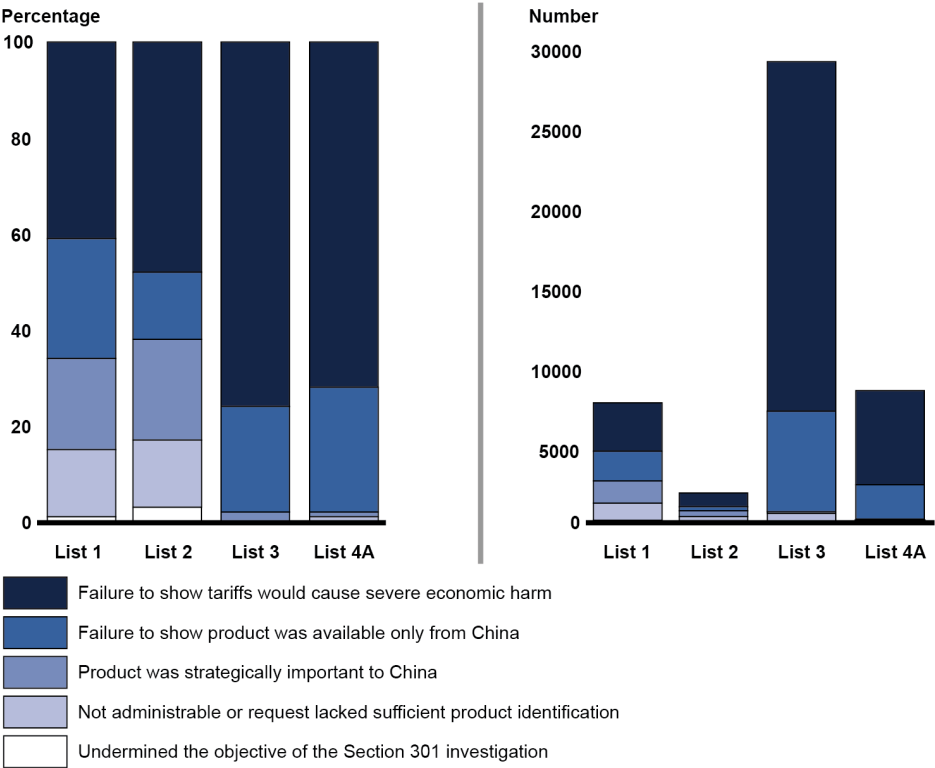
Source: GAO analysis of the Office of the U.S. Trade Representative (USTR) data. | GAO-21-506

Notes: Withdrawn requests and requests that did not have a decision as of August 10, 2020, which made up less than 1 percent of the exclusion request data, are not included. According to officials, USTR examined all possible reasons for denying an exclusion request. However, it cited only the strongest reason for denial in its notification letters to requesters depicted above.

USTR denied a smaller proportion of exclusion requests for Lists 1 and 2 (42 percent) than for Lists 3 and 4A (75 percent) for the failure to show that additional tariffs would cause severe economic harm. USTR officials said additional information provided by requesters for Lists 3 and 4A informed their review of severe economic harm and might explain the

increased denial rate based on this factor for Lists 3 and 4A.<sup>49</sup> In particular, these officials said they could compare the value of the import subject to the tariff with the requester’s gross revenues, which was not possible for Lists 1 and 2. On the other hand, it denied a larger proportion of exclusion requests for Lists 1 and 2 (14 percent) than for Lists 3 and 4A (1 percent) because the request lacked sufficient product identification or was not administrable. See figure 11.

**Figure 11: USTR’s Primary Reasons for Denying Exclusion Requests for Each List of Section 301 Tariffs on Products from China**



Source: GAO analysis of the Office of the U.S. Trade Representative (USTR) data. | GAO-21-506

Notes: Withdrawn requests and requests that did not have a decision as of August 10, 2020, which made up less than 1 percent of the exclusion request data, are not included. USTR imposed tariffs on certain products from China in four product lists. Lists 1, 2, and 3 went into effect between July and September 2018, and List 4A in September 2019. According to officials, USTR examined all possible

<sup>49</sup>As noted earlier, USTR included additional questions in exclusion request forms for Lists 3 and 4A. For example, USTR asked requesters to provide information about their company’s gross revenues, as well as whether their business satisfied the Small Business Administration’s size standard for a small business.

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reasons for denying an exclusion request. However, it cited only the strongest reason for denial in its notification letters to requesters depicted above.

## Certain Types of Requests Had Higher Exclusion Approval Rates

We found that requests for exclusion from the Section 301 tariffs on products from China for certain types of products had higher rates of approval than others. In addition, exclusion requests for products in Lists 1 and 2 had higher approval rates on average than for requests for products in Lists 3 and 4A. In particular, we found that that USTR's exclusion approval rate remained 21 percent higher for products in Lists 1 and 2 than for products in Lists 3 and 4A after controlling for product type and other variables in our regression analysis.<sup>50</sup> Our findings that products in Lists 1 and 2 had higher approval rates were statistically significant and consistent across different modelling approaches. See appendix II for more information about the results from our statistical analysis.

Exclusion requests for products in capital goods, public-health maintenance,<sup>51</sup> and advanced technology categories<sup>52</sup> had higher rates of approval than other types of products.<sup>53</sup> In particular, we found that:

- USTR approved 24 percent of exclusion requests submitted for capital goods. In comparison, USTR approved 7 percent of exclusion requests for consumer goods. See table 2.

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<sup>50</sup>Before controlling for variables that could influence exclusion approval, we found that the exclusion approval rate for products in Lists 1 and 2 was roughly 27 percentage points higher than for products in Lists 3 and 4A. As noted earlier, according to USTR, this higher percentage could be because there were process-related changes between Lists 1 and 2 and Lists 3 and 4A that allowed USTR to collect additional information provided from requesters for Lists 3 and 4A.

<sup>51</sup>We identified products related to public-health maintenance using a study conducted by USITC. In 2020, USITC identified over 200 10-digit HTSUS product categories that contained products associated with responding to the COVID-19 pandemic, such as diagnostic test kits, personal protective equipment, sterilization products, oxygen therapy equipment, medical imaging, hospital supplies, pharmaceuticals, and other products. See *COVID-19 Related Goods: U.S. Imports and Tariffs*, Investigation No. 332-576, USITC Publication 5073 (Washington, D.C.: June 2020) for more information.

<sup>52</sup>Census defines a 10-digit HTSUS product category as advanced technology if the category contains products whose technology is from a recognized high technology field, products that represent leading edge technology in that field, and products that constitute a significant part of all items covered in the selected classification code. See <https://www.census.gov/foreign-trade/reference/definitions/index.html> (Accessed on May 6, 2021) for more information.

<sup>53</sup>While agricultural or other products had the second highest approval rate, they made up less than 1 percent of all exclusion requests submitted.

**Table 2: USTR’s Approved Exclusions from Section 301 Tariffs on Products from China by Product Type**

Product Type (End-Use Category)	Number of Exclusion Requests Submitted	Number of Exclusion Requests Approved	Percent of Exclusion Requests Approved
Capital	19,186	4,679	24
Industrial	8,460	863	10
Consumer	12,120	801	7
Automotive	12,633	292	2
Agricultural or Other <sup>a</sup>	411	64	16
<b>Total</b>	<b>52,810</b>	<b>6,699</b>	<b>13</b>

Source: GAO analysis of U.S. Census Bureau (Census) trade data and the Office of the U.S. Trade Representative (USTR) data. | GAO-21-506

Notes: This analysis includes fewer exclusion requests than submitted because a small share of those requests were for Harmonized Tariff Schedule of the United States (HTSUS) 10-digit product categories that did not have a Census assigned end-use code. For instance, some exclusion requests may have had incorrect HTSUS codes. Census summarizes statistical numbers in the HTSUS of the United States into six principal “end-use” product types according to the product’s end-use function in the production process. Since there were relatively few requests submitted for agricultural and other products, we grouped requests for those products into one category in our analysis.

<sup>a</sup>Other product types include goods not elsewhere specified.

- USTR approved approximately 28 percent of the 1,402 exclusion requests submitted for products related to public-health maintenance. In comparison, USTR approved roughly 12 percent of exclusion requests submitted for products not related to public-health maintenance.
- USTR approved approximately 27 percent of the 2,301 exclusion requests submitted for products in advanced technology categories. In comparison, USTR approved roughly 12 percent of exclusion requests submitted for products in categories that did not contain advanced technology.

After controlling for certain variables that could influence exclusion approval, such as the total value of imports and share of imports from

China, we found, using a regression analysis,<sup>54</sup> that exclusion requests for capital products, industrial products, and products related to maintaining public health were more likely to be approved than other types of products. See appendix II for more information about the results from our statistical analysis.

USTR Used Three Factors to Evaluate Extensions on a Case-by-Case Basis

USTR evaluated the possible extension of exclusions on a case-by-case basis. According to USTR officials, they examined all of the evidence to make their decisions using three factors—availability, severe economic harm, and the objective of the Section 301 investigation—rather than the five factors for exclusion requests (see table 3). Officials said they did not examine administrability or if the product was strategically important to “Made in China 2025” or other Chinese industrial programs because they had examined those factors when granting the original exclusion.

Table 3: USTR’s Factors for Evaluating Whether to Extend Exclusions for Section 301 Tariffs on Products from China

Factor	Description
Availability	Whether the particular product remains available only from China.
Severe economic harm	Whether the imposition of additional tariffs on the particular products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.
Objective of the Section 301 investigation	Whether the extension would undermine the objective of the Section 301 investigation to obtain the elimination of China’s acts, policies, and practices that USTR found unreasonable or discriminatory, and burden or restrict U.S. commerce. <sup>a</sup>

Source: GAO summary of *Federal Register* notices and information provided by the Office of the U.S. Trade Representative (USTR) officials. | GAO-21-506

Note: According to USTR officials, the agency examined all of the information from public comments to determine whether to extend a particular exclusion.

<sup>a</sup>According to USTR, the Section 301 tariffs aim to address China’s unfair acts, policies, and practices related to technology transfer, intellectual property, and innovation identified in the investigation, such as China’s foreign ownership restrictions to require or pressure technology transfer from U.S. companies.

<sup>54</sup>We used several multi-variate regression models to examine how different product characteristics interacted in relation to the outcomes of the exclusion requests. These models enabled us to determine whether certain types of products had statistically significant higher rates of exclusion approval even when controlling for other variables that could have influenced the outcomes. Product types, whether the product was included in Lists 3 or 4A, and other product characteristics remained significant in explaining exclusion request approval rates even after accounting for differences in firm characteristics, such as firm size and profits. Our analyses do not completely explain the reasons for differences in approval different types of products, which may result from unobservable variables. Therefore, our analyses do not establish a causal relationship between product characteristics and exclusion outcomes. For more information, see appendix II.

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According to officials, USTR decided whether to extend an exclusion based on information submitted in the public comments for extensions. As discussed earlier, USTR officials said they did not review the original exclusion request again unless they had not received public comments regarding the potential extension. In general, USTR only extended exclusions that received public comments, according to USTR officials.<sup>55</sup> Public comments for extension did not have to come from the original requester.

**Availability.** USTR examined whether the excluded product remained available only from China. To do so, USTR officials said they reviewed such information provided by commenters as:

- Any changes that had occurred in the global supply chain or industry development;
- If importers or U.S. purchasers attempted to source the product from the U.S. or third countries; and
- If the product was subject to an antidumping or countervailing duty, which would indicate the product was available in the U.S.

USTR's evaluation of extensions focused on the availability factor according to the *Federal Register* notices requesting public comments about extending particular exclusions.

If the public comments demonstrated that the excluded product remained available only from China, USTR considered granting the extension. For example, in a case file we reviewed, USTR granted the extension because the public comments showed, among other things, that the product was unavailable outside of China. The reviewer noted the comments demonstrated that financial and logistical difficulties existed to transitioning production outside of China in a short period.

**Severe economic harm.** USTR examined whether the imposition of additional tariffs on the product from China covered by the exclusion would result in severe economic harm to the commenter or other U.S. interests. To do so, USTR officials said they reviewed commenters' explanations for this factor and such information provided as:

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<sup>55</sup>USTR officials said they extended 37 exclusions for which they did not receive public comments for various reasons, including exclusions that covered COVID-19 related products.

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- If Chinese suppliers had lowered their prices for products covered by the exclusion following the imposition of tariffs;
  - The value and quantity of the product covered by exclusion purchased from China, the U.S., and third country sources;
  - The commenter's gross revenue; and
  - If the Chinese-origin product was sold as a final product or input (used in the manufacturing of other goods).

If the public comments did not demonstrate that the additional tariffs on the excluded product would cause severe economic harm to the commenter or other U.S. interests, USTR did not consider extending the exclusion. For example, in a case file we reviewed, USTR did not extend the exclusion because the commenter did not explain how the tariff on the particular product would result in the harms claimed, such as closing its manufacturing facility in China.

**Objective of the Section 301 investigation.** USTR officials said they examined whether extending the exclusion would undermine the objective of the Section 301 investigation to obtain the elimination of China's acts, policies, and practices that USTR found unreasonable or discriminatory, and burden or restrict U.S. commerce. To do so, USTR officials said they examined the public comments on extending a particular exclusion to see if entities partially or wholly owned by the Chinese government had submitted them. If Chinese-state owned enterprises had submitted the public comments, USTR did not consider extending the exclusion.

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## USTR Did Not Extend Most Tariff Exclusions

Of the approximately 2,200 exclusions for Lists 1 to 4A, USTR extended 25 percent and let the exclusions expire for 1,660 previously excluded products. USTR extended particular exclusions for a limited duration ranging from approximately 3 to 12 months and most have since expired.<sup>56</sup>

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<sup>56</sup>While USTR granted 12-month extensions for the first three sets of exclusions under List 1, it later applied the same expiration date of December 31, 2020, for all extensions. As of March 2021, USTR extended 99 exclusions for COVID-19 related products through September 30, 2021.

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## Certain Types of Excluded Products Had Higher Extension Rates

We found that 74 percent of exclusions received at least one public comment about extension through USTR's portal.<sup>57</sup> The public submitted more than 3,600 comments about whether USTR should extend previously granted tariff exclusions; 97 percent, or 3,536 of the comments supported extending particular exclusions.<sup>58</sup> Most of these public comments focused on products related to categories representing nuclear reactors, boilers, machinery, and mechanical appliances (HTSUS Chapter 84) and electrical machinery and equipment, sound recorders and reproducers, and television image and sound recorders and reproducers (HTSUS Chapter 85). Of the more than 3,600 public comments submitted about extensions, 31 percent, or 1,135, were for excluded products that later received extensions from USTR.

Certain product categories with excluded products had higher rates of exclusion extensions than other such categories.<sup>59</sup> Excluded products in categories representing consumer goods and public-health maintenance had higher rates of extension than other types.<sup>60</sup> In particular, we found that:

- Of the 224 HTSUS categories representing consumer goods with at least one exclusion, USTR granted extensions for 45 percent or 101 product categories. In comparison, USTR granted extensions for between 26 and 30 percent of product categories representing capital,

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<sup>57</sup>This calculation does not include public comments USTR solicited through Regulations.gov about extending 125 exclusions it had granted under the first four sets of exclusions for List 1 due to data limitations. USTR solicited public comments about extending all other exclusions through its portal.

<sup>58</sup>We analyzed public comments about extending particular exclusions submitted through USTR's portal and did not include extension-related data from Regulations.gov due to data limitations. As discussed earlier, USTR used a public comment process to decide whether to extend particular exclusions, and did not solicit individual requests as it did for the exclusion process. In addition, USTR did not publish a reason for its extension decisions. As such, our analysis of extension-related data differs from exclusion-related data.

<sup>59</sup>Since USTR decided extensions based on all of the public comments submitted for a potential extension, we were not able to calculate approval rates as we did for exclusion requests discussed above. Instead, we analyzed 10-digit HTSUS product categories that contained exclusions to determine whether products in certain product categories had higher rates of extension than those in other categories. We did not use multi-variate statistical methods to control for factors that could influence extension approval, as we did for exclusion approval, due to data limitations. For more information, see appendix I.

<sup>60</sup>While agricultural or other products had the highest extension rate, they had seven exclusions.



industrial, and automotive goods, respectively, with at least one exclusion. See table 4.

- Of the 42 HTSUS categories related to public-health maintenance with at least one exclusion, USTR granted extensions for 76 percent or 32 product categories. In comparison, USTR granted extensions for roughly 30 percent of the over 1,100 product categories not related to public-health maintenance with an exclusion.

**Table 4: HTSUS-10 Product Categories with Exclusions from Section 301 Tariffs on Products Approved for Extension by USTR**

Product Type (End-Use)	Number of HTSUS-10 product categories with an approved exclusion	Number of HTSUS-10 product categories with an extended exclusion	Percent of HTSUS-10 product categories with an approved exclusion that also have an approved extensions
Capital	557	169	30
Consumer	224	101	45
Industrial	265	77	29
Automotive	68	18	26
Agricultural or Other <sup>a</sup>	29	16	55
<b>Total</b>	<b>1,143</b>	<b>381</b>	<b>33</b>

Source: GAO analysis of U.S. Census Bureau (Census) trade data and the Office of the U.S. Trade Representative (USTR) data. | GAO-21-506

Notes: Census summarizes statistical numbers in the Harmonized Tariff Schedule of the United States (HTSUS) into six principal “end-use” product types listed in the table.

<sup>a</sup>Other product types include goods not specified elsewhere.

## Conclusions

In response to USTR’s determination that certain actions by China are unreasonable or discriminatory, and burden or restrict U.S. commerce, the agency imposed tariffs of up to 25 percent on about \$460 billion worth of imports from China, which represents about 40 percent of U.S. imports from China. By the end of 2020, the U.S. government had collected an estimated \$71 billion in such tariffs. Many U.S. companies and consumers rely on imports from China as inputs for manufactured goods and final consumer goods, and USTR established the exclusion process to mitigate harm associated with the tariffs. USTR granted exclusions on approximately \$71 billion of U.S. imports from China, allowing importers to forgo paying about \$14 billion in tariffs. However, USTR denied a vast majority of exclusion requests.

While USTR established processes to review exclusion requests in 2018 and later to receive public comments on extensions, the agency did not fully document its internal procedures. USTR took steps to document its process for us during our review, but its documentation was incomplete

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and did not explain each step in the process, who was responsible for them, and when they should occur. In addition, we found inconsistencies in the case files we reviewed, particularly in areas where USTR did not have written procedures to explain its process. Without appropriately documenting the roles and responsibilities of reviewers and each step in its decision processes, USTR lacks reasonable assurance that it consistently followed its processes.

Moreover, without fully documented procedures, USTR risks losing the expertise it gained from administering the exclusion and extension processes, particularly if the agency implements any similar ones in the future. While USTR has not announced any additional exclusions or extensions for imports from China, the agency has committed to reexamine the existing tariffs and exclusion process as part of its broader review of U.S.-China trade policy. In the meantime, the tariffs remain in effect, and members of Congress have advocated for the agency to restart the exclusion and extension processes, all of which amplifies the need for consistency and transparency. By fully documenting its internal procedures, USTR can retain institutional knowledge and create a blueprint for successfully implementing any tariff exclusion programs it may choose to administer in the future.

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## Recommendations for Executive Action

We are making the following two recommendations to USTR:

The U.S. Trade Representative should fully document the internal procedures used to make tariff exclusion decisions for the Section 301 tariffs on products from China. (Recommendation 1)

The U.S. Trade Representative should fully document the internal procedures used to make tariff extension decisions for the Section 301 tariffs on products from China. (Recommendation 2)

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## Agency Comments and Our Evaluation

We provided a draft of this report to USTR, Department of Homeland Security, and USITC for review and comment. In USTR's comments, reproduced in appendix III, it concurred with our recommendations and stated that it is taking steps to implement them.

USTR provided comments on our findings related to the agency's documentation of its exclusion and extension processes, as well as context on specific case files we reviewed. USTR stated that its exclusion processes evolved over time and it did document some aspects of its procedures. Further, USTR reiterated that its extension process required different documentation than the exclusion process. USTR's comments

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repeated explanations provided during our audit work in response to our questions about how the process worked. We had already noted these explanations in the draft report USTR commented on and thus made no changes in response. Given the inconsistencies and gaps we found, we maintain that USTR should fully document all steps, as well as roles and responsibilities, in its internal procedures for reviewing exclusion and extension requests to ensure consistency and retain the agency's expertise.

USTR also provided comments regarding our regression analysis on USTR's exclusion decisions. USTR stated that our regression analysis did not adequately account for all five factors it used to evaluate exclusion requests. As stated in appendix II, the regression analysis examines how different product characteristics were associated with exclusion request approvals, while accounting for other variables that could have influenced the outcome of each exclusion request. While USTR considered several factors when evaluating exclusion requests, it did not provide specific measures for many of these factors. For example, as noted in the report, USTR officials said they did not specifically define what they meant by "severe economic harm." Instead, officials applied their judgment by considering the size of the requesting company's operations, level of imports, and ability to absorb the tariffs.

Given USTR's comments on the quantitative analysis, we further clarified in appendix II how we accounted for some of the factors USTR considered in their decision-making process. We explained how we identified and included proxy variables in our analysis from publically available data sources that could reflect some of the factors USTR considered in its decision making. For instance, we used import data to measure whether a product requested for exclusion was available from other countries by calculating the import shares of similar products from China. Additionally, we provided detail on our use of different modelling techniques to account for differences in a requester's characteristics that could indicate whether the requesting company was prone to suffer economic harm from the tariffs. Specifically, we used a regression model with requester fixed effects to account for a company's characteristics that may affect its reliance on imports from China or its profitability. As noted in the report, a company might be more likely to suffer severe economic harm when importing final products (covered by the tariffs) that account for a significant percentage of its gross sales, according to USTR training materials. Even with the data limitations, which we described in appendix II, we maintain that the analysis provides useful insights into the outcomes of USTR's review process.

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CBP and USITC also provided technical comments, which we incorporated as appropriate. For example, CBP and USITC provided comments clarifying their limited role in the administrability review process.

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If you or your staff have any questions about this report, please contact me at (202) 512-8612 or [gianopoulosk@gao.gov](mailto:gianopoulosk@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

A handwritten signature in black ink, reading "Kimberly M. Gianopoulos". The signature is fluid and cursive, with the first name "Kimberly" and last name "Gianopoulos" clearly legible.

Kimberly M. Gianopoulos  
Director, International Affairs and Trade

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# Appendix I: Objectives, Scope, and Methodology

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This report (1) examines what processes the Office of the U.S. Trade Representative (USTR) used to review exclusion requests and extension and (2) describes how USTR evaluated exclusion requests and extensions, and the outcome of its decisions.

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## The Exclusion and Extension Processes

To describe what processes USTR used to review tariff exclusion requests and extensions, we reviewed *Federal Register* notices announcing each exclusion and extension process, public guidance documents that USTR posted to its website, internal planning documents, and USTR's training materials that described certain internal procedures for reviewing exclusion requests. During our review, USTR developed a document that outlined the four stages of the exclusion process and certain internal procedures. USTR told us that they developed this document upon our request and did not use it internally as policy or guidance. While we used this document and others as a basis to illustrate the exclusion process depicted in figure 6, USTR's documents did not comprehensively describe the agency's exclusion or extension process. We also interviewed and sent written questions to USTR officials to understand how they implemented and documented the exclusion and extension processes, and how the processes changed over time. These interviews and written responses also served to fill in gaps and resolve inconsistencies in agency documents.

USTR imposed tariffs under Section 301 of the Trade Act of 1974, as amended (Section 301)<sup>1</sup> on certain products from China in four product lists and implemented an exclusion process for each list. We focused our review on the exclusion process USTR used for List 3 and List 4A, which covered approximately three-quarters of exclusion requests under all four lists. We assessed USTR's exclusion and extension processes against federal internal control standards related to documenting organizational responsibilities in policies.<sup>2</sup> We also interviewed officials at U.S. Customs and Border Protection (CBP) and the U.S. International Trade Commission (USITC) to understand their roles in the tariff exclusion and extension processes.

To identify examples of how USTR implemented its exclusion and extension processes and documented its decision-making, we selected

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<sup>1</sup>Pub. L. No. 93-618, tit. III, § 301, 88 Stat. 1978, 2041 (1975) (codified as amended at 19 U.S.C. § 2411).

<sup>2</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

and analyzed a nongeneralizable sample of 16 case files from List 3. We limited our selection of case files to List 3 because we focused our review on the process USTR used for List 3 and List 4A, and USTR was still making exclusion determinations under List 4A as we developed our case selection. We randomly selected two case files each from eight subgroups—granted exclusions, denied exclusions based on each of the five reasons cited by USTR, exclusions extended by USTR, and exclusions USTR declined to extend.<sup>3</sup> Our selection resulted in 12 exclusion requests out of 30,248 exclusion requests under List 3, and four extension public comments out of 1,416 under List 3.

We used a data collection instrument to examine each of the selected case files, which we developed based on our review of USTR's documents, written responses, and interviews with officials related to List 3 processes. We tested each case file against the data collection instrument to determine whether USTR officials consistently followed their procedures and recorded their activities. However, as mentioned, USTR's documentation of its exclusion and extension processes was not comprehensive, and as a result, we could not always assess what information each case file should contain. For such cases, we spoke with officials about what information should and should not be in the case files.

Because we selected a nongeneralizable sample of case files, we cannot generalize findings based on these 16 case files or infer how USTR officials reviewed other exclusion requests and extensions. Nevertheless, we were able to test whether USTR officials consistently followed their procedures and recorded their activities in the 16 case files we reviewed.

To describe how USTR evaluated tariff exclusion requests and extensions, we identified the factors USTR used for its decisions based on *Federal Register* notices outlining USTR's exclusion and extension processes, USTR training materials, and other relevant agency

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<sup>3</sup>USTR listed one of these reasons for denying exclusion requests: (1) the request failed to show that the imposition of additional tariffs on a particular product would cause severe economic harm to the requester or other U.S. interests; (2) the request failed to show that the particular product was available only from China; (3) the requested product was strategically important or related to "Made in China 2025" or other Chinese industrial programs; (4) the request did not contain sufficient product identification or was determined to be non-administrable; and (5) granting the exclusion would undermine the objective of the Section 301 investigation. USTR did not publicly cite reasons for approving or extending exclusions.

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documents.<sup>4</sup> We also interviewed knowledgeable agency officials about how they applied the factors, including what information and analyses informed their decisions. Further, we analyzed the nongeneralizable sample of 16 case files discussed earlier to identify practical examples of how USTR applied the factors for both exclusion requests and extensions.

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## Exclusion Data

To calculate statistics about the outcomes of exclusion requests, we obtained and analyzed data for Lists 1 and 2 through Regulations.gov and Lists 3 and 4A through USTR's portal for exclusion requests.<sup>5</sup> For Lists 1 and 2, we analyzed data submitted from July 11, 2018, the beginning of the exclusion process, to August 22, 2019. For Lists 3 and 4A, we analyzed data submitted from June 30, 2019, the beginning of the exclusion process, to August 10, 2020. At the time of data collection, USTR had not posted or we could not extract the decision for 45 of the exclusion requests listed in USTR's portal.

To obtain data from Regulations.gov, we extracted metadata, such as the posting date of each comment, as well as attachments that included the request itself and the decision letter using an Application Programming Interface. Regulations.gov contained companies' exclusion requests and USTR's decisions. We used two separate methods to extract the data from the applications: (1) the command-line utility PDF Toolkit, a cross-platform tool for extracting text from PDFs and data from fillable forms and (2) text extraction and regular expressions to extract data from non-fillable PDF documents. Many of the exclusion requests submitted to Regulations.gov are fillable forms, and PDF Toolkit has a utility that can programmatically extract the text contained in the fillable sections of the

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<sup>4</sup>USTR announced the tariff exclusion process in the following *Federal Register* notices: 83 Fed. Reg. 32,181 (July 11, 2018) for List 1; 83 Fed. Reg. 47,236 (Sept. 18, 2018) for List 2; 84 Fed. Reg. 29,576 (Jun. 24, 2019) for List 3; and 84 Fed. Reg. 57,144 (Oct. 24, 2019) for List 4A. USTR announced the extension process in a series of *Federal Register* notices soliciting public comments about the possible extension of particular exclusions. They were as follows: 84 Fed. Reg. 58,427 (Oct. 31, 2019), 84 Fed. Reg. 72,102 (Dec. 30, 2019), 85 Fed. Reg. 6,687 (Feb. 5, 2020), 85 Fed. Reg. 12,373 (Mar. 2, 2020), 85 Fed. Reg. 16,181 (Mar. 20, 2020), 85 Fed. Reg. 24,081 (Apr. 30, 2020), 85 Fed. Reg. 34,274 (Jun. 3, 2020), and 85 Fed. Reg. 46,777 (Aug. 3, 2020) for List 1; 85 Fed. Reg. 24,076 (Apr. 30, 2020), 85 Fed. Reg. 38,237 (Jun. 25, 2020), and 85 Fed. Reg. 38,243 (Jun. 25, 2020) for List 2; 85 Fed. Reg. 27,011 (May 6, 2020) and 85 Fed. Reg. 34,279 (Jun. 3, 2020) for List 3; and 85 Fed. Reg. 38,482 (Jun. 26, 2020), 85 Fed. Reg. 43,639 (Jul. 17, 2020), and 85 Fed. Reg. 48,595 (Aug. 11, 2020) for List 4A.

<sup>5</sup>For USTR's portal, see <https://comments.ustr.gov/>. The number of exclusion requests we collected from Regulations.gov and USTR's portal differ by approximately 1 percent from the number of requests in USTR's final public index of exclusion requests for each list.

PDFs. However, some companies submitted requests as scanned images or letters rather than as fillable forms. For these non-fillable PDFs, we extracted the text from these applications with an open-source software program that extracts text from a variety of formats, and then used regular expressions to identify the relevant parts from the unstructured text.

To obtain data from USTR's exclusion portal, we extracted all metadata, as well as the individual requests and decision letters using an open-source software package used to automate web browsers, which allowed us to extract information from the web browser automatically.

Before generating descriptive statistics, we performed extensive electronic data reliability testing of the data fields for both Regulations.gov and USTR's portal. For instance, we compared extracted values from requests with the requests themselves for a sample of cases. We also confirmed that no dates were outside of the range of dates from which we gathered data. We found that some of the data from Regulations.gov were not sufficiently reliable because not all of the exclusion requests were fillable forms. As a result, certain fields, such as quantity and value of Chinese-origin product purchased in past years, were so variable across requests that we could not extract them reliably. Thus, we did not examine descriptive statistics on all possible fields in the requests submitted to Regulations.gov. We found the other data from Regulations.gov sufficiently reliable for our purposes. We found that all of the data from USTR's portal was sufficiently reliable for our purposes.

We generated descriptive statistics on characteristics of requests and decisions, such as reasons for denial, and the association between the characteristics of requests and decisions. Across the requests submitted to Regulations.gov and USTR's portal, we examined the characteristics of fields, such as: (1) 10-digit Harmonized Tariff Schedule of the United States (HTSUS) codes, (2) name of organization who submitted the request, (3) number of applications with comments, and (4) product availability. We also examined how some of these characteristics varied with approvals and denials of exclusion requests. Finally, we examined the number of approvals and denials as well as the reasons for denial. As noted earlier, USTR cited one of the following reasons for denying exclusion requests in its decision letters: (1) the request failed to show that the imposition of additional tariffs on a particular product would cause severe economic harm to the requester or other U.S. interests; (2) the request failed to show that the particular product was available only from China; (3) the requested product was strategically important or related to



“Made in China 2025” or other Chinese industrial programs; (4) the request did not contain sufficient product identification or was determined to be non-administrable; and (5) granting the exclusion would undermine the objective of the Section 301 investigation.

For USTR’s portal, we also examined the characteristics of the following fields: (1) type of product (final product or input to final product); (2) whether a third party prepared the application; (3) whether the product was subject to an antidumping or countervailing duty; and (4) whether the application had been previously submitted. In addition, we examined how these characteristics varied with approvals and denials of exclusion requests. We also examined public comments submitted for exclusion requests and analyzed the characteristics of the following fields: (1) commenter position (support or oppose) and (2) commenter relationship (such as supplier).

To identify the total number of product exclusions USTR established for Lists 1 to 4A based on the exclusion requests it had granted, we reviewed the 37 *Federal Register* notices announcing product exclusions<sup>6</sup> and summed the count provided in each notice. This total count did not include the 19 additional tariff exclusions USTR granted in December 2020 for medical-care products related to the COVID-19 response.

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## Extension Data

To describe the outcomes of possible extensions, we extracted exclusion numbers for extensions of excluded products from *Federal Register*

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<sup>6</sup>USTR announced product exclusions for List 1 in 10 *Federal Register* notices: 83 Fed. Reg. 67,463 (Dec. 28, 2018), 84 Fed. Reg. 11,152 (Mar. 25, 2019), 84 Fed. Reg. 16,310 (Apr. 18, 2019), 84 Fed. Reg. 21,389 (May 14, 2019), 84 Fed. Reg. 25,895 (Jun. 4, 2019), 84 Fed. Reg. 32,821 (Jul. 9, 2019), 84 Fed. Reg. 49,564 (Sept. 20, 2019), 84 Fed. Reg. 52,567 (Oct. 2, 2019), 84 Fed. Reg. 69,016 (Dec. 17, 2019), and 85 Fed. Reg. 7,816 (Feb. 11, 2020). USTR announced product exclusions for List 2 in four *Federal Register* notices: 84 Fed. Reg. 37,381 (Jul. 31, 2019), 84 Fed. Reg. 49,600 (Sept. 20, 2019), 84 Fed. Reg. 52,553 (Oct. 2, 2019), and 85 Fed. Reg. 10,808 (Feb. 25, 2020). USTR announced product exclusions for List 3 in 15 *Federal Register* notices: 84 Fed. Reg. 38,717 (Aug. 7, 2019), 84 Fed. Reg. 49,591 (Sep. 20, 2019), 84 Fed. Reg. 57,803 (Oct. 28, 2019), 84 Fed. Reg. 61,674 (Nov. 13, 2019), 84 Fed. Reg. 65,882 (Nov. 29, 2019), 84 Fed. Reg. 69,012 (Dec. 17, 2019), 85 Fed. Reg. 549 (Jan. 6, 2020), 85 Fed. Reg. 6,674 (Feb. 5, 2020), 85 Fed. Reg. 9,921 (Feb. 20, 2020), 85 Fed. Reg. 15,015 (Mar. 16, 2020), 85 Fed. Reg. 17,158 (Mar. 26, 2020), 85 Fed. Reg. 23,122 (Apr. 24, 2020), 85 Fed. Reg. 27,489 (May 8, 2020), 85 Fed. Reg. 32,094 (May 28, 2020), and 85 Fed. Reg. 38,000 (Jun. 24, 2020). USTR announced product exclusions for List 4A in eight *Federal Register* notices: 85 Fed. Reg. 13,970 (Mar. 10, 2020), 85 Fed. Reg. 15,244 (Mar. 17, 2020), 85 Fed. Reg. 17,936 (Mar. 31, 2020), 85 Fed. Reg. 28,693 (May 13, 2020), 85 Fed. Reg. 35,975 (Jun. 12, 2020), 85 Fed. Reg. 41,658 (Jul. 10, 2020), 85 Fed. Reg. 44,563 (Jul. 23, 2020), and 85 Fed. Reg. 48,627 (Aug. 11, 2020).

notices.<sup>7</sup> To determine data reliability, we verified that the number of unique exclusions granted extensions was roughly equal to the total number USTR announced for each list in its annual report. We also manually verified a small random sample of exclusion numbers in the source *Federal Register* notices.

We obtained and analyzed public comment data for extensions from USTR's portal. We analyzed data submitted from April 1, 2020, to August 31, 2020. We used comments posted on USTR's portal about extension to determine the number of comments associated with an approved extension. We also calculated the number of comments posted on USTR's portal that supported or opposed extension for particular exclusions. We did not use comments posted to Regulations.gov because it had a relatively small number of extensions and the comments supporting extension did not include the published exclusion number, making it impossible to link the comments back to the exclusion numbers posted in the *Federal Register* notices.<sup>8</sup>

To identify the proportion of product exclusions USTR extended for Lists 1 to 4A, we reviewed the 13 *Federal Register* notices announcing extensions for product exclusions<sup>9</sup> and summed the count provided in each notice. We then compared the number of product exclusions USTR extended with the total number of product exclusions it had granted. This calculation did not include the 80 exclusions USTR extended in December 2020 for medical-care products related to the COVID-19 response.

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<sup>7</sup>Products that USTR granted exclusions for had assigned exclusion numbers that pointed to their location in Chapter 99 of the HTSUS.

<sup>8</sup>USTR solicited public comments about extending the 125 product exclusions it had granted under the first four List 1 determinations through Regulations.gov.

<sup>9</sup>USTR announced extensions for List 1 product exclusions in eight *Federal Register* notices: 84 Fed. Reg. 70,616 (Dec. 23, 2019), 85 Fed. Reg. 15,849 (Mar. 19, 2020), 85 Fed. Reg. 20,332 (Apr. 10, 2020), 85 Fed. Reg. 29,503 (May 15, 2020), 85 Fed. Reg. 33,775 (Jun. 2, 2020), 85 Fed. Reg. 41,267 (Jul. 9, 2020), 85 Fed. Reg. 59,587 (Sept. 22, 2020), and 85 Fed. Reg. 62,782 (Oct. 5, 2020). USTR announced extensions for List 2 product exclusions in three *Federal Register* notices: 85 Fed. Reg. 45,949 (Jul. 30, 2020), 85 Fed. Reg. 59,595 (Sept. 22, 2020), and 85 Fed. Reg. 62,786 (Oct. 5, 2020). USTR announced extensions for List 3 product exclusions in 85 Fed. Reg. 48,600 (Aug. 11, 2020). USTR announced extensions for List 4A product exclusions in 85 Fed. Reg. 54,616 (Sept. 2, 2020).

Exclusion Approval Rates  
and Product Type

To examine whether requests for certain product types had higher rates of exclusion approval, we conducted two types of statistical analyses—descriptive and regression—using USTR exclusion request data combined with U.S. trade and product data.<sup>10</sup> Table 5 below describes the variables related to types of requests in both of the analyses. We categorized requests listed in the USTR exclusion data into several different groups using data on the requested products from other sources, such as import data provided by the U.S. Census Bureau (Census). For the descriptive analysis, we calculated the approval rates for exclusion requests for various product characteristics. For example, we examined approval rates for different end-use product types, such as capital or industrial goods, and for products that share certain characteristics, such as whether the requested product was a public-health maintenance product or contained advanced technology.<sup>11</sup> For the regression analysis, we calculated whether requests for certain product types continued to have higher likelihood of exclusion approval even when we accounted for other variables that could also influence the outcome of an exclusion request.

See appendix II for further discussion of the regression analysis.

**Table 5: Variables Considered in Analysis of Product Characteristics of Section 301 Exclusion Requests for Imports from China**

Variables	Description
Product covered in List 3 or 4A	The requested product is included in Lists 3 and 4A. USTR published four different lists of products subject to Section 301 tariffs on products from China between July 2018 and September 2019.
Principal End-Uses for Products	The requested product is in a Harmonized Tariff Schedule (HTSUS) product category that is classified into one of six different principal end-uses—capital, industrial, automotive, consumer, agriculture, and other. <sup>a</sup>
Products of Advanced Technology	The requested product is in a HTSUS product category categorized by Census as advanced technology, such as, products with technology from a recognized high technology field or products representing leading edge technology in that field.
Products Related to Public-Health Maintenance	The requested product is in a category identified by USITC as goods most likely used in the response to the COVID-19 pandemic. <sup>b</sup>
Product covered by other tariffs	The requested product is subject to both the Section 301 tariffs on products from China and other tariffs imposed by the Trump administration using published presidential proclamations. <sup>c</sup>

<sup>10</sup>This includes U.S Census Bureau (Census) import data and data from USITC that identified goods related to maintaining public health.

<sup>11</sup>The Bureau of Economic Analysis classifies products into six different principal end-uses—agriculture, industrial, capital, automotive, consumer, and other. Because companies submitted relatively few requests for agriculture and other products, we grouped them together as one category in the analysis.

**Appendix I: Objectives, Scope, and Methodology**

Variables	Description
Import Value	Import value of goods from all countries that belong to the same HTSUS product category as the requested product. <sup>d</sup>
Import Share from China	Import shares from China of goods that belong to the same HTSUS product category as the requested product. <sup>d</sup>
U.S. Industry Employment	The number of people working in the U.S. industry most likely to produce the requested product in 2018. <sup>e</sup>
Number of exclusion applications submitted by each requester	The total number of requests submitted by the requester. <sup>f</sup>
Request submitted by most frequent requester	The request for the product was submitted by the most frequent requester in the exclusion request data. <sup>g</sup>

Source: GAO description of U.S. Census Bureau (Census) trade data, United States International Trade Commission (USITC) product category data and the Office of the U.S. Trade Representatives (USTR) exclusion data. | GAO-21-506

Notes: We included variables that could be factors for the availability or economic importance as well as to control for the size of trade and whether the request was in List 1 or 2 versus 3 or 4A to determine if certain product end-uses continued to have higher rates of exclusion approval in our regression analysis. Products discussed in this table represent a set of goods in different 10-digit statistical reporting numbers detailed in the HTSUS. We combined USTR's request data with Census import data and USITC data identifying products related to maintaining public health using HTSUS-10 product category codes before combining with Census's County Business Patterns using the six-digit North American Industry Classification System code. USTR asked requesters to apply for exclusions for products within a specific HTSUS category. Therefore, each exclusion request submitted to USTR would be one observation in the data we compiled to conduct this analysis and the outcome of the exclusion request would be the dependent variable.

<sup>a</sup>The Bureau of Economic Analysis classifies products into these six different groups based on their principal end use in the production process. We categorize exclusion requests for different products into these six different categories using data provided by Census that map 10 digit statistical numbers in the HTSUS. Since there were relatively few requests submitted for agriculture and other products, we grouped them together as one category in our analyses.

<sup>b</sup>See COVID-19 Related Goods: U.S. Imports and Tariffs, Investigation No. 332-576, USITC Publication 5073 (Washington, D.C.: June 2020). These products include diagnostic test kits, personal protective equipment, sterilization products, oxygen therapy equipment, medical imaging, hospital supplies, pharmaceuticals and other products.

<sup>c</sup>In 2018, the administration imposed additional tariffs on some products. We captured tariffs on steel and aluminum products as well as solar panels and washing machines in several presidential proclamations. See e.g. Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 15, 2018), Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018), Proclamation 9693, 83 Fed. Reg. 3,541 (Jan. 25, 2018), and Proclamation No. 9694, 83 Fed. Reg. 3,553 (Jan. 25, 2018).

<sup>d</sup>We calculated import shares and values using the total global imports for certain products from January 2016 to July 2018 and for other products from January 2017 to July 2019, depending on when the tariffs went into effect for each product. We calculated import shares from China by dividing the customs value of imports from China in each product category by the customs value of global imports of products in the same category.

<sup>e</sup>Census publishes the number of people working in each U.S. industry. Census's County Business Patterns dataset, an annual series, provides subnational economic data by industry that identify employment levels across different sectors of the U.S. economy. The version of the County Business Patterns Dataset we used is from 2018. (U.S. Census Bureau. County Business Patterns, 2018 [United States]: U.S. Summary, Industry Data. <https://www.census.gov/data/datasets/2018/econ/cbp/2018-cbp.html>. Accessed 6-11-2021.) The County Business Patterns Dataset uses the North American Industry Classification System to define industries. This classification system is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS identifies broader industries, such as manufacturing or retail, using two-digit codes and narrow industries using six-digit codes (e.g., the North American

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Industry Classification System code 335911 refers to the industry that manufactures of rechargeable batteries). See <https://www.census.gov/naics/> for more information.

<sup>f</sup>USTR data for exclusion requests contain the name of the requester who is applying for each exclusion. Some requesters make multiple requests for exclusion.

<sup>g</sup>This requester submitted over 10,000 requests on products covered on Lists 1 through 4A.

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## Extension Approval Rates and Product Type

To examine whether certain types of product categories with exclusions had higher rates of extension, we conducted a descriptive analysis using information extracted from *Federal Register* notices combined with trade and product data. As discussed above, USTR decided whether to extend a particular exclusion based on public comments submitted in response to *Federal Register* notices that detailed the product's description and corresponding HTSUS-10 product category rather than individual requests. As a result, the data for extension outcomes differed from that for exclusions. Due to the lack of granular data, our analysis for extensions used data at the HTSUS-10 product category level. The data contain the HTSUS-10 statistical number of the product to be extended and a field indicating whether that product category contained a product that was previously granted an exclusion. Similar to the exclusion analysis, we calculated approval rates for different types of end-use products, such as capital or industrial goods, and products that share certain characteristics, such as whether the requested product was a product related to public-health maintenance or the product contained advanced technology, using the variables outlined in table 5.

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## Import and Tariff Data

To identify the composition of products covered in each list of Section 301 tariffs, we calculated the non-seasonally adjusted import value of products in 2017 in each of the six principal end-use groups defined by the Bureau of Economic Analysis (capital, industrial, automotive, consumer, agriculture, and other) as a share of the total import value of products covered by each list of tariffs.

To calculate the total U.S. imports from China subject to the Section 301 tariffs, we used *Federal Register* notices and Census import data. The *Federal Register* notices identify the product categories covered in Lists 1 to 4A. We extracted the data for non-seasonally adjusted monthly imports for products at an HTSUS-10 product level from China between January 1, 2018, and December 31, 2020.<sup>12</sup> To identify imports for which

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<sup>12</sup>December 31, 2020, was the latest month available at the time of our analysis. We extracted the data using an Application Programming Interface provided by Census. We verified that no imports were subject to additional tariffs before July 1, 2018, as a reliability check on the data before conducting the analysis.

importers paid tariffs, we used the rate provision code, a specific field contained in publically available Census trade data that flags imports subject to tariffs as outlined in Chapter 99 of the HTSUS code. CBP uses Chapter 99 of the HTSUS schedule to calculate duties for imported products subject to Section 301 trade actions,<sup>13</sup> as well as Section 201<sup>14</sup> and Section 232<sup>15</sup> trade actions. According to Census officials, a rate provision code equal to 69 or 79 indicates imports of products subject to additional duties, including the Section 301 tariffs as outlined in Chapter 99 of the HTSUS.

We assessed the reliability of using the rate provision codes 69 or 79 to identify imports on which importers paid these tariffs. We determined this methodology was reliable for estimating these import values, but we identified some limitations. First, the rate provision code does not specify whether the tariff assessed was due to the Section 301 tariff on products from China or other duties outlined in Chapter 99 of the HTSUS schedule mentioned above. However, we found that roughly \$2.6 billion of the over \$460 billion (less than 1 percent) of imports subject to the Section 301 tariffs were subject to Chapter 99 duties and were covered by either the Section 232 or 201 tariffs from July 2018 to December 2020. Second, some products subject to the Section 301 tariffs on products from China could be subject to additional temporary duties as well.<sup>16</sup> However, we found that only about \$300 million dollars of imported products from January 2016 to July 2018 paid Chapter 99 duties before they were subject to the Section 301 tariffs. Third, we captured imports not subject to Section 301 tariffs for part of the first month the tariffs came into effect.<sup>17</sup> Roughly \$28 billion of the \$464 billion of products subject to the Section 301 tariffs (about 6 percent) were imported in the first month the tariff came into effect for different products mentioned in each list, and \$6

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<sup>13</sup>Section 301 refers to section 301 of the Trade Act of 1974. 19 U.S.C. § 2411.

<sup>14</sup>Section 201 refers to section 201 of the Trade Act of 1974. Pub. L. No. 93-618, tit. II, § 201, 88 Stat. at 2011 (codified as amended at 19 U.S.C. § 2511).

<sup>15</sup>Section 232 refers to section 232 of the Trade Expansion Act of 1962. Pub. L. No. 87-794, Title II, § 232, 76 Stat. 872, 877 (codified as amended at 19 U.S.C. § 1862).

<sup>16</sup>For instance, products in subheading HTSUS 1701.99.50 are covered by the Section 301 tariffs, but are also subject to safeguard duties managed by the Secretary of Agriculture due to the Uruguay Round of Negotiations. In addition, products in HTSUS 2009.89.70 are subject to temporary reductions in duty.

<sup>17</sup>For instance, the effective date for products in List 3 was September 24, 2018. Since we cannot exclude imports prior to September 24, 2018, we included these imports in our calculations.

billion of those imports paid Chapter 99 duties. Fourth, since retroactive exclusion refunds may occur in the future, they are not reflected in the 2020 trade statistics. As a result, the 2018 and 2019 Census data may not reflect such exclusions until after Census updates the data to include importers that filed post entry corrections. Finally, Census officials informed us that a data processing error could wrongly assign rate provision codes. According to Census officials, this error affected less than 1 percent of all imports from China covered by the Section 301 tariffs.

We conducted this performance audit from February 2020 to July 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Technical Summary of Regression Analysis Examining Outcomes of Exclusion Requests for Section 301 Tariffs on Imports from China

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We used several different multi-variate regression models to examine how different product characteristics were associated with exclusion request approval while accounting for other variables that could have influenced the outcome of each exclusion request. We combined U.S. Census Bureau (Census) data with exclusion request data submitted to the Office of the U.S. Trade Representative (USTR) between July 2018 and August 2020 to determine whether requests for certain products had statistically significant higher or lower rates of exclusion approval. We controlled for factors, such as availability from outside China, using proxy variables identified in publically available data. We also used different modelling techniques to account for firm characteristics that may be related to the level of economic harm faced by the requesting company from the tariffs, another factor USTR considered when evaluating exclusion requests.

**Summary Statistics of Variables:** We present the summary statistics of the dependent variable and the independent variables in table 6 below to provide context for the results from the regression analysis discussed below. In summary, USTR granted roughly 13 percent of the over 52,800 requests submitted for exclusion from the tariffs. Companies submitted roughly 75 percent of the exclusion requests through USTR's portal for products in Lists 3 and 4A. In addition, over half of the exclusion requests companies submitted for exclusion were for products typically used in the production process of other products, such as capital and industrial goods. About one quarter of them were for consumer products, over a third were for capital products, and approximately 16 percent of requests were for industrial products. The remaining 25 percent of requests were for automotive products, agricultural products, or other products not specified elsewhere.<sup>1</sup> In addition, 3 percent of exclusion requests were for products in Harmonized Tariff Schedule of the United States (HTSUS)-10 product categories that contained products for public health maintenance and 4 percent were for products that contained advanced technology.<sup>2</sup>

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<sup>1</sup>Census assigns products into six end-use product types (agriculture, industrial, capital, automotive, consumer, and other products not specified elsewhere) defined by the Bureau of Economic Analysis.

<sup>2</sup>According to USITC, the HTSUS sets out the legal subheadings (with related tariff rates) and statistical reporting categories for all merchandise imported into the United States. Each statistical category is represented by a 10-digit code. The HTSUS is based on the international Harmonized System, which is the global system of nomenclature applied to most world trade in goods.



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Two percent of the requests were for products also covered by the Section 232 or 201 tariffs.<sup>3</sup>

**Table 6: Summary Statistics of the Dependent and Independent Variables in the Regression Analysis of Product Characteristics on Section 301 Tariff Exclusions for Imports from China**

Variables (Unit of Measure) Number of observations: 52,810	Average	Standard Deviation	Minimum	Maximum
Exclusion Request Approved by USTR <sup>a</sup> (Binary)	.13	.33	0	1
Product covered in USTR tariff List 3 or 4A (Binary)	.74	.44	0	1
Consumer End-use Product <sup>b</sup> (Binary)	.23	.42	0	1
Capital End-use Product <sup>b</sup> (Binary)	.36	.48	0	1
Industrial End-use Product <sup>b</sup> (Binary)	.16	.37	0	1
Automotive End-use Product <sup>b</sup> (Binary)	.24	.43	0	1
Agricultural or Other End-use Product <sup>b</sup> (Binary)	.01	.09	0	1
Products Related to Public-Health Maintenance <sup>c</sup> (Binary)	.03	.16	0	1
Products of Advanced Technology (Binary)	.04	.20	0	1
Product covered by other tariffs <sup>d</sup> (Binary)	.02	.13	0	1
Import Value <sup>e</sup> (Billions of Dollars)	2.41	4.5	0	130
Import Share from China <sup>e</sup> (Proportion)	.35	.26	0	1
Level of Industry Employment <sup>f</sup> (Persons)	47,512	55,679	0	381,444
Number of exclusion applications submitted by each requester <sup>g</sup> (Requests)	2,146	3,952	1	10,196
Request submitted by most frequent requester <sup>h</sup> (Binary)	.21	.40	0	1

Source: U.S. Census Bureau (Census) trade data, United States International Trade Commission (USITC) data on COVID-related products and the Office of the U.S. Trade Representative (USTR) exclusion request data. | GAO-21-506

Notes: Products discussed in this table represent a set of goods in different 10-digit statistical reporting numbers detailed in the Harmonized Tariff Schedule of the United States (HTSUS). We combined USTR's exclusion request data with Census import data using HTSUS-10 product category codes before combining with the County Business Patterns using the six-digit North American Industry Classification System code. USTR asked requesters to apply for exclusions for products within a specific HTSUS category. Each exclusion request submitted to USTR was one observation in the data we compiled to conduct this analysis and the dependent variable was a binary variable measuring whether the exclusion request was approved or denied.

<sup>a</sup>This is our dependent variable.

<sup>b</sup>Census assigns products into six principal end-use product types (agriculture, industrial, capital, automotive, consumer, and other products not specified elsewhere) defined by the Bureau of

<sup>3</sup>In 2018, the administration imposed additional tariffs on steel and aluminum products as well as solar panels and washing machines in several presidential proclamations. See e.g. Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 15, 2018), Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018), Proclamation 9693, 83 Fed. Reg. 3,541 (Jan. 25, 2018) and Proclamation No. 9694, 83 Fed. Reg. 3,553 (Jan. 25, 2018). Section 232 refers to section 232 of the Trade Expansion Act of 1962. Pub. L. No. 87-794, tit. II, § 232, 76 Stat. 872, 877 (codified as amended at 19 U.S.C. § 1862). Section 201 refers to section 201 of the Trade Act of 1974. Pub. L. No. 93-618, tit. II, § 201, 88 Stat. at 2011 (codified as amended at 19 U.S.C. § 2511).

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Economic Analysis. Because companies submitted relatively few requests for agriculture and other products, we grouped them together as one category in the analysis.

<sup>c</sup>These products include diagnostic test kits, personal protective equipment, sterilization products, oxygen therapy equipment, medical imaging, hospital supplies, pharmaceuticals and other products. USITC identified these categories in its report, COVID-19 Related Goods: U.S. Imports and Tariffs, Investigation No. 332-576, USITC Publication 5073 (Washington, D.C.: June 2020).

<sup>d</sup>In 2018, the administration imposed additional tariffs on some products. We captured tariffs on steel and aluminum products as well as solar panels and washing machines in several presidential proclamations. See e.g. Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 15, 2018), Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018), Proclamation 9693, 83 Fed. Reg. 3,541 (Jan. 25, 2018), and Proclamation No. 9694, 83 Fed. Reg. 3,553 (Jan. 25, 2018). Section 232 refers to section 232 of the Trade Expansion Act of 1962. Pub. L. No. 87-794, tit. II, § 232, 76 Stat. 872, 877 (codified as amended at 19 U.S.C. § 1862). Section 201 refers to section 201 of the Trade Act of 1974. Pub. L. No. 93-618, tit. II, § 201, 88 Stat. at 2011 (codified as amended at 19 U.S.C. § 2511).

<sup>e</sup>We calculated import shares and values using the total global imports for certain products from January 2016 to July 2018 and for other products from January 2017 to July 2019, depending on when the tariffs went into effect for each product. We calculated import shares from China by dividing the customs value of imports by the customs value of global imports of products in the same category.

<sup>f</sup>Census publishes the number of people working in each U.S. industry. Census's County Business Patterns dataset, an annual series, provides subnational economic data by industry that identify employment levels across different sectors of the U.S. economy. The version of the County Business Patterns Dataset we used is from 2018 (U.S. Census Bureau. County Business Patterns, 2018 [United States]: U.S. Summary, Industry Data. <https://www.census.gov/data/datasets/2018/econ/cbp/2018-cbp.html>. Accessed 6-11-2021). The County Business Patterns Dataset uses the North American Industry Classification System to define industries.

<sup>g</sup>USTR exclusion request data contains the name of the requester who is applying for each exclusion. Some requesters make multiple requests for exclusion.

<sup>h</sup>This requester submitted over 10,000 requests on products covered on USTR's tariff Lists 1 through 4A.

**Model Specification:** To obtain our model specification, we selected the independent variables mentioned in table 6 and included them in a regression model we determined to be most appropriate for this type of analysis. We chose independent variables that could be factors for the availability or economic importance as well as to control for the size of trade, such as import value and whether the request was in List 1 or 2 versus 3 or 4A, to determine if certain product end-uses continued to have higher rates of exclusion approval. For instance, the import share from China of products most similar to the product being requested serves as a proxy variable that measures the potential availability of a requested product from other countries. We also included a variable that indicated whether the requested product was covered in List 3 or 4A, since USTR made changes to how they processed and reviewed these exclusion requests. Finally, because consumer products represent final goods and other types of products, such as capital or industrial goods, could represent inputs in the production process, we compared the approval rates of certain types of requested products to consumer products to better interpret the relationships in the data.

We implemented several discrete regression models in our analysis to determine whether the independent variables we considered had a statistically significant relationship on the likelihood of approval for each exclusion request submitted to USTR. Specifically, we used logistic, probit, and linear probability regression models to identify our statistical relationships in the request data.<sup>4</sup> After implementing these models, we estimated the relationship each independent variable had with the probability of exclusion approval.<sup>5</sup> We determined these models were sufficiently reliable.

**Results:** USTR denied most exclusion requests, but our regression analysis allowed us to identify several key variables that influenced the likelihood of exclusion request approval when controlling for other factors. We found some statistically significant differences in exclusion approval based on product characteristics.

Specifically, requests for products in Lists 3 and 4A were 21 percent less likely to be approved after accounting for other variables we considered that could influence exclusion approval. We asked USTR officials what else might explain this difference. They said additional information provided by requesters for Lists 3 and 4A informed their review of severe economic harm.<sup>6</sup> In particular, these officials said they could compare the

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<sup>4</sup>In some instances, a linear regression model may suggest an outcome could occur with a negative probability or beyond certainty (more than 100 percent). In this analysis, with 13 percent of all exclusion requests being approved, the former could be likely. For this reason, we use logistic and probit regression models instead of the standard linear regression model to observe the effect a set of independent variables have on the probability a certain event would occur or not occur (binary outcome). In this case, the event we tried to predict using our independent variables was whether USTR approved or denied an exclusion request. We implemented a technique called maximum likelihood estimation to estimate the statistical relationships between each of our independent variables and the binary outcome variable.

<sup>5</sup>Marginal effect estimation allows one to report the estimated change in likelihood of an exclusion request approval from a one unit change in the independent variable after implementing the model that uses the maximum likelihood estimation.

<sup>6</sup>As noted earlier, USTR included additional questions in exclusion request forms for Lists 3 and 4A. For example, USTR asked requesters to provide information about their company's gross revenues, as well as whether their business satisfied the Small Business Administration's size standard for a small business. Previously, USTR officials conjectured that differences in the types of products could explain the difference. We controlled for differences in the types of products requested in our analysis.

value of the import subject to the tariff with the requester's gross revenues.

Nonetheless, the results from the regression analysis generally reflected some of the factors USTR stated that it would consider in granting exclusion requests.<sup>7</sup> For example, requests for goods in product categories with higher import shares from China, a possible indicator of product availability from other countries, were more likely to be approved.<sup>8</sup> In addition, in most of our models requests for goods in industries with higher numbers of people employed, a possible indicator for how available the product is domestically, were less likely to be approved.<sup>9</sup> Finally, we found that requests for products with certain end-uses were more likely to be approved. Using the output from the logistic regression model, we found the following results:

- Both products with capital and industrial end-uses, which companies typically use in the production process of other products, were roughly 5 percent more likely to be approved than requests for consumer end-uses.
- Automotive products were not statistically significantly more or less likely to be approved than products with consumer end-uses.<sup>10</sup>
- Products with agricultural end-uses or products with end-uses not elsewhere specified were 11 percent more likely to be approved than other products.

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<sup>7</sup>See Table 1 for the list of factors USTR considered.

<sup>8</sup>Specifically, we found a 1-percentage point increase in the import share of goods in an HTSUS product category is associated with the average request for a product in that category being 8 percent more likely to be approved when controlling for other factors.

<sup>9</sup>Specifically, a 1-percentage point decrease in the industry's employment level is associated with the average request for goods manufactured in that industry being 0.1 to 0.2 percent more likely to be approved when controlling for other factors. The effect of industry employment on exclusion request outcomes is statistically insignificant when clustering errors at the requester level. After accounting for firm fixed effects, requests for products in industries with higher levels of U.S. employment were more likely to be approved.

<sup>10</sup>When using a linear probability or probit model, we found that requests for products with automotive end-uses were between 2 to 4 percent more likely than consumer products to be approved. This result was not statistically significant in some of the other regression models we considered.

We also used other product groupings available in Census data and other sources to identify other product characteristics that are correlated with exclusion approval rates. For instance, we found the following results:

- Products in advanced technology categories were not statistically significantly more or less likely to be approved than products not in advanced technology.<sup>11</sup>
- Products related to public-health maintenance were about 14 percent more likely to be approved than products not related to public-health maintenance related categories.
- Products either covered by the Section 201 or 232 tariffs were roughly 6 percent less likely to be approved.<sup>12</sup>

In addition, we also found that requests:

- For goods in product categories with higher import values were less likely to be approved for exclusion.<sup>13</sup> Requests from stakeholders that also requested other products were less likely to be approved.<sup>14</sup> For example, one additional request submitted by a firm was correlated with an approximately one-half percent decrease in the likelihood any other exclusion request submitted by that firm was approved.
- Submitted by the most frequent requester were almost 6 percent less likely to be approved than requests made by other requesters. This requester submitted over 20 percent of all exclusion requests.

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<sup>11</sup>Using a linear probability model without requester fixed effects, we found requested products likely containing advanced technology were 2 percent more likely to be approved than products without advanced technology.

<sup>12</sup>Exclusion requests for products also covered by these tariffs were not statistically more or less likely to be approved when we accounted for differences in characteristics between requesters.

<sup>13</sup>Specifically, a 5-percent increase in the import value of goods in an HTSUS product category is associated with requests for those products being 1 percent less likely to be approved. However, after accounting for differences in requester characteristics, we found that the relationship between import values and exclusion approval switched from negative to positive. When clustering our errors at the requester level, our logistic regression model showed that requests for products in product categories that had higher levels of import value from China did not have a statistically significant relationship with exclusion approval rates.

<sup>14</sup>This result was not statistically significant when we considered a logistic regression model with clustered standard errors.

**Appendix II: Technical Summary of Regression Analysis Examining Outcomes of Exclusion Requests for Section 301 Tariffs on Imports from China**

See table 7 for a more detailed discussion of the findings discussed above.

**Table 7: Regression Analysis of Section 301 Exclusion Request Approvals on Product Characteristics**

<b>Independent Variables (Unit of Measure)</b>	<b>Linear Probability Model</b>	<b>Logistic regression (Marginal Effects)<sup>a</sup></b>	<b>Logistic regression (Clustered Standard Errors at Requester Level)<sup>b</sup></b>	<b>Probit Regression (Marginal Effects)<sup>a</sup></b>	<b>Linear Probability Model with Requester Fixed Effects<sup>c</sup></b>
Product covered in USTR tariff List 3 or 4A (Binary)	-0.268*** (0.01)	-0.214*** (0.01)	-0.214*** (0.04)	-0.223*** (0.01)	-0.377*** (0.01)
Capital End-use Product (Binary) <sup>d</sup>	0.053*** (0.00)	0.045*** (0.00)	0.045* (0.02)	0.055*** (0.00)	0.027*** (0.00)
Industrial End-use Product (Binary) <sup>d</sup>	0.049*** (0.00)	0.053*** (0.01)	0.053* (0.03)	0.054*** (0.01)	0.012** (0.01)
Automotive End-use Product (Binary) <sup>d</sup>	0.038*** (0.01)	-0.001 (0.01)	-0.001 (0.03)	0.018*** (0.01)	0.024*** (0.01)
Agricultural or Other End-use Product (Binary) <sup>d</sup>	0.092*** (0.02)	0.112*** (0.02)	0.112* (0.06)	0.099*** (0.02)	0.055* (0.03)
Products Related to Public-Health Maintenance (Binary)	0.165*** (0.01)	0.137*** (0.01)	0.137** (0.03)	0.157*** (0.01)	0.060*** (0.01)
Products of Advanced Technology (Binary)	0.021** (0.01)	0.006 (0.00)	0.006 (0.03)	0.007 (0.00)	0.013 (0.01)
Product covered by other tariffs (Binary)	-0.064*** (0.01)	-0.060*** (0.00)	-0.060*** (0.01)	-0.067*** (0.00)	0.018 (0.02)
Import Value (in Logarithm)	-0.004*** (0.00)	-0.002*** (0.00)	-0.002 (0.00)	-0.003*** (0.00)	0.003*** (0.00)
Import Share from China (Proportion)	0.091*** (0.01)	0.077*** (0.01)	0.077** (0.03)	0.081*** (0.01)	0.109*** (0.01)

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<b>Independent Variables (Unit of Measure)</b>	<b>Linear Probability Model</b>	<b>Logistic regression (Marginal Effects)<sup>a</sup></b>	<b>Logistic regression (Clustered Standard Errors at Requester Level)<sup>b</sup></b>	<b>Probit Regression (Marginal Effects)<sup>a</sup></b>	<b>Linear Probability Model with Requester Fixed Effects<sup>c</sup></b>
Level of Industry Employment (in Logarithm)	-0.003***	-0.001**	-0.001	-0.002***	0.006***
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Number of exclusion applications submitted by each requester (Requests)	-0.003***	-0.003***	-0.003	-0.005***	Not applicable <sup>e</sup>
	(0.00)	(0.00)	(0.00)	(0.00)	Not applicable <sup>e</sup>
Request submitted by most frequent requester (Binary)	-0.027***	-0.056***	-0.056**	-0.063***	Not applicable <sup>e</sup>
	(0.01)	(0.00)	(0.03)	(0.00)	Not applicable <sup>e</sup>

Legend: \*\*\* = statistically significant at p-value < 0.01, \*\* = statistically significant at p-value < 0.05, \* = statistically significant at p-value < 0.1.

Source: U.S. Census Bureau (Census) trade data, United States International Trade Commission (USITC) data on COVID-related products and the Office of the U.S. Trade Representative (USTR) exclusion request data. | GAO-21-506

Notes: Our sample size consisted of 52,031 exclusion applications submitted by 4,542 different requesters. We combined USTR's request data with Census import data using the Harmonized Tariff Schedule of the United States (HTSUS)-10 product category codes before combining with the County Business Patterns published by Census using the six-digit North American Industry Classification System code. We omitted requests from the analysis for products not found in Census import data. These requests could either be for products that were never imported or that the requests could contain incorrect HTSUS-10 codes in the application. We also did not include requests for products not imported prior to the tariff being imposed. Positive values (coefficient estimates) indicate that requests with that characteristic had higher rates of approval even when controlling for other independent variables mentioned in the table. Values in parentheses represent the standard errors for our coefficient estimates. Since consumer products represent final goods and other types of products, such as capital or industrial goods, could represent inputs in the production process, we compared the approval rates of certain types of requested products to consumer products to better interpret the relationships in the data. We computed the log-transformation for some independent variables due to the heavy skewness of their distributions in the data. We conducted several discrete regression analyses to identify statistical relationships in the data and check the robustness of our main result. Since many requesters submitted multiple applications, we also considered a requester fixed-effect linear probability model to control for differences in characteristics among different requesters. In some instances, USTR also considered other requests made by the same requester in deciding whether to approve a specific exclusion request. For this reason, we included a regression model with the residuals clustered at the requester level to control for correlation in exclusion request outcomes submitted by the same requester.

<sup>a</sup>In some instances, a linear regression model may suggest an outcome could occur with a negative probability or beyond certainty (more than 100 percent). In this analysis, with 13 percent of all exclusion requests being approved, the former could be likely. For this reason, we use logistic and probit regression models instead of the standard linear regression model to observe the effect a set of independent variables have on the probability a certain event would occur or not occur (binary outcome). In this case, we tried to predict whether USTR would approve or deny an exclusion request. When using these models, we implemented the maximum likelihood estimation method to estimate the statistical relationships (coefficients) between each of our independent variables and the binary outcome variable. This technique generates a more accurate measurement of each of those coefficients compared with the methods used in the standard linear regression model. Marginal effect estimation after observing the estimates from models using maximum likelihood estimation allowed us to report the ratio of change between the probabilities of an exclusion request approval and each independent variable.

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<sup>b</sup>A key assumption for using the logistic model is that the outcome of a given request is independent of the outcome of another request. In some instances, it is possible that some dependency exists between the outcomes of requests in certain clusters. In these situations, it is necessary to calculate standard errors for the regression model separately for requests in each cluster. While this method did not change the magnitude of the relationship between each independent variable and the outcome, it could affect whether the relationship remains statistically significant.

<sup>c</sup>Using a regression with requester fixed effects allows one to consider relationships between the outcome variable and independent variables, while accounting for any possible differences in characteristics between different requesters (such as firm size or profitability). Linear Probability Models are regression models that use standard techniques to model the effect of each independent variable on a binary outcome. Results from Linear Probability Models including or excluding fixed-effects can be imperfect when modelling a binary outcome like request approval since it can suggest nonsensical probabilities, such as probability value under “0” or over “1,” for approval in some cases. These models are easier to interpret than more complex models like the logit and probit models, but results should be considered along with results in those more complex models. For this reason, we also ran a logistic regression model with requester fixed-effects (conditional logistic model) and confirmed that the statistical relationships were quantitatively similar across the two fixed-effects models. This model is not included in the table above.

<sup>d</sup>Coefficients for these variables reflect the difference in likelihood between requests for products in the category and requests for consumer products while controlling for all other factors mentioned in the table.

<sup>e</sup>We cannot control for these variables separately when running a fixed-effects regression model at the requester level.

**Robustness Checks:** We also conducted several robustness checks to ensure the reliability of our preferred analysis by implementing different modelling techniques. In particular, we used a linear probability model with requester fixed effects to account for the effect some requester’s characteristics could have on exclusion request outcomes. Implementing such a model accounts for a requesting company’s reliance on overall profitability and imports from China during the study period, which could be indicative of whether a firm was prone to incurring severe economic harm from the tariff. As noted in the report, a company might be more likely to suffer severe economic harm when importing final products (covered by the tariffs) that account for a significant percentage of its gross sales, according to USTR training materials. Similar results for a given variable across the different models we considered suggests consistency in our overall findings.

Since we could not gather business information on the firm level from the request data we extracted, we accounted for these differences among requesting firms by using a linear probability model with requester fixed



effects.<sup>15</sup> Additionally, in some instances, USTR also considered other requests made by the same requester in deciding whether to approve a specific exclusion request. Therefore, we also considered a logistic regression model with our residuals clustered at the requester level to ensure the relationships in the data remained significant.<sup>16</sup> We generally found similar results across these models for most of the independent variables we considered as shown in table 7.

**Limitations:** Since we only had access to a select set of possible variables, there could be other important variables that we did not account for in the model. For example, the negative and significant relationship between import values and exclusion approval could be driven by issues related to administrability of those goods or other firm level information provided in individual requests. We used various econometric techniques, such as fixed effect regressions, to account for other variables that could affect the likelihood that an exclusion request was approved. Some of the variables we used in our statistical analysis to reflect the factors USTR uses in its decision making process are only proxies as USTR did not explicitly use these same variables in its reviews. For instance, if similar products have high import shares from China that suggests, but does not confirm that the specific product requested is less available from other countries. USTR might have considered the import share to evaluate availability, but it might not have been the only variable considered. Furthermore, there could also be relevant variables beyond firm and product characteristics that we did not

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<sup>15</sup>Linear Probability Models are regression models that use standard techniques to model the effect of each independent variable on a binary outcome. Results from linear probability models including or excluding fixed-effects can be imperfect when modelling a binary outcome like request approval since it can suggest nonsensical probabilities for approval in some cases. These models are easier to interpret than more complex models like the logit and probit models, but results should be considered along with results in those more complex models. For this reason, we also ran a logistic regression model with requester fixed-effects (conditional logistic model) and confirmed that the statistical relationships were similar across the two fixed-effects models. Interpreting results from a conditional logistic regression is more difficult than the standard logistic model because the properties of the model prohibit accurate calculation of marginal effects; thus, we do not report the coefficients in the table.

<sup>16</sup>A key assumption for using the logistic model is that the outcome of a given request is independent of the outcome of another request. In some instances, it is possible that there exists some dependency between the outcomes of requests in certain clusters. In these situations, it is necessary to calculate standard errors for the regression model separately for requests in each cluster. While this method will not change the magnitude of the relationship between each independent variable and the outcome, it could affect whether the relationship remains to be statistically significant.

consider in our modelling approach. As a result, our analysis does not fully explain the reasons for differences in exclusion approval rates for different products. Thus, our analysis does not establish a causal relationship between product characteristics and exclusion request outcomes.

Requests to USTR include narrative descriptions, which could have requester-level information, but we could not reliably extract requester-level data from these narratives. As such, many of the variables we considered came from Census data on imports and other sources measured at the HTSUS-10 product category or six-digit North American Industry Classification System level.<sup>17</sup> Consequently, some requests sharing the same HTSUS product category or North American Industry Classification System industry code had equal values for the factors we consider, creating a lack of variation in our independent variables, which led to lower precision of the regression coefficients and therefore would bias the results toward not finding a statistically significant relationship. We conducted the analysis at the exclusion request level to more easily interpret and discuss the results. We gained more precision around the regression coefficients when we aggregated the data to product category level to obtain more variation in the independent variables we considered. Our findings from this approach were similar to the results discussed above.

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<sup>17</sup>See Table 5 and associated notes for a list of variables and datasets we used in this analysis.

# Appendix III: Comments from the Office of the U.S. Trade Representative

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

July 8, 2021

Kimberly M. Gianopoulos  
Director  
International Affairs and Trade  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Gianopoulos:

We appreciate the opportunity to review and comment on the Government Accountability Office's (GAO) draft report entitled, *U.S.-China Trade, USTR Should Fully Document Internal Procedures for Making Tariff Exclusion and Extension Decisions*.

On behalf of the Office of the United States Trade Representative (USTR), I would like to thank GAO for its work in planning and conducting the engagement that led to this report. In the course of this engagement, we too have surveyed USTR's documenting of internal procedures for the exclusions and extensions processes and have gained important insights that will inform the documentation of internal procedures for any future processes.

In that vein, we embrace the GAO's recommendation that USTR fully document the internal procedures used to make Section 301 tariff exclusion and extension decisions. USTR currently does not have an ongoing exclusion process. Nonetheless, as GAO has recommended, and so as not to risk losing the expertise USTR gained from administering the previous exclusion and extension processes, USTR has begun a review to fully document the internal procedures used in those processes and implement GAO's two recommendations. USTR will provide a written statement of action to the relevant Congressional Committees, with a copy to you, following publication of the final report.

USTR also wishes to provide comments and additional context with respect to the findings and discussion in the draft report. USTR's comments address the following matters: (1) GAO's finding with respect to USTR's substantive reviews; (2) the evolving nature of USTR's Exclusion Process; (3) documenting certain steps of the processes; (4) GAO's analysis of case files; (5) GAO's quantitative analysis; and (6) certain clarifications.

#### USTR's Substantive Reviews

GAO's primary finding is that USTR did not document all of its internal procedures with respect to certain steps. USTR would like to highlight, however, that the GAO has recognized that with respect to the substantive review, USTR's reviews were consistent with its documented procedures.<sup>1</sup> Furthermore, regarding procedures for steps not fully documented, GAO does not report any inconsistencies in the substantive application of the decision-making factors. The

<sup>1</sup> GAO Draft Report at 19.

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procedures where GAO reports that USTR lacked full documentation were either administrative in nature; well established procedures for determinations under Section 301; or involved the internal procedures of other agencies.

The Evolving Nature of USTR's Exclusion Process

The procedural differences among the reviewed case files stem not from any lack of documentation of internal procedures, but rather from the evolving nature of particular steps to reflect lessons learned over time and certain factual differences in the case files. Moreover, the procedural difference reflected in the reviewed case files are not inconsistencies in how procedures were applied.

With subsequent lists, and particularly List 3, USTR made certain adjustments to improve the review process based on experience.<sup>2</sup> The company profile tool, consistency check, and the addition of a third tariff classification expert were such adjustments. These adjustments in the process did not involve a different substantive analysis. Rather, these adjustments were made to improve the tools available to reviewers and improve the administrative process.

- Assigning multiple requests from the same company to one reviewer so that the requests could be reviewed together started with List 1. Because requests were reviewed on a rolling basis and requesters were able to submit requests over a three-month period, however, USTR was not always in a position to assign all the requests from a particular company to the same reviewer at the same time. The consistency check was added for List 3 as an administrative step to better ensure that all requests from a company were reviewed together.
- Similarly, the company profile was a tool developed during USTR's review of List 3 exclusion requests. The tool was added after USTR received 10,000 requests from one company. Rather than being a separate type of substantive analysis, the company profile was a tool to help reviewers identify whether multiple requests from the same company contained the same rationales for different products with respect to availability and severe economic harm.
- USTR initially required that two tariff classification experts review a product description before the request was denied for insufficient product identification. In order to improve the process further, during List 3 USTR added an extra classification review to ensure that all product descriptions were considered by at least three tariff classification experts before a request was denied for insufficient product identification.

Documentation of the Process

The draft report notes that USTR lacked documented procedures for review of decisions by the General Counsel and for the United States Trade Representative to make a final decision. As noted at the outset of this letter, USTR intends to comply with the recommendation to document all procedures. At the same time, USTR would emphasize that under longstanding agency practice, every staff recommendation for a formal determination under Section 301 is reviewed

<sup>2</sup> GAO Draft Report at 11.

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by the General Counsel. And if the General Counsel agrees, the recommendation is sent on the U.S. Trade Representative for final decision. This process is reflected in every decision memo for a determination under Section 301, including with respect to each of the exclusion determinations, as the 16 case files show. Further, the draft report acknowledges that all case files contained the summary information provided to the General Counsel, the General Counsel's recommendation, and a decision memo from the General Counsel to the U.S. Trade Representative.<sup>3</sup>

With respect to the administrability review performed by the U.S. Customs and Border Protection (CBP) and the U.S. International Trade Commission (ITC), USTR believes that USTR's description of the administrability reviews performed by CBP and ITC is consistent with how these agencies characterized their reviews. Specifically, USTR's characterization of the administrability review as "draft language for exclusions sent to USITC and DHS/CBP for review"<sup>4</sup> is consistent with CBP and ITC's characterization as "providing technical comments on draft exclusion language."<sup>5</sup>

GAO also notes that USTR did not have written procedures for the 21 agencies that join USTR on the Trade Policy Staff Committee (TPSC) to provide comments on USTR's proposed exclusions as part of the long-established interagency review process.<sup>6</sup> On this point, USTR would highlight that the 21 agencies participating in the TPSC process have different missions and provide views and advice based on their respective expertise, and USTR does not have the role of determining the procedures used by other TPSC agencies.

GAO's Analysis of Specific Case Files

As part of GAO's review of USTR's processes, GAO reviewed 16 random case files from List 3, including 12 exclusion requests and 4 extension comments.

As an initial point, USTR appreciates that GAO recognizes that results from the case files "cannot be used to make inferences about a population." These 16 case files represent only a small percentage of the total number of exclusion and extension requests reviewed by USTR.

USTR also would like to provide some further context with regard to certain case-specific findings in the draft report. First, the draft report expresses concerns that for two of the cases, the date for the consistency check was not recorded, and for two other cases, the consistency check occurred after the General Counsel review.<sup>7</sup> As GAO notes, however, initially reviewers were not instructed to record the date for the consistency check.<sup>8</sup> As USTR indicated to GAO during the engagement, reviewers were only required to indicate that the review had been completed.<sup>9</sup> Similarly, GAO also recognizes that it was possible that the consistency check

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<sup>3</sup> GAO Draft Report at 20-21.

<sup>4</sup> USTR's Response to GAO's Initial Question Set, Exhibit 1.

<sup>5</sup> GAO Draft Report at 21.

<sup>6</sup> GAO Draft Report at 21.

<sup>7</sup> GAO Draft Report at p. 19.

<sup>8</sup> GAO Draft Report at p. 19, fn. 34.

<sup>9</sup> USTR Response GAO's January 5, 2021 Information Request.

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could occur after the General Counsel review, particularly if a company submitted requests under variant organization names (as was the case with one of the files GAO examined).<sup>10</sup>

With respect to the addition of a third tariff classification expert, GAO notes that one of the files was different from the other files because the request was sent to a third tariff classification expert after being sent to the General Counsel, where the others were sent to three tariff classification experts, and then sent to the General Counsel.<sup>11</sup> But, as GAO explains in footnote 35, this request, and 72 other exclusion requests, were sent to the General Counsel after just two tariff classification experts. This is because, at the time, USTR had not required that requests be reviewed by three tariff classification experts before being denied based on insufficient product description.<sup>12</sup> Thus, to ensure that these 73 requests received the benefit of three reviews, the 73 requests were returned for review by a third tariff classification expert. Accordingly, the examined case file underscores USTR's consistency in applying this additional step.

Regarding extensions, GAO notes that for the two reviewed case files for which the exclusions were extended, the decisions were recorded in a decision memo to the U.S. Trade Representative.<sup>13</sup> And, in the two case files reviewed where the exclusions were not extended, there was no decision memo recording the General Counsel's recommendation. The difference in how this step was performed stems not from any difference in process, but from the different results. As GAO notes, not extending an exclusion does not result in a modification of the Section 301 action because the exclusion is already scheduled to expire. It was not necessary to record the recommendation to maintain the Ambassador's previous determination in a decision memo.<sup>14</sup> By contrast, extending an exclusion is a modification of the Section 301 action, and thus requires a decision memo.

GAO's Quantitative Analysis:

GAO's report provides certain quantitative analysis regarding distribution of exclusions between Lists 1 and 2 versus Lists 3 and 4A and across certain product categories. The USTR economic team has carefully reviewed the quantitative analysis. Although the analysis is of interest as an academic matter, USTR believes the analysis is not directly relevant to USTR's processes and sheds no light on the relationship between the outcomes of the process and the five factors USTR used to evaluate requests. Rather, the analysis illustrates the distribution of exclusions between Lists 1 and 2 versus Lists 3 and 4A across certain product categories never used by USTR.

GAO performs two types of quantitative analysis using data from exclusion requests. First, GAO calculates the rate of exclusion approval within certain categories. The approval rates featured in the analysis describe how the share of approved exclusion requests varied across five product end-use categories and between products on Lists 1 and 2 versus products on Lists 3 and 4A.

<sup>10</sup> GAO Draft Report at p. 19, fn. 34.

<sup>11</sup> GAO Draft Report at p. 20.

<sup>12</sup> GAO Draft Report at 20, fn. 35.

<sup>13</sup> GAO Draft Report at 21.

<sup>14</sup> GAO Draft Report at 21, fn. 37.

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Second, GAO reports results from a regression analysis, which examines the extent to which variation across these categories can be explained by “certain factors that could influence exclusion approval.”<sup>15</sup> Those factors include the total value of U.S. imports and China’s share of imports in the HTS 10-digit code under which the requested product falls, U.S. employment in the associated industry, and the number of other exclusion requests made by the requesting company. Importantly, however, the variables GAO uses are not representative of the five factors USTR used to evaluate requests.<sup>16</sup>

In principle, a regression-type analysis might be used for examining whether the outcomes of exclusion requests differed across lists or product categories for reasons other than the established criteria. This would be accomplished by controlling for all five factors used to evaluate exclusion requests – that is, by including variables in the regression that adequately represent availability, severe economic harm, strategic importance to China, objective of the Section 301, and administrability. GAO’s regression analysis, however, fails to control for these five factors. USTR would particularly emphasize that the GAO analysis falls short in controlling for the factor that represented the most frequent basis for rejecting an exclusion request, namely a failure to show severe economic harm.

GAO’s report uses its regression analysis to compare approval rates between Lists 1 and 2 and Lists 3 and 4A. Since GAO’s regression model does not include variables that adequately control for the five factors considered by USTR reviewers, however, this comparison may simply be picking up differences in the degree to which requests associated with products on Lists 3 and 4A satisfied USTR’s criteria compared to the Lists 1 and 2 requests. In other words, the quality and nature of the requests submitted for Lists 1 and 2 may have been significantly different from those on Lists 3 and 4A. This includes differences in the prevalence of severe economic harm among requests.

Furthermore, as GAO notes, USTR officials explained that additional information provided by requesters for Lists 3 and 4A allowed for better evaluation of severe economic harm during the Lists 3 and 4A process. For example, for Lists 3 and 4A, requesters were required to report their annual gross revenues, which allowed USTR to compare the value of reported imports for a particular product subject to the additional duties as percentage of the company’s gross revenues.<sup>17</sup> The absence of this information during the Lists 1 and 2 process may have led USTR to grant exemptions for products on the basis of severe economic harm that they would have rejected if they had additional information. However, GAO’s regression does not shed light on whether the enhanced ability to evaluate severe economic harm contributed to a higher rejection rate for Lists 3 and 4A.

In addition, the GAO report uses its regression analysis to compare requests for products that fall into the industrial and capital goods end-use categories versus consumer products. But again, since GAO’s regression model does not adequately control for the five factors considered by

<sup>15</sup> GAO Draft Report at 36.

<sup>16</sup> See, GAO Draft Report at Table 1 and 22-27.

<sup>17</sup> GAO Draft Report at 29.

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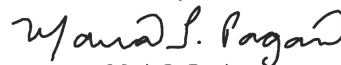
USTR in its exclusion process, the comparison may simply reveal that requests for industrial product exclusions were more likely to satisfy USTR's criteria for approval.

Clarifications:

USTR provides the following clarifications. Edits are in red font.

- Summary Page (Sidebar): USTR excluded *products* from additional Section 301 duties. The exclusions were not company specific.
  - “Because these tariffs could harm U.S. workers and manufacturers that rely on these imports, USTR developed a process to exclude some ~~U.S. stakeholder from having to pay the tariff on products they imported~~ products from additional duties.”
- On page 2 of the draft report, GAO states that: “To help obtain the elimination of China’s trade practices identified in the investigation, in July 2018, USTR began imposing additional tariffs on products from China under Section 301. To be complete, the statement should state: “To help obtain the elimination of China’s trade practices identified in the investigation, ~~at the direction of the President~~, in July 2018, USTR began imposing additional tariffs on products from China under Section 301. See, 83 FR 28710, 28711.
- On page 7 of the draft report GAO notes that USTR received an average of 12 requests per 10-digit tariff line. As USTR previously reported to GAO, this simple average is misleading. For example, on List 3, 36% of the 10-digit tariff lines that received at least one request, only received one request. 70% of the 10-digit tariff lines that received at least one request, received fewer than 5 requests.

Sincerely,



Maria L. Pagan  
Deputy General Counsel



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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Kimberly M. Gianopoulos, (202) 512-8612, [GianopoulosK@gao.gov](mailto:GianopoulosK@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Adam Cowles (Assistant Director), Alana Miller (Analyst-in-Charge), James Boohaker, Natalie Brodsky, Lilia Chaidez, Ming Chen, Caitlin Cusati, Neil Doherty, Grace Lui, Adam Peterson, Sam Portnow, Maria Psara, and Aldo Salerno made key contributions to this report.

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