

CLIENT ALERTS

Section 301 of the Trade Act of 1974 and the Automotive Industry: Past, Present, and Future

1.21.2021

Our last Client Alert to the auto industry on January 19th broadly outlined areas involving trade laws that automakers should be aware of for 2021. Many of these involve potential changes in existing laws, practices, and policies that impact the automotive industry. Among the most important of these are tariffs imposed on imports from China pursuant to Section 301 of the Trade Act of 1974. These tariffs affect almost all goods imported from China and a considerable percentage of those goods are utilized in the automotive industry. These tariffs range from 10% to 25% and were imposed in various tranches since 2018. The auto industry received some relief from these tariffs due to a system of exclusions in effect during various periods for each tranche. When these exclusions were expiring, there were often extensions available. However, the bad news for the auto industry is that effective December 31, 2020, these exclusions have expired, with the exception of some COVID related products

This means that if your company has orders pending from China that were exempt last year, you will have to pay duties on them when they land. Some of those orders may be for electronic components and semi-conductors already in short supply.

What options does the automotive industry have?

Many have predicted a more “friendly” trade policy under the new Biden Administration, but this is not likely to affect Section 301, at least in the short run. Most politicians on both sides of the aisle agree that China has engaged in certain dubious intellectual property and restricted market access practices for many years that warranted some action. President Biden indicated that there will be no immediate removal of the Section 301 tariffs on China. Last year, the Trump Administration reached a Phase I Trade Agreement with China but it was not very comprehensive. The two countries agreed to a standstill in new

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tariffs which were escalating on both sides. However, a rollback in tariffs, which many in the auto industry were hoping for, was not included. The rollback was left for Phase II, which was predicted to occur after the presidential elections. No timetable has been announced

Those that predict an immediate swing by the Biden administration to trade liberalization and rollback of Section 301 duties may be surprised. The influence of organized labor in protecting the US market and jobs should not be underestimated. Moreover, there are many in the Biden administration committed to a social justice agenda and who may support the use of trade remedies and sanctions to combat the Chinese policies, such as those on Hong Kong and those involving the treatment of internal minority groups. In short, a quick end to Section 301 duties on China is not likely. A pending case in the Court of International Trade challenging the President's authority under Section 301 is moving very slowly and may take years to resolve. The chances of success are unclear.

One option that may be the most desired by the labor movement and some business interests is more "onshoring" to produce more essential components domestically. Broader options are available in sourcing products from countries other than China that have relatively low labor costs (some of which receive other tariff preferences). For example, several developing countries, such as Brazil and Indonesia, are eligible for duty-free benefits in the U.S. under a program known as the Generalized System of Preferences (GSP). The individual products involved must be on the list of GSP eligible products and there is a process for adding and removing products and countries each year. Until recently, both India and Thailand were eligible for GSP benefits, but these were suspended.

It is possible for these countries, which produce auto parts, to be returned to GSP. For example, Chile and Argentina have been removed from GSP at various points in time but later returned to GSP status. Other non-GSP countries with lower labor costs than the U.S., having Free Trade Agreements (FTA's) with the U.S., are also being used as an alternative to China by companies in the auto industry to lower costs and tariffs. These include Mexico, under the new U.S., Mexico, Canada Agreement (to be discussed in a subsequent Client Alert); Central American countries along with the Dominican Republic, which belong to the Central American Free Trade Agreement (CAFTA); and bilateral agreements such as those with Korea (KORUS), Colombia, and other countries.

Often, Chinese goods can be imported into these third countries and go through a transformation process to avoid tariffs. If the goods undergo sufficient transformation resulting in a tariff shift (change in tariff heading from the imported input to the finished product exported to the U.S.), they may qualify for the preferential duty status when imported into the U.S. from such third countries.

Butzel Lawyers have experience counseling clients on how to take advantage of these options and to be able to avoid Section 301 tariffs from China in the uncertain times ahead.

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