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A New List and a New Exclusion Process for 301 China Tariffs Announced

9.18.2018

The Trump Administration announced Monday evening that it will impose 10% Section 301 tariffs on \$200 billion of goods imported from China beginning next week. The tariffs, which go into effect September 24, will rise to 25% on January 1, 2019. In his statement at the White House, President Trump added that “if China takes retaliatory action against our farmers or other industries, we will immediately pursue phase three, which is tariffs on approximately \$267 billion of additional imports.”

The changes that the Administration is seeking from China in return for easing up on the 301 tariffs include greater access to Chinese markets for American companies, and eliminating requirements for U.S. companies to share technology with Chinese companies in order to do business there. The Chinese government has thus far been unwilling to give in to the U.S. demands, instead issuing retaliatory tariffs on the first \$50 billion of U.S. tariffs that went into effect earlier this summer. China has threatened to retaliate against the latest wave of tariffs with other tariffs, as well as restrictions on the export of some critical components and materials to the U.S.

This latest round of tariffs is widely expected to raise prices on consumer goods such as food and electronics and was announced despite widespread criticism of the tariffs during a comment period and 6 days of hearings held in Washington last month. Retailers, manufacturers and trade associations predicted that the U.S. no longer had the capability to produce replacements for the products imported from China. The Administration did remove approximately 300 goods from the initially-proposed list as a result of the hearings, so not all comments submitted through these efforts went unheeded. Products removed from the proposed list include consumer electronics products like smartwatches and Bluetooth devices; some chemical inputs for manufactured goods, textiles and

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agriculture; and some health and safety products like bicycle helmets, and car seats.

During his White House appearance, President Trump incorrectly stated that “China is now paying us billions of dollars in tariffs”; in fact, the tariffs are paid to the Treasury Department by the Americans who import the goods. In his statement, the President referred to the retaliatory tariffs imposed by China as an effort to hurt the American economy. “As President, it is my duty to protect the interests of working men and women, farmers, ranchers, businesses, and our country itself.”

It is not clear whether the newly announced tariffs will disrupt Treasury Secretary Mnuchin’s efforts to broker economic policy discussions. China had previously indicated it would not proceed with such discussions if new tariffs were implemented.

SEPARATE ANNOUNCEMENT FROM USTR REGARDING SECTION 301 LIST TWO PRODUCT EXCLUSION PROCESS

In a separate but related announcement, the United States Trade Representative today also announced a Product Exclusion Process for those products from China subject to a 25% tariffs effective August 23, 2018. Those of you that have been regular readers of our Butzel Long client alerts (Anthony- please hyperlink to all past 301 client alerts) know that there has already been an exclusion process established for products from China on “List One” from 301 tariffs that took effect on July 6, 2018. Until now, no details had been provided on the List Two exclusion process, which will have a deadline of December 18, 2018.

Today’s Federal Register sets out the List Two procedures and deadlines. The approximately \$16B of products covered by List Two can be found [here](#).

The process is similar to that set out for List One. Each request must identify a separate product and separate company. Any exclusion granted is valid for one year and is retroactive to the effective date of the List Two tariffs, August 23, 2018. The announcement does not address whether the one year period can be extended

Each exclusion request must include:

- Identification of the particular product in terms of the physical characteristics (e.g. dimensions, material composition, or other characteristics) that distinguish it from other products within the covered 8-digit subheading. (USTR will not consider requests that (1) identify the product at issue in terms of the identity of the producer, importer, ultimate consumer, actual use or chief use, or trademarks or trade names; or (2) identify the product using criteria that cannot be made available to the public.
- The 10-digit subheading of the HTSUS applicable to the particular product requested for exclusion.
- Information on the ability of U.S. Customs and Border Protection to administer the exclusion.
- The annual quantity and value of the Chinese-origin product that the requester purchased in each of the last three years. (Trade association requesters, should provide such information based on

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members' data.) If precise annual quantity and value information is not available, provide an estimate and explain the basis for the estimation.

- For imports sold as final products, provide the percentage of their total gross sales in 2017 that sales of the Chinese-origin product accounted for.
- For imports used in the production of final products, provide the percentage of the total cost of producing the final product(s) the Chinese-origin input accounts for and the percentage of their total gross sales in 2017 that sales of the final product(s) accounted for.

Rationale for the requested exclusion should address the following factors:

- Whether the particular product is available only from China; specifically whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requester or other U.S. interests.
- Whether the particular product is strategically important or related to "Made in China 2025" or other Chinese industrial programs.

Beyond the above rationale, the requester should provide support for each of their assertions, and may also provide other information or data that they consider relevant to an evaluation of the request. Any request that contains business confidential information must be accompanied by a public version that will be posted on [regulations.gov](https://www.regulations.gov). All submissions must include a certification of accuracy and those containing confidential information must contain a certification that disclosure of the information would endanger trade secrets or profitability and that the information would not customarily be released to the public.

Finally, the List Two Exclusion process allows parties to comment in support of or in opposition to the exclusion request within 14 days after the request is posted in the USTR docket USTR 2018-0032. Replies to comments are permitted within 7 days after the close of the 14 day comment period or 7 days after the posting of the response (whichever is later).

Your Butzel attorneys remain on top of the developments regarding international trade – including 301 Tariffs, 232 Tariffs, NAFTA developments, and more. For answers, for support, or simply to talk tariffs, do not hesitate to contact your Butzel attorney!

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