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United States Trade Representative to Consider Reinstatement of Expired Section 301 Exclusions

10.6.2021

In a speech on October 4th on U.S. trade policy towards China at the Center for Strategic and International Studies, United States Trade Representative (USTR) Catherine Tai briefly mentioned that the USTR was considering a process for reinstating section 301 tariff exclusions that had been extended but expired, but gave few details of the timing or process. Tariffs imposed under section 301 of the Trade Act of 1974 ranged from 7.5% to 25% as a result of the Trump Administration finding that China had, among other things, impaired intellectual property rights of U.S. companies and that U.S. companies have been denied market access in China. A series of tariffs were imposed in four tranches on Chinese imports. However, an exclusion process was established to aid importers who were not able to source the products in the U.S. due to "unavailability." Unavailability included the inability to source the product domestically in the needed quantities, time periods and with comparable specs. However only about 13% of these exclusion requests were granted. The exclusions were for a one-year period but could be extended. Butzel Long assisted its clients in obtaining exclusions and extensions. Of the exclusions granted 549 were extended. The exclusions, extensions and the exclusion process were terminated on December 31, 2020, except for some COVID 19 related products.

In the official announcement on October 5th, Ambassador Tai noted the basis for any reinstatement of previously extended exclusions and the process, as follows:

'The focus of the evaluation will be whether, despite the first imposition of these additional duties in September 2018, the particular product remains available only from China. In addition, USTR will consider whether reinstating the exclusion, or not reinstating the exclusion, will impact or result in severe economic harm to the commenter or other U.S. interests,

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including the impact on small businesses, employment, manufacturing output, and critical supply chains in the United States, as well as the overall impact of the exclusions on the goal of obtaining the elimination of China's acts, policies and practices covered in the Section 301 investigation."

In the draft Federal Register notice accompanying the announcement, the USTR indicated that it was inviting comments on the possible reinstatement of previously extended exclusions and inviting public comment on whether to reinstate particular exclusions that were previously granted and extended.

Comments are also invited on the appropriate length of any reinstatement. Reinstatement will be evaluated on a case-by-case basis. The criteria for evaluation are similar but not identical to those for the original exclusion and extension requests and include:

- * Whether the product and /or a comparable product is available from sources in the United State and/or in third countries.
- * Any changes in the global supply chain since September 2018 with respect to the product or any other relevant industry developments.
- * The efforts if any, the importers or U.S. purchasers have undertaken since September 2018 to source the product from the U.S. or third countries.
- * Domestic Capacity for producing the products in the United States.

A list of the previously extended exclusions is available on the USTR website.

The period for written comments will open on October 12, 2021 and close on December 1, 2021. If granted, exclusions could be retroactive to October 12, 2021. For further information on the application process, contact your Butzel Long attorney.

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