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USTR Solicits Importer and Domestic User Comments on Extension of Section 301 Tariffs

Client Alert

10.24.2022

In April 2018 under former President Trump, the U.S. Trade Representative (USTR) issued the first of several notices imposing tariffs on certain imports from China. This was due to policies and practices of the Government of China relating to technology transfer, intellectual property and innovation that were found to be “unreasonable or discriminatory and burden or restrict U.S. commerce” and that were thus actionable under section 301(b) of the Trade Act of 1974, as amended. See 83 FR 14906 (April 6, 2018). For historical perspective on 301 tariffs, see also e.g. Butzel Client Alerts:

4/4/2018 – New Tariffs on Chinese Exports to United States Linked to Intellectual Property Issues Announced: Hearings to be Held

6/15/2018 – Section 301 Tariffs Involving China – Update

7/11/2018 – No One Is Blinking Yet: Trump Administration Responds to China’s Retaliatory Tariffs by Releasing New \$200B List of Chinese Exports That Could Be Subject to Section 301 Tariffs

1/2/2019 – United States Trade Representative Begins Issuing Product Exclusions for Section 301 Tariffs; Good News Whether or Not You Filed!

12/13/2019 – Phase I Agreement with China in Progress – Planned December 15th Tariff Increase to be Withdrawn

This new USTR action is in regard to the possible termination of the section 301 tariffs as part of a statutory four-year review. USTR decided to give the domestic producers benefitting from the tariff the first opportunity to comment on May 5, 2022, which allowed U.S. producers to request an extension of the tariffs and indicated that the section 301 tariffs would be extended as long as one U.S. domestic industry representative requested such

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extension 87 FR 26797 (May 5, 2022). On September 6, 2022 the USTR announced that the tariffs would remain in effect due to timely requests from U.S. producers 87 FR 55073 (September 8, 2022). No comments from importers and their customers were permitted prior to the time of that notice. However, the September 8, 2022 notice indicated that the USTR would conduct a complete review of the continuation of the tariffs and accept comments from "interested persons." An online portal will be opened effective November 15, 2022 and it will remain open until January 17, 2023. The portal will contain more details on the questions and issues to be commented upon which will include:

1. The effectiveness of the actions in obtaining the elimination of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
2. The effectiveness of the actions in counteracting China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
3. Other actions or modifications that would be more effective in obtaining the elimination of or in counteracting China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
4. The effects of the actions on the U.S. economy, including U.S. consumers.
5. The effects of the actions on domestic manufacturing, including in terms of capital investments, domestic capacity and production levels, industry concentrations, and profits.
6. The effects of the actions on U.S. technology, including in terms of U.S. technological leadership and U.S. technological development.
7. The effects of the actions on U.S. workers, including with respect to employment and wages.
8. The effects of the actions on U.S. small businesses.
9. The effects of the actions on U.S. supply chain resilience.
10. The effects of the actions on the goals of U.S. critical supply chains outlined in Executive Order 14017 and in subsequent reports and findings.
11. Whether the actions have resulted in higher additional duties on inputs used for additional manufacturing in the United States than the additional duties on downstream product(s) or finished good(s) incorporating those inputs.

All exclusions granted for section 301 ended in December 2020. Legislation is pending in Congress that could restore these exclusions and open the process to new exclusions.

In the meantime, this USTR notice for comments may be the only official opportunity for U.S importers, industrial users and consumers of these products from China to submit official comments to the USTR.

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Butzel attorneys have considerable experience in this area and are available to assist with preparing and submitting comments.

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