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U.S. Releases Final List of Tariffs on $200 Billion in Chinese Imports

Tariff rate of 10 percent will rise to 25 percent in 2019 Product-level exclusion process announced for $16 billion list released in August

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International Trade; Public Policy

On September 17, 2018, the Office of the U.S. Trade Representative (USTR) released its final list of approximately $200 billion in Chinese imports subject to an additional *ad valorem* tariff. The final list, which covers 5,745 product categories, will take effect on September 24, 2018. The tariff rate will initially be set at 10 percent and increase to 25 percent after January 1, 2019. The announcement of the final tariff list does not address whether the Administration will provide a product-level exclusion process from these tariffs, as it has done for two other rounds of tariffs imposed on Chinese imports earlier this year. In the case of the second tariff list on $16 billion in Chinese imports, which took effect on August 23, 2018, the Administration opened the process for requesting product-level exclusions on September 18, 2018.

Final $200 Billion Product List

The announcement of a final tariff list on $200 billion in Chinese imports follows the U.S. Administration's determination in March under Section 301 of the Trade Act of 1974 ("Section 301") that China's technology transfer and intellectual property ("IP") policies are harming U.S. companies. This list will be the third set of Section 301 tariffs to take effect, following tariffs targeting goods worth $34 billion and $16 billion, respectively. The $200 billion list was initially released for public comment on July 10, and this comment period closed on September 6.

The industries impacted by the $200 billion list are wide-ranging. The final list covers 5,745 subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) at the 8-digit level; only 286 tariff lines were fully excluded and just 11 tariff lines were partially excluded from the initial proposed list of 6,031 subheadings released in July. The vast majority of the 5,745 subheadings will be fully impacted by the new tariff and fall within "Part 1" of the list released by the Administration. Eleven of the subheadings, however, are identified in "Part 2" of the final list, and are subject to certain enumerated exclusions at the 10-digit level. In its statement on the final tariff list, USTR highlighted that products removed from the initial proposed list include "certain consumer electronics products such as smart watches and Bluetooth devices; certain chemical inputs for manufactured goods, textiles and agriculture; certain health and safety products such as bicycle helmets, and child safety furniture such as car seats and playpens." A chart comparing the initial and final lists is available here.

In contrast to the earlier announcements of the final $34 billion and $16 billion list, the Administration did not signal in its announcement of the final tariffs whether it will provide an opportunity to request product-level exclusions from the latest $200 billion list. Parties interested in seeking product-level relief should closely monitor further USTR announcements.

China Responds by Announcing Tariffs on $60 Billion in U.S. Products

In response to the U.S. announcement, China made clear that it is poised to retaliate. Earlier today, China's Ministry of Commerce ("MOFCOM") released a statement expressing "deep regret" at the U.S. decision, which in its words "ignored the vast majority of international and domestic opinion in opposition" to the tariffs. MOFCOM further stated that it plans to protect its "legitimate rights and interests and the global free trade order," and that China will "simultaneously implement retaliatory measures." Subsequently, MOFCOM announced that it would impose an additional 5-10 percent in tariffs on U.S. imports worth $60 billion beginning on September 24 (12:01 AM U.S. Eastern Time). In response to the initially proposed U.S. $200 billion list, MOFCOM had previously identified these products, grouping them into four lists of 8-digit subheadings. MOFCOM's first two lists, totaling 3,571 subheadings, will be subject to a 10 percent tariff. The latter two lists, totaling 1,636 subheadings, will be subject to a 5 percent tariff. Collectively, the four lists cover 5,207 subheadings and include agricultural, food, chemical, plastic, textile, metal, and electrical equipment products. President Trump reiterated his pledge to move forward with a tariff on an additional $267 billion in Chinese imports if China retaliates.

As tariffs take effect, U.S. companies with business interests in China should assess potential impacts on their customers, suppliers, and competitors, and also watch for further developments from both the U.S. and Chinese governments.

Product-Level Exclusion Process for $16 Billion Product List

Separately, as anticipated, USTR initiated the process for seeking product-level exclusions from the 25 percent *ad valorem* tariff levied on $16 billion in Chinese imports as of August 23, 2018. Exclusions, if granted, will apply retroactively to August 23, 2018 and will remain in place for one year after the exclusion determination is published in the *Federal Register*.

As set forth in USTR's September 18 announcement of the $16 billion exclusion process, product-level exclusion requests must clearly identify the physical characteristics of the product for which exclusion is sought. Potentially relevant characteristics include dimensions, weight, material composition, and other unique features that distinguish a product from others within the same tariff classification. USTR will not consider requests that define a product in terms of the producer/exporter or by trademarks or tradenames. Exclusion requests must also, among other requirements, identify the 10-digit HTSUS subheading under which the relevant imports are classified and any rulings issued by U.S. Customs and Border Protection supporting that classification.

Beyond a detailed physical description of the product subject to the request, requestors must address whether (1) the product is only available from China; (2) imposition of additional duties on the product would cause severe economic harm to the requestor or other U.S. interests; and (3) the product is strategically important to or related to Chinese industrial programs such as "Made in China 2025."

Although the $16 billion exclusion process closely parallels an ongoing process for seeking exclusions from an earlier round of tariffs on $34 billion in Chinese imports, there are notable differences. For example, unlike under the prior exclusion process, requestors must now quantify the percentage of total gross sales represented by the Chinese imports for which exclusion is sought. Requestors must also provide “support” for any assertions regarding alternative supply sources and the severe economic harm that would result from the imposition of tariffs.

Exclusion requests for products covered by the tariffs on $16 billion in Chinese imports are due by December 18, 2018. As requests are posted to USTR’s docket, parties will have 14 days to file responses either in support of or opposition to a particular request. The requestor then has 7 days to reply to any responses. USTR will evaluate each request on a “case-by-case basis” and will “periodically” announce decisions on pending requests.

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Covington’s diverse trade policy teams in Washington and Beijing, which include former senior government officials, are uniquely positioned to provide thoughtful strategic advice to clients seeking to monitor, prepare for, and react to upcoming Section 301 developments. We count among our ranks:

- Chris Adams, former Senior Coordinator for China Affairs at the U.S. Department of Treasury and Minister Counselor for Trade Affairs at the U.S. Embassy, Beijing;
- Marney Cheek, former Associate General Counsel in the Office of the USTR;
- Alan Larson, former Under Secretary of State for Economic, Business and Agricultural Affairs;
- Timothy Stratford, former Assistant USTR for China Affairs;
- John Veroneau, former Deputy USTR and former USTR General Counsel; and
- Gina Vetere, former Senior Policy Advisor to the Deputy USTR and former Director of IP and Innovation at USTR.

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