

## Resources

### Latest Developments on Trade Policy: Tariffs on Chinese Imports & Considerations When Applying for an Exclusion

August 29, 2018

With the ever changing developments regarding trade policy, we wanted to take this opportunity to provide some clarity regarding the Administration's actions under Section 301 of the Trade Act of 1974, regarding products imported from China.

#### Tariffs on Chinese Imports

Section 301 of the Trade Act allows the President to take action against a foreign government that violates an international trade agreement or restricts U.S. commerce - in this case, China. President Trump has announced three tranches of tariffs against China under Section 301. The imported goods subject to the tariffs are determined by a product's eight-digit harmonized tariff system (HTS) code.

**1st Tranche** - Enacted on July 6, 2018 - Imposes an additional 25 percent tariff on \$34 billion worth of Chinese imports.

**2nd Tranche** - Effective August 23, 2018 - Imposes an additional 25 percent tariff on \$16 billion worth of Chinese imports.

**3rd Tranche** - Proposed/Likely to become effective mid-October - Originally announced as an additional 10 percent tariff, but increased to an additional 25 percent tariff on \$200 billion worth of Chinese imports.

- Public Comment Period - USTR is accepting public comments on the third tranche until September 6, 2018. It is worth noting five HTS codes were removed from the final list for the second tranche in response to public comments received.
- Based on the timelines of the first two tranches of tariffs, the third tranche is likely to be enacted about six weeks from the end of the public comment period.

**Exclusion Process** - The Office of the United States Trade Representative (USTR) announced an application process for requesting an exclusion for specific products from the first tranche of tariffs.

- The deadline for submitting an exclusion request form is October 9, 2018.
- Any exclusion that is granted would be retroactive from the date the tariff went into effect and in place for one year.
- Opportunities for exclusion requests for the second and third tranches are expected to be announced separately.

#### If you're thinking of applying for an exclusion, there are several things to consider:

- Companies need to make a compelling case based on financial status and impact, inability to obtain the product from a non-Chinese source despite efforts to do so and/or can commit to finding alternative sources within a year to have the greatest chance of success.
- Since exclusions will apply to specific HTS codes, any importer can utilize the exclusion.
- Individual companies, along with trade associations are allowed to seek exclusions on behalf of members. The Motor Equipment Manufacturers Association has indicated they are not filing exclusions on behalf of their members.
- Based on the outcomes to date of exclusions requested for steel and aluminum, we believe all requests for exclusion from the Section 301 tariffs face an uphill battle.

With all of this in mind, if your organization is severely impacted by these tariffs, you may wish to submit an exclusion request in an effort to pursue all available options. Dykema has experience assisting clients in trade-related filings and stands ready to assist and advise any company considering a Section 301 exclusion request.

Please do not hesitate to contact Dykema attorneys and/or government policy advisors to discuss these matters in more detail:

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