

July 11, 2018

Increased Duties on Imports of Goods From China

By Ted Posner and Nathan Cunningham

This alert discusses duties the United States recently has imposed and is threatening to impose on imports of goods from China. It also discusses a newly established procedure, administered by the Office of the United States Trade Representative (“USTR”), for requesting to have particular goods excluded from duties.

Duties of 25% ad valorem on \$34 billion of Chinese imports as of July 6

On July 6, Customs and Border Protection (“CBP”) began imposing duties on imports of certain goods from China over and above the import duties that ordinarily would apply. The goods subject to these new duties are set forth in Annex A to a USTR notice published in the Federal Register on June 20 and available [here](#). The additional duty applied as of July 6 is equal to 25% of the value of the imported good. Each good included in Annex A is identified by its 8-digit subheading in the Harmonized Tariff Schedule of the United States (“HTSUS”). Annex A consists of 818 HTSUS subheadings, representing an annual trade value of approximately \$34 billion. (Annex B to the June 20 notice repeats the list in Annex A together with product descriptions included for informational purposes only.)

Duties of 25% ad valorem on \$16 billion of Chinese imports expected in the near term

In its June 20 notice, USTR also proposed to impose duties on imports from China of goods identified by an additional 284 HTSUS subheadings, as set forth in Annex C to the notice and representing an annual trade value of approximately \$16 billion. Like the duties now being imposed on the Annex A goods, duties on the Annex C goods would equal 25% of the value of the imported good.

USTR has set up a notice-and-comment process for the proposal to impose duties on the Annex C goods. Key upcoming dates in that process are:

- July 23: Submission of written comments
- July 24: Public hearing
- July 31: Submission of post-hearing rebuttal comments

USTR has not stated how long after July 31 it will finalize the list of goods subject to duties and instruct CBP to start imposing duties.

Legal basis for the duties

The legal basis for imposing duties on the Annex A and Annex C goods imported from China is Section 301(b) of the Trade Act of 1974 (19 U.S.C. § 2411(b)). As relevant here, Section 301(b)(1) requires the Trade Representative to take certain action if he determines that “an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce.”

Following an investigation that began in August 2017, Trade Representative Robert Lighthizer made such a determination (published in the Federal Register on April 6, 2018) with respect to Chinese government acts, policies, and practices related to technology transfer, intellectual property, and innovation. In light of that determination, the statute authorized the Trade Representative to take actions including “impos[ing] duties or other import restrictions on the goods of . . . such foreign country for such time as the Trade Representative determines appropriate.” 19 U.S.C. § 2411(c)(1)(B).

Duties of 10% ad valorem on \$200 billion of Chinese imports expected in the medium term

Trade Representative Lighthizer announced the imposition of duties on Annex A goods and proposal to impose duties on Annex C goods on June 15. The following day, the Chinese Government announced its intention to impose duties on imports of U.S. goods representing approximately \$50 billion in annual trade. On July 6, the Chinese Government confirmed that it will proceed to impose 25% *ad valorem* duties on the goods previously identified. In response to the original Chinese announcement, on June 18, President Trump directed Trade Representative Lighthizer to identify \$200 billion worth of additional Chinese goods on which to impose import duties of 10%. In response to that direction, USTR issued a notice, available [here](#), identifying such goods and announcing a notice-and-comment process concerning that list. Key dates in that process are:

- July 27: Submission of requests to appear at public hearing and summary of expected testimony
- August 17: Submission of written comments

- August 20-23: Public hearing
- August 30: Submission of post-hearing rebuttal comments

USTR has not stated how long after August 30 it will finalize the list of goods subject to duties and instruct CBP to start imposing duties.

Procedure to request to have particular goods excluded from duties

On July 11, USTR published in the Federal Register a notice setting forth procedures for parties to follow if they wish to have particular goods excluded from the duties imposed as of July 6. Presumably, similar procedures will apply to the new rounds of duties expected to be imposed in the near and medium term. For now, however, the procedures – which are available [here](#) – apply only to goods currently subject to additional duties (*i.e.*, the Annex A goods identified in USTR’s June 20 notice).

A duty exclusion request may be submitted to USTR (via an online portal available at www.regulations.gov) by any “interested person,” which may include a trade association. Each exclusion request must pertain to a single product and must be submitted by October 9, 2018. Any responses must be submitted no later than 14 days after a request has been posted on www.regulations.gov. Any replies must be submitted no later than 7 days after the close of the response period.

USTR has prepared an exclusion request form, which is available [here](#). Although requestors are not obligated to use this form, they are encouraged to do so.

USTR has not indicated how long it will take it to decide exclusion requests. But it has stated that if it grants a request, the relief granted will be retroactive to July 6 and will continue for one year after publication of the decision in the Federal Register.

Factors that USTR has indicated it will consider in deciding whether to grant an exclusion request include:

- Whether the subject product is available only from China;

- Whether the additional duties would cause severe economic harm to a U.S. interest; and
- Whether the product is strategically important or related to the “Made in China 2025” program.

However, this list of factors is not a closed list. USTR’s July 11 notice invites requestors to “provide any other information or data that they consider relevant to an evaluation of the request.”

Weil’s international trade lawyers are available to assist clients in navigating the rapidly changing trade

regulatory landscape, including by advising on the latest developments, drafting comments on proposed duties, and drafting submissions in the exclusion request process. Please direct any questions on these matters to Ted Posner at ted.posner@weil.com or 202-682-7064.

If you have questions concerning the contents of this issue, or would like more information about Weil’s International Arbitration & Trade practice group, please speak to your regular contact at Weil, or to:

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