WINSTON & STRAWN LLP

USTR Postpones Section 301 Tariff Increases During Negotiation Period with China

DECEMBER 27, 2018

On December 19, 2018, the United States Trade Representative ("USTR") issued a Federal Register notice that any increases to the third wave Section 301 tariffs will be postponed due to ongoing trade negotiations between the Trump Administration and the Chinese government. Originally, the tariffs on this third wave were set to increase from 10% to 25% on January 1, 2019. Now, the tariffs will only increase to 25% on March 2, 2019, if the governments do not reach a favorable agreement prior to that date.

On December 1, 2018, President Trump and President Xi Jinping met in Buenos Aires, Argentina, during the G20 Summit. After this meeting, President Trump announced a trade truce for 90 days while both governments continue to negotiate. According to the December 1 White House press release, in exchange for President Trump's agreement not to raise Section 301 tariffs, China has agreed to purchase a "substantial amount of agricultural, energy, industrial, and other product from the United States to reduce the trade imbalance between our two countries." President Trump and President Xi also agreed to "immediately begin negotiations on structural changes with respect to forced technology transfer, intellectual property protection, non-tariff barriers, cyber intrusions and cyber theft, services and agriculture."

We have been closely monitoring the three waves of Section 301 tariffs on behalf of our clients. The imposition of these duties is part of the U.S.'s response to the results of the Section 301 investigation that found that China was engaging in unfair trade practices related to the forced transfer of American technology and intellectual property. For more background information, please see our previous briefing, which provides details about the first wave of 25% tariffs which took effect July 6, 2018.

- Tariffs on List 1 products took effect on July 6, 2018, imposing a 25% tariff on $34 billion worth of Chinese products. The deadline to file product exclusion requests for List 1 was October 9, 2018.

- Tariffs on List 2 products took effect on August 23, 2018, imposing a 25% tariff on $16 billion worth of Chinese products. The deadline to file product exclusion requests for List 2 was December 18, 2018. Notably, China responded to these first two rounds of Section 301 tariffs by imposing the same duty rate on a comparable amount of U.S. products.

- Tariffs on List 3 products took effect on September 24, 2018, imposing a 10% tariff on $200 billion worth of Chinese products. China responded to these 10% tariffs by imposing duties ranging from 5% to 10% on $60 billion

worth of American imports. The USTR has not yet announced a process or timeline for filing exclusion requests for List 3 items.

The USTR has published a <u>tariff database link</u> where you can check the tariff classification of your product to determine whether it is on one of the three Lists above.

Public comments, which we have filed on behalf of clients in response to each of the announced rounds of tariffs, seem to have influenced the USTR's decision-making process. According to the Federal Register notice, "[t]he Trade Representative's decision to modify the September 2018 action takes into account the extensive public comments and testimony, as well as advice from advisory committees, concerning the actions proposed in the notices issued in advance of the September 2018 action."

If you have questions as you address these complex matters, we recommend seeking the guidance of counsel. Please contact any of the attorneys listed below or your usual Winston & Strawn LLP contact for assistance.
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