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Section 301 Tariffs Increase to 25% for Tranche 3 Goods from China

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May 10, 2019 - On May 9, 2019, the Office of the United States Trade Representative (“USTR”) officially published a notice that formally increased tariffs on nearly \$200 billion of Chinese goods from 10% to 25%. The 25% tariffs went into effect at 12:01 a.m. ET on May 10, 2019. The increase cast uncertainty on the prospects of a U.S.-China bilateral trade deal, as a Chinese delegation arrived in Washington, D.C. to continue negotiations.

Background

In August 2017, USTR initiated an investigation under Section 301 of the Trade Act of 1974 into alleged unfair trade practices by the Chinese government that harmed U.S. interests. Based on the findings of the investigation, the Trump Administration imposed tariffs on selected Chinese imports in three tranches:

- 25% ad valorem duties on \$50 billion in Chinese goods listed in tranches 1 and 2, and
- 10% ad valorem duties on \$200 billion in Chinese goods listed in tranche 3.

Although the tranche 3 tariffs were scheduled to increase to 25% on March 2, 2019, USTR indefinitely postponed the increase on March 5, 2019, citing positive ongoing trade negotiations with the Chinese government. This week, the Trump Administration suddenly changed course, increasing tariffs on the tranche 3 goods despite ongoing bilateral negotiations.

Implementation of Increase and Exclusions

The Federal Register notice provides that the increase on tranche 3 goods applies to goods “(i) entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on May 10, 2019, and (ii) exported to the United States on or after May 10, 2019.”

USTR has since issued a new notice, likely to be published early next week, modifying the implementation by providing that “products of China that are covered by the September 2018 action and that were exported to the

United States prior to May 10, 2019, are not subject to the additional duty of 25 percent, as long as such products are entered into the United States prior to June 1, 2019.” The new notice goes on to explain that “[s]uch products remain subject to the additional duty of 10 percent for this interim period.”

The application of the increase based on export date is unusual. USTR stated that the transitional period provided for goods that were exported prior to May 10, 2019 is designed to “account for customs enforcement factors and the average transit time between China and the United States by sea.” The transitional period may also reflect an acknowledgement by USTR that little notice was given to U.S. importers purchasing tranche 3 goods prior to the tariff increase.

In light of the tariff increase and USTR’s subsequent notice modifying the implementation of the tariff, U.S. Customs and Border Protection (“CBP”) has advised importers that:

For subject goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on May 10, 2019, and exported to the United States on or after May 10, 2019, report the following HTS numbers and duty rates:

*HTS: 9903.88.03 and 9903.88.04
Duty Rate: 25 percent*

For subject goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on May 10, 2019, and before June 1, 2019, and exported to the United States before May 10, 2019, report the following HTS number and duty rate:

*HTS: 9903.88.09
Duty Rate: 10 percent*

According to the Federal Register notice, USTR will establish an exclusion process that allows parties to submit or oppose exclusion requests for tranche 3 items, although USTR has not defined the parameters of this exclusion process. USTR initially promised an exclusion process in January 2019 when the Trump Administration first contemplated the tariff increase. At that time, USTR indicated that exclusion decisions would consider whether the goods were exclusive to China and how severely the duties would economically damage affected U.S. companies.

Impact on Ongoing Trade Negotiations

President Trump announced his intention to increase the tranche 3 Section 301 tariffs on May 5, 2019, asserting that negotiations between the United States and China had slowed. USTR, in formalizing the increase, has accused China of “retreat[ing] from specific commitments agreed to in earlier rounds [of trade negotiations].” The Chinese government has disputed this characterization, and it has threatened to respond in kind to the Trump Administration’s tariff increase. However, some analysts suggest that China increasingly hardened its negotiating stance in prior weeks, believing that the United States was in a position of weakness based on tweets from President Trump lamenting actions by the Federal Reserve and praising Chinese economic policy.

Bilateral negotiations between China and the United States are facing intense pressure from both sides. While China has sent its top trade negotiator, Vice Premier Liu He, to Washington, it is unlikely that this round of negotiations will quickly result in a trade deal. Negotiations did not result in an agreement before the tariff increase went into effect, despite President Trump tweeting that talks “continue in a very congenial manner.” It is also worth noting that Liu arrived in Washington without the designation of “special envoy” of Chinese President Xi Jinping.

Potential Fourth Round of Section 301 Tariffs

As bilateral negotiations continue, President Trump has also stated that the process has begun to impose 25% tariffs on a fourth tranche of Chinese goods: the \$325 billion in annual imports that have not yet been affected by any Section 301 tariffs. In doing so, the Trump Administration is likely trying to increase leverage in negotiations by signaling to China that the Section 301 tariffs will continue—and worsen—should China not accede to certain U.S. demands during the trade negotiations.

If you have questions about developments in the application of Section 301 tariffs, please contact one of the experienced attorneys in Hughes Hubbard's International Trade practice.

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