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Numerous Imports Targeted as U.S.-China Trade Tensions Escalate

U.S. Proposes List of 1,300 Products Subject to Section 301 Tariffs; China Counters with Own List of U.S. Imports

April 4, 2018

International Trade; Public Policy and Government Affairs

On April 3, the Trump Administration proposed a list of approximately 1,300 products originating from China that would bear an additional 25 percent *ad valorem* import tariff and requested public comments on the list, following the Administration's determination last month that China's technology transfer and intellectual property ("IP") policies are harming U.S. companies and competitiveness. In a swift response, China published a list of 106 imports from the U.S. that would be subject to an additional tariff of the same magnitude and sharply critiqued the proposed U.S. action as inconsistent with global trade rules.

The U.S. product list covers approximately 1,300 items, representing sectors including aerospace, information communication technology, machinery, medical instruments, and steel. The U.S. Administration had signaled on March 22 that this list would be forthcoming, when it found that China's forced transfer of U.S. technologies and IP theft have caused at least $50 billion in harm to the U.S. economy per year, capping an investigation launched in August 2017 under Section 301 of the Trade Act of 1974 ("Section 301"). 40 percent of the listed products fall under Chapter 84 of the Harmonized Tariff Schedule of the U.S. ("HTSUS"), and include a wide variety of machinery, such as boilers, generators, engines, and equipment related to metal, textiles, oil and gas, food, printing, and plastic products. 18 percent are classified under Chapter 85, including electrical motors and machinery, batteries, data storage media, video monitors, and circuit assemblies. 12 percent fall under Chapter 90, including numerous types of optical, medical, and measuring equipment. 8 percent are covered by Chapter 72, including iron or non-alloy steel, stainless steel, and alloy steel products.

The Office of the U.S. Trade Representative ("USTR") explained that the list was developed through an inter-agency effort to identify products benefitting from China's technology transfer and IP policies while balancing the impacts of the tariff on the U.S. economy. USTR also clarified that the proposed products and 25 percent tariff do not relate to China's discriminatory technology licensing rules, which are the subject of a newly-filed challenge in the World Trade Organization ("WTO"), also announced on March 22.

The Administration plans to solicit public comments regarding the product list through both hearing testimony and written submissions. Requests to appear at the hearing and a summary of expected hearing testimony, along with optional pre-hearing written comments, must be submitted by April 23. May 11 is the deadline for written submissions. At the hearing to be held on May 15, participants will be able to testify and respond to questions from the Section 301

Committee. Post-hearing rebuttal comments are due by May 22. USTR has specifically asked for comments addressing the “inclusion or removal of particular products” on the list, whether the duties on a product “would be practicable or effective” in countering China’s problematic IP practices, and whether the duties “would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.” After these proceedings, USTR will publish the final product list in the Federal Register.

In response to the U.S. product list, China’s Ministry of Commerce (“MOFCOM”) today announced an additional 25 percent *ad valorem* tariff on 106 products originating from the U.S., including soybeans, automobiles, and chemicals, representing approximately $50 billion in 2017 trade flows (see Covington’s unofficial English translation of the product list here). MOFCOM asserted that the U.S. had “clearly violated relevant WTO rules” and had created an “emergency situation,” and noted that the final implementation date of the tariffs would be determined separately. This announcement followed an earlier MOFCOM statement that retaliatory measures would be “equal in strength and equal in scale.” In that statement, MOFCOM emphasized that the Section 301 tariff “violates the foundational principles and spirit of the WTO,” and indicated that it will promptly lodge a WTO challenge against the U.S. measures. The Chinese tariffs are additional to its response to the Section 232 tariffs; there, China has imposed an additional 15 percent tariff on 120 products worth a total of $977 million, including fresh fruits, nuts, wine, and seamless steel pipes, and a 25 percent tariff on eight other products worth $1.992 billion, including pork, pork products, and recycled aluminum. Tariff measures aside, U.S. companies with business interests in China should also be prepared for more informal and opaque actions that impede their business goals in China.

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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, who recently joined Covington from the U.S. Department of Treasury, where he served as Senior Coordinator for China Affairs, managing the highest level U.S.-China economic policy dialogues for the Obama and Trump administrations;
- Marney Cheek, former Associate General Counsel at 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;
- Gina Vetere, former Senior Policy Advisor to the Deputy USTR and former Director of IP and Innovation at USTR; and
- Robert Wang, former career Foreign Service Officer for 30 years, including serving as the Deputy Chief of Mission at the U.S. Embassy in Beijing.

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