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First Set of U.S. Section 301 Tariffs Goes into Effect; China Retaliates in Kind

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International Trade; Public Policy

As anticipated, an additional 25 percentage point *ad valorem* tariff on $34 billion worth of Chinese imports into the United States (covering 818 product categories in sectors including aerospace, information communication technology, machinery, and medical instruments) went into effect on July 6, 2018. China immediately responded by imposing tariffs on a commensurate amount of U.S. products. These are the first tariffs to go into effect as a result of an investigation by the U.S. Trade Representative ("USTR"), conducted under Section 301 of the Trade Act of 1974, that found at least $50 billion in harm to the U.S. economy each year due to Chinese intellectual property and technology transfer policies and practices.

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Guidance from the U.S. Customs and Border Protection sets out specific instructions on how the tariffs are to be applied. Notably, the tariffs can be refunded when an imported good is subsequently re-exported or destroyed. Interested individuals and entities, including trade associations, may request that certain products be excluded from the U.S. tariffs using a product-level exclusion process. All product exclusion requests must be submitted by October 9, 2018, and will be evaluated on a case-by-case basis by USTR. An exclusion, if granted, will apply retroactively starting from July 6, 2018, extending for one year since the publication of the exclusion determination in the Federal Register.

A second list of Chinese products for potential tariffs, covering 284 product categories valued at $16 billion, is currently subject to a public comment and hearing process, which is scheduled to conclude in late July: written submissions are due by July 23; a public hearing will be held on July 24; and post-hearing rebuttal comments are due by July 31. President Trump has indicated an intention to impose this second set of tariffs and has threatened further tariffs on Chinese imports worth hundreds of billions of dollars more if China retaliates. Beyond tariffs, the U.S. administration is challenging certain policies and practices that were the subject of the Section 301 investigation through the World Trade Organization ("WTO"). Threats to impose new restrictions on Chinese investment in sensitive technologies appear to have been moderated and redirected into current legislative efforts to strengthen the Committee on Foreign Investment in the United States ("CFIUS") national security investment review mechanism and expand controls on the export of technology.

China's Response

The Chinese government implemented retaliatory tariffs targeting $34 billion in U.S. imports into China immediately after the new U.S. tariffs went into effect. Further, the Ministry of Commerce ("MOFCOM") stated that China was challenging the U.S. tariffs through the WTO. In line with a June 16, 2018, State Council Tariff Commission announcement, the newly effective retaliatory Chinese tariffs cover 545 tariff lines, largely in the agriculture, aquaculture, and automotive sectors. A second list of U.S. imports, covering a further 114 tariff lines valued at $16 billion, was also published on June 16. Chinese tariffs on these products would presumably go into effect if and when the U.S. implements tariffs on its own second list covering $16 billion in Chinese imports. In addition to retaliatory tariffs, anecdotal reports indicate that China has begun to take other measures to restrict imports of U.S. products, including a dramatic tightening of customs inspections of goods imported from the United States.

China responded to the imposition of U.S. tariffs through a MOFCOM statement criticizing the United States for "launching the largest trade war in economic history." Chinese media, notably restrained in recent months, have begun to offer critical assessments of U.S. policies toward China, with the People's Daily lambasting American "trade terrorism."

U.S.-China trade relations are likely to undergo a prolonged period of turbulence and uncertainty, which presents companies with risks and opportunities. American companies with interests in China should evaluate the impact of the tariffs on their businesses, identify risks arising from U.S. actions and formal or informal Chinese retaliation, and consider potential opportunities to address longstanding concerns as the two governments seek resolution of their trade disputes.

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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;
- 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; and
- Gina Vetere, former Senior Policy Advisor to the Deputy USTR and former Director of IP and Innovation at USTR.

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