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U.S. Prepares to Boost Tariffs on Chinese Imports, Citing "Lack of Progress" in Trade Talks

Tariffs on $200 billion in imports to increase from 10% to 25% by week's end; exclusion process forthcoming

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International Trade; Public Policy

On May 8, the U.S. Administration confirmed its intent to increase tariffs on $200 billion in Chinese imports from 10 percent to 25 percent, effective Friday, May 10, 2019, and establish a process for requesting exclusions from these tariffs. As justification for these actions, the Administration cites the "lack of progress in discussions with China" and concerns that "China has chosen to retreat from specific commitments agreed to in earlier rounds" of talks.

The announced increase in tariffs had been contemplated by the Administration but was delayed pending the ongoing trade negotiations. The current 10 percent tariffs on $200 billion in Chinese imports are the third and widest-ranging tranche of tariffs imposed pursuant to the U.S. Administration's determination in March 2018 under Section 301 of the Trade Act of 1974 (Section 301) that China's technology transfer and intellectual property (IP) policies are harming U.S. companies. When imposing these tariffs in September 2018, the Administration had announced that the duty level would increase from 10 to 25 percent on January 1, 2019. Subsequently, following a December 1, 2018, working dinner meeting between President Trump and Chinese President Xi Jinping, the U.S. Administration postponed the January 1 increase to enable negotiations to proceed, but stated that the increase to 25 percent would take place on March 1, 2019, absent an agreement between the two governments. Then, in early March, this tariff increase was suspended "until further notice." With the May 8 announcement, the Administration has confirmed its plan to proceed with this tariff increase.

The notice released on May 8 also states that the Office of the U.S. Trade Representative (USTR) will establish an exclusion request process for products covered by the $200 billion list, and that a separate forthcoming notice will set forth the procedures for submitting requests for tariff relief. Although the Administration had provided an exclusion request process for the first two rounds of Section 301 tariffs on $34 billion and $16 billion in Chinese imports, no exclusion process has been available for the third round of tariffs on $200 billion in imports—a disparity that has elicited concerns from Congress (see our prior analysis here). If the new exclusion process parallels the prior processes, then requesting companies will need to submit a range of information regarding the products they wish to exclude. In requesting exclusions from the second $16 billion list, companies were required to identify the physical characteristics of the product for which exclusion was sought and the 10-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading under which the relevant imports were classified. Additionally, requestors had to address whether (1) the product is only available from China; (2) imposition of additional duties on the product would cause severe economic harm to the requestor or other U.S. interests; and (3) the product is strategically important to or related to

Chinese industrial programs such as "Made in China 2025." The Federal Register notice outlining the $16 billion list exclusion request process, which closed in December 2018, is available here.

Companies with interests in U.S.-China trade relations should move quickly to assess the impact of the forthcoming tariff increase and consider whether to prepare an exclusion request. Businesses planning to request an exclusion may opt to start gathering certain information that will likely be required. Moving forward, companies will need to remain vigilant and responsive to further developments, as bilateral trade talks will likely extend further into the future than previously anticipated.

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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 the evolving Section 301 developments. We count among our ranks:

- Chris Adams, former Senior Coordinator for China Affairs at the U.S. Department of Treasury and Minister Counselor for Trade Affairs at the U.S. Embassy, Beijing;
- Marney Cheek, former Associate General Counsel in the Office of the 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; and
- Gina Vetere, former Senior Policy Advisor to the Deputy USTR and former Director of IP and Innovation at USTR.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Trade and Public Policy practices:

Contacts in Washington

Christopher Adams	+1 202 662 5288	cadams@cov.com
Marney Cheek	+1 202 662 5267	mcheek@cov.com
Alan Larson	+1 202 662 5756	alarson@cov.com
John Veroneau	+1 202 662 5034	jveroneau@cov.com
Gina Vetere	+1 202 662 5647	gvetere@cov.com
Victor Ban	+1 202 662 5553	vban@cov.com

Contacts in Beijing

Tim Stratford	+86 10 5910 0508	tstratford@cov.com
Yan Luo	+86 10 5910 0516	yluo@cov.com
Ashwin Kaja	+86 10 5910 0506	akaja@cov.com