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U.S. to Raise Forthcoming Tariffs on $300 Billion in Chinese Imports, Citing Retaliation

Administration separately weighs raising current tariffs on another $250 billion in Chinese goods

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International Trade; Public Policy

On August 27 and 29, 2019, the U.S. Administration released notices concerning increases in certain tariffs on Chinese imports, marking the latest escalation in bilateral trade frictions. The first notice increases from 10 to 15 percent the forthcoming tariffs on $300 billion in goods set to take effect in September and December of 2019. The second notice calls for public comments regarding a proposed October 1, 2019, increase in existing tariffs on $250 billion in goods, from 25 to 30 percent. Explaining both actions, the Administration cited China's failure to remedy certain intellectual property (IP) practices and its retaliatory responses to U.S. tariffs.

These developments further complicate the landscape of tariffs imposed on imports from China under Section 301 of the Trade Act of 1974. The Section 301 tariffs are based on the Administration's determination in March 2018 that China's technology transfer and intellectual property (IP) policies are harming U.S. companies. As explained further below, the tariffs on $250 billion in Chinese imports that are currently in effect have been implemented in three tranches, with the fourth tranche on an additional $300 billion in Chinese imports to be imposed in two groups, on September 1, 2019 and December 15, 2019:

- **List 1**: 25 percent tariffs on $34 billion in Chinese imports took effect on July 6, 2018; the Administration has granted certain product-specific exclusions.
- **List 2**: 25 percent tariffs on $16 billion in Chinese imports took effect on August 23, 2018; the Administration has granted certain product-specific exclusions.
- **List 3**: A 10 percent tariff on $200 billion in Chinese imports was initially imposed on September 24, 2018, though this rate increased on May 10, 2019, to 25 percent after the Administration cited "lack of progress" in negotiations and concerns that China had backtracked from earlier commitments. The Administration has granted certain product-specific exclusions, and the exclusion request process will close on September 30, 2019.
- **List 4**: On August 20, 2019, the U.S. Administration published its plans for a fourth tranche of tariffs on $300 billion in Chinese imports, dividing the tranche into two separate lists of goods subject to an additional 10 percent tariff—one list taking effect on September 1, 2019, and a second taking effect on December 15, 2019. Major consumer products such as laptops, cell phones, and video game consoles were included on the latter delayed list. The notice also stated that an exclusion process would be forthcoming.

On August 23, 2019, soon after China's announcement of certain retaliatory tariffs, President Trump announced his intent to increase all four tranches of Section 301 tariffs, as confirmed and further elaborated in a press release issued by the Office of the U.S. Trade Representative (USTR).

The notices released on August 27 and 29, 2019, formalize and further explain the basis for these latest tariff increases:

- **Rationale for increased tariffs**: The rationale provided in both notices for these new tariff increases is substantially identical to that given in the August 20, 2019 notice finalizing the fourth tranche of tariffs. Both notices reference China's backtracking from commitments made during earlier trade negotiations; cite countermeasures deployed by China including currency devaluation; and explain that China's retaliatory actions "further protect" the problematic practices identified in the Section 301 investigation, "resulting in increased harm to the U.S. economy." Notably, the notices explain that China's unfair trade practices are not limited to the IP-related practices identified in the Section 301 investigation; they now include China's "subsequent defensive actions taken to maintain" those original unfair practices.
- **Increase in List 4 tariffs**: In respect to the forthcoming fourth tranche, the first notice explains that both the September 1, 2019 and December 15, 2019 lists of products will be subject to an additional 15 percent rather than 10 percent tariff, though their timing will not change. The notice does not provide for any further public comment period related to this increase, on grounds that the original notice had covered proposed tariffs "up to 25 percent." Accordingly, the increase to 15 percent "takes into account the public comments and testimony, as well as advice from advisory committees and the interagency Section 301 committee" previously provided.
- **Increase in List 1, List 2, and List 3 tariffs**: As for the first three tranches, the second notice proposes to increase the tariffs from 25 percent to 30 percent on October 1, 2019. Because notices regarding the first three tranches did not contemplate tariffs over 25 percent, USTR is now seeking comments "specifically on the proposed increase in the rate of additional duty from 25 percent to 30 percent." Consistent with prior guidelines, USTR asks that comments address whether the proposed tariff increase "would be practicable or effective to obtain the elimination of China's acts, policies, and practices," and whether the increase "would cause disproportionate economic harm to U.S. interests, including small- or medium-sized businesses and consumers." Comments are due by September 20, 2019.

Companies with interests in U.S.-China trade relations should move quickly to assess the potential impact of the increases in tariffs and consider whether to participate in the public comment process closing on September 20, 2019. Companies should also closely monitor developments in ongoing bilateral trade talks, which could affect further tariff-related developments.

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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; and
- John Veroneau, former Deputy USTR and former USTR General Counsel

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
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

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