Executive summary

On 29 May 2018, the Trump Administration issued a Statement announcing upcoming release dates for actions related to the Section 301 of the Trade Act of 1974 (Section 301) investigation. The Statement announces that by 15 June 2018, the US Trade Representative (USTR) will publish the final list of covered products, comprising $50 billion of imported goods from China, to be subject to a 25% tariff (in addition to normal tariffs). The effective date for the tariffs will be imposed shortly thereafter.

The Statement also announced the Administration’s intention to implement investment restrictions and enhanced export controls applicable to Chinese persons and entities by 30 June 2018. The Administration states that this action is intended to protect our national security related to the acquisition of industrially significant technology by Chinese persons and entities. Details and implementation dates will be outlined with the proposed restrictions.

Finally, the Statement reiterates that the Administration remains committed to seeking protection from the World Trade Organization (WTO) following its 23 March 2018 case for violations of the Agreement on Trade-Related Aspects of Intellectual Property Rights based on China’s discriminatory practices for licensing intellectual property.
Detailed discussion

On 3 April 2018, the USTR published a proposed list of Chinese goods targeted for assessment of an additional 25% duty upon importation into the United States (US). The detailed list of 1,300 US tariff line items followed President Trump’s announcement on 22 March 2018 that China’s alleged theft of US intellectual property, estimated to cost US$50 billion per year, will be offset through the suspension of commensurate trade concessions to China. As reported on 22 March, the President ordered the USTR to propose a list of products from China, pursuant to an investigation under Section 301.

Public comments on the proposed tariffs were accepted through 11 May, and on 15-17 May the US International Trade Commission held a public hearing to review the submitted comments and hear testimony of goods to be retained, removed or added from the proposed list. Post-hearing rebuttal comments were due 22 May 2018.

Hearing transcripts from the three days of testimony have been released and over 3,154 public comments were posted by interested parties. The hearings consisted of speakers representing companies as well as industry and trade associations. Speaker testimony was then followed by questions from government officials representing the USTR, Customs and Border Protection (CBP), and the Departments of State, Commerce, Treasury and Labor.

Government questions generally focused on how long it would take to ramp up US manufacturing to replace Chinese production, alternate sourcing scenarios, the impact on consumers and unintended consequences of the additional tariffs. Officials were also interested in understanding the impact on foreign trade zone (FTZ) stakeholders. In response to the FTZ inquiry, speakers testified that FTZs were specifically established to compete with overseas manufacturers and that elimination of inverted tariff benefits would lead to increased costs and the loss of US jobs.

Hearing overview

Speakers’ interests included both those in favor of the proposed additional tariffs and those opposed.

Those in favor of additional tariffs

Speakers in favor of additional tariffs included steel manufacturers and sellers of certain steel products, solar cell manufacturers, and domestic producers of construction materials such as ceramic tiles, doors, and wood products, among others. Commenters testified that additional tariffs were necessary to level the playing field due to unfair Chinese competition including subsidies, while acknowledging that additional tariffs would increase consumer prices. Factors noted in support of the tariffs include the belief that it would result in increased US manufacturing and jobs especially within industries such as steel that have the excess capacity necessary to fulfill demand immediately or within a few months and that retailers who shifted their sourcing away from US suppliers to overseas China companies retained the cost savings as profit instead of passing it on to customers.

Those opposed to additional tariffs

Those in opposition to additional tariffs were numerous and included companies from the life sciences sector, machine and automotive parts manufacturers, chemical producers, TV retailers, as well as footwear and apparel retailers, among others. Speakers emphasized that sourcing products from alternative countries will take time – ranging from six months up to five years for some companies, that sourcing or manufacturing products within the US is not commercially feasible such as the production of TVs or manufacturing of certain automotive parts, and in certain categories of products, production shifts to other countries, not the US, is more likely. Additionally, it was stated that where the additional tariffs could not be avoided, they would likely be passed directly on to consumers. Others noted years of overseas investment in global supply and manufacturing value chains that will be severely impacted, including the potential of ceasing operations.

Unintended Consequences

Several commenters pointed out the unintended consequences of the additional tariffs which would include potentially incentivizing certain product production to increase overseas where not assessed the punitive duties, concerns over already announced or signaled retaliatory measures from China to counter the tariffs and direct job loss that may result from industry reductions during an adjustment period to a wide range of products that are impacted directly or indirectly by the action.

Actions for Businesses

With the public comment and hearing procedures now complete, and the announced date of 15 June 2018 or sooner for publication of the final list, businesses with China origin imports should begin to prepare for the impact of goods that will be subjected to the Section 301 duties.
As the Statement maintains the Administration’s focus on industrially significant technology, including items related to the “Made in China 2025” program, the targeted goods will likely look similar to those on the original list and/or goods potentially identified during the comment and hearing review process.

Companies who export goods to China should anticipate retaliatory duties being imposed by China against this action. On 4 April 2018, China announced the identification of 106 items with a similar trade value of $50 billion should the US follow through with imposition of the Section 301 duties. China may take further action as well.

For those who may be negatively impacted by the additional duties, whether importing Chinese goods into the US or exporting US goods to China, immediate actions may include:

- Mapping their complete, end-to-end supply chain to fully understand the extent of products impacted, potential costs, alternative sourcing options, and to assess any opportunities to mitigate impact
- Identifying strategies to defer, eliminate, or recover the excess duties such as bonded warehouses, US FTZs, or substitution drawback
- Exploring strategies to minimize the customs value of imported products subject to the additional duties, re-evaluating current transfer pricing approaches, and for US imports considering US customs strategies such as First Sale for Export

Further, because the White House has stated additional export controls would be implemented shortly, exporters to China will want to be sure that their screening systems can make the necessary immediate adjustments to avoid transactions that would trigger a violation.

While the US and China have recently held meetings specific to addressing the trade imbalance and national security concerns noted by the Trump Administration, and China has announced both a commitment to purchase additional US goods while relaxing certain trade restrictions and barriers for key products such as US origin vehicles, each country may seek additional duties or actions that could impact global trade.

Endnotes


2. Currency references in this Alert are to US$.

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Indirect Tax

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