CLIENT ALERTS & INSIGHTS

Immediate Next Steps for New China Tariffs

MAY 16, 2024

Authors: Jonathan R. Todd

New Section 301 tariffs on imports from China were announced by the Biden Administration on May 14, 2024. The White House circulated a fact sheet directing the United States Trade Representative ("USTR") to exercise tariffs on $18 billion of imports from China. Also that day, the USTR Ms. Katherine Tai released a press statement accompanied by a report titled, "Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation" (the "USTR Report").

Two immediate next steps will help US importers respond to this news through procurement and cost impact planning:

- The first is to consider whether your sector may be impacted. The President has specifically directed the USTR to increase tariffs on Chinese goods including steel and aluminum, semiconductors, electric vehicles, batteries, critical minerals, solar cells, ship-to-shore cranes, and medical products.
- The second next step is to review the USTR's forthcoming Federal Register Notice ("Notice") on these actions, which is anticipated to publish during the week of May 20. The Notice is expected to contain specific proposed modifications to the tariffs and information on the exclusion process.

For many this proposed trade action valued at $18 Billion has a feel of history repeating itself. We all remember the Trump Administration's iterative Section 301 actions against imports from China that were announced between April 6, 2018, and May 17, 2019. We counseled clients on applicability of the new duties, navigating the exclusion process, and alternate procurement strategies including purchasing from the USMCA territories (signed November 30, 2018). Some importers may be well suited for this sourcing environment although others with acute impact may have additional work ahead.

Goals of Increased Tariffs

The intent behind these duties remains to help protect American workers and combat China's unfair trade practices. USTR Kai's public statements echo the sentiment that further action is required to encourage China to take additional steps to refine issues identified in the Section 301 investigation initiated under the prior administration. The USTR Report proposes those modifications to the China tariffs currently under Section 301 by adding or increasing tariffs on certain products imported into the U.S. from China.

President Biden also directed the USTR to develop a process to exclude tariffs on manufacturing machinery intended for US domestic use. For example, the USTR is to prioritize excluding tariffs on

certain equipment used to manufacture solar cells domestically. The USTR proposes exclusions to limited machinery under Chapters 84 and 85 of the Harmonized Tariff Schedule and 19 temporary exclusions on tariffs for solar manufacturing equipment.

Trade Compliance Enforcement

Our team has seen a steady rise in US Customs and Border Protection ("CBP") and Homeland Security Investigations ("HSI") activity over recent years. With these new developments, the Administration is also signaling an interest in greater enforcement, awareness in the private sector, and continued assessment to enhance supply chain impacts.

The USTR Report proposes specifically allocating funds to CBP earmarked to enforce trade actions under Sections 301, 201, and 232. Duty evasion is a top concern. Recommendations specifically identify alleged evasion activities involving Chinese investment in other high growth areas of production following the Section 301 duties announced in 2018 and 2019. Those countries include Vietnam, Mexico, Korea, Taiwan, and Singapore. The USTR also recommends that the U.S. government intelligence agencies bring awareness to and collaborate with U.S. companies regarding the threat of China-sponsored technology theft.

Jonathan R. Todd is Vice-Chair of the Transportation & Logistics Practice Group at Benesch. He may be reached at 216.363.4658 and jtodd@beneschlaw.com. Vanessa I. Gomez is an associate in the Practice Group and may be reached at 216.363.4482 and vgomez@beneschlaw.com