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Alert

Business Transactions Practice Group

Trade War Tariffs: How Can a U.S. Importer Respond?

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In mid-May, the United States Trade Representative ("USTR") published a proposal to impose additional 25% tariffs on approximately \$300 billion worth of goods imported from China ("List 4"), pursuant to Section 301 of the Trade Act of 1974. List 4 covers 3,805 full and partial tariff subheadings ranging from agricultural products to manufactured goods. A public hearing on the proposed tariffs will take place on June 17, 2019, and post-hearing comments are due around June 27, when the G20 Summit in Japan is being held. It is widely expected that a trade deal between the U.S. and China will come out of the G20 Summit; however, U.S. importers are advised to consider alternatives should a trade deal fail to materialize.

Generally, there are two major routes to mitigating a tariff increase if your imports are affected.

First, you may file a Request for Exclusion with the USTR following the official Section 301 Exclusion Process. You will need to file a separate request for each product. You will need to state: the annual quantity and value of the China-origin product that you purchased in each of the last 3 years, whether the particular product is available only from China, whether the imposition of additional tariffs would cause severe economic harm to you or other U.S. interests, whether that product is strategically important or related to "Made in China 2025" or other Chinese industrial programs, and any other relevant information. The request will then be published to an online docket for public commenting. The requests are evaluated on a case-by-case basis and granted periodically. Public records show that the USTR makes decisions on around 80% of requests in about 4 months. Any exclusion will be effective for *one year* from the date of the imposition of the additional tariffs.

Second, you may consider using the "first sale" rule to minimize the dutiable customs value of imports subject to the additional tariffs. U.S. Customs and Border Protection's ("CBP") current position is to base transaction value on the price paid by the buyer in the first or earlier sale (e.g., the sale between the manufacturer and the intermediary) provided the importer can establish by sufficient evidence that this was an arm's length sale and that, at the time of such sale, the merchandise was clearly destined for exportation to the United States. Therefore, an importer can benefit from the transaction value being determined on the basis of the price paid by a foreign intermediary to a foreign seller.

Each method has potential shortcomings and risks. There is no guarantee of any Exclusion Request being granted; the USTR review process may take several months; and your product and trade information will become public information and subject to public scrutiny. The CBP is well aware of the practice of using intermediaries to lower tariffs, and heightened scrutiny of imports coming through the China → Intermediary → U.S. route is expected in the coming months. You may want to consult your trade association for further information on additional strategies pertinent to your imports.



At Bousquet Holstein PLLC, we are happy to answer your questions and help you develop a strategy that minimizes the impact of the proposed tariff increase and other trade barriers.

Please contact **Gwen Z. Gou** at **315.701.6327** or email ggou@bhlawpllc.com.