The Bottom Line

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SECTION 301 DUTIES TO STAY...FOR NOW

Summary

The Office of the United States Trade Representative (USTR) has confirmed that domestic industry representatives benefiting from the tariff actions have requested the continuation of the tariffs. Accordingly, although the tariffs will continue, they may be subject to further modifications, including those resulting from the review.

Background

The Trade Act of 1974 (Section 301) authorizes the President to take all appropriate action, including retaliation, to obtain the removal of any act, policy, or practice of a foreign government that violates an international trade agreement or is unjustified, unreasonable, or discriminatory, and that burdens or restricts U.S. commerce.

Accordingly, in August 2017, the President instructed the U.S. Trade Representative to investigate China's unfair trade practices. The results, announced in March 2018, concluded that China does engage in unfair activities. These activities include foreign ownership restrictions on business in China and requirements for technology transfer to Chinese entities. China has actively invested in U.S. firms to obtain cutting-edge technology and intellectual property, and has supported and conducted unauthorized intrusions into the computer networks of U.S. companies to secure the technology when they can't get it by other means. Additionally, they manipulate Chinese currency to inflate the cost of U.S.-manufactured goods in China. As a result of these practices, starting in June 2018, punitive tariffs have been levied against Chinese products.

According to Section 301, duties imposed are subject to a mandatory review every four years, the "Review of Necessity," to determine if the domestic industry that benefits from the duties continues to support the tariffs. To continue the tariffs, the domestic sector must submit a written request to the USTR within the last 60 days of the relevant four-year period.

The currently pending Section 301 tariffs were applied in four waves: 25 percent tariffs on $34 billion worth of Chinese goods effective July 6, 2018 (List 1); 25 percent tariffs on $16 billion worth of Chinese goods effective August 23, 2018 (List 2); 10 percent tariffs on $200 billion worth of Chinese goods effective September 24, 2018 (List 3); and 15 percent tariffs on $120 billion worth of Chinese goods effective September 1, 2019 (List 4A). The List 3 tariffs were increased to 25 percent effective May 10, 2019. The List 4A tariffs were reduced to 7.5 percent effective February 14, 2020, when the U.S.-China Phase One agreement took effect.

Current Status

According to the published four-year schedule, Phase I of the Section 301 tariffs would have expired this past summer, but the USTR announced that it had received numerous requests to continue them. As a result, importers will have an opportunity to plead their case for changes to the Section 301 tariff program as part of the next phase of the review.

USTR will next solicit, for a period beginning November 15 and ending January 17, 2023, comments on the following issues:

The Bottom Line

- The effectiveness of the actions in counteracting or obtaining the elimination of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
- Whether other actions or modifications would be more effective in counteracting or obtaining the elimination of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
- The effects of the actions on the U.S. economy, including U.S. consumers.
- The effects of the actions on domestic manufacturing—including capital investments, domestic capacity and production levels, industry concentrations, and profits.
- The effects of the actions on U.S. technology—including U.S. technological leadership and U.S. technological development.
- The effects of the actions on U.S. workers, including employment and wages.
- The effects of the actions on U.S. small businesses.
- The effects of the actions on U.S. supply chain resilience.
- The effects of the actions on the goals of U.S. critical supply chains as outlined in Executive Order 14017 and subsequent reports and findings.
- Whether the actions have resulted in higher additional duties on inputs used by manufacturers than the additional duties on downstream products or finished goods incorporating those inputs.

The comments received on these issues will be shared with the International Trade Commission (ITC).

Impact

Despite speculation that the Biden administration was preparing to announce changes to the China tariffs, no such changes appear likely in the near term. Instead, increasing tensions in the U.S.-China relationship and the rapidly approaching U.S. midterm elections are contributing to the continued erosion of the relationship between the two countries.

Based on a review of the comments received, the ITC will submit a report to Congress to include trade, production, and price data for the U.S. industries most affected by the tariffs. The report is expected by March 15, 2023.

RESOURCES:

+ Notice of Reinstatement of Certain Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property and Innovation (USTR)
+ Section 301 Update: USTR Announces Initiation of "Review of Necessity" (Venable LLP)
+ China Tariff Review Advances with Three Month Comment Period (ST&R)
+ USTR to Continue Section 301 Tariffs on China During Four-Year Review Process (SmarTrade)
+ Request for Comments in Four-Year Review of Actions Taken in the Section 301 Investigation (USTR)