

Advisory | International Trade



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Considerations for Managing Section 301 Tariffs: Triage Your Supply Chain

Beginning on July 6, 2018, and pursuant to Section 301 of the Trade Act of 1974, the United States imposed 15-25% additional tariffs in four tranches on \$550 billion worth of Chinese products imported into the U.S. The tariffs have placed a financial burden on many companies importing into the U.S. and created much uncertainty. Which products will be excluded? Who should shoulder the duty burden? How long will this trade war last?

Proactive importers may potentially reduce their increased duty liability using several duty-saving strategies. Below is a list of possibilities companies may wish to consider for supply chain triage:

- Request exclusions for products on Section 301 "List 4A." Consider exclusion requests for specific products that cannot be sourced in the U.S. The deadline for submissions is January 31, 2020.
- Request extensions on exclusions for products on Section 301 "List 1." Many of the exclusions granted in December 2018 are set to expire on December 28, 2019. USTR is considering extending these exclusions by up to twelve months and will accept comments in support of exclusions until November 30, 2019.
- **Move production outside of China.** Consider whether it is possible to move part or all of the production process outside of China so that the country of origin is a third country. This is a product specific analysis and will depend on sourcing of the components and complexity of production steps outside of China.



- Implement duty savings with "First Sale." Customs duties are normally assessed on the sale between the importer and the middleman vendor. With first sale, duties are assessed on the transaction between the manufacturer and the middleman vendor. The importer would pay duties on the value of the components and labor, but not on the middleman vendor's markup, thereby shrinking the transaction value of the goods and reducing duty payments.
- **Determine if components of invoice price can be broken out.** With proper structuring, many of the fees that are elements of the price can be deducted from the transaction value upon which duty payments are determined. Deductions can include foreign inland freight and foreign port charges.
- **Review purchase order terms.** Are the incoterms DDP or FOB? If so, consider adding language to agreements regarding duty to shift the burden wherever possible. Further, consider inserting language to account for potential uncertainties regarding future tariffs.

Greenberg Traurig's International Trade Practice has broad experience advising clients on Section 301 tariffs. For additional insights on this topic, click here.

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