GT GreenbergTraurig

Alert | International Trade

June 2019

Trump Tariffs – An Overview

Tariffs appear to be the tool of choice for the Trump administration to redress the many wrongs it sees in the global trading system (and most recently, to address immigration concerns). This GT Alert generally describes the tariffs that have been announced. It assumes the tariffs are a legal exercise of presidential power and does not address whether the courts will ultimately uphold the legal basis claimed in support of the tariff actions. We are also not describing the countermeasures announced by the countries affected nor the legal actions that may be taken by the countries or companies affected by these tariffs.

To date, the administration has imposed "additional duties" on imported goods under three separate laws, citing different threats:

- Section 232[1] duties on certain steel (25%) and aluminum (10%) products
- Section 301[2] duties on listed imports from China (25% at this time)
- Additional duties on all imports from Mexico (starting at 5% and increasing in equal monthly increments to 25% by October 1). These will go into effect June 10, 2019. Negotiations between the U.S. and Mexico are underway to try to avoid the imposition of these duties.

[1] Section 232 of the Trade Expansion Act of 1962.
[2] Section 301 of the Trade Act of 1974.

Section 232 Duties

Section 232 duties were imposed by President Trump on imports of specifically identified steel and aluminum imports from almost all countries on March 8, 2018 (these tariffs only came into effect regarding Canadian and Mexican products until June 1, 2018). Today, Argentina, Australia, Brazil, South Korea, Canada, and Mexico are exempt from the duties imposed on steel products (products from Argentina, Brazil, and South Korea are subject to absolute quotas). Aluminum from all countries except Argentina, Australia, Canada and Mexico are subject to 10% additional duties (imports from Argentina are subject to absolute quotas).

For a time, additional duties on steel imports from Turkey were raised to 50%, but they are now back to 25%.

Goods eligible for duty-free treatment under the Generalized System of Preferences (GSP) and the African Growth and Opportunity Act (AGOA) programs may not claim benefits under these programs if subject to section 232 duties. Trade preferences may be claimed for other trade preference programs.

Section 232 duties are not eligible for duty drawback.

The administration has put in place a process by which importers may request their imports of steel and aluminum products be excluded from the Section 232 duties. Exclusions may be requested from the Department of Commerce for specific quantities of specifically identified steel and aluminum products. If granted, exclusions may only be used by the importer who made the request and apply only to the specified quantities of the specific steel or aluminum products identified in the letter granting the exclusion. Importantly, importers may not use an exclusion granted to another importer for an identical product. Evidence of granted exclusions for identical or similar products, however, may be persuasive evidence in another importer's own exclusion requests. Exclusions, if granted, are retroactive to the time the request filed with the Department of Commerce. Granted exclusions are valid for one year from the date that appears on the approval memorandum.

Section 301 Duties (China)

The Trump administration announced on March 22, 2018, that it would take multiple steps to protect U.S. technology and intellectual property from unfair and discriminatory Chinese practices, including the imposition of "additional duties" on specifically identified Chinese products. To date, there have been three different lists of products (accounting for an estimated $250 billion in trade) that have been subject to additional 25% duties. The duties for List 1 became effective on July 6, 2018; for List 2 on August 23, 2018, and for List 3 on Sept. 24, 2018 (initially duties were set at 10%, and were then increased to 25% on May 10, 2019).

The administration has proposed a fourth list of products, essentially covering all products from China not covered by Lists 1 through 3, except for certain pharmaceuticals and pharmaceutical inputs, select medical goods, rare earth materials and critical minerals. The Office of the United States Trade Representative (USTR) anticipates that goods on List 4, which has not yet been finalized, will account for an estimated $300 billion in trade. USTR has requested comments on products it has proposed to include on List 4. Such comments are due by June 17, 2019. It is not yet known when products ultimately included on a final List 4 will become subject to additional duties, or at what level such duties will be set. Though it is unlikely duties will go into effect until early July, trade policy is difficult to predict under this administration. There is also the possibility the duties will not be set at the 25% level, but instead will initially be set at a lower level, such as 10% (as was done with List 3).

Section 301 duties are eligible for duty drawback.

USTR has put into place a process whereby importers may request exclusions from the Section 301 duties. Unlike Section 232 exclusions, granted exclusions under Section 301 can be taken advantage of by anyone who imports products that fit the products described in the exclusion. Granted exclusions are good for one year from the date the exclusion is published in the *Federal Register*. The period to request exclusions for products on Lists 1 and 2 has closed, and such requests are now pending before USTR. To date, USTR has announced five "tranches" of exclusions for List 1 products.

Though an exclusion process for List 3 goods has not yet been announced, following the tariff rise to 25% on List 3 goods, the administration has said it will put an exclusion process in place. It is expected USTR will publish an announcement in the *Federal Register* regarding an exclusion process for List 3 goods in late June or early July 2019.

Mexico

In what many consider a surprising move, the Trump administration announced it would begin imposing a 5% tariff on all goods imported from Mexico as of June 10, 2019, as a means to pressure Mexico to reduce or eliminate illegal immigration from Central American countries. It further stated that on July 1 these tariffs will be raised to 10%; on Aug. 1 to 15%; on Sept. 1 to 20%; and on Oct. 1 to 25%. The Trump administration has said these tariffs will remain in place until Mexico takes action to dramatically reduce or eliminate illegal immigration to the United States.

Few details of this policy are currently available, though a press release from the White House pointed to the International Emergency Economic Powers Act (IEEPA) as the legal authority behind the move.[3] The U.S. and Mexico are in talks to see if some agreement can be reached to avoid the imposition of these duties, but whether this will happen before June 10 (or at all) is not known.

Authors

This GT Alert was prepared by **Donald S. Stein** and **Axel S. Urie**. Questions about this information can be directed to:

- Donald S. Stein | +1 202.530.8502 | steind@gtlaw.com
- Axel S. Urie | +1 202.530.8539 | uriea@gtlaw.com
- Or your Greenberg Traurig attorney

[3] Statement from the President Regarding Emergency Measures to Address the Border Crisis, THE WHITE HOUSE (issued May 30, 2019) available at https://www.whitehouse.gov/briefings-statements/statement-president-regarding-emergency-measures-address-border-crisis/.