

CLIENT ALERT

The Month in International Trade – August 2019

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This news bulletin is provided by the International Trade Group of Crowell & Moring. If you have questions or need assistance on trade law matters, please contact [Jeff Snyder](#) or any member of the [International Trade Group](#).

[Top Trade Developments](#)

Latest U.S. Trade Actions/Tariffs and Other Countries Retaliatory Measures

Finding it hard to stay on top of the latest in tariff increases?

Please [click here anytime](#) for the latest actions, covered products rate increases, and effective dates.

For more information, contact: Dan Cannistra, Robert Holleyman, Bob LaFrankie, Spencer Toubia, Ru Xiao-Graham, Cherie Waltermann

Escalation of U.S.-China Trade War in August

USTR Unveils List of Products Subject to the Proposed 10 Percent Tariff on Imports from China

On August 13, the United States Trade Representative (USTR) released two additional lists of products that will be subject to a 10 percent tariff on approximately \$300 billion worth of imported Chinese goods, pursuant to Section 301 of the Trade Act of 1974. The first set of tariffs will go into effect on September 1, 2019 as announced by the president on August 1. Some products have been removed from the tariff list based on health, safety, national security, and other factors, according to USTR.

The second set of tariffs for certain products from China, including, but not limited to, cell phones, laptop computers, video game consoles, certain toys, computer monitors, and certain footwear and clothing will be delayed to December 15, 2019.

List 4A: Effective as of September 1, 2019 (See Annex A)

List 4B: Effective as of December 15, 2019 (See Annex C)

USTR will introduce an exclusion request process for products subject to the additional 10 percent ad valorem tariff.

China Announces \$75 Billion in Additional Retaliatory Tariffs

On August 23, the Customs Tariff Commission of China's State Council announced the decision to impose approximately \$75 billion in additional tariffs on the United States. Beijing's latest retaliatory tariffs are in response to President Trump's List 4 Trade Action of \$300 billion dollars which USTR published earlier in August.

Mirroring the rollout of U.S. tariffs, the Chinese tariffs will also be installed in two batches. Starting on September 1, tariffs of 5 and 10 percent will affect 5,078 products. Tariffs of 5 and 25 percent on U.S.-made vehicles and auto parts will begin on December 15. Taking the existing duties into account, the total tariffs levied on U.S. cars will soon be as high as 50 percent. Notable U.S. products targeted by the tariffs other than autos include crude oil, soybeans, pork, chicken, wheat, sorghum, cotton and other farm products.

China will begin their second-phase of collecting tariff exemption applications on September 2 and will conclude the process on October 18. Firms in China that import, produce, or use relevant input material are eligible to apply for exclusions, including from the most recent trade action. [Details for how to apply can be found here.](#)

Unofficial translations for China's \$75 billion trade action can be accessed below:

List 1 – Effective September 1, 2019

List 2 – Effective December 15, 2019

USTR Ordered to Raise All Section 301 Tariffs by 5% Due to Chinese Retaliation

A statement on the Office of the U.S. Trade Representative's (USTR) website announced the Trump administration will add 5% to all Section 301 tariffs. List 4 duties on goods worth \$300 billion will now be 15%. These tariffs are scheduled to be implemented on September 1st and December 15th.

On October 1st, the \$250 million of Chinese imports currently at a 25% tariff rate will increase to 30%, following a notice and comment period. These are the goods on U.S. Lists 1-3.

Both moves are in response to Chinese retaliation to the latest (List 4) U.S. tariffs.

Comment Period Announced for Section 301 Tariff Increase to 30% on Lists 1-3 Worth \$250 Billion

According to a Federal Register Notice published on September 3, 2019, the U.S. Trade Representative (USTR) proposes to increase additional duties from 25 percent to 30 percent on the products from China currently subject to Section 301 tariff actions first taken in June, August, and September 2018, with an aggregate annual trade value of approximately \$250 billion (Lists 1-3).

The USTR invites public comment on the proposed modification. There will be no hearing on this proposal. The important dates in the comment process are:

September 20, 2019: To be assured of consideration, submit written comments by September 20, 2019.

October 1, 2019: The proposed modification would be effective on October 1, 2019.

Parties can submit public comments and the public version of comments containing business confidential information (BCI) through the Federal eRulemaking Portal: <http://www.regulations.gov>. The docket number is USTR–2019–0015.

For more information, contact: John Brew, Frances Hadfield, Spencer Toubia, Edward Goetz, Walter "Sam" Boone

ITC Publishes Final Rule Regarding Filing of Miscellaneous Tariff Bill (MTB) Petitions

On August 27, 2019, the U.S. International Trade Commission (ITC) published a final rule regarding the procedures for the preparation and filing of Miscellaneous Tariff Bill (MTB) petitions and public comments. Under the MTB process, U.S. importers may petition for duty-free or reduced-duty treatment of certain imported products by submitting an MTB petition to the ITC. Typically, importers request duty relief for manufacturing raw material inputs such as chemicals, electronic goods, and proprietary parts that are not produced in the United States. However, there are no restrictions on what products and parts can be requested. In general, for an MTB petition to be successful there must not be any domestic industry opposition, and any reduction of duties resulting from the change to the duty rate for the proposed product breakout may not exceed \$500,000 per annum. Importers can request an elimination or reduction of duties, depending on the annual duty savings anticipated and the \$500,000 threshold.

The new rules take effect on September 26, 2019. It is anticipated that the ITC will begin accepting MTB petitions after October 15, 2019, and petitions must be filed within 60 days of this date. These dates will be confirmed after the ITC formally announces the commencement of the MTB petition process. Any successful petition would then need to pass Congress and be signed into law by the president before becoming effective. If signed into law, then the MTB petitions may become effective January 1, 2021, with an expiration date of December 31, 2024.

The new procedures appear more stringent than those applied during the 2016 round of MTB petitions. The petitions should include to the extent available: (1) CBP rulings issued on the product; and (2) a copy of other CBP documentation indicating where the article is classified in the HTS. Additionally, the petitions should include:

1. an estimate of both total value and dutiable value for the product for the next five calendar years;
2. an estimate of the share of total imports represented by the petitioner's imports of the subject article;
3. the names of any domestic producers of the article, if available;
4. a certification of completeness and correctness; and
5. an acknowledgement of the petitioner's awareness that the information submitted is subject to ITC audit and verification.

The ITC has also indicated that there will be a clearer way to renew current MTBs. However, that information is not yet available.

For more information, contact: John Brew, Frances Hadfield, Aaron Marx, Edward Goetz, Walter "Sam" Boone

United States Ramps Up Sanctions Pressure on Russia and Venezuela

Over the course of the last week, the United States has escalated its sanctions programs targeting Russia and Venezuela. It began by implementing the long-delayed second round of sanctions on Russia mandated by the Chemical and Biological Weapons Act of 1991 (CBW Act) on Saturday, August 3, 2019. While the CBW sanctions will have a limited impact on most companies, the same cannot be said of the issuance of Executive Order 13884 ("E.O. 13884") on Monday, August 5, 2019, which designated the Government of Venezuela and all entities that it owns or controls as "blocked." Full details on each action are below.

Russia: Implementation of CBW Sanctions

The United States CBW-related sanctions have been almost a year in the making. The CBW Act requires the United States to impose certain prescribed sanctions when it concludes that a foreign government has used chemical weapons in violation of international law or in lethal form against its own nationals. As a result, after concluding on August 8, 2018 that the Russian Federation had sponsored the use of chemical weapons as part of the attempted assassination of its former spy in Salisbury, U.K., the United States issued a first round of CBW-related sanctions. These measures became effective on August 27, 2018, but had limited commercial impact as the Administration either waived their implication (with respect to sanctions cutting off foreign assistance), established limits for certain activity that was largely not occurring (*e.g.*, foreign military financing to Russia or U.S. government financial assistance to Russia), or imposed restrictions that largely duplicated existing requirements (*e.g.*,

export licensing requirements on items controlled for national security purposes).

The CBW Act required the imposition of a second round of sanctions unless the Administration could certify within 90 days that the identified country has ceased its use of chemical weapons. On November 9, 2018, the State Department publicly confirmed that it could not make that certification, requiring the imposition of sanctions.

Those sanctions were finally implemented on August 3, 2019. Specifically, the United States imposed three related measures:

- **Non-Ruble Denominated Sovereign Loans:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a new "[CBW Act Directive](#)" that prohibits a "U.S. Bank" from: (1) participating in the primary market for non-ruble denominated bonds issued by the Russian sovereign; or (2) lending non-ruble denominated funds to the Russian sovereign. "U.S. Bank" is defined broadly, including not only banks, but also securities brokers and dealers, commodity futures and options brokers, and U.S. affiliates of any of the foregoing. "Russian sovereign" is defined to mean any ministry, agency, or fund of the Russian Federation, including the Central Bank of Russia and the Ministry of Finance, but not state-owned enterprises.
- **Export Restrictions:** The United States announced new export licensing restrictions on Department of Commerce-controlled goods and technology. However, to date, the specific restrictions have not yet been identified.
- **Multilateral Financial Institutions:** Finally, the United States announced its intention to oppose the extension of any loan or financial or technical assistance to Russia by international financial institutions, such as the World Bank or International Monetary Fund.

These requirements will only take effect upon publication in the Federal Register, expected on or after August 26, 2019.

Simultaneously, OFAC issued a series of [Frequently Asked Questions](#) to provide guidance on the new requirements.

Venezuela: Blocking of the Entire Government of Venezuela

On August 5, 2019 the U.S. Administration re-escalated its Venezuela sanctions program issuing an [Executive Order, Blocking Property of the Government of Venezuela](#) (E.O. 13884) that designates the entire Government of Venezuela, including everything it owns or controls (collectively the GoV), for blocking sanctions.

This action represents a continued escalation of the U.S. Venezuela sanctions program. While that program has been in place since March 2015, it has strengthened in intensity since the United States recognition of Juan Guaidó as the "Interim Leader" of Venezuela on January 26, 2019. Since then, the United States has designated a series of key GoV entities, including: *Petróleos de Venezuela, S.A. (PdVSA)* (January 28, 2019); *CVG Compañía General de Minería de Venezuela CA (Minerven)* (March 19, 2019); *Banco de Desarrollo Económico y Social de Venezuela (BANDES)* and four of its subsidiaries (March 22, 2019); and the *Central Bank of Venezuela* (April 17, 2019).

The GoV as a whole had been subject to a limited set of debt, equity, and securities related restrictions since August 2017. E.O. 13884 now imposes comprehensive blocking sanctions on the GoV and its many owned and controlled entities. As a result, U.S. Persons are now prohibited from engaging in virtually all transactions with the GoV and these entities unless a general license (GL) applies.

OFAC has issued 13 new GLs and made amendments to 12 existing GLs to mitigate the impact of E.O. 13884. Below is a selection of a few of the key amendments and new GLs specific to the new action:

- **Wind-Down Authorization (GL28):** OFAC issued a comprehensive 30-day wind-down authorization for all activities pursuant to operations, contracts, or other agreements, that were in place as of August 5, 2019, with the newly-designated elements of the GoV through September 3, 2019.
- **Transactions with the Interim President and Designees (GL31):** OFAC authorized U.S. Persons to engage in transactions involving the Government of the Interim President of Venezuela (Juan Guaidó), including transactions with (a) the Venezuelan National Assembly, (b) any official, designee, or representative appointed or designated by Juan Guaidó to act on behalf of the Government of Venezuela and their staff, (c) any ambassador or other representative to the United States or to a third country appointed by Juan Guaidó, and their staff, and (d) any person appointed by Juan Guaidó to the board of directors (including any ad hoc board of directors) of a Government of Venezuela entity.
- **Continued Authorization for Several PdVSA Subsidiaries:** The existing authorizations for (a) PDV Holding, Inc., (b) CITGO Holding, Inc., and (c) Nynas, A.B. were preserved through updated GLs 2A, 7C, 9E, and 13C. The authorizations related to the former two entities are effectively permanent until rescinded, while the Nynas GL currently expires on October 25, 2019.
- **Conforming Changes:** OFAC updated a series of GLs to extend them to apply to the prohibitions in E.O. 13884, including the authorization related to: (a) agricultural commodities, medicine, and medical devices (GL 4C); (b) bonds issued prior to August 25, 2017 by GoV entities (GL 3F); (c) Chevron, Halliburton, Schlumberger, Baker Hughes, and Weatherford activities in Venezuela (GL 8C); and (d) purchases of refined petroleum in Venezuela (GL 10A).

In addition, while E.O. 13884 does not constitute an embargo—insofar as OFAC has not categorically prohibited the export of goods or services to, or the import of goods or services from, Venezuela—several of the 13 new GLs largely parallel the types of GLs that OFAC typically includes in its country-based embargo programs, including GLs for:

- Venezuela's Mission to the United States (GL 22).
- Third-country Diplomatic and Consular Funds Transfers (GL 23).
- Certain Transactions Involving the Government of Venezuela Related to Telecommunications and Mail (GL 24).
- Exportation of Certain Services, Software, Hardware, and Technology Incident to the Exchange of Communications over the Internet (GL 25).
- Certain Transactions Related to Patents, Trademarks, and Copyrights (GL 27).
- Certain Transactions Related to Personal Maintenance of Individuals who are U.S. Persons Residing in Venezuela (GL 32).
- Certain Overflight Payments, Emergency Landings, and Air Ambulance Services over, and in, Venezuela (GL 33).

Simultaneously, OFAC issued a series of new [Frequently Asked Questions](#) and a new document titled "[Guidance Related to the Provision of Humanitarian Assistance and Support to the Venezuelan People](#)." The latter document reaffirms the U.S. commitment to supporting humanitarian assistance, and notes various general licenses that may assist humanitarian activities (including, e.g., for agricultural commodities, medicine, and medical devices in GL 4C and for certain international organizations such as the United Nations and the International Federation of the Red Cross and Red Crescent societies), along with a new statement of favorable licensing policy for activities that promote humanitarian assistance. At the same time, it reiterates that any such activities must meet the terms of the applicable general licenses. This is a relevant caveat given that at least one recent OFAC designation has targeted a corrupt network that was seeking to abuse the Venezuelan food subsidy program, Los Comités Locales de Abastecimiento y Producción (CLAP).

Practical Considerations

The U.S. Congress is debating several pieces of legislation that would increase pressure on both Russia and Venezuela. Companies doing business in, or exposed to commercial risk, in either country therefore may wish not only to evaluate the impact of the changes described above, but also (1) actively monitor for additional potential change over the next few weeks or months; and (2) ensure that new contracts with exposure to these countries provide for the possibility of new restrictions.

For more information, contact: Dj Wolff, Carlton Greene, Nicole Succar, Jana del-Cerro, Erik Woodhouse

Customs Rulings of the Week

- [Roomba® Robotic Vacuum Cleaner](#)
- [Country of Origin of "All-in-One" Computer](#)
- [Ridge® wallet credit card/money holders](#)

For more information, contact: Frances Hadfield, Rebecca Toro Condori

Crowell & Moring Speaks

Frances Hadfield will be speaking at the [Sports and Fitness Industry Association \(SFIA\) Industry Leaders Summit](#) in Baltimore on September 26. She will be speaking on U.S. Trade & Tariffs: The Pain...And the Potential for Savings.

[Michelle Linderman](#) and [Dj Wolff](#) will be speaking at the [Managing Regulatory & Compliance Challenges in Shipping Seminar](#) at Lloyd's Maritime Academy in London on September 27. They will be on a panel entitled, "Sanctions: Current Focus and Potential Changes".

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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