CLIENT ALERT

The Month in International Trade – May 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 Walterman

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Trump Administration Follows Through on Plans to Tighten Cuban Sanctions

On June 4, 2019, the Trump Administration formally implemented its previously announced intent to tighten its Cuban sanctions program. Specifically, on April 17, 2019 the Administration had announced that in response to Cuba's alleged role in "destabilizing" activities throughout Latin America, particularly in Venezuela and Nicaragua, it would terminate aspects of the relaxations, primarily related to travel, previously implemented by the Obama Administration. Yesterday, the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) and the Commerce Department's Bureau of Industry and Security (BIS) implemented that intention in a set of coordinated actions, discussed below.

The Trump Administration announced that these changes were intended to limit tourism, which it alleged has "served to line the pockets of the Cuban military" and to "enrich[] the Cuban military, security, and intelligence services." To do that, OFAC and BIS announced the following two changes to the Cuba sanctions program:

- **Ending Group "People-to-People" Educational Travel**: OFAC removed its previous general license that had authorized groups to undertake "people-to-people" educational travel. These changes do not, however, affect: (1) previously scheduled travel that was to be undertaken pursuant to the "people-to-people" authorization, provided that at least one "travel-related transaction (such as purchasing a flight or reserving accommodation)" was undertaken prior to June 5, 2019; (2) the parallel educational authorization for travel related to programs undertaken by accredited U.S. undergraduate or graduate degree-granting institutions; or (3) any of the other 11 general licenses that authorize specific types of travel to Cuba.
- **Limiting Aircraft and Vessel Travel to Cuba**: In parallel, OFAC and BIS both took steps to remove authorization for non-commercial aircraft and passenger and recreational vessels on temporary sojourn. Specifically, BIS amended License Exception Aircraft, Vessels and Spacecraft (AVS) to remove the previous authorization for such aircraft and vessels that are subject to the Export Administration Regulations (EAR) as well as to establish a licensing policy of denial; OFAC removed the parallel authorization it had previously maintained for associated services. The net effect is to cut off the ability of private aircraft as well as cruise ships and other private vessels subject to the EAR to travel to Cuba, unless a specific license is granted.

OFAC and BIS issued a coordinated Fact Sheet and OFAC updated its previously issued Frequently Asked Questions Related to Cuba to incorporate these changes.

For more information, contact: Dj Wolff, David Baron, Mariana Pendas, Eduardo Mathison

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Steel and Aluminum 232 Tariffs from CA and MX No Longer in Effect; Countermeasures Eliminated as of May 20

Per CBP, "Effective for goods entered for consumption, or withdrawn from warehouse for consumption, on or after **12:01 a.m. eastern daylight time on May 20, 2019**, the Section 232 duty on imports of steel and aluminum articles with a country of origin of Canada or Mexico will no longer be in effect."

The Cargo Systems Messaging Service message also provides the following filing information for imports of "steel mill and aluminum articles with a country of origin of Canada or Mexico":

- Do not report Harmonized Tariff Schedule (HTS) classification 9903.80.01 or 9903.85.01.
- For steel products, report the regular Chapter 72 or 73 HTS classification for the imported merchandise.

- For aluminum products, report the regular Chapter 76 HTS classification for the imported merchandise.

Following the U.S. removal of Section 232 tariffs on steel and aluminum products from Canada and Mexico, both countries have officially lifted their retaliatory tariffs.

- Canadian Finance Minister Bill Morneau announced that effective May 20, 2019, Canada is lifting its retaliatory countermeasures against the U.S.
- The Mexican Ministry of Economy published, and put into force, a decree on May 20, 2019, eliminating its retaliatory tariffs against the United States. This decree repeals Articles 1, 2, and 9 of the decree that initially established retaliatory tariffs on June 5, 2018.

For more information, contact: John Brew, Frances Hadfield, Spencer Toubia, Rebecca Toro Condori

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USTR Announces China Section 301 List 3 with Public Hearing and Comment Dates

In a Federal Register Notice, the U.S. Trade Representative (USTR) announced a proposed additional ad valorem duty of up to 25 percent on products from China with an annual trade value of an estimated $300 billion. The proposed product list ("List 4") is located in the Annex to the notice and covers 3,805 full and partial tariff subheadings. The USTR indicated in a press release that these proposed tariffs cover "essentially all remaining imports from China."

USTR is seeking public comment and will hold a public hearing. The schedule is listed below.

Date	Event
June 10	Due date for filing requests to appear and a summary of expected testimony at the public hearing
June 17	Due date for submission of written comments
June 17	Public Hearing
7 days after the last public hearing	Due date for submission of post-hearing rebuttal comments (post-hearing rebuttal comments are to be limited to rebutting or supplementing testimony at the hearing)

USTR is requesting comments with respect to any aspect of the proposed action, including:

- The specific tariff subheadings to be subject to increased duties, including whether the subheadings listed in the Annex should be retained or removed, or whether subheadings not currently on the list should be added.
- The level of the increase, if any, in the rate of duty.
- The appropriate aggregate level of trade to be covered by additional duties.

Also, the USTR "requests that commenters address specifically whether imposing increased duties on a particular product would be practicable or effective to obtain the elimination of China's acts, policies, and practices, and whether imposing additional duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers."

The notice describes the process for submitting comments. The docket number for this action on regulations.gov is USTR 2019-0004.

Companies are allowed to submit comments with Business Confidential information which will not be viewable by the public.

For more information, contact: John Brew, Frances Hadfield, Spencer Toubia, Rebecca Toro Condori

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China Releases Product Exclusions Process for Certain U.S. Products Subject to Additional Retaliatory Tariffs

On May 13, 2019, the Chinese Customs Tariff Commission of the State Council (CTCSC) issued CTCSC Announcement [2019] No. 3 announcing China's retaliatory measures in response to the United States' latest increase of Section 301 tariffs from 10 percent to 25 percent on $200 billion worth of Chinese imports.

According to the CTCSC Announcement [2019] No. 3, 2493 items would be hit with a new additional tariff of 25 percent, 1078 items will be subject to additional 20 percent tariff, 974 items will be subject to additional 10 percent tariff, and the additional tariff on the 595 items will remain unchanged at 5 percent. China's retaliatory tariffs will come into effect as of June 1, 2019.

Of note, one important tariff relief measure was also announced by the CTCSC. In the CTCSC Announcement [2019] No. 2, the CTCSC released a long-awaited process to obtain product exclusions for particular products classified within covered tariff subheadings from the additional duties in effect on certain products originated from the U.S.

Eligible Parties to Submit Exclusion Requests

Product exclusion requests can be submitted by "interested persons," which include "companies in China" that are impacted by the retaliatory tariffs on covered U.S.-origin products, such as importers, manufacturers, users, and trade associations, or chambers representing such companies. Subject to the CTCSC's further clarification, "companies in China" usually would be interpreted to include not only wholly owned Chinese companies, but also WFOEs (Wholly Foreign-Owned Enterprises) or joint ventures registered in China by foreign companies. Companies are encouraged by the CTCSC to have relevant trade associations or chambers to file exclusion requests on their behalf.

Eligible Products

Only products that fall within the lists of products subject to China's retaliatory tariffs in effect would be eligible for exclusion from the retaliatory tariffs. Products for which China has terminated or suspended imposition of retaliatory tariffs would not be within the scope of eligible products.

Specifically, interested parties may request exclusion from China's retaliatory tariffs for the following products:

- List 1 (Batch 1), covering 545 items (worth $34 billion), the retaliatory tariff rate for which is 25 percent, effective as of July 6, 2018. 28 lines of auto and auto part products on this list will be excluded.
- List 1 (Batch 2), covering 333 items (worth $16 billion), the retaliatory tariff rate for which is 25 percent, effective as of August 23, 2018. 116 lines of auto and auto part products on this list will be excluded.
- List 2 (Batch 1), covering 2493 items, the retaliatory tariff rate for which was 10 percent as of September 24, 2018, but will be increased to 25 percent as of June 1, 2019.
- List 2 (Batch 2), covering 1078 items, the retaliatory tariff rate for which was 10 percent as of September 24, 2018, but will be increased to 20 percent as of June 1, 2019.
- List 2 (Batch 3), covering 974 items, the retaliatory tariff rate for which was 5 percent as of September 24, 2018, but will be increased to 10 percent to be effective on June 1, 2019.
- List 2 (Batch 4), covering 662 items, the retaliatory tariff rate for which was 5 percent as of September 24, 2018, and will continue to be 5 percent as of June 1, 2019. 67 lines of auto and auto part products on this list will be excluded.

The products subject to the retaliatory tariffs imposed in response to the U.S.' additional duties under Section 232 were not included within the current lists of products eligible for exclusion.

Exclusion Request Process and Timeline

Exclusion requests shall be filed via http://gszx.mof.gov.cn, the website of the Tariff Policy Research Center of the Chinese Ministry of Finance. This website is not accessible at this point for request submissions.

Generally, the CTCSC will accept and review exclusion requests in two stages. In stage 1, the CTCSC will start to accept exclusion requests for List 1 products as of June 3, 2019, and the deadline for filing List 1 product exclusion requests will be July 5, 2019. In stage 2, the CTCSC will accept exclusion requests for List 2 products from September 2, 2019 to October 18, 2019. However, the CTCSC has not imposed a deadline for making determinations on such requests and stated only that it will publish approved exclusion lists according to relevant exclusion procedures.

Each request must identify a specific product under a specific 8-digit Chinese HS code. Interested parties seeking to exclude products under two or more 8-digit Chinese HS codes are required to submit a separate request for each product. The CTCSC will review and investigate each exclusion request on a case-by-case basis. In making its determination on requests, the CTCSC may consult with relevant experts, trade associations and governmental departments.

If a company has submitted information to a trade association or chamber and the trade association or chamber has filed a collective exclusion request for a particular product, the company may not file a separate request for the same product.

No response and reply procedures were provided in the CTCSC Announcement [2019] No. 2 for relevant parties to provide comments in support or opposition of relevant exclusion requests.

Rationales for Exclusion Requests

Interested parties must provide relevant facts and data to support the rationale for their requested exclusions. The CTCSC will consider various rationales for granting a product exclusion on a case-by-case basis. However, the CTCSC notes the following necessary rationales for the requests:

- Difficulties in seeking alternative sources of the subject product.
- Severe economic harm to the requester as a result of the imposition of additional duties on the subject product.
- Significant negative structural impacts on relevant industries (including impacts on industry development, technological progress, employment, environmental protection and so on) or any other severe social consequences.

Effects of A Successful Exclusion

Granted requests will be effective for one year as of the implementation date of relevant exclusion lists; no additional duties would be imposed on concerned products during this one-year period.

Chinese importers may, within six months of the publication date of the relevant exclusion lists, apply to China Customs for the refund of additional duties imposed by the Chinese government if certain “refund conditions” are met. No further guidance was provided on the definition or scope of “refund conditions.” The CTCSC Announcement [2019] No. 2 also did not specify whether the exclusion would be retroactive to the effective date of the relevant retaliatory tariff lists. However, according to the Regulations of the People's Republic of China on Import and Export Duties, where an importer discovers that it paid any import taxes in excess of that required by law, it may apply to China Customs for a refund within one year of the date of payment of such taxes. It is not clear at this stage whether any special rules would apply to products subject to the U.S.-China trade dispute. Where China has terminated or suspended imposition of additional duties on concerned products before the publication of exclusion lists, no duties imposed would be refunded to importers.

The CTCSC Announcement [2019] No. 2 provides that, under the following two situations, the refund conditions are deemed to be met:

- The products on an exclusion list were excluded on the basis of relevant Chinese HTS codes.
- The products on an exclusion list are part of the products covered under relevant Chinese HTS codes, and China Customs is administratively capable of granting the refund, i.e., when supplementary Chinese HTS codes are provided for the products on the exclusion list.

Please note, requesters will be held responsible for the accuracy of the information submitted by them. Requests will not be considered by the CTCSC if any false information was provided. The information submitted by requesters will be used for exclusion purposes only, and will not be disclosed to any third parties without the consent of the requesters. Please note, however, that the information will be released upon the request of the government or requirement of laws or policies.

Crowell & Moring has extensive experience in advising U.S. and China multinationals from various industries on the application of special tariff and trade issues, including product exclusion issues. Please do not hesitate to contact us should you have any questions.

For more information, contact: Evan Chuck, David Stepp, Nicole Simonian, Zhiwei Chen

USTR Extends "On Water" Exception for Section 301 Goods until June 15

The Office of the United States Trade Representative (USTR) announced it would be publishing a notice in the Federal Register extending the amount of time certain goods exported from China have to enter the United States before they will be subject to an additional tariff increase from 10 percent to 25 percent.

Per USTR, "Covered products that were exported from China to the United States prior to May 10, 2019 will remain subject to an additional 10 percent tariff if they enter into the U.S. before June 15, 2019. Originally, the deadline to enter the U.S. before the goods would be subject to an additional 25 percent tariff was June 1, 2019. This limited extension will further account for customs enforcement factors and the transit time between China and the United States by sea."

For more information, contact: Frances Hadfield, Edward Goetz

Customs Rulings of the Week

- May 10: Classification of the Temi S1 Personal Computer Robot
- May 17: Classification of a "Smart" Coffee Table
- June 7: Classification of Sport Helmets with Integrated Headphones

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

CROWELL & MORING SPEAKS

Pierce Lee spoke at the Southeast United States Korean Chamber of Commerce's Korean Seminar for Multinationals on May 10 at Auburn University. He discussed "Trade Issues Related to Auto Industry: Section 232, Section 301, and USMCA Rules of Origin."

Ambassador Robert Holleyman spoke at the APEC Life Sciences Forum on "Attracting Capital – Role of Trade, Investment, and Innovation Policies on May 15-16 in Viña del Mar, Chile, and Santiago, Chile, respectively.

Elena Klonitskaya spoke on "Managing Trade Risks" at the International Compliance Professionals Association's (ICPA) 2019 EU/UK Conference in London on May 17.

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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