Section 301 Tariffs on Chinese Products and Retaliatory Tariffs by China on U.S. Goods

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Starting on July 6, 2018, the Trump administration has imposed a 25 percent ad valorem tariff on certain Chinese machinery and high-tech imports following an investigation pursuant to section 301 of the Trade Act of 1974 (the "Section 301 Tariffs"). The United States Trade Representative (the "USTR") has determined, as a result of that investigation, that China's acts, policies, and practices related to technology transfer, intellectual property, and innovation are (i) unreasonable or discriminatory, and (ii) burden or restrict U.S. commerce.

The published list of Chinese products subject to the Section 301 Tariffs consists of two sets of Harmonized Tariff Schedule of the United States ("HTSUS") classifications, including a total of 1,102 HTSUS subheadings covering goods that are valued at $50 billion. The first set contains 818 HTSUS subheadings, for which an additional 25 percent ad valorem duty has already been levied since July 6, 2018. The second set enumerates 284 HTSUS subheadings, which are currently undergoing further review in a public comment and hearing process, after which the USTR will issue a final determination on which products will be subject to the additional tariff.

Soon after the Section 301 Tariffs were put into effect, the USTR unveiled a process for companies to request product exclusions. Interested parties have 90 days to file such exclusion requests, with a deadline of October 9, 2018. Once the USTR reviews and posts a filed request on regulations.gov, the public will have 14 days to submit responses in support of or opposition to the exclusion request. Once the 14-day response period expires, interested parties will have an additional seven days to reply to any responses posted.

Any exclusions granted would last a year from the publication of the exclusion determination by the USTR and be retroactive to July 6,

2018. Also, since exclusions will be determined on a product basis, a particular exclusion will apply to all imports of that product, regardless of whether the importer filed the request.

If you are a U.S. company that imports any item on the published lists of products subject to the Section 301 Tariffs, you may wish to consider submitting a formal exclusion request. Additionally, U.S. companies that produce machinery and high-tech goods domestically may wish to respond to exclusion requests filed by other importers.

In response to the Section 301 Tariffs by the U.S., China announced its own list of U.S. goods subject to new tariffs covering a total of 545 tariff lines. Similar to the approach and timeline taken by the U.S., China has imposed retaliatory tariffs in two stages, with the first stage already in effect since July 6, 2018. Some examples of the American products subject to this tariff include agricultural products, animal products, and aquatic products. The second stage has not yet been finalized by China; however, it will likely include an additional 114 tariff lines in the categories of chemicals, medical equipment, and energy products, according to the official Chinese news agency, Xinhua.

We strongly recommend that all U.S. companies importing from or exporting to China review the product lists mentioned above to determine potential exposure to the Section 301 Tariffs and/or China's retaliatory tariffs.

If you need any assistance in determining the effect of such tariffs on your business operations, please contact Jan de Beer, Katie Berkley, or Chanhee Han of Frost Brown Todd's International Trade Service Team.

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