New Opportunity for Section 301 Exclusions

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The Office of the United States Trade Representative (USTR) is conducting a review of the Section 301 Tariffs (defined below) applicable to most goods imported from China. The USTR is specifically seeking comments on the economy-wide and industry-specific impact of these Tariffs, as well as whether Tariffs on specific Harmonized Tariff Schedule of the United States (HTSUS) subheadings should be modified. ***This process provides an important opportunity for importers to seek permanent exclusions of their products from these Section 301 Tariffs.***

Background and Statutory Review

In August 2017, the USTR commenced an investigation under Section 301 of the Trade Act of 1974 (19 U.S.C. § 2411) into the trade practices of the government of China. Concluding that investigation, the USTR determined that the acts, policies, and practices of the Chinese government relating to technology transfer, intellectual property, and innovation are unreasonable or discriminatory, and burden or restrict U.S. commerce. *See* 83 FR 14,906. As a result, the USTR imposed a series of tariffs in four separate stages throughout 2018 and 2019 on hundreds of billions of dollars' worth of Chinese goods (the "Section 301 Tariffs" or the "Tariffs").

However, the USTR is required by statute to conduct a "necessity review" of the Section 301 Tariffs every four years. *See* 19 U.S.C. § 2417(c). The goal of this review is to determine both the effectiveness of the Tariffs in achieving their objectives, and the detrimental impact of the Tariffs on the U.S. economy, including workers and consumers. *Id.* The USTR has already concluded the first stage of its review, confirming the extension of the Tariffs on September 8, 2022. Now, in this second phase, the USTR is seeking input from a broader section of stakeholders regarding the twin goals of the review.

USTR's Request for Comments and Client Opportunity

The USTR began accepting comments via a specific form located on its online portal on November 15, 2022 and will continue accepting them through January 17, 2023. The form is comprised of three major sections, ordered in increasing levels of specificity. Section A of the form solicits views at the economy-wide level, while Section B drills down into the sector or industry specific impact of the tariffs. Finally, Section C seeks comments on whether the Tariffs on specific HTSUS subheadings should be maintained, eliminated, or modified.

It is this Section C that presents an important opportunity. This review process represents the only currently available method for importers to seek exclusion of their products from the Tariffs. Businesses should consider submitting comments, particularly if they previously participated in the now-defunct Section 301 Tariff exclusion process.

If you have interest in participating in this comment process, please contact any attorney with Frost Brown Todd's International Services practice group.