GRMA Summit 2019

China Tariffs

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Mr. England is the Founder and CEO of FDAImports.com and Benjamin L. England & Associates, a fully integrated FDA, USDA, Customs, FTC, and EPA regulatory practice.

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Ms. Rifkin practices in the area of customs and international trade law, with a special emphasis on food, drugs, cosmetics, and medical devices. She is the senior lead attorney for Benjamin L. England's growing Customs and Trade Practice. She regularly represents clients before U.S. Customs and Border Protection (CBP), the U.S. Department of Commerce (DOC), and the United States Trade Representative (USTR).

With over 15 years of experience in the customs and trade area, Ms. Rifkin provides guidance on all aspects of the import and export process, including tariff classification and valuation of imported merchandise, country of origin determinations, country of origin marking, NAFTA and other free trade agreements, Customs penalties, antidumping and countervailing duty proceedings, and intellectual property issues. She routinely assists clients with prior disclosures of violations, mitigation of liquidated damages and penalties, protests, requests for binding rulings, and antidumping and countervailing duty scope ruling requests.

Ms. Rifkin regularly litigates cases before the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit and has obtained a number of favorable decisions for her clients, including decisions overturning adverse classification determinations by CBP and adverse scope rulings issued by the DOC.
Agenda

• Global View of China Tariffs
• Section 232
• China Section 301 Tariffs
• Exclusions
• China Retaliatory Tariffs
• Headlines
• Where might this go from here?
• Questions and Answers
First a global view of tariffs
U.S. China Trade War
Section 232 Tariffs

• Effective June 1, 2018, the U.S. imposed 25% tariffs on imported steel and 10% tariffs on imported aluminum.

• Steel duties apply to all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea.

• Aluminum duties apply to all countries except Argentina, Australia, Canada, and Mexico.

• The DOC handles Section 232 exclusion application requests. Over 57,000 Section 232 exclusion requests have been filed, and DOC has approved over 41,000 of those requests.
CHINA TARIFFS: 301
What is Section 301?

• Section 301 of the Trade Act of 1974 gives the U.S. authority to remedy "unfair" foreign barriers to U.S. exports - including by imposing tariffs in addition to regular duties.

• In 2017, the USTR opened an investigation into China's "economic aggression." President Trump identified four Chinese barriers to U.S. exports:
  – (a) forced technology transfers from U.S. companies to Chinese entities;
  – (b) unfair licensing practices that undercut U.S. companies' IP protection;
  – (c) support of China's Made in China 2025 and other industrial policy goals through the use of the forced technology and IP transfers; and
  – (d) cybertheft of U.S. companies' business information.

• USTR completed the investigation in 2018 and determined that the Chinese Government's acts, policies, and practices are unreasonable/discriminatory and burden/restrict U.S. commerce. That determination gave the USTR power to impose Section 301 tariffs on Chinese-origin goods, to remedy harm to U.S. economy and force China to eliminate its harmful practices.
Lists 1 & 2

**List 1** – includes medicines, organic chemicals, some devices
- consists of 818 tariff lines
- valued at $34 billion worth of imports
- 25% duties started on July 6, 2018

**List 2** – includes devices, cosmetics, pharmaceutical necessities
- consists of 284 tariff lines
- covers approximately $16 billion worth of imports
- 25% duties started on August 23, 2018
List 3

Includes human and animal foods, ingredients, and seafood

- $200 billion worth of products
- Includes 5,745 tariff lines
- 10% tariffs Sept. 24, 2018 – May 9, 2019
- Tariff rose to 25%, effective May 10th, 2019 (goods exported prior to May 10th which entered US on or before June 15th were still eligible for 10% rate)

These tariffs (if imposed) apply to Chinese-origin goods, not necessarily goods exported to the U.S. from China. We've covered country of origin determinations, and how they can be used to manage tariffs, in our breakout session.
List 4
The Leverage List

• 25% on List 4 was postponed earlier this summer due to progress in talks
• Talks slowed and List 4 was leveraged to relight the fires – Trump Announced Last Week List 4 is back on
• If imposed, 10% tariff effective Sept. 1 on the remaining $300 billion worth of goods coming from China into the U.S.
• Regulatory process (investigation, hearing, and comments) for List 4 has been completed, so USTR has the ability to quickly implement them at any time.
• This excludes the products already affected by the previous 25% tariffs.
• Includes 3,805 tariff lines
• Includes most remaining imports except for pharmaceuticals, select medical goods, rare earth materials and critical minerals

8/01/19
President Trump announced that List 4 tariffs will be imposed beginning September 1st
Exclusions: Lists 1 & 2

- Windows closed October 2018 for List 1 and December 2018 for List 2 to request exclusions.

- On List 1 out of 10,827 exclusions filed, 2,813 were granted, 1,389 remain in Stage 3 review. We expect approval figures to go up once CBP review is complete.

- On List 2 out of 2,920 exclusions filed, 1,320 were denied, 1 is in Stage 2 review, 1,307 are in Stage 3 review. First set of exclusions issued Aug 1, 2019.

- Exclusions are retroactive to date on which the tariffs were imposed, and are good for one year going forward from the date of published approval.

- Exclusions cover all goods falling within USTR’s product description and applicable HTSUS subheading - not just limited to applicant's goods.

- USTR will revisit whether 1 year period for exclusions will be extended if tariffs are still in place at time exclusion expires.
Exclusions: List 3

- Applications accepted by USTR June 30-Sept. 30, 2019
- Applications to include volumes of imported product, availability of non-Chinese sources, and impact on business from increased tariffs.
- Successful applicants will need to tell a compelling story over and above basic information on application.
- If granted, exclusions will cover all goods falling within USTR's description of excluded good and HTSUS subheading - not just applicant's goods.
- If granted, applied retroactively to Sept. 24, 2018 (when 10% duty was imposed)
- So far, 2,430 exclusion requests filed for List 3 – all are in the public comment period still
CHINA RETALIATORY TARIFFS
China Retaliatory Tariffs (Affecting U.S. Exports)

- China: imposed tariffs over past year on $100b worth of US-origin products
- Now has established exclusion process
- China has much less flexibility in retaliating because of the trade imbalance
HEADLINES
Headlines: Origin Questions and Transshipments Exposed

“Companies Are Being Fined for Using Cambodia to Dodge US Tariffs”

“Vietnam to crack down on Chinese goods relabeled to beat U.S. tariffs”

“Alaskan fish gets deboned in China. Now it may get hit with Trump's tariffs”

“Your Next iPhone Might Be Made in Vietnam. Thank the Trade War.”

“U.S.-China Trade Talks End With No Deal in Sight.”
WHERE MIGHT THIS GO FROM HERE?
The Effects on the Trade Community

• Our Broker clients tell us that there’s been a “dramatic increase” in the number of notices of bond insufficiency issued by CBP as a result of the trade remedies/tariffs.

• There’s been a large increase of direct and indirect costs associated with the trade remedies – not just the tariffs themselves, but also the overall indirect costs of compliance.
The Effects on the Trade Community, cont…

Trade remedy enforcement - and catching those who evade them - is "major priority" for CBP. Increased data collection and data sharing with PGAs, and the industry knowledge of the CEEs, increases CBP's enforcement abilities.
Predictions

China’s economy has substantially slowed down in the last quarter, which will potentially create more incentive to avoid List 4 triggering Sept. 1 – but it may be too late to avoid it.

List 3 started at 10% and most companies ate the costs – but it may be too late for companies to eat 10% on List 4.

China has failed to make moves on their agricultural promises.

If a deal is reached, high chance that List 4 is avoided. At best List 3 goes to 15%.

What will our relationship with China look like even if all of the tariffs are gone?
Contact Us with Your Questions

Let us put our 100 years of direct former government experience to work for you to identify and solve problems involving approval, manufacture and movement of products in and out of the U.S. market.

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