
March 26, 2020

USTR Requests Comments Regarding Tariff Modifications in Response to COVID-19

By Ted Posner and Timothy Welch

As part of the U.S. effort to alleviate the public health and economic impacts of the COVID-19 pandemic, on March 20 the Office of the U.S. Trade Representative (“USTR”) announced it is seeking public comment on whether and how to modify the tariffs that have been imposed on goods imported from China since July 2018 and encompassing the majority of such goods since the latter part of 2019. In announcing this action, USTR stated that it considered public health implications when imposing the tariffs in the first instance and in adjusting them since then. Thus, according to USTR’s press release announcing its action (available [here](#)), “the United States determined to not impose tariffs on certain critical products such as ventilators, oxygen masks, and nubilators,” and USTR has “granted exclusions [from tariffs] for a large number of health-related products.” Now, with its new call for comments, USTR states that it seeks to “keep current on developments in our national fight against the coronavirus pandemic.”

The tariffs in question range from 7.5% to 25% *ad valorem*. They were imposed under section 301 of the Trade Act of 1974, based on an April 2018 finding by USTR that acts, policies, and practices of the government of China relating to technology transfer, intellectual property, and innovation are unreasonable or discriminatory and burden or restrict U.S. commerce. In June 2018, USTR announced that, based on that finding, tariffs would be imposed on Chinese imports covered by 818 different subheadings of the Harmonized Tariff Schedule of the United States (“HTSUS”), representing approximately \$34 billion in annual trade. Subsequently, in response to retaliatory trade actions by China, USTR added to this first tranche of tariffs by announcing three additional tranches of tariffs, eventually covering approximately two-thirds of imports from China (\$550 billion in annual trade).

With respect to each of the four tranches, USTR has established a process for U.S. stakeholders to request the exclusion of products from otherwise applicable duties. As part of these processes, USTR has assessed the public health justification for particular exclusions, and in recent weeks, in consultation with the Department of Health and Human Services, USTR has granted exclusions for medical-care products relating to the U.S. response to COVID-19.

Published in the Federal Register on March 25 (available [here](#)), USTR’s notice requests public input regarding further modifications to exclude additional medical-care products from the section 301 tariffs, regardless of

whether the products are subject to pending or previously denied exclusion requests (however, the exclusion processes governing the third and fourth tranches of duties are still underway and are not covered by the notice published in the Federal Register yesterday). Interested parties may submit comments electronically [here](#). Commenters must identify the product at issue (by describing the functionality and physical characteristics of the product and, to the extent possible, by stating the product's HTSUS classification at the ten-digit level) and explain precisely how the product relates to the response to the COVID-19 outbreak. When a comment is posted on the regulations.gov website, other interested parties will have three business days in which to submit any responsive comments. The docket for comments will remain open until at least June 25, 2020.

USTR's call for comments occurs against the backdrop of requests from some parts of the business community for much broader tariff relief, including a lifting of the section 301 tariffs entirely, a moratorium on the imposition of new tariffs on goods of any kind and origin, and deferral of the ordinary deadlines for remitting tariff assessments to U.S. Customs and Border Protection. To date, the Administration has indicated that it is not receptive to such requests.

* * *

This International Trade Current does not constitute legal advice and is not meant to be a comprehensive guide to the USTR's Section 301 actions or exclusion processes. For questions or assistance in submitting comments in response to today's request, please contact the authors.

If you have questions concerning the contents of this issue, or would like more information about Weil's International Arbitration & Trade practice group, please speak to your regular contact at Weil, or to:

Editor and Author:

Ted Posner (DC) [View Bio](#) ted.posner@weil.com +1 202 682 7064

Contributing Author:

Timothy Welch (DC) [View Bio](#) timothy.welch@weil.com +1 202 682 7132

© 2020 Weil, Gotshal & Manges LLP. All rights reserved. Quotation with attribution is permitted. This publication provides general information and should not be used or taken as legal advice for specific situations that depend on the evaluation of precise factual circumstances. The views expressed in these articles reflect those of the authors and not necessarily the views of Weil, Gotshal & Manges LLP. If you would like to add a colleague to our mailing list, please [click here](#). If you need to change or remove your name from our mailing list, send an email to weil.alerts@weil.com.