

CLIENT ALERT

The Month in International Trade – July 2018

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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

USTR ADJUSTS PUBLIC COMMENT DUE DATES FOR LATEST CHINA SECTION 301 TARIFF LIST

President Trump has directed the Office of the United States Trade Representative (USTR) to consider increasing the proposed tariffs under Section 301 from 10% to 25% for the [entire \\$200 billion list \(also known as "List 3"\)](#). Because of this, the USTR has extended several of the dates in the public comment process.

The USTR circulated an e-mail on August 2 to parties that had submitted a request to appear in the upcoming Section 301 hearing for the “List 3” products. In it, the USTR clarified information provided in a [press release on August 1](#).

To summarize:

- The due date for filing **requests to appear and a summary of expected testimony** at the public hearing and for filing **pre-hearing submissions** is extended from **July 27 to August 13, 2018**.
- The due date for submission of **written comments** is extended from **August 17 to September 5, 2018**.
- The due date for submission of **post-hearing rebuttal comments** is also extended from **August 30 to September 5, 2018**.
- The scheduled start date of the Section 301 hearing (August 20) **has not changed**.
 - The Section 301 Committee may extend the length of the hearing depending on the number of additional interested persons who request to appear. As of now, the hearing is scheduled to take place from August 20 to August 23.
 - The USTR will provide the full hearing schedule the day before the hearing, per USTR policy.

For more information, contact: John Brew, Spencer Toubia, Edward Goetz

HIGHLIGHTS FROM USTR’S SECOND SECTION 301 HEARING

On July 24-25, 2018, the Office of the United State Trade Representative (USTR) held public hearing regarding proposed tariffs on approximately \$16 billion of Chinese products.

The [list identifying these products](#) (also known as “List 2”) was released last month and represents 284 new tariff lines identified by the interagency Section 301 Committee as “benefiting from Chinese industrial policies, including the 'Made in China 2025' industrial policy.”

The Committee heard testimony from over 80 witnesses on whether to include certain tariff lines in List 2. The witnesses represented trade organization and corporations of all sizes.

Most of the witnesses requested that the Committee remove specific tariff lines from the list. The most common justifications were as follows:

- The United States has a trade surplus in a particular good, and the 301 duties would harm that industry.
- The increased duties would:
 - Lead directly to the loss of U.S. manufacturing jobs.;
 - Lead directly to an increase in the price of goods to the U.S. consumer.
 - Would have no effect on China’s intellectual property practices.
- The goods targeted on List 2:
 - Are only available from China.
 - Are not relevant to the “Made in China 2025” program.

Witnesses who supported the Section 301 duties asserted that they were necessary to protect U.S. manufacturing concerns and that sufficient capacity existed in the United States to manufacture the listed products.

The Committee asked questions of the witnesses when their testimony was complete. The questions fell into several broad categories:

- Would the Section 301 duties affect the cost and availability of medical devices?
- Why isn't current U.S. manufacturing capacity available to meet U.S. demand?
- Are the listed goods available from non-Chinese foreign suppliers?
- How long would it take to increase production in the U.S., or to requalify a new non-Chinese supplier?

Even though rebuttal comments were due at the end of July, this is not the last Section 301 Hearing. The next one is scheduled for August (see first article). An important point for rebuttal comments after any hearing is to always consider the Committee's questions to the witnesses.

For more information, contact: John Brew, Aaron Marx, Cherie Walterman

USTR PUBLISHES 'CHINA 301 PRODUCT EXCLUSION FORM'; DOCKET OPEN FOR SUBMISSIONS

On July 11, 2018, the [United States Trade Representative \(USTR\)](#) opened the docket for [China 301 Product Exclusion Requests on regulations.gov](#). The Docket ID is USTR-2018-0025.

The docket includes USTR's ['China 301 Product Exclusion Form.'](#)

In its [July 11 Federal Register Notice](#) describing the procedures to use for product exclusion requests, USTR states, "To assist in review of requests for exclusion, USTR has prepared a request form that will be posted on the USTR website under "Enforcement/Section 301 investigations" and on the [www.regulations.gov](#) docket in the "supporting documents" section.

USTR strongly encourages interested persons to use the form to submit requests."

The Section 301 exclusion form is more simplified than the earlier Section 232 exclusion form. Interested parties can still submit supporting documents in addition to the form, and there is no page limit to the submission.

As a reminder, this product exclusion request process only applies to those goods subject to the *ad valorem* duty of 25 percent on products from China classified in the 818 subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) [set out in Annex A of the June 20, 2018, Federal Register Notice](#). Note that Annex B to the notice contains the same list of tariff subheadings, with unofficial descriptions of the types of products covered in each subheading.

For more information on key dates and submission guidelines for China Section 301 Product Exclusion Requests, [please click here for Crowell & Moring's post discussing the specifics of the notice](#).

For more information, contact: John Brew, Robert Holleyman, Spencer Toubia, Yun Gao, Cherie Walterman

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

SENATE PASSES MISCELLANEOUS TARIFF BILL ACT OF 2018

On July 26, 2018, the Senate unanimously passed the Miscellaneous Tariff Bill Act of 2018 (MTB), a bill that would cut or eliminate tariffs on articles such as chemicals, footwear, toasters, and roughly 1,660 other items made outside the United States. Half of those items are produced in China. The bill was passed without debate. The last MTB passed by Congress expired on December 31, 2012.

President Trump had announced a series of punitive tariffs on Chinese imports and China has retaliated with its own duties on imports from the United States. The White House has not yet announced a position on the MTB bill, which has now passed both the Senate and the House of Representatives unanimously. There are minor differences that need to be resolved before the legislation can be sent to the President to sign into law.

Associations have been urging Congress to pass MTB in order to eliminate what they claim are unfair, out-of-date and/or anticompetitive taxes. It is estimated that the 2018 MTB Act would eliminate import tariffs of more than \$1.1 billion over the next three years and boost U.S. manufacturing output by more than \$3.1 billion. Supporters of the bill have stated that it would boost the economy by getting rid of tariffs set up to protect industries that no longer exist in the United States.

For more information, contact: John Brew, Aaron Marx, Frances Hadfield

CBP PUBLISHES PROPOSED RULE FOR MODERNIZED DRAWBACK

On August 2, 2018, U.S. Customs and Border Protection (CBP) published a proposed rule in the Federal Register to implement changes to the drawback regulations as directed by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA).

According to the notice:

- The proposed regulations establish a new process for drawback pursuant to TFTEA which liberalizes the merchandise substitution standard, simplifies recordkeeping requirements, extends and standardizes timelines for filing drawback claims, and requires the electronic filing of drawback claims.
- TFTEA allows a transition period wherein drawback claimants will have the choice between filing claims under the existing process detailed in the current regulations or filing claims under the proposed new process. [The notice] explains how filings during the transition period will work, discusses the interim policy guidance procedures for filing claims prior to these regulations becoming final, and proposes to make TFTEA-related changes, dealing with bonds, regarding liability for the importer of the goods and the drawback claimant, and technical corrections and conforming changes to CBP regulations.
- CBP also proposes to clarify the prohibition on the filing of a substitution drawback claim for internal revenue excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise; or the substituted merchandise is the subject of a different claim for refund or drawback of tax under any provision of the Internal Revenue Code.

Comments must be received on or before September 17, 2018.

For more information, contact: John Brew, Aaron Marx

ZTE BACK IN BUSINESS AS COMMERCE DEPARTMENT LIFTS DENIAL ORDER

In a [July 13, 2018 press release](#), the Commerce Department announced it had lifted the denial order on Zhongxing Telecommunications Equipment Corporation, of Shenzhen, China (ZTE Corporation) and ZTE Kangxun Telecommunications Ltd. of Hi-New Shenzhen, China (ZTE Kangxun) (collectively, ZTE). Commerce took this action shortly after ZTE deposited \$400 million in escrow at a U.S. bank to provide a form of security that ZTE will comply with its continuing obligations under the June 2018 superseding settlement agreement. The funds in escrow are in addition to the \$1 billion paid to the U.S. Treasury last month.

According to the press release, the \$1.4 billion paid under the 2018 settlement agreement is in addition to the \$892 million in penalties ZTE paid to the U.S. government under the original March 2017 settlement agreement. That agreement included a suspended denial order against the company, which the Bureau of Industry and Security (BIS) had activated on April 15, 2018.

The 2018 settlement agreement requires ZTE to retain a team of special compliance coordinators selected by and answerable to BIS for a period of 10 years. The June 2018 agreement again imposed a denial order that is suspended, this time for 10 years, and BIS can activate it in the event of additional violations during the ten-year probationary period. Pursuant to the 2018 agreement, ZTE has also replaced the entire board of directors and senior leadership for both entities.

For more information, contact: Alan W.H. Gourley, Jeff Snyder, Jana del-Cerro

OFAC ISSUES VENEZUELA GENERAL LICENSE 5 AND VENEZUELA-RELATED FREQUENTLY ASKED QUESTIONS

On July 19, the Department of the Treasury's [Office of Foreign Assets Control \(OFAC\)](#) issued [Venezuela General License 5](#).

General License 5 authorizes U.S. persons to engage in all transactions related to, the provision of financing for, and other dealings in the [Petróleos de Venezuela SA 2020 8.5 Percent Bond](#) that would be prohibited by Subsection 1(a)(iii) of [Executive Order 13835](#) of May 21, 2018 ("Prohibiting Certain Additional Transactions With Respect to Venezuela") (E.O. 13835). In practice, General License 5 expands the previously issued General License No.3. by adding a new bond to the list of previously authorized bonds.

OFAC also published [two new Frequently Asked Questions \(FAQs\)](#). One explains why OFAC is issuing General License 5. The other answers the question of whether E.O. 13835 prohibits a U.S. person with a legal judgment against the Government of Venezuela from attaching and executing against Venezuelan government assets.

For more information, contact: Dj Wolff, Mariana Pendas

OFAC EXTENDS DIVESTMENT AND TRANSFER PERIOD FOR CERTAIN RUSSIAN COMPANIES TO OCT 23

On July 31, 2018, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued [Ukraine-/Russia-related General License 13C](#), which replaces and supersedes General License 13B in its entirety.

General License 13C extends to 12:01 a.m. October 23, 2018, the "authorized period to make certain divestment and transfer activities related to debt, equity, or other holdings in EN+ Group, GAZ Group, or United Company RUSAL PLC, or in entities in which those persons own, directly or indirectly, a 50 percent or greater interest, that were issued by Irkutskenergo, GAZ Auto Plant, or Rusal Capital Designated Activity Company (Other Issuer Holdings), subject to certain conditions and exceptions."

Previously, General License 13B had authorized the same activity, but only until 12:01 a.m. August 5, 2018. Further information on this topic in may be found in [FAQs 570](#) and [571](#) on OFAC's website.

For more information, contact: Jeff Snyder, Dj Wolff, Edward Goetz

PUBLICATION OF NORTH KOREA SUPPLY CHAIN ADVISORY

On July 23, 2018, the U.S. Department of State, with the U.S. Department of the Treasury and the U.S. Department of Homeland Security, issued [this advisory](#) to highlight the sanctions evasion tactics used by North Korea that could expose businesses – including manufacturers, buyers, and service providers – to sanctions compliance risks under U.S. or United Nations sanctions authorities.

CROWELL & MORING WELCOMES

Rebecca Toro Condori joined Crowell’s Washington D.C. office as an International Trade Analyst and a member of the firm’s International Trade Group. Rebecca comes to us from an internship at Volvo Group, where she worked in customs operations and freight forwarding. Prior to that, she was a Western Hemisphere Intern at the Office of the U.S. Trade Representative (USTR). While at the USTR, Rebecca primarily assisted with NAFTA renegotiation issues, including conducting analyses of both the Industry Trade and Agricultural Technical Advisory Committees’ comment submissions regarding NAFTA modernization.

As a trade analyst, Rebecca provides practice support to the International Trade Group in import regulatory matters pending primarily before U.S. Customs & Border Protection (CBP). She is also the group’s lead analyst for data analysis. Additionally, she works closely with attorneys developing courses of action for clients impacted by the investigation of the Government of China pursuant to Section 301 of the Trade Act of 1974.

Rebecca graduated *cum laude* from Virginia Tech with degrees in both Economics and International Studies with a focus in International Business.

We are pleased to welcome Rebecca to the International Trade Group and the firm.

CROWELL & MORING SPEAKS

Erik Woodhouse spoke at the American Conference Institute’s 9th Global Forum on Anti-Corruption in High Risk Markets on July 26 in Washington, D.C. He was on a panel entitled “Virtual Currencies and Blockchain Technology: The Latest Schemes to Hide Corruption – How to Restructure Your Risk and AML Strategies in Light of New Tactics and Risks.”

CROWELL & MORING EVENTS

Doing Business with Asia: Developments in Trade, IP, Investment and Dispute Settlement

September 20, 2018 | Los Angeles, CA

Starts: 12:30 PM (PDT)

Ends: 7:00 PM (PDT)

Site: Crowell & Moring

Address: 515 South Flower Street, Los Angeles, CA 90071 ([view map](#))

This event will showcase the Inter-Pacific Bar Association (IPBA) to lawyers in the U.S., with a focus on the hot issues for 2018, including international trade under the “new rules” of the Trump Administration.

The sessions are designed to address the important matters facing international business in Asia, with speakers from key IPBA jurisdictions, led by IPBA Committee members, including the Corporate Counsel Committee. IPBA Leadership, including those involved in future annual conferences has been invited and will discuss plans for upcoming events in Singapore, China, and Japan, among others.

Partner [Jeffrey L. Snyder](#) will be presenting during this event.

[For more information and to register, click here.](#)

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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