International Trade Alert

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USTR Requests Comments on Section 301 Tariffs on COVID-19 Related Products

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Key Points

- Late on Friday, March 20, 2020, USTR announced that it has opened a new public comment period for businesses and government agencies to request additional product exclusions from Section 301 duties for certain Chinese-origin medical-care products needed to respond to the COVID-19 outbreak.
- USTR encourages parties to submit comments as promptly as possible, but will keep the comment period open until June 25, 2020, with further extensions as appropriate.
- Interested parties can provide comments here.

Introduction and Background

Starting in June 2018, the Office of the U.S. Trade Representative (USTR) has implemented duties in four separate tranches ("Lists 1-4") on billions of dollars of goods imported from China – including roughly $5 billion of medical goods from China – following its investigation into China's acts, policies and practices related to technology transfer, intellectual property and innovation under Section 301 of the Trade Act of 1974 (Section 301). For each tranche of imposed duties, USTR has established a process for interested parties to request exclusions of particular products classified within a covered ten-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading. USTR is still reviewing exclusion requests for Lists 3 and 4, and USTR is considering extensions of granted exclusions from List 1.

USTR has previously determined that Section 301 tariffs should not be placed on ventilators and oxygen masks, breathing masks, and nebulizers; accordingly, Section 301 tariffs have not been placed on these items. In addition, as the COVID-19 outbreak has worsened in recent weeks, USTR has granted a series product exclusions for a large number of health-related products, including certain surgical and sterile drapes, medical gloves, soaps, bedsheets, and sanitary paper products, e.g., sanitary covers for certain dental instruments. The specific exclusions can be found in the following *Federal Register* notices:

- List 4: 85 FR 13970 (March 10, 2020)

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- List 3: 85 FR 15015 (March 16, 2020)
- List 4: 85 FR 15244 (March 17, 2020)

USTR's Latest Action to Provide Potential Tariff Relief Given COVID-19

On March 20, 2020, USTR announced that in "an effort to keep current on developments in our national fight against the coronavirus [COVID-19] pandemic," the agency "has opened a new docket for members of the public, business, and government agencies to submit comments" on possibly removing duties from additional medical care products of Chinese-origin. According to USTR, this comment process "supplements" the current Lists 3 and 4 exclusion processes and does not replace them.

In its *Federal Register* notice, USTR states that "[e]ach comment specifically must identify the particular product of concern and explain precisely how the product relates to the response to the COVID-19 outbreak". As an example, the comment may explain "whether a product is directly used to treat COVID-19 or to limit the outbreak, and/or whether the product is used in the production of needed medical-care products". All comments must include the following information:

- The ten-digit subheading of the HTSUS applicable to the product; and
- The identity of the particular product in terms of its functionality and physical characteristics (e.g., dimensions, material composition or other characteristics).

Comments may provide information concerning the producer, importer, ultimate consumer or trademarks or tradenames, but according to USTR, "this is less helpful".

USTR will accept comments regarding **any product** currently subject to duties under Lists 1-4, regardless of whether the product is subject to a pending or denied exclusion request, but the comments must be relevant to the medical response to COVID-19. Interested persons may also submit responses to comments, within three business days after a comment is posted in the docket, and USTR will review comments on a rolling basis.

Recommendations and Next Steps

As discussed above, USTR has already granted product exclusions for some medical-related items in light of the COVID-19 outbreak; however, there is still significant opportunity for obtaining Section 301 duty mitigation for various items related to the COVID-19 relief efforts. Examples include[1]:

- CT systems, used for COVID-19 diagnosis and screening;
- Patient monitoring devices (e.g., pulse oximeters or bedside monitoring stations used for continuous monitoring of various vital signs);
- Electro-cardiographs;
- Alcohol solutions (e.g., Ethyl alcohol) for use in the preparation of sanitizing agents/solutions;
- Organic chemicals/chemical compounds used in the development of pharmaceutical products (such as those articles classified under Chapter 29);
- Hand sanitizers and other disinfectant preparations;

- Various electro-medical instruments, including, but not limited to, intubation kits, anesthetic instruments, etc.; and
- Instruments used in clinical labs for diagnosis.

Importers of these items, as well as related stakeholders such as hospitals, government agencies and other businesses assisting in combatting COVID-19, should strongly consider submitting comments to USTR here as soon as possible, and no later than June 25, 2020. Further, if a company imports any components/parts currently subject to Section 301 duties that are used for the production of items critical to COVID-19 relief efforts, it should also consider submitting comments. Akin Gump can assist in preparing comments for submission to USTR.

[1] Some of these product categories may have already received partial exclusions but, because many of the granted exclusions are limited in scope, the full product category may not be subject to duty relief.

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