SFIA THOUGHT LEADERSHIP WEBINAR

September 12, 2019

China 301 Exclusion Requests: How to Obtain Favorable Results and Secure Duty Refunds

Featured Speaker:
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Partner
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SFIA Guest:
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Coordinator, Communications & Marketing
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September 17, 2019
2:00 PM (EST)

Racing Ahead & Keeping Pace in Wearable Technology: Evolution of the Industry and its Legal Risks
Agenda

• China Trade War – Background
• China 301 Proceedings – Overview
• China 301 Proceedings – Impact on SFIA Members
• China 301 Proceedings – Exclusion Process
• China 301 Proceedings – Required Information
• Preserving Rights to Duty Refunds
• China 301 Proceedings – List 4 Impact and Process
• China 301 – Status and Resources
China Trade War – Background

• Section 301 U.S. Law to Counter Unfair Trade Practices
• Office of the United States Trade Representative and 301 Committee
• WTO Inconsistent
• China IP Investigation (August 2017)
• USTR Report (March 2018)
• Remedy Phase
• Harmonized System (HS) Classification
China 301 Proceedings – Overview

• USTR Remedy Phase – Four Separate Proceedings
  • List 1: April 2018 – $50 billion proposed list of products at 25%
  • List 1: Effective July 6, 2018 on $36 billion at 25%
  • List 2: June 2018 – $16 billion proposed list of products at 25%
  • List 2: Effective August 23, 2018 on $16 billion at 25%
  • List 3: July 2018 – $200 billion proposed list of products at 25%
  • List 3: Effective September 24, 2018 on $200 billion at 10%
  • List 3: Increased to 25% effective May 10, 2019
China 301 Proceedings – Overview

• List 4: May 2019 – $300 billion proposed List of Products at 25%
• List 4A: Effective September 1, 2018 – 15%
• List 4B: Effective December 15, 2019 – 15%
• Lists 1-3: September 2019 – proposed increase from 25% to 30% to be effective October 1, 2019
China 301 Proceedings – Impact on SFIA Members

List 3 Includes

<table>
<thead>
<tr>
<th>HS Code</th>
<th>Product Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3926</td>
<td>plastic articles, baseball gloves, sports gloves, certain apparel and accessories</td>
</tr>
<tr>
<td>4015</td>
<td>rubber gloves</td>
</tr>
<tr>
<td>4202</td>
<td>sports bags, coolers, smart phone carriers</td>
</tr>
<tr>
<td>4203</td>
<td>leather baseball gloves, sports gloves</td>
</tr>
<tr>
<td>5903</td>
<td>certain sports tapes</td>
</tr>
<tr>
<td>6505/6506</td>
<td>hats, headwear, caps</td>
</tr>
<tr>
<td>6502</td>
<td>helmet components</td>
</tr>
<tr>
<td>8308</td>
<td>helmet components</td>
</tr>
<tr>
<td>8504/8537</td>
<td>exercise equipment</td>
</tr>
<tr>
<td>9106</td>
<td>timers</td>
</tr>
<tr>
<td>9401</td>
<td>folding chairs</td>
</tr>
</tbody>
</table>
China 301 Proceedings – Exclusion Process

- Exclusions
- Product Specific Requests for Lists 1, 2 and 3 only
- Retroactive and good for at least 1 year
- List 1 request closed October 2018
- List 2 requests closed December 2018
- List 3 exclusions closes September 30, 2019
- List 4 TBD
- Over 15,000 requests filed – 2,800 requests granted – 6,700 requests denied – approximately 30% approval rate
China 301 Exclusions – Required Information

- 10 digit HS Code
- Product name, description, function, application and use
- Pictures, specification sheets, CBP rulings
- Role of requestor (e.g., importer, producer, association)
- Is product available in U.S., if not why?
- Is product not available in third countries?
- Describe attempts to source outside of China
- Import data (2017 – Q1 2019)
China 301 Exclusions – Required Information

- Details if product is an input material (% of finished good and of company sales)
- Arguments why imposition of tariffs harms your company or other U.S. interests
- Business confidential information must be identified
- Submission of List 1 or 2 requests
- Strategic importance to China 2025
China 301 Exclusions – Good Facts

• No U.S. sources
• No third country sources, or small percentage with imports from other countries
• Product requires special certifications or testing to meet standards
• Input material for U.S. production and exports
• Chinese producer is a U.S. subsidiary
• Efforts to find third country sources
• Price increase costs U.S. jobs and consumers
• Not critical to China 2025
China 301 Exclusions – Bad Facts

• U.S. sources, who may file objections
• Large percentage of imports from third countries
• Finished product, not input material
• Price increase absorbed by Chinese suppliers
• Critical to China 2025
China 301 Exclusions – Reasons for Denial

• Wrong list
• Wrong HS code
• Bad product description
• Multiple products in one petition
• Domestic opposition
• Reasonably available alternative or U.S. sources
• Subjectivity
Preserving Rights to Duty Refunds

• Duties on List 3 imposed in September 2018
• Customs “liquidates” entries 314 days after entry
• Importers may request customs extend liquidation upon request
• Importers must protest liquidation 180 days to protest customs liquidation
• Importers should monitor entries, request extension of liquidation and/or file protective protests
## China 301 Proceedings – List 4 Import and Process

<table>
<thead>
<tr>
<th>HS Code</th>
<th>Product Descriptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>6110/6114/6116/6201/6203/6204</td>
<td>Apparel: pullovers, uniforms, gloves, outer wear</td>
</tr>
<tr>
<td>6216</td>
<td>Sports gloves</td>
</tr>
<tr>
<td>6302/6307</td>
<td>Towels, and other textile articles</td>
</tr>
<tr>
<td>6402/6404</td>
<td>Sports footwear</td>
</tr>
<tr>
<td>6506</td>
<td>Helmets and headgear</td>
</tr>
<tr>
<td>6601</td>
<td>umbrellas</td>
</tr>
<tr>
<td>9004</td>
<td>Eyewear</td>
</tr>
<tr>
<td>9506</td>
<td>Sports equipment, golf club parts, tennis racquets, baseballs, raquet balls, other balls, ice skates, baseball bats, hockey sticks and other spots equipment and games</td>
</tr>
</tbody>
</table>

- List 4 Process TBD – likely similar to List 3
China Section 301 – Status and Resources

• U.S. – China Negotiations
• Potential Outcomes
  – Status Quo: Announce List 4 exclusion process and continue to make determinations
  – Delay: Based on October negotiations, delay increase to Lists 1-3 tariffs
  – Increase: Raise tariffs on List 4, and continue to raise tariffs
  – Resolution: Will pending requests be granted if agreement is reached?
  – Crowell Trade Blog – cmtradelaw.com
Questions?
Thank You!
Thank you to all of our participants!