



ONPOINT / A legal update from Dechert's International Trade Group

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Trade War Escalates with China Tariffs

The United States put into effect new tariffs on July 6, 2018, on roughly US\$34 billion in Chinese products. In response, the Chinese government instituted retaliatory tariffs on a comparable quantity of U.S. products.

These new tariffs follow on the heels of the recent steel and aluminum tariffs, and further trade war escalation is possible. The Trump administration is considering another round of Chinese tariffs and global automotive sector tariffs. Trading partners routinely impose retaliatory tariffs, and businesses are taking steps to adjust to the impact.

First Wave of Chinese Tariffs

In March 2018, the U.S. Trade Representative (USTR) made findings concluding that the Chinese government unfairly pressured U.S. businesses to transfer technology and intellectual property to Chinese companies. President Trump instructed USTR to propose a list of products that would be subject to new tariffs, and USTR did so. U.S.-Chinese negotiations to reach a resolution have been unsuccessful.

On June 15, 2018, USTR announced that effective July 6 U.S. Customs and Border Protection would begin collecting 25% tariffs on a variety of products imported from China. Those tariffs are now in effect. The U.S. tariffs are aimed at a broad range of technological, advanced manufacturing and other products relating to industries targeted for global market dominance as part of China's Made in China 2025 program. USTR is due to publish procedures by which U.S. importers may request exclusions from the final product lists. Judging by the exclusion process criteria for tariffs on aluminum and steel, as well as USTR's published comments relating to the China tariff lists, we expect the Chinese tariff exclusion process to focus on adequate supply of the subject product outside of China, harm to U.S. interests, and the strategic importance of the product and its relation to the Made in China 2025 program.

A second wave of tariffs is under consideration. USTR has a second list of imports valued at roughly US\$16 billion in imports that is undergoing review. A hearing on this list is scheduled for July 24. President Trump has also suggested that if China opts to enforce its retaliatory tariffs rather than changing course with respect to U.S. intellectual property and technology, the U.S. government would explore additional tariffs on as much as US\$400 billion in Chinese imports.

As expected, China has imposed retaliatory tariffs. They target electric and hybrid electric vehicles, soybeans and other foodstuffs amounting to US\$34 billion in annual U.S. exports.

It is possible that President Trump will de-escalate tariffs against China after imposing them, if he believes he can achieve a satisfactory deal. This is the track the Administration has taken on another major topic in the U.S.-China trade relationship – the trade sanctions imposed on the Chinese telecom company ZTE Corporation (ZTE). Following the Commerce Department's issuance of a comprehensive denial order in March 2016, effectively cutting ZTE off from access to all U.S. origin products and related services, the Administration and ZTE agreed to a deal in June to lift the ban in exchange for a fine of approximately \$1.4 billion, replacement of its senior leadership, and an internal monitoring program. On July 3, the Trump Administration granted temporary authorization to ZTE until August 1 to conduct activities necessary to maintain existing networks under pre-existing contracts. Just as with ZTE, businesses can expect negotiations and continuing developments.

Auto Industry Concerns

Meanwhile, the U.S. Department of Commerce is investigating whether national security concerns justify new tariffs on global automotive imports.

The Administration is using the same process for automotive tariffs as used for the steel and aluminum tariffs. The automotive industry is already grappling with the effects of the steel and aluminum tariffs, and there is growing concern regarding the prospect of new tariffs on autos and parts.

The Commerce Department investigation of automotive tariffs must be complete by February 2019. However, in late June, Secretary of Commerce Wilbur Ross said that his agency intends to complete the review in July or August. Although the Commerce Department's global auto tariff recommendations are forthcoming, President Trump tweeted in June that his administration would impose a 20-percent tariff on all cars assembled in the European Union unless the E.U. lifts its own tariffs on U.S. automobiles. Discussions with the EU and others are ongoing.

Retaliatory Tariffs on Steel and Aluminum

A broad swath of U.S. companies have begun to encounter tariffs imposed by three significant U.S. trading partners, as Canada, Mexico and the European Union have all imposed retaliatory tariffs in response to the United States' steel and aluminum tariffs. After the U.S. government set new tariffs on steel and aluminum imports (of 25% and 10%, respectively), trading partners issued new tariffs in response.

- Mexico imposed new tariffs (effective June 5) on a variety of U.S. products, including pork, apples, bourbon and cheese, with tariff amounts varying by product.
- The European Union introduced tariffs (effective June 22) on a variety of consumer products, including whiskey and motorcycles totaling nearly US\$3.2 billion in annual imports.
- Canada imposed tariffs (effective July 1) targeting U.S. steel and aluminum imports (with duties matching those imposed by the U.S.), along with 10% tariffs on a variety of foods and consumer products from the United States.

Business Planning

Businesses are planning for various contingencies involving tariffs. In addition to the obvious cost impact, businesses are looking at how rules of origin and other complex customs rules could impact their plans.

How Dechert Can Help

With a wealth of international trade experience in the United States and abroad, Dechert is available to advise clients on managing risks emerging from tariffs. We regularly assist clients in conducting internal audits, establishing improved compliance plans and programs, and assisting with tariff classifications and enforcement proceedings.

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