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Enjoying the Great Outdoors May Soon Cost You More

The Impact of Proposed New Tariffs on the Outdoor Industry

Insight — 09/18/2018

BACKGROUND: In 2017, under Section 301 of the Trade Act of 1974, as amended, the United States Trade Representative ("USTR") started an investigation into the Chinese government's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The investigation found the Chinese government was engaged in unreasonable or discriminatory practices that were burdensome or restrictive on U.S. commerce. In March 2018, President Trump directed the USTR to take all appropriate action to address China's trade practices.

The U.S. response included the imposition of additional duties of 25% on 818 classifications of products made in China (or approximately \$50 billion of products) that are strategically important to, and benefit from, the "Made in China 2025" program and other Chinese industrial policies. These duties became effective on July 6, 2018 and are in addition to any preexisting duties on such goods.

The Chinese government, rejecting U.S. concerns with unfair trade practices, responded on June 15, 2018, by announcing it would impose equivalent tariff measures on U.S. goods.

RECENT U.S.T.R. ACTIONS: This initial round of tariffs largely spared the outdoor industry. However, the industry will not escape the impacts of the trade war for much longer. In July and August 2018, and in response to China's imposition of duties on U.S. goods, the USTR proposed modifying its original actions by adding an additional 10%-25% ad valorem (based on the item's value) duty on Chinese products that are contained on a 195-page list (approximately \$200 billion of products). On September 17, 2018, the USTR announced a finalized list of goods (found in 5,745 different product classifications) subject to this third round of tariffs. The additional duties are effective **September 24, 2018**.

The new U.S. tariffs will have a direct impact on the outdoor industry because the items subject to the new duties include, but are not limited to:

- Baseball and softball gloves and mitts (Harmonized Tariff Schedule of the United States ("HTSUS") Subheadings 3926.20.20 and 4203.21.40);
- Bicycles (HTSUS Subheadings 8712.00.15, 8712.00.25, 8712.00.35, 8712.00.44 and 8712.00.48);
- Numerous bicycle parts, including:
 - Tires (HTSUS Subheadings 4011.50.00);

- Rims (HTSUS Subheadings 4012.90.30 and 4012.90.70);
- Inner tubes (HTSUS Subheading 4013.20.00);
- Ski and snowmobile gloves (HTSUS Subheadings 4203.21.55 and 4203.21.60 for ski/snowmobile gloves);
- Knit/wool/crocheted/felt hats and headgear (HTSUS Subheadings 6505.00.30, 6505.00.40, 6505.00.50, 6505.00.60, 6505.00.70, 6505.00.80); and
- Folding hunting knives (HTSUS Subheading 8211.93.00).

HOW WILL OUTDOOR INDUSTRY BRANDS REACT TO NEW

DUTIES?: A number of outdoor brands have stated that they will shift these increased costs onto consumers even though increased prices may drive away some business. In addition, the increased tariffs could harm smaller brands or businesses that decide to absorb the additional costs themselves, instead of choosing to pass along such increased costs to the consumers. While there will be certain exemptions to the new tariffs, some of the exemptions only further perpetuate the problem to outdoor industry businesses. For example, the *de minimis* exemption under the Trade Facilitation and Trade Enforcement Act of 2015 excludes from taxes imported personal purchases under \$800, including online purchases. This may provide consumers greater incentive to order their outdoor gear online from sites such as Amazon rather than visiting their local outdoor gear and sporting goods stores.

U.S. importers, however, may take certain actions to mitigate the impact of these new duties. For example, importers may:

- Review and confirm product classifications to identify candidates for re-classification under a HTSUS subheading not subject to these duties.
- Request exclusion for the duties. Exclusion requests can be made directly, through counsel, or through trade associations, and are retroactive to the initial implementation date of the Section 301 duties. The exclusion request process for the third round of duties (so called list 3 items) is expected to be announced a few weeks after the new duties become effective.
- Move the final manufacturing or assembly location from China to another country. This will avoid Section 301 duties only if a substantial transformation (i.e. a new article of commerce is produced) occurs, thereby changing the country of origin of the products to a country other than China.
- Change sourcing to non-China suppliers. This will avoid Section 301 duties only if the country of origin of the products sourced from new suppliers is not China.
- Deliver imported items to a Foreign Trade Zone ("FTZ"). Section 301 duties are not applied on items temporarily imported into a FTZ and subsequently exported from a United States FTZ in the same condition.
- Request a duty drawback, which is a refund of up to 99% of duties paid on items imported into the United States that are subsequently

exported. Drawback requires detailed record keeping and administration.

- Consider whether the import falls under HTSUS Chapter 98 duty-free provisions, which are items originally exported from the United States that are eligible for duty-free reentry.

And there's more bad news for importers of these products. The additional Section 301 duties on list 3 items are scheduled to increase to 25% on January 1, 2019 if the trade dispute remains unresolved. At this time, talks to resolve the issue are stalled with no projected resolution date.

If you have questions about the applicability of duties on your imports and potential ways to mitigate the impact of these duties, including drafting and submission of exclusion requests for your company's products, please contact Dave Glynn, Clarissa Collier, Lizbeth Rodriguez-Johnson, or a member of your Holland & Hart LLP team. For additional information about the import team at Holland & Hart LLP, please check the list of Customs/Import services we provide. For additional information about the Recreational and Outdoor Equipment industry group at Holland & Hart LLP, please check out the group's webpage.

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