



COMMENTARY
JANUARY 2019

Section 301 Goes Global: U.S. May Soon Apply Additional Duties to Non-Chinese-Origin Goods

IN SHORT

The Situation: The United States Trade Representative ("USTR") requested comments to identify countries that fail to protect intellectual property rights or deny fair and equitable market access to U.S. persons.

The Result: While only Chinese-origin goods currently are subject to additional duties pursuant to Section 301 of the Trade Act of 1974 ("Section 301"), other foreign-origin goods may soon be subject to such additional duties.

Looking Ahead: Companies that manufacture products outside the United States or import foreign-origin goods into the United States should monitor the comments and public hearing to determine if they could be impacted by the additional duties and, if so, consider their options to mitigate or avoid paying these additional duties while ensuring compliance with applicable requirements and restrictions.

On December 28, 2018, the USTR signaled that foreign-origin goods from countries other than China may soon be subject to additional duties pursuant to Section 301. In particular, the USTR published a [request for comments and notice of public hearing](#) to "identify ... countries whose acts, policies, or practices deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection." As we explained in a prior [Commentary](#), the U.S. government previously imposed additional duties on three sets of Chinese-origin goods pursuant to Section 301.



The USTR will publish a Special 301 Report, in which the USTR may identify so-called Priority Foreign Countries that fail to protect intellectual property rights or deny fair and equitable market access to U.S. persons.



Written comments, hearing statements, and notices of intent to appear at the hearing are due on February 7, 2019, from the public and on February 21, 2019, from foreign governments. The public hearing will be held on February 27, 2019. On or about April 26, 2019, the USTR will publish a Special 301 Report, in which the USTR may identify so-called Priority Foreign Countries that fail to protect intellectual property rights or deny fair and equitable market access to U.S. persons. The U.S. government would then be authorized to impose additional duties on goods that originate in those countries.

In addition, the USTR may place certain countries on the Priority Watch List or the Watch List, which "indicates that particular problems exist in that country with respect to [intellectual property rights] protection, enforcement, or market access for persons that rely on intellectual property protection." While placement on the Priority Watch List or the Watch List does not authorize the U.S. government to impose additional duties pursuant to Section 301, placement on the Priority Watch List indicates that the country is "the focus of increased bilateral attention concerning the problem areas," and placement on either list may indicate that the USTR is likely to identify the country as a Priority Foreign Country in the future.

Companies that manufacture products outside the United States or import foreign-origin goods into the United States should monitor the comments and public hearing. Parties impacted by the additional duties may be able to mitigate or avoid additional duties pursuant to Section 301, as we explained in another prior [Commentary](#).

THREE KEY TAKEAWAYS

1. Foreign-origin goods from countries other than China may soon be subject to additional duties pursuant to Section 301.
2. Companies should monitor the comments, public hearing, and Special 301 Report to determine which, if any, countries may be identified as Priority Foreign Countries or placed on the Priority Watch List or the Watch List.
3. Parties impacted by the additional duties should consider their options to mitigate or avoid paying the additional duties while ensuring compliance with applicable requirements and restrictions.



Laura Fraedrich
Washington



Chase D. Kaniecki
Washington



Christopher M. Tipler
Washington

YOU MIGHT BE INTERESTED IN: [Go To All Recommendations >>](#)



[TPP-11 to Come into Force on December 30, 2018](#)



[Regional Shake-Up or More of the Same? How the USMCA Impacts North American Trade](#)



[Recent CBP Rulings Make it More Difficult to Avoid Section 301 Duties](#)

SUBSCRIBE

SUBSCRIBE TO RSS



Jones Day is a global law firm with more than 2,500 lawyers on five continents. One Firm WorldwideSM

Disclaimer: Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2019 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113