USTR Section 301 Tariff Updates

On May 17, 2019, the Office of the United States Trade Representative proposed the implementation of additional tariffs on a list of Chinese imports valued at approximately $300 billion. This list contained nearly every product not currently covered by tariffs under the Section 301 investigation into China’s trade practices, which was initiated in 2017. Included on the proposed list were shipping containers and cranes from China.

USTR sought written comments and held seven days of public hearings in late June to receive feedback from industry stakeholders. Several organizations, including IANA, the American Association of Port Authorities, and the Institute of International Container Lessors, used this opportunity to urge USTR to remove shipping containers and cranes from the proposed list of goods subject to additional duties.

On August 20, 2019, USTR announced the products that will be subject to a 10 percent tariff. The products were divided into two lists, the first will go into effect on September 1, 2019 and the other on December 15, 2019. Shipping containers and cranes were removed from the final lists and will not be subject to the 10 percent tariff. According to American Trucking Associations, a tariff on containers would have cost the industry an additional $63 million in the first year and nearly $750 million more over 10 years if the tariffs remained in place.

President Trump, in late August, directed USTR to increase the tariff rates for all products subject to Section 301 tariffs. USTR is implementing an increase from 10 percent to 15 percent on the $300 billion list, to apply on the previously announced effective dates of the tariff. USTR is also proposing an increase from 25 to 30 percent on all other tariff lists, including the list that contains chassis. If implemented, this increase would be effective October 1, 2019. Comments on the proposed increase are due September 20, 2019.

FMCSA Publishes HOS NPRM; Holds First Listening Session

In 2018, the Federal Motor Carrier Safety Administration published an advanced notice of proposed rulemaking seeking comments on possible changes to its current hours of service regulations. The agency received over 5,200 public comments on the ANPRM and held a series of public listening sessions to hear from industry stakeholders. On August 22, 2019, FMCSA published proposed amendments to its HOS requirements which are
intended to increase flexibility and safety for drivers. This notice of proposed rulemaking specifically sought comments on five key changes to HOS provisions.

In the NPRM, FMCSA noted that the proposed rule would not increase the maximum allowable driving time and would continue to restrict commercial motor vehicle operators from driving more than eight consecutive hours without a break of at least 30 minutes.

One provision under consideration is the 30-minute break requirement. FMCSA is proposing this regulation be modified to require a break after eight hours of driving time, rather than on-duty time. It would also allow drivers to fulfill their break requirement using either on-duty status or off-duty. Second, FMCSA is proposing increased flexibility to its split sleeper berth provision by allowing drivers to divide their required 10 off-duty hours between seven hours in the sleeper berth and at least two hours either off-duty or in the sleeper berth. While the NPRM requires the shorter break period to be at least two hours long, FMCSA officials noted that total off-duty or sleeper berth time must still add up to at least 10 hours. They indicated that the language for this provision will be clarified in the final rule. The NPRM would allow this 7/3 split in addition to the 8/2 and 9/1 hour splits currently permitted, and neither break would count against the driver’s 14-hour driving window. Third, FMCSA is proposing to allow one off-duty break of at least 30 minutes but no more than three hours. This proposed revision would pause the 14-hour on-duty window, as long 10 off-duty hours are taken after the work shift ends. Fourth, FMCSA is proposing a change to the adverse driving conditions exception. Currently, drivers are permitted up to two additional hours of driving time under adverse conditions, but these hours must fall within their 14-hour driving window. The NPRM proposes to extend the maximum driving window under these conditions. Lastly, FMCSA is proposing modifications to the short-haul exception by increasing the driver’s maximum on-duty period from 12 to 14 hours and extending the distance radius from 100 to 150 air miles.

On August 23, 2019, FMCSA held a public listening session to hear comments on the five proposed revisions to HOS regulations. Industry stakeholders, including TruckerNation, the Owner-Operator Independent Drivers Association, and the United States Transportation Alliance called for increased flexibility and safety measures for drivers. Specifically, stakeholders recommend that drivers be allowed to split the 30-minute break into smaller time increments throughout the day. They also suggested FMCSA allow drivers to split their sleeper berth time more evenly by including the option of a 6/4 or 5/5 split.

A second listening session will take place on September 17, 2019. Comments on the NPRM are due by October 7, 2019.
FRA Requests Applications for the CRISI Grant Program

On August 19, 2019, the Federal Railroad Administration published a notice of funding opportunity for nearly $245 million in available grant funding under the Consolidated Rail Infrastructure and Safety Improvements Program. The CRISI program provides grants for safety and general infrastructure improvements for both passenger and freight railroads. In a statement to the press, U.S. Department of Transportation Secretary Elaine Chao said the CRISI grant program “is an important resource for railroads to upgrade infrastructure and for communities to enhance safety on tracks and at railroad crossings.”

The NOFO highlights that FRA will especially focus on projects relating to congestion challenges, highway-rail grade crossings, short-line railroad infrastructure upgrades, rail line relocation, intercity passenger rail capital assets improvement, and railroad safety technology. Of the total funds available, at least 25 percent must be allocated towards projects in rural areas. The NOFO also notes that FRA will give preference to projects where the proposed federal share does not exceed 50 percent of total costs. Grant applications are due by October 18, 2019.