

Special Program Announcement: Tariff Exclusions for the Vaping Industry



Starting from the time they litigated the first e-cigarette case against the FDA, Thompson Hine's attorneys have been at the forefront of the regulatory and business issues facing the vaping industry. Thompson Hine is pleased to serve as outside counsel to the **Vapor Technology Association** and to offer exclusive capped fee pricing on legal services to the VTA's members.

One of the current challenges facing the industry is the recent imposition of Section 301 tariffs on vaping products, which are described in further detail below. These tariffs are currently imposed at a rate of 25 percent. However, industry participants have until December 18, 2018, to apply for an exemption from the first set of vapor tariffs. Thompson Hine's interdisciplinary team has extensive experience preparing Section 301 exemption requests and can prepare and file an exclusion request on your company's

behalf.

Trade Act of 1974: Section 301

Section 301 of the Trade Act of 1974 sets out three categories of acts, policies, or practices of a foreign country that are potentially actionable: (i) trade agreement violations; (ii) acts, policies, or practices that are unjustifiable (defined as those that are inconsistent with U.S. international legal rights) and that burden or restrict U.S. commerce; and (iii) acts, policies or practices that are unreasonable or discriminatory and that burden or restrict U.S. commerce. The provisions of Section 301 authorize the President to take appropriate actions, including retaliation, to obtain the cessation of such behavior by a foreign country. The Office of the U.S. Trade Representative (USTR) has broad authority for a range of possible responsive actions to meet the goal of eliminating or otherwise resolving these unfair practices, such as the imposition of duties or other restrictions on goods or services.

Regarding trade with China, the USTR initiated an investigation to determine whether China's acts, policies, and practices related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory, and burden or restrict U.S. commerce. After conducting an investigation

and finding that China's action were unreasonable and discriminatory, the USTR initially determined in June 2018 that a twenty-five (25) percent tariff was appropriate to impose on approximately \$50 billion of products from China that are strategically important to, and benefit from, the "Made in China 2025" program and other Chinese industrial policies. The United States implemented these tariffs on \$34 billion of imports from China. On August 16, 2018, the United States implemented tariffs on additional U.S. imports of 279 Chinese products covering an estimated trade value of \$16 billion. **With these tariffs in place, the USTR has announced procedures to request the *exclusion* of products subject to this additional duty.**

In September 2018, the USTR announced that a ten (10) percent tariff would go into effect on approximately \$200 billion of products from China starting from September 24, 2018, which will increase to 25 percent on January 1, 2019. Affected industries, including the vaping industry, are actively pursuing the establishment of a similar exclusion application process in this latest round of tariffs, as the lack of such a process will have a negative impact on American businesses and American consumers.

To receive your specialized VTA Member pricing to request an exclusion, you can contact any of our team members below to find out how we can assist your business in applying for an exclusion from the Section 301 tariffs.

Thompson Hine Team



Eric N. Heyer leads the firm's vaping industry practice. Eric was integrally involved in the first federal lawsuit in 2009 that successfully challenged FDA's categorization of ENDS products as unapproved new drugs or medical devices. Over the years, Eric has counseled and represented both foreign and domestic ENDS and e-liquid manufacturers, wholesalers, distributors, and retailers on all manner of federal and state regulatory compliance issues, in significant transactions, and in litigation, including Proposition 65 litigation, patent litigation, and a constitutional case that successfully challenged Indiana's statutory scheme regulating the manufacture of e-liquids. Eric.Heyer@ThompsonHine.com | 202.263.4128



Michelle Li has extensive experience in trade policy matters and disputes involving unfair competition, including Section 301, Section 232, and antidumping (AD) and countervailing duty (CVD) proceedings and administrative reviews. Michelle has successfully assisted U.S. producers in a wide range of industries in guarding against unfair trade practices. Michelle assists clients in the e-cigarette industry on various matters, and has deep knowledge of the industry's products and business practices. Michelle.Li@ThompsonHine.com | 202.263.4162



As a non-attorney policy advisor, **Scott Diamond** has extensive experience with the legislative and regulatory processes involved in international trade and has assisted firm attorneys and clients in policy matters and disputes involving unfair competition, including Section 301 (unfair trade acts, policies and practices of foreign entities), Section 332 (general fact-finding investigations into trade and tariff matters), and antidumping (AD) and countervailing duty (CVD) proceedings and administrative reviews. Mr Diamond was involved in one of the last successful Section 301 investigations prior to the enforcement actions against China. Scott.Diamond@ThompsonHine.com | 202.263.4197

About Thompson Hine LLP. Thompson Hine LLP, a full-service business law firm with approximately 400 lawyers in 7 offices, was ranked number 1 in the category “Most innovative North American law firms: New working models” by *The Financial Times*. For 6 straight years, Thompson Hine has distinguished itself in all areas of Service Delivery Innovation in the BTI Brand Elite, where it has been recognized as one of the top 4 firms for “Value for the Dollar” and “Commitment to Help” and among the top 5 firms “making changes to improve the client experience.” The firm’s commitment to innovation is embodied in Thompson Hine SmartPaTH® – a smarter way to work – predictable, efficient and aligned with client goals. For more information, please visit ThompsonHine.com and ThompsonHine.com/SmartPaTH.