

US announces tariffs on \$200b China-origin goods; trade pressures to continue

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Executive summary

On 17 September 2018, the United States Trade Representative (USTR) announced a third list of China-origin products which will become subject to additional 10% ad valorem punitive tariffs (calculated in addition to most-favored nation duties) beginning on 24 September 2018 (US List 3).¹ The ad valorem duty rate for the covered products on US List 3 is scheduled to then increase to 25% on 1 January 2019.² A wide range of products are impacted by the duties; however, certain consumer products and other categories of goods originally proposed to be subject to the tariffs have been fully or partially removed, as discussed below.

The USTR's continued action, imposing tariffs on Chinese origin products, is based on the findings of its investigation into China's acts, policies and practices related to forcible transfers of United States (US) intellectual property.³ As a result of the investigation, the US announced it was targeting more than 1,000 unique tariff lines for an additional 25% ad valorem duties⁴ and US Customs and Border Protection (CBP) began collecting additional duties on 818 tariff lines covering US\$34 billion⁵ worth of imports from China per year on 6 July 2018 (US List 1).⁶ CBP then began collecting additional tariffs on another 279 tariff lines covering \$16 billion worth of imports from China per year on 23 August 2018 (US List 2).⁷

China responded to each of the first two US actions by collecting additional duties on 545 tariff lines covering \$34 billion worth of imports from the US (China List 1)⁸ on 6 July 2018 and then began collecting punitive tariffs of 25% ad valorem on another 333 tariff lines covering \$16 billion worth of imports (China List 2) on 23 August 2018 (China List 2).⁹ The USTR's finalization of US List 3 is in response to China's implementation of China Lists 1 and 2.¹⁰

Separately, the USTR announced a product exclusion process for US List 2, which was implemented on 23 August 2018. The process builds on the prior US List 1 requirements, and adds additional reporting criteria around Chinese origin parts used in the production of final products. Importers who wish to seek an exclusion have until 18 December to submit a completed application.

Detailed discussion

US List 3

US List 3 consists of 5,745 full or "partial"¹¹ tariff lines covering \$200 billion worth of trade with China. The final list varies slightly from the initially proposed list of 6,031 tariff lines, with the USTR removing 297 full or partial tariff lines from the original proposed list following a six-week period of notice and comment and six days of public hearings. The 17 September USTR announcement states that the following types of products were removed: "smart watches and Bluetooth devices; certain chemical inputs for manufactured goods, textiles and agriculture; certain health and safety products such as bicycle helmets, and child safety furniture such as car seats and playpens." A review of the list shows that two new tariff lines were added after the comment period:

- ▶ 23011000: Flours, meals, and pellets, of meat or meat offal unfit for human consumption; greaves
- ▶ 27090010: Petroleum oils and oils from bituminous minerals, crude, testing under 25 degrees

US List 3 is the most expansive of the lists with covered products falling within 80 Chapters of the Harmonized Tariff System of the United States (HTSUS). Pharmaceuticals of Chapter 30, and apparel and footwear of Chapters 61-64 are notably absent from the list. However, the list does include consumer products such as hats and handbags, car parts, appliances, televisions, batteries, computer components and network routers, furniture, as well as fabrics, food, chemicals and pesticides, minerals, machines, items made from steel and aluminum, semiconductor assemblies, among others.

The list is broken up into two parts. Part one contains 5,734 tariff items fully subject to the punitive tariffs while Part two contains 11 8-digit tariff numbers where certain 10-digit tariff numbers are excluded. For example, seats under 9401.80.60 are subject to punitive tariffs except for child safety seats classified under 9401.80.6021 and 9401.80.6023. Under Part two, HTSUS code 8517.62.0090 is listed; however, this is not a current or previous HTSUS code. The USTR announced that it was removing from the final list smart watches and Bluetooth devices currently classified under 8517.62.0050. If the exclusion of 8517.62.0090 is a typographical error, it is likely 8517.62.0050; if it is not an error, there is a possibility that the USTR has intended to create a new HTSUS code in order to allow CBP to more easily identify covered items.

Summary of final US List 3

Rank	Tariff Chapter	Tariff chapter description	No. of tariff lines listed
1	29	Organic chemicals	693
2	03	Fish and crustaceans, molluscs and other aquatic invertebrates	275
3	28	Inorganic chemicals; organic or inorganic compounds of precious...	231
4	52	Cotton	230
5	48	Paper and paperboard; articles of paper pulp, of paper...	222
6	85	Electrical machinery and equipment and parts thereof...	213

Rank	Tariff Chapter	Tariff chapter description	No. of tariff lines listed
7	84	Nuclear reactors, boilers, machinery and mechanical appliances...	196
8	44	Wood and articles of wood; wood charcoal	180
9	38	Miscellaneous chemical products	142
10	07	Edible vegetables and certain roots and tubers	143
All other tariff chapters (70 chapters)			3220
Grand Total			5745

Product exclusion process for US List 2

On the same day as its finalization of US List 3, the USTR announced a product exclusion process for US List 2. Similar to the exclusion process outlined for products on US List 1, exclusion requests must specify a particular product that is classified within a HTSUS subheading based on physical characteristics that distinguish it from other products within the covered 8-digit subheading. Importers must also provide the applicable 10-digit HTSUS subheading for the item as well as the annual quantity and value of the Chinese origin product that the requester purchased in each of the last three years. In addition, for parts used in the production of final products, importers must provide the percentage of the total cost of Chinese-origin input and the percentage of their total gross sales in 2017 that the final product accounted for. Only one product may be submitted per exclusion request. For imports sold as final products, requesters must provide the percentage of their total 2017 gross sales that sales of the Chinese-origin product accounted for. For imports used in the production of final products, requesters must provide the percentage of the total cost of producing the final product(s) the Chinese-origin input accounts for as well as the percentage of their total 2017 gross sales that sales of the final product(s) accounted for.

Consistent with the exclusion process for US List 1, all submissions must include a rationale for the product exclusion request which address the following factors:

- ▶ Commercial availability of the product outside of China
- ▶ Potential harm to the requester or other US interests if the exclusion is not granted
- ▶ Whether the product is strategically important or related to Beijing's "Made in China 2025" or other industrial programs

Requesters are permitted to submit any other information relevant to their request, including comments on CBP's ability to administer the exclusion requested.

The exclusion process has the following important dates and features:

- ▶ Product exclusions may be filed up until 18 December 2018, and exclusions granted by the USTR will retroactively apply to the date when the duties became effective (23 August 2018).
- ▶ Product exclusions will be effective for **one year** upon the publication of the exclusion determination in the Federal Register.
- ▶ Following public posting of the exclusion request on www.regulations.gov, the public will have 14 days to file responses in support or opposition of the request. After the close of the 14-day response period, interested persons will have an additional 7 days to reply to any responses received in support of or opposition to the request.

The USTR's 17 September 2018 Press Release contains further details regarding the filing process:

- ▶ Detailed instructions for submitting an electronic product exclusion request, including how to submit requests containing confidential business information
- ▶ Detailed instructions for submitting responses and replies to responses on any product exclusion requests
- ▶ Format and certification requirements for all submissions

What to expect next?

With the finalization of US List 3, China has announced the finalization and implementation of its tariffs on imported US goods, with collection to begin on 24 September 2018 (China List 3). Initially announced on 3 August 2018, China List 3 consists of 5,207 product lines covering \$60 billion of commerce with the US which will become subject to additional tariffs of 5% and 10% ad valorem.¹² Notably, the list includes liquefied natural gas, auto parts, medical devices, various types of machinery, furniture, minerals, chemicals, leather products, wood products, as well as food and beverage products such as meat, coffee, nuts and alcoholic drinks. The universe of tariff lines covered by the final version of China List 3 remains unchanged from the originally proposed list.

On 17 September 2018, prior to Beijing's announcement of China List 3, the White House announced that additional items valued at \$267 billion will become subject to punitive tariffs should China continue to retaliate.¹³ Referred to as phase three, this list of products would essentially cover the full universe of imports from China.

Actions for businesses

Any company involved in US/China trade is encouraged to identify the potential impact of additional duties and develop duty avoidance or mitigation strategies. Immediate actions for such companies could include:

- ▶ Mapping their complete, end-to-end supply chain to fully understand the extent of products impacted, potential costs, alternative sourcing options, and to assess any opportunities to mitigate impact such as tariff engineering.
- ▶ Identifying strategies to defer, eliminate, or recover the excess duties such as bonded warehouses, FTZs, substitution drawback, Chapter 98 and equivalent programs under China customs regulations.
- ▶ Exploring strategies to minimize the customs value of imported products subject to the additional duties, re-evaluating current transfer pricing approaches, and for US imports, considering US customs strategies, such as First Sale for Export.

Endnotes

1. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/ustr-finalizes-tariffs-200>.
2. Id.
3. Section 301 of the *Trade Act of 1974* (Section 301) allows them to impose duties or import restrictions upon a determination that an act, policy or practice of a foreign country violates, or is inconsistent with, a trade agreement such as the World Trade Organization (WTO), or is "unjustifiable and burdens or restricts United States Commerce." 19 USC § 2411 et seq.
4. The USTR's methodology targeted products related to the "Made in China 2025" policy and was designed to minimize the impact on US consumers by selecting products with commercially feasible alternative sourcing options. As a result, the proposed and final lists exclude major categories of consumer goods, such as footwear, apparel, smartphones and most consumer electronics, such as personal computers and computer monitors. For further background see TradeWatch Vol 17, Issue 2 (June 2018), "[US to impose USD34 billion in tariffs on China-origin goods effective 6 July 2018; additional USD16 billion to follow.](#)"
5. Currency references in this Alert are to US\$.
6. "[USTR Issues Tariffs on Chinese Products in Response to Unfair Trade Practices](#)," 15 June 2018.
7. "[USTR Finalizes Second Tranche of Tariffs on Chinese Products in Response to Unfair Trade Practices](#)," 7 August 2018.
8. China Ministry of Commerce, "Announcement on Imposing Tariffs on Some Goods Originating in the US," 17 June 2018.
9. China Ministry of Finance, "[Announcement of the Customs Tariff Commission of the State Council on Adding Tariffs to Imported Goods Originating from the United States of About US\\$16 Billion](#)," 8 August 2018.
10. See above note ...
11. A "partial" tariff line means that only a portion of the 10 digit HTSUS sub-codes that fall within an 8 digit code covered by US List 3 are subject to punitive duties.
12. China Ministry of Finance, 18 September 2018, "[Announcement of the Customs Tariff Commission of the State Council on the application of tariffs on imports of approximately US\\$60 billion worth of goods originating in the United States.](#)"
13. <https://www.whitehouse.gov/briefings-statements/statement-from-the-president-4/>.

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