

US suspends planned increase of duties on certain Chinese origin imports "until further notice"; Moves to remove India and Turkey from preferential trade benefits

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Executive summary

In a 5 March 2019 Federal Register Notice, the United States Trade Representative (USTR) formally announced the official delay in increasing tariffs on US\$200 billion¹ of Chinese origin imports (US List 3 goods) from 10% to 25% until further notice.² The increase was intended to occur for imports beginning on 2 March 2019³ if the United States (US) and China did not conclude negotiations by that time. On 24 February 2019, President Trump announced that satisfactory progress had been made to warrant a delay of the planned increase while negotiations continue. While the announcement affirms delay of the increase on List 3 (\$200b), duties of 25% previously imposed on \$50 billion of China-origin goods remain in force at this time (US Lists 1 and 2).

In additional trade news, on 4 March 2019, the USTR announced it intends to revoke trade benefits provided under the Generalized System of Preferences (GSP) for India and Turkey.⁴ The revocations will not take effect until at least 60 days after formal notification to Congress has been made as well as to the governments of India and Turkey. The official removal of Turkey and India will be made by Presidential Proclamation.

Detailed discussion

Section 301 punitive duties

On 6 April 2018, the USTR published a product list (List 1)⁵ containing 818 tariff lines which became subject to an additional 25% ad valorem tariff on 6 July 2018. Any products described on List 1 of Chinese origin are subject to the additional duties.⁶ The USTR subsequently implemented a second and third round of tariffs on several other Chinese-origin products. The 25% punitive tariff for articles described on List 2 was implemented on 23 August 2018 and covers 279 tariff lines,⁷ while the 10% punitive tariff for articles described on List 3 was implemented on 24 September 2018 covering 5,745 full or partial tariff lines.⁸ The duty rate for List 3 was originally scheduled to rise to 25%⁹ as of 1 January 2019, but an agreement announced by US President Trump and China President Xi Jinping delayed the increase for 90 days (2 March 2019) while negotiations between the US and China continue.

On 27 February 2019, the USTR's office announced further that it would move to formally suspend a scheduled tariff increase on Chinese goods until further notice following President Trump's decision to delay his deadline for a US-China trade deal amid progress in their talks (announced 24 February 2019). The formal announcement rescinding the scheduled tariff increase for List 3 was published in the Federal Register on 5 March 2019.

Generalized System of Preferences

The GSP was implemented as part of the *Trade Act of 1974* and became effective on 1 January 1976.¹⁰ The program, designed to promote economic growth in developing countries by helping countries diversify their trade with the US, provides duty-free benefits for a wide range of qualifying products listed in the US Harmonized Tariff Schedule. The GSP presently provides duty-free treatment for up to 4,800 products from 129 beneficiary countries.

On 4 April 2018, the USTR announced that it would review India's participation in the program,¹¹ and added on 3 August 2018 that it would also review Turkey.¹² In both cases, the agency cited concerns that the countries failed to comply with certain eligibility criteria. Specifically, India has purportedly failed to provide equitable and reasonable access to its markets despite previous assurance to do so,

while the review finds that Turkey's economic development progress no longer necessitates preferential access to the US market. The USTR's office is also currently reviewing the eligibility for Indonesia and Kazakhstan.

Actions for businesses

There are continued actions to be taken by companies around 301 tariffs as well as the GSP.

Trade negotiations between the US and China remain uncertain despite both countries indicating a deal could be close. Any company involved in US-China trade is encouraged to continue to identify the potential impact of additional duties and explore mitigation strategies. Close monitoring of the negotiations and any political developments is warranted, as companies will want to assess any liability under a changing tariff regime. Terms of any deal reached are likely to contain specific conditions that may impact certainty of outcome and will need to be closely analyzed once made available.

For companies importing products from India or Turkey and currently claiming preference under the GSP, should take similar activities around quantifying impact.

Immediate actions for such companies to consider 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 to address potential increases in 301 tariffs.
- ▶ Isolating imports currently receiving benefits under the GSP from India and/or Turkey, and determining the magnitude of the exposure should benefits be revoked.
- ▶ Identifying strategies to defer, eliminate, or recover the excess duties paid under Section 301 such as bonded warehouses, Free Trade Zones, 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 under either 301 tariffs or the GSP, re-evaluating current transfer pricing approaches, and for US imports, considering US customs strategies, such as First Sale for Export.

Endnotes

1. Currency references in this Alert are to US\$.
2. https://ustr.gov/sites/default/files/enforcement/301Investigations/84_FR_7966.pdf.
3. See EY Global Tax Alert, *US announces temporary pause on planned increase of List 3 tariffs on China origin goods; duties remain in force and key issues remain unresolved*, dated 3 December 2018.
4. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/march/united-states-will-terminate-gsp>.
5. For the full list of tariff lines subject to List 1, see <https://ustr.gov/sites/default/files/enforcement/301Investigations/List%201.pdf>.
6. Office of the United States Trade Representative, press release, *USTR Issues Tariffs on Chinese Products in Response to Unfair Trade Practices* (15 June 2018). <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/june/ustr-issues-tariffs-chinese-products>.
7. Office of the United States Trade Representative, press release, *USTR Finalizes Second Tranche of Tariffs on Chinese Products in Response to China's Unfair Trade Practices* (7 August 2018). <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/ustr-finalizes-second-tranche>.
8. Office of the United States Trade Representative, press release, *USTR Finalizes Tariffs on \$200 Billion of Chinese Imports in Response to China's Unfair Trade Practices* (19 September 2018). <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/ustr-finalizes-tariffs-200>.
9. White House Press Statement, 1 December 2018.
10. <https://ustr.gov/sites/default/files/gsp/GSP%20Guidebook%20March%202017.pdf>.
11. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/april/ustr-announces-new-gsp-eligibility>.
12. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/ustr-announces-new-gsp-eligibility>.

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EYG no. 000740-19GbI

1508-1600216 NY
ED None

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