

USTR announces formal submission process for List 3; Mexico formally ratifies USMCA and India formally retaliates against US

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Executive summary

On 1 March 2019, the United States Trade Representative (USTR) formally released United States (US) President Donald Trump's 2019 Trade Policy Agenda and Annual Report. The report outlines the Administration's trade policies in detail and its objectives of: (i) updating the global trading system; (ii) making US Trade Policy work better for American workers; and (iii) pursuing new trade deals and stronger enforcement to continue rebalancing America's trade relationships.

Following through on commitments under its Trade Agenda, the Trump Administration recently took further actions regarding tariffs for China-origin goods including an announcement of an exclusion process in limited circumstances. Additionally, measurable actions have occurred towards ratification of the US-Mexico-Canada Agreement (USMCA) as well as in response to the Administration's recent removal of India from the Generalized System of Preferences (GSP) program.

In a 20 June 2019 Notice, the USTR published guidelines for the exclusion process on Section 301 List 3 products.¹ The process, which allows for interested parties to request a product exemption from the Section 301 List 3 tariffs, will begin on 30 June 2019 at noon EDT and will close on 30 September 2019. This is the first exclusion process outlined for List 3 since the tariffs went into effect on 24 September 2018 at the initial 10% rate.

With respect to the USMCA, the Mexican Senate voted on 19 June 2019 to ratify the USMCA, making Mexico the first of the three signatory countries to do so.

Separately, on 16 June 2019, India increased tariffs on 28 targeted products of US origin. The action was in response to India's removal from the US' GSP program earlier this month.²

Detailed discussion

Formal exclusion submission process for List 3

Following the direction of the President under Section 301 of the *Trade Act of 1974*, the USTR published a Notice to impose 10% punitive tariffs on approximately US\$200b of Chinese origin goods on 24 September 2018 (List 3).³ The List 3 tariffs were intended to increase from 10% to 25% on 1 January 2019; however, this increase was delayed due to progress in negotiations between the US and China. Following the stalemate of US-China trade negotiations, which occurred in early May, the USTR then proceeded with the planned increase to 25% on 10 May 2019.⁴

On 20 June 2019, the USTR published guidance on the exclusion process for List 3 and announced that the process will now be via a web-based portal, along with other important considerations. The process will open to the public on 30 June 2019 and the USTR will review each request and will grant exclusions on a case-by-case basis. To submit the request, the requester must provide various product-specific data, such as the 10-digit HTSUS (Harmonized Tariff Schedule US), the product's application and use, the requester's relationship to the product, and the annual quantity and value of the product. Requests are limited to one product per individual submission.

As with prior exclusion processes for Lists 1 and 2, the requester should sufficiently answer the following questions with supporting documentation, regarding the rationale for the exclusion request:⁵

- ▶ Whether the product is only available in China or if the product is available in either the US or a third-party country
- ▶ Whether the requester has attempted to source the product elsewhere
- ▶ Whether the imposition of additional duties has or will caused economic harm to the requester
- ▶ Whether the product is strategically important or is related to a Chinese industrial program

Notably, once a request has been posted on the USTR's online portal, the public will have a period of 14 days to comment with their opinion, either in support or opposition of the exclusion. The initial requester will then have 7 days after the posting of responses to reply. All exclusion request submissions will be a matter of public record. The portal, and all exclusion requests for List 3, will close on 30 September 2019.

USMCA ratified by Mexico

The leaders of the United States, Mexico and Canada signed, on 30 November 2018, the USMCA to replace the current North America Free Trade Agreement (NAFTA).⁶

Mexico became the first of the three countries to ratify the agreement following a Senate vote on 19 June 2019. The motion passed with an overwhelming majority; 114 votes in favor of the deal, 4 against, and 3 abstentions. While USTR Lighthizer qualified the ratification as a "crucial step forward,"⁷ the treaty must still be ratified by the US Congress and Canadian Parliament. Once ratified by all three signatory countries, the deal will go into force and supersede NAFTA.

Indian Import Tariffs

On 5 June 2019, the US removed India from the GSP program. The GSP provides duty-free benefits on a wide range of products to qualified developing countries. The proclamation from the White House cited India's failure to provide equitable and reasonable access to its market, a key criterion in the qualification of a beneficiary country, as reason for exclusion from the program.⁸

India was the largest beneficiary of the GSP in 2018, with the country claiming \$6.3b in imports under the program. The removal of GSP status also removed India from the exemption list on Section 201 safeguard measures on crystalline silicon photovoltaic cells and residential washers.

In June 2018, in response to the US Section 232 steel and aluminum tariffs, the Indian Government issued an order of intent to impose punitive tariffs up to 120% on select US origin goods. This threat was diffused after trade talks between the two nations began.

On 16 June 2019, in retaliation of its removal from the GSP program, India amended the 2018 order "to implement the imposition of retaliatory duties on 28 specified goods originating in or exported from USA."⁹ The 28 targeted products range from agricultural goods to chemicals and metals, with tariffs up to 70%.¹⁰ The most notable products

being almonds and apples as India is the largest buyer of US almonds, purchasing \$543m and accounting for over half of 2018 US almond exports. India was the second largest buyer of US apples in 2018, buying \$156m in from the US.¹¹

Actions for businesses

Companies who have been impacted by List 3 duties should consider submitting an exclusion request. If an exclusion is not likely, or to mitigate impacts of the tariffs while waiting for the USTR to grant an exclusion, immediate actions for the List 3 tariffs can 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 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.

- ▶ Reviewing contracts with suppliers and with customers to understand who has liability for increased duties and if there are opportunities for negotiation.
- ▶ Utilizing duty drawback and Foreign Trade Zones, identifying strategies to defer, eliminate, or recover the excess duties.

Companies who are currently claiming duty-free treatment under NAFTA are encouraged to compare current rules of origin to new rules of origin for their products under the USMCA. While the deal will not be in force until all three signatory countries ratify, it is important to understand any potential impact or changes that may occur under the new rules to products.

Any US company involved in US/India trade should assess the financial impact of the increased tariffs both on the US import as well as the Indian import side and review contracts currently in place to understand which party is ultimately responsible for the additional costs.

Endnotes

1. https://ustr.gov/sites/default/files/enforcement/301Investigations/Procedures_for_Requests_to_Exclude_Particular_Products_from_the_September_2018_Action.pdf.
2. See EY Global Tax Alert, *US announces new import tariffs on Mexico, delays tariff increase on certain China goods and formalizes removal of India from GSP*, dated 3 June 2019.
3. <https://www.federalregister.gov/documents/2018/09/21/2018-20610/notice-of-modification-of-section-301-action-chinas-acts-policies-and-practices-related-to>.
4. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/may/statement-us-trade-representative>.
5. https://ustr.gov/sites/default/files/enforcement/301Investigations/Procedures_for_Requests_to_Exclude_Particular_Products_from_the_September_2018_Action.pdf.
6. <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>.
7. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/june/ustr-robert-lighthizer-usmca>.
8. <https://www.whitehouse.gov/presidential-actions/proclamation-modify-list-beneficiary-developing-countries-trade-act-1974-2/>.
9. <https://www.reuters.com/article/us-usa-trade-india/india-to-impose-retaliatory-tariffs-on-28-us-goods-from-sunday-idUSKCN1TGOH0>.
10. <https://www.bbc.com/news/world-asia-india-48650505>.
11. <https://www.nbcnews.com/news/world/india-impose-retaliatory-tariffs-28-u-s-goods-n1017971>.

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