

Indirect Tax Alert

US announces details for products subject to 1 September 10% tariffs on imports from China with certain exclusions; provides delay to 15 December for other products

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Executive summary

On 13 August 2019, the United States (US) Trade Representative (USTR) formally announced¹ the imposition of a 10% punitive tariff on approximately US\$265b² of Chinese origin goods (List 4³). According to the announcement, the implementation of the List 4 tariffs will occur in two installments, by defined groupings of products.

The announcement further notes that certain products have been removed from the initial proposed List 4 citing factors such as health, safety, and national security as the reasons for removal. Products covered by List 4A, comprising approximately \$155b in goods and considered as the first installment of the tariffs, will go into effect 1 September 2019 while products covered by List 4B, comprised of approximately \$110b in goods, will be imposed as of 15 December 2019.

Detailed discussion

On 13 May 2019, the USTR released a proposed product list initially covering \$300b in Chinese-origin imports and comprising 3,805 tariff codes intended to be subject to up to 25% punitive duties under Section 301 of the *Trade Act of 1974*.⁴ In the announcement, the USTR requested public comments

and subsequently held hearings for companies to express concerns and adverse impacts that may result from the tariffs. The results of the hearings and comments have now been taken into account with the publication of Lists 4A and 4B on 13 August 2019.

The process has resulted in a significant number of Harmonized Tariff Schedule of the United States (HTSUS) numbers appearing on List 4A, which will become subject to a 10% punitive tariff on 1 September 2019; the announcement also states the decision to delay the punitive tariff on certain classes or categories of products covered by List 4B to 15 December as a direct response to the public comments and hearings held in June.

Lists 4A and 4B include nearly all chapters of the HTSUS. As mentioned in EY Global Tax Alert, [*US announces 10% tariffs on remaining \\$300 billion of China origin goods, grants new exclusions on goods subject to 25% duties and reaches agreement with EU for increased beef exports*](#), dated 6 August 2019, List 4 in its entirety (both Lists 4A and 4B) notably covers previously omitted consumer goods ranging from apparel and footwear, and certain toys, as well as personal electronics such as smart phones, video consoles and laptops. Certain categories of these consumer goods are now primarily found on List 4B and are therefore subject to the postponed implementation date in December, providing importers with additional time to receive orders or anticipated merchandise prior to year end.

Certain HTSUS codes that were on the originally proposed List 4 are no longer on Lists 4A or 4B, further illustrating the USTR took the public comments and hearings into account when determining the final list. Products removed from the proposed list include:

- ▶ Certain fish fillets and other fish meat imported under 0304.71 and 0304.81
- ▶ Natural barium sulfate imported under 2511.10
- ▶ Aluminum oxide imported under 2818.20
- ▶ Crane parts imported under 8426.11 and 8426.12

Additionally, the originally proposed List 4 included punitive tariffs on products under subheading 4901.99.00. The newly published Lists 4A and 4B do not have the tariffs covering the entire subheading, rather, the lists provide for the 10-digit HTS code of all goods under the subheading, excluding 4901.99.0040, which covers bibles, testaments, prayer books and other religious books.

Further, the USTR has indicated that it applied a methodology in determining which products to delay imposing tariffs on until December. The USTR analyzed 2018 import data and determined that if a product had Chinese origin in 75% or more cases, they would be placed on List 4B, and therefore postponed until 15 December 2019. In instances where a product had a Chinese origin less than 75% of the time, it was placed on List 4A, with the 10% tariff going into effect 1 September 2019.

Under this action, the US has intentionally continued to exclude specific chapters of the tariff or groups of certain sensitive products such as pharmaceuticals, certain pharmaceutical inputs, select medical goods, rare earth materials, and critical minerals on List 4.⁵ This follows the List 3 guidance for these products to provide exclusion from the additional tariffs at this time. The USTR has also affirmed product exclusions granted previously will not be affected.

As mentioned in EY Global Tax Alert, [*USTR initiates actions to implement up to 25% tariffs on remaining products from China under Section 301; China retaliates with its own tariffs against most recent actions*](#), dated 15 May 2019, the proposed List 4 tariffs were initially expected to take effect in July; however, following a meeting between US President Trump and Chinese President Xi at the G20 Summit in June, President Trump moved to postpone the tariffs, citing progress in negotiations between the two nations. Following additional negotiations in Shanghai held in July, President Trump announced the 1 September imposition date for List 4 tariffs at 10% with no initial mention of potential exclusions; the 13 August 2019 USTR press release details and related postings of the determined items by HTSUS provides the specific lists and imposition dates. A forthcoming Federal Register notice will provide additional details and guidance for exclusion requests to List 4.

The exclusion process for List 4 (including Lists 4A and 4B) has yet to be announced formally but it is expected to be similar to that for List 3. Below are the details for List 3 submissions via the web-based portal:

- ▶ The requester must provide various product-specific data, such as the 10-digit HTSUS, 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.

- ▶ 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 cause economic harm to the requester.
- ▶ Whether the product is strategically important or is related to a Chinese industrial program.

Prior to this announcement, as of 8 August, the USTR had denied 1,484 or 50.82% of the 2,920 requests for List 2 and 6,762 or 62.48% of the 10,822 requests for List 1. As described in EY Global Tax Alert, [*US announces 10% tariffs on remaining \\$300 billion of China origin goods, grants new exclusions on goods subject to 25% duties and reaches agreement with EU for increased beef exports*](#), dated 6 August 2019, there is currently a process undergoing to request exclusions from List 3. While the submission period is ongoing, to date it appears 15 requests have been granted.

Actions for business

With List 4A and List 4B, nearly all products from China will shortly be subject to punitive duties upon import into the US. Combined with the continued tariffs on US products imported into China, 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, and possibly duration, of outcomes and will need to be closely analyzed once made available.

Immediate actions for such companies to consider include:

- ▶ Evaluating Lists 4A and 4B to identify specific products and the respective impacts of the announced tariff rates going into effect, including review of tariff classification determinations and considerations for supply chain or manufacturing adjustments to help mitigate potential tariffs.
- ▶ Reviewing contracts with suppliers and with customers to understand who has liability for increased duties and if there are opportunities for negotiation.
- ▶ 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 country of origin planning to address potential increases in 301 tariffs.
- ▶ Identifying strategies to defer, eliminate, or recover the excess duties paid under Section 301 such as bonded warehouses, Foreign 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, re-evaluating current transfer pricing approaches, and for US imports, considering US customs strategies, such as First Sale for Export.

Companies importing goods from China that are included on List 4 are encouraged to closely monitor and participate in any exclusion process the USTR may issue. Companies should actively develop procedures to support necessary documentation for imported goods that will be subject to List 4, as similar to the past actions, where subject goods ultimately receive exclusion status after the tariff imposition date are expected to be eligible for a refund on punitive duties paid through the Customs Post Summary Correction procedures.

Endnotes

1. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/august/ustr-announces-next-steps-proposed>.
2. Currency references in this Alert are to US\$.
3. https://ustr.gov/sites/default/files/enforcement/301Investigations/84_FR_22564.pdf.
4. See EY Global Tax Alert, [*USTR initiates actions to implement up to 25% tariffs on remaining products from China under Section 301; China retaliates with its own tariffs against most recent actions*](#), dated 15 May 2019
5. Ibid.

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EYG no. 003757-19Gbl

1508-1600216 NY
ED None

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