

US announces 10% tariffs on remaining \$300 billion of China origin goods, grants new exclusions on goods subject to 25% duties on Lists 2 and 3 and reaches agreement with EU for increased Beef exports

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Executive summary

On 1 August 2019, United States (US) President Donald Trump announced via Twitter¹ that the US will impose a 10% punitive tariff on US\$300b² of Chinese origin goods (List 4³). As stated, the tariffs will be set to go into effect 1 September 2019. While the US conducted recent hearings for companies to express concerns over the proposed goods covered by List 4 as announced, it is expected that the announced tariffs will cover all remaining goods that have not yet been subjected to the additional duties under Section 301 of the *Trade Act of 1974*. Formal implementing guidance, including any categories of goods potentially excluded from the order, is expected to be published in the Federal Register in advance of the 1 September imposition date.

The tariff announcement followed the recent visit of United States Trade Representative (USTR) Robert Lighthizer and Treasury Secretary Steven Mnuchin with lead Chinese negotiators in Shanghai, China in efforts to continue the advancement of reaching a potential trade deal between the world's two largest economies. In announcing the tariffs for List 4, President Trump stated lack of progress in the negotiations necessitated the move.

Section 301 duties at a rate of 25% are currently in place for the initial \$250b of China origin goods imported annually to the US, identified on three specific lists of products. A process for requesting exclusions exists for importers who

meet certain criteria. The USTR recently announced exclusions for Lists 2 and 3; this is the first exclusion announcement from the USTR for both List 2 and List 3 to date as the agency continues to review company requests for relief from the punitive tariffs. The announcements are as follows:

- ▶ In a Federal Register Notice (FRN)⁴ published on 31 July 2019, the USTR published a set of exclusions for 69 products otherwise subject to a 25% punitive tariff as part of the 279 tariff lines covering US\$16b worth of imports from China annually (List 2⁵).
- ▶ On 2 August 2019, the USTR announced⁶ a set of exclusions for 10 products otherwise subject to a 25% punitive tariff as part of the 5,745 tariff lines covering US\$200b worth of imports from China annually (List 3⁷).

Additionally, on 2 August 2019, the US and the European Union (EU), signed an agreement easing EU market access for the US beef industry by way of an increased duty-free tariff rate quota.

Detailed discussion

10% tariffs announced on List 4

On 13 May 2019, the USTR released a proposed product list 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*.⁸ List 4 spans across almost all chapters of the Harmonized Tariff Schedule of the US (HTSUS). Most significantly, List 4 covers consumer goods ranging from apparel and footwear to personal electronics such as smart phones and laptops, which had previously been left off the preceding three lists.

Notably, the US has intentionally excluded specific chapters of the tariff or groups of critical products such as pharmaceuticals, certain pharmaceutical inputs, select medical goods, rare earth materials, and critical minerals on List 4.⁹ The USTR has also affirmed product exclusions granted previously will not be affected.

The proposed List 4 tariffs were initially expected to take effect in July; however, following a meeting between 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.

However, in a tweet on 1 August 2019, President Trump announced that items on List 4 would be subject to a 10% punitive tariff beginning on 1 September 2019. The 10%

tariff will not impact any items that are already under the US\$250b subject to Lists 1, 2 and 3. The President cited China's failure to execute on previous promises in negotiations, specifically regarding the purchase of US agriculture products, as his reason for the decision to move ahead with imposing the proposed tariffs. The US provided certain exclusions or exemptions of products on Lists 1, 2 and 3. While formal guidance is not yet published for List 4, it is anticipated that input obtained by the USTR during the comment and hearing process may result in similar action.

List 2 and 3 product exclusions

On 22 March 2018, President Trump executed a Presidential Memorandum directing the Administration to take a full range of action responding to China's acts, policies and practices involving unfair and harmful acquisition of US technology.¹⁰ The USTR subsequently proposed, and President Trump ordered, punitive duties of 25% to be imposed on Lists 1, 2 and 3.

The USTR's 31 July 2019 FRN and 2 August 2019 announcement reaffirms that product exclusion decisions will be made based on the criteria stated in the notices establishing the exclusion process. Specifically, the criteria require applicants to provide the following detailed information for consideration of a determination to grant an exclusion: (1) availability of the product outside of China; (2) harm to US interests due to additional tariffs; (3) significance of the product to Chinese industrial policy; and (4) whether an exclusion would undermine the objective of the Section 301 investigation.

Product exclusions for List 2 apply to any product that meets the description contained in the FRN Annex which are entered for consumption or withdrawn from warehouse on or after 12:01 EST on 23 August 2018 and are not limited to the particular requestor.

The FRN regarding List 2 added a new specific 10-digit HTSUS code, 9903.88.12, for reporting the products now covered by the latest exclusions. The latest exclusions apply to 69 products by specific descriptions. These products include the following, the full list can be found in the FRN:

- ▶ Plastic film and sheeting imported under 3919.90.5060
- ▶ Machinery parts used for pumping air or liquid imported under 8424.89.9000
- ▶ Certain electric motors imported under 8501.10.6020
- ▶ Speed sensors imported under 8543.70.4500

- ▶ Audio parts imported under 8543.70.9960
- ▶ Certain motorcycles imported under 8711.10.0000
- ▶ Thermometers imported under 9028.10.0000

Product exclusions for List 3 apply to any product that meets the description contained in the announcement Annex which are entered for consumption or withdrawn from the warehouse on or after 12:01 EST on 24 September 2018.

The FRN regarding List 3 added a new specific 10-digit HTSUS code, 9903.88.13, for reporting the products now covered by the latest exclusions. The latest exclusions apply to 10 products by specific descriptions. These products include:

- ▶ Container units of plastics configured or fitted for the conveyance, packing, or dispensing of wet wipes imported under 3923.10.9000
- ▶ Certain injection molded polypropylene plastic caps or lids used for dispensing wet wipes imported under 3923.50.0000
- ▶ Certain double-ended Kayak paddles imported under 3926.90.3000
- ▶ High tenacity polyester yarn not over 600 decitex imported under 5402.20.3010
- ▶ Certain nonwovens imported under 5603.92.0090
- ▶ Pet cages of steel imported under 7323.99.9080
- ▶ Shopping carts imported under 8716.80.5090
- ▶ Truck trailer skirt brackets imported under 8716.90.5060
- ▶ Certain inflatable boats, other than kayaks and canoes imported under 8903.10.0060
- ▶ Certain inflatable kayaks and canoes imported under 8903.10.0060

Prior to this announcement, 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, [USTR announces formal submission process for List 3; Mexico formally ratifies USMCA and India formally retaliates against US](#), dated 26 June 2019, the USTR announced an exclusion procedure for List 3, which will close 30 September 2019. There has been no exclusion procedure yet announced for List 4.

As the exclusions are retroactive to date of import, companies may claim refunds on punitive duties already paid on the now excluded products. The refund request process

for punitive duties paid on products that have been granted exclusion for List 2 has been published by Customs and Border Protection (CBP) via the Cargo Systems Messaging Service.¹¹ To claim a refund, importers must file a post-summary correction (PSC) on affected entries within the prescribed timeframe for PSC filings (i.e., before liquidation). In the event the entry has already been liquidated, the liquidation may be protested.

US and EU sign agreement on US beef exports

On 2 August 2019, the USTR announced that the US and the EU had signed an agreement on EU market access for US beef.¹² The agreement provides for a duty-free tariff rate quota system to be applied on US beef imports. Once the agreement is fully in force, the amount of duty-free exports of US beef into the EU are expected to rise from \$15m to \$420m annually. It should be noted that the agreement must still be passed by the European Parliament before it will go into force.

The agreement comes after the National Cattlemen's Beef Association, U.S. Meat Export Federation, and the North American Meat Institute asked the USTR in 2016 to act under Section 301 of the *Trade Act of 1974* and impose tariffs on EU-origin beef, citing a World Trade Organization ruling that found an EU ban on hormones in cattle production to be unfair.

Actions for businesses

For companies importing products from China, trade negotiations between the US and China continue to remain uncertain. With the tariffs expected to remain in place and with the potential for additional tariffs, 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 outcome and will need to be closely analyzed once made available.

Immediate actions for such companies to consider include:

- ▶ 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 tariff engineering 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 that are importing goods from China that are included on List 4 are encouraged to assess the Federal Register notice details upon issuance and assess direct impact of excluded product categories, if any, as well as other details announced by the USTR. They should also closely monitor and participate in any exclusion process the USTR may issue. Similarly, companies that have imported goods that have been granted exclusions are encouraged to submit the necessary PSC to receive a refund on punitive duties paid.

Endnotes

1. <https://www.reuters.com/article/us-usa-trade-tariffs-factbox/tariff-wars-duties-imposed-by-trump-and-u-s-trading-partners-idUSKCN1UR5YD>.
2. Currency references in the Alert are to US\$.
3. https://ustr.gov/sites/default/files/enforcement/301Investigations/84_FR_22564.pdf.
4. https://ustr.gov/sites/default/files/enforcement/301Investigations/16_Billion_Exclusions_Granted.pdf.
5. <https://ustr.gov/sites/default/files/enforcement/301Investigations/2018-17709.pdf>.
6. https://ustr.gov/sites/default/files/enforcement/301Investigations/200_Billion_Exclusions_Granted.pdf.
7. https://ustr.gov/sites/default/files/enforcement/301Investigations/84_FR_20459.pdf.
8. 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.
9. Ibid.
10. <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-actions-united-states-related-section-301-investigation/>.
11. [https://content.govdelivery.com/bulletins/gd/USDHSCBP-255ae1d?wgt_ref=USDHSCBP_WIDGET_2?utm_source=live&utm_medium=live&utm_term=cbp+cargo+messaging+service&utm_content=undefined&utm_campaign=\(not+set\)&qclid=undefined&dclid=undefined&GAID=549372037.1556909835](https://content.govdelivery.com/bulletins/gd/USDHSCBP-255ae1d?wgt_ref=USDHSCBP_WIDGET_2?utm_source=live&utm_medium=live&utm_term=cbp+cargo+messaging+service&utm_content=undefined&utm_campaign=(not+set)&qclid=undefined&dclid=undefined&GAID=549372037.1556909835).
12. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/august/united-states-and-european-union>.

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