

US announces additional tariffs in response to China's tariff retaliation for List 4 products and reinstated tariffs on US-origin vehicles and parts

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Executive summary

On 23 August 2019, China's Customs Tariff Commission (Commission) announced it would implement additional tariffs of 5% and 10% on 5,078 tariff items that amount to US\$75 billion¹ of US-origin goods (China List 4).² The Commission also announced that China would resume tariffs on US-origin vehicles and parts beginning 15 December 2019.³

These actions formalize China's retaliation to the United States (US) recently announced imposition of a 10% punitive tariff on \$265b of Chinese origin goods, out of the remaining \$300b (US List 4) not already subject to punitive tariffs. The US tariffs were recently set to be imposed 1 September 2019 and 15 December 2019, based on two defined lists of products, respectively. In response to that announcement, officials from the Commission on 15 August 2019 indicated that China would take necessary countermeasures if the US took action with the planned implementation of 10% punitive tariffs.

In an immediate response to the 23 August actions by China, the US Trade Representative (USTR) announced a 5% increase to the existing 25% punitive tariffs on \$250b of Chinese origin goods⁴ (Lists 1⁵, 2⁶ and 3⁷). The increase is scheduled to take effect beginning on 1 October 2019. Additionally, the 10% punitive tariffs on the remaining \$300b of Chinese origin goods (Lists 4A and 4B⁸), due to take effect later this year, will be increased to 15%. The announcement cites China's retaliatory decision to impose "unjustified tariffs" on US-origin goods by the Chinese Government.

Detailed discussion

China

China List 4

China's announcement is in reaction to the USTR announcement that the US would implement 10% additional duties on US\$300b of Chinese-origin goods (US List 4).⁹ The China List 4 covers all major categories of US goods imported into China, including consumer electronics (cell phones), machinery (engines), aircrafts and parts, medical instrument, vehicles, and oil and fuel products.

The China List 4 consists of 5,207 product lines covering US\$75b of annual commerce with the US. Corresponding to the planned implementation dates for the US List 4, the China List 4 will also be implemented in two batches with the first on 1 September and the second on 12 December 2019. Each batch is further divided into four parts, each with different additional duty rates as illustrated in the table below:

Part	1 September 2019 Implementation			15 December, 2019 Implementation		
	Number of items	Duty rates	Affected items (tariff chapters)	Number of items	Duty rates	Affected items (tariff chapters)
Part 1	270	10%	01-04; 07; 08	749	10%	09-13; 15-23; 25-26; 29-34; 37-41; 44; 46-52; 55-56; 58-60; 65; 68-74; 76; 79; 81-87; 89; 90 94-97
Part 2	646	10%	02; 05; 07; 10-23; 28-29; 32-33; 35; 37; 39-44; 48-55; 57-58; 61-65; 67; 69-74; 80-85	163	10%	87; 90; 96-97
Part 3	64	5%	04-07; 09; 11-12	634	5%	12-13; 15-24; 26-28; 30-32; 34-36; 39; 41-42; 44-46; 48; 50; 52-65; 67-76; 81-87; 89-92; 94-97
Part 4	737	5%	01; 05-07; 13; 15-16; 19-22; 25-40	1,815	5%	15-33
Total			1,717			3,361

Of the 5,207 products, tariffs on 1,717 items will be implemented on 1 September 2019 and tariffs on 3,361 items will be implemented on 15 December 2019. Of the September implementation, 916 items will be subject to 10% additional duties and 801 items will be subject to 5% additional duties; of the December implementation, 912 items will be subject to 10% additional duties and 2,449 items will be subject to 5% additional duties. Overall, if implemented fully, 1,828 items, or 36% of the China List 4 items will be subject to 10% additional duty and the remaining 3,250, or 64% of the List 4 items will be subject to 5% additional duty.

Auto tariffs

On 23 August 2019, the Commission also announced that China would resume tariffs on US-origin vehicles and parts beginning 12:00 am on 15 December 2019. The reinstatement includes additional tariffs on US-origin vehicles and parts that were covered under China List 1 through 3¹⁰ and that were previously suspended.¹¹ After the reinstatement, 28 automotive items that were originally covered under China List 1 and 116 automotive items covered under China List 2 will be subject to 25% additional duties; 67 automotive items covered under China List 3 will be subject to 5% additional duties.

United States

On 22 March 2018, US 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, citing the authority granted under Section 301 of the *Trade Act of 1974*.¹² The USTR subsequently proposed, and US President Trump ordered, punitive duties of 25% to be imposed and collected on two lists of imports from China beginning 6 July 2018¹³ and 23 August 2018¹⁴ (List 1 and List 2 respectively). The third list of punitive duties, covering 5,745 tariff

lines, (List 3) was effective on 24 September 2018. List 3 tariffs were set at 10% ad valorem duty until 1 January 2019 when they were to automatically increase to 25%¹⁵; however, the punitive duties on List 3 ultimately did not increase to 25% until 1 June 2019.¹⁶

Additionally, 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 (US List 4). On 13 August 2019, the USTR formally announced the imposition of a 10% punitive tariff on approximately US\$265b of Chinese-origin goods occurring in two installments; List 4A and List 4B, to be imposed 1 September 2019 and 15 December 2019, respectively (See EY Global 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](#), dated 14 August 2019).

On 23 August 2019, the USTR announced that, in response to China's action to impose additional punitive tariffs on \$75b of US-origin goods,¹⁷ the existing 25% punitive tariffs on Lists 1-3 would increase to 30% as of 1 October 2019, with the planned 10% punitive tariffs on List 4A and List 4B to be increased to 15% on 1 September 2019 and 15 December 2019, respectively. Further details will be provided in the Federal Register notice week of 26 August 2019 and should be immediately reviewed once available for additional details regarding dates and products excluded from the increases, if any, and other developments.

Also on 23 August, the USTR released updated details on exclusion requests for Lists 1 and 2. While no additional products have been granted exclusions to date, the USTR has denied an additional 115 items on List 1, increasing total denials to 6,877 or 63.54%. For List 2, an additional eight cases have been added while no additional denials or grants for exclusion have taken place. For List 3, no additional exclusions since 2 August have been announced (See 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 on Lists 2 and 3 and reaches agreement with EU for increased Beef exports](#), dated 6 August 2019).

Actions for businesses

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 and increasing tariffs on US products imported into China, and President Trump's

statements on 23 August 2019 for companies to consider alternative production locations outside of China, any company involved in US-China trade should continue to identify the potential impact of additional duties and explore mitigation strategies.

Continued 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. Further escalation of tensions may also warrant actions by companies now to have alternative operational plans to adjust as necessary in mitigating business disruption and costs from the ongoing dispute.

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, including the incremental increases announced. Importantly, with the recent escalations on both sides, companies may need to revisit previously conducted impact analyses.
- ▶ 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, alternative manufacturing options including relocation of production outside of China, 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 should closely monitor and participate in any exclusion process the USTR may issue. Companies also 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 that 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. Currency references in this Alert are to US\$.
2. "Announcement of the Customs Tariff Commission of the State Council with regard to Increasing Additional Tariffs on Certain Imported Goods Originating from the United States " Customs Tariff Commission Announcement 2019 No 4, 23 August 2019, available at http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201905/t20190513_3256788.html.
3. "Announcement of the Customs Tariff Commission of the State Council with regard to the Reinstatement of Additional Tariffs on Imported Autos and Automotive Parts Originating from the United States " Customs Tariff Commission Announcement 2019 No 5, 24 August 2019, available at http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201908/t20190823_3372941.html.
4. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/august/ustr-statement-section-301-tariff>.
5. <https://ustr.gov/sites/default/files/2018-13248.pdf>.
6. <https://ustr.gov/sites/default/files/enforcement/301Investigations/2018-17709.pdf>.
7. <https://ustr.gov/sites/default/files/enforcement/301Investigations/Tariff%20List%20%2883%20FR%2047974%2C%20as%20amended%20and%20modified%20by%2083%20FR%2049153%29.pdf>.
8. govinfo.gov/content/pkg/FR-2019-08-20/pdf/2019-17865.pdf.
9. "USTR Announces Next Steps on Proposed 10 Percent Tariff on Imports from China" <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/august/ustr-announces-next-steps-proposed>.
10. "Announcement of the Customs Tariff Commission of the State Council with regard to Levying Additional Tariffs on USD 500 Billion Imported Goods Originating from the United States " Customs Tariff Commission Announcement 2018 No 5, 16 June 2018, available at http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201806/t20180616_2930325.html; "Announcement of the Customs Tariff Commission of the State Council with regard to Levying Additional Tariffs on USD 160 Billion Imported Goods Originating from the United States" Customs Tariff Commission Announcement 2018 No 7, 8 August 2018, available at http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201808/t20180808_2983770.html; "Announcement of the Customs Tariff Commission of the State Council with regard to Levying Additional Tariffs on Certain Imported Goods Originating from the United States " Customs Tariff Commission Announcement 2018 No 6, 3 August 2018, available at http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201808/t20180803_2980950.html.
11. "Announcement of the Customs Tariff Commission of the State Council with regard to the Suspension of Additional Tariffs on Imported Autos and Automotive Parts Originating from the United States " Customs Tariff Commission Announcement 2018 No 10, 14 December 2018, available at http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201812/t20181214_3093439.html.
12. <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-actions-united-states-related-section-301-investigation/>.
13. <https://ustr.gov/sites/default/files/2018-13248.pdf>.
14. <https://ustr.gov/sites/default/files/enforcement/301Investigations/Final%20Second%20Tranche.pdf>.
15. See EY Global Tax Alert, [US announces tariffs on \\$200b China-origin goods; trade pressures to continue](#), dates 18 September 2018.
16. <https://ustr.gov/sites/default/files/enforcement/301Investigations/2019-09990.pdf>.
17. <https://www.bloomberg.com/news/articles/2019-08-23/china-to-soon-unveil-tariffs-on-u-s-says-global-times-hu>.

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