

## China publishes first punitive tariff exclusions while US postpones 5% increase to Lists 1, 2 and 3; other regional trade developments

---

### EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

---

### Executive summary

On 11 September 2019, China's Customs Tariff Commission (Commission) announced a list of 16 tariff items<sup>1</sup> that will be exempted from the retaliatory tariffs on the US\$500<sup>2</sup> billion of United States (US) origin goods (China Lists 1 and 2<sup>3</sup>). These are the first group of exemptions to be granted by the Commission since the punitive tariffs went into effect in July and August 2018.

Also on 11 September, following the latest announcements out of China, US President Donald Trump announced that the US would delay a scheduled 5% increase to the 25% punitive tariffs on \$250b of Chinese origin goods (Lists 1, 2 and 3). The increase, originally due to take place 1 October 2019, has been delayed until 15 October 2019. President Trump noted that the action was done as a "gesture of goodwill." The announcements from both countries come before they are scheduled to meet for another round of negotiations in the trade discussions. Initial meetings among the working groups are scheduled next week in Washington, D.C., with ministerial level meetings to take place next month in Washington as well.

In addition to the latest actions between the US and China, there have been recent trade developments between the US and other countries in the Asia region. Last month, at the G7 Summit, President Trump and Japanese Prime Minister Shinzo Abe jointly announced a trade deal between the two countries, expected to be signed at the United Nations General Assembly (UNGA).<sup>4</sup>

Also, on 10 September 2019, the United States Trade Representative (USTR) published a joint statement with the Association of Southeast Asian Nations (ASEAN) Economic Ministers (AEM) regarding a recent meeting between US and ASEAN representatives around various trade and investment initiatives in the ASEAN member countries.<sup>5</sup>

## Detailed discussion

### China grants first round of product exclusions

On 11 September 2019, China's Commission announced a list of 16 tariff items that will be exempted from the retaliatory tariffs on the \$500b of US origin goods (China Lists 1 and 2). These products are the first batch of approved US origin products under China's exclusion program that was announced by the Commission in May 2019.<sup>6</sup>

The 16 tariff items are divided into two lists and cover animal feed ingredients, raw materials (inputs) for cancer medication and certain chemicals. The first list consists of 12 tariff items while the second list consists of 4 tariff items. Products on both lists are exempted from the retaliatory duties for a period of one year from 17 September 2019 to 16 September 2020. For products included on the first list, importers may request a refund for past duties paid within six months from the announcement date. Duty refund for the products on the second list is not available.

China Product Exclusion Announced on 11 September 2019				
	Number of items	Current punitive tariff rate	Affected Items (tariff chapters)	Effective Date
List 1	12	25%	03;12;23;27;29;34;90	17 September 2019 to 16 September 2020
List 2	4	25%	04;27	
<b>Total</b>	<b>16</b>			

### US 5% increase on Lists 1, 2, and 3 postponed

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*.<sup>7</sup> 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 2018<sup>8</sup> and 23 August 2018<sup>9</sup> (Lists 1 and List 2 respectively). The third list of punitive duties, 5,745 tariff lines, (List 3) was effective on 24 September 2018 and was only to be 10% ad valorem duty until 1 January 2019 when it was set to automatically increase to 25%.<sup>10</sup> The punitive duties on List 3 ultimately did not increase to 25% until 1 June 2019.<sup>11</sup>

As detailed in EY Global Tax Alert, [US announces additional tariffs in response to China's tariff retaliation for List 4 products and reinstated tariffs on US-origin vehicles and parts](#), dated 26 August 2019, on 23 August 2019 the USTR announced that the 25% punitive tariffs imposed on Lists 1, 2, and 3 would increase to 30% beginning on 1 October 2019, subsequently outlining the action further in a Federal Register Notice (FRN) and requesting comments on the proposed rate increase, which are due by 20 September 2019.<sup>12</sup>

On 11 September 2019, President Trump announced via Twitter that as 1 October 2019 marked the 70th anniversary of the People's Republic of China, and at the request of China Vice Premier Liu He, that the US would be postponing the tariff increase to 15 October 2019, as a "gesture of goodwill." At time of publication of this Alert, there has been no announcement from either the USTR or White House formalizing the delay.

## Other regional developments

On 25 August 2019, the White House published the transcript of a joint press conference between President Trump and Prime Minister Abe announcing the progression of a trade deal between the two nations. The announcement states that they anticipate the deal to be signed around the time of the UNGA, taking place later this month, where a bilateral summit meeting between the two is expected to occur. USTR Robert Lighthizer was also present at the press conference, where he is cited with noting three major components of the deal: agriculture, industrial tariffs, and digital trade. More information surrounding specifics of the deal is expected to be announced after the signing.

In addition to further developments with Japan, the USTR recently held meetings with the AEM regarding trade and investment initiatives in the ASEAN member countries, which include Indonesia, Thailand, Singapore, Malaysia, the Philippines, Vietnam, Myanmar, Brunei, Cambodia, and Laos. The joint statement release noted there has been progress surrounding the implementation of the 2018-2019 ASEAN-US Trade and Investment Framework Arrangement (TIFA), as well as the Expanded Economic Engagement (E3) Initiatives Work Plan.

## Actions for businesses

Companies who are involved in US-Japan trade should closely monitor the progression of the trade deal and once details are announced, analyze potential benefits available or anticipate any impacts it may have to present operations necessary to adjust to new terms of the trade agreement. Companies should also closely monitor US discussions with the ASEAN countries for developments towards trade agreements or other statements that could have ramifications for regional business activities.

With List 4A in effect and List 4B coming shortly, nearly all products from China will 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 remains 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.

Companies with exports to China are encouraged to evaluate the recently announced exclusions and determine eligibility for seeking potential refunds. Additionally, China is continuing to accept exclusion requests from importers and US-based companies with China List 3 items<sup>13</sup> should be aware of such opportunities in negotiating with customers.

## Endnotes

1. “Announcement of the Customs Tariff Commission of the State Council with regard to the First Excluded Product List to the First Batch of US Origin Products that are Subject to Additional Tariffs” Customs Tariff Commission Announcement 2019 No 6, 11 September 2019, available at [http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201909/t20190911\\_3384638.html](http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201909/t20190911_3384638.html).
2. Currency references in this Alert are to US\$.
3. “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](http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201806/t20180616_2930325.html).
4. <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-prime-minister-abe-japan-meeting-trade-biarritz-france/>.
5. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/september/joint-media-statement-aem-ustr>.
6. “Announcement of the Customs Tariff Commission of the State Council with regard to the Pilot of Exclusion Program for US Origin Products that are Subject to Additional Duties” Customs Tariff Commission Announcement 2019 No 3, 13 May 2019, available at [http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201905/t20190513\\_3256788.html](http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201905/t20190513_3256788.html).
7. <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-actions-united-states-related-section-301-investigation/>.
8. <https://ustr.gov/sites/default/files/2018-13248.pdf>.
9. <https://ustr.gov/sites/default/files/enforcement/301Investigations/Final%20Second%20Tranche.pdf>.
10. See EY Global Tax Alert: *US announces tariffs on \$200b China-origin goods; trade pressures to continue*, dated 19 September 2018.
11. <https://ustr.gov/sites/default/files/enforcement/301Investigations/2019-09990.pdf>.
12. e.g., 84 FR 46212.
13. “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](http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201808/t20180803_2980950.html).

For additional information with respect to this Alert, please contact the following:

**Ernst & Young LLP (United States), Chicago**

- ▶ Nathan Gollaher                      nathan.gollaher@ey.com
- ▶ Helen Xiao                              helen.xiao@ey.com

**Ernst & Young LLP (United States), Dallas**

- ▶ Armando Beteta                      armando.beteta@ey.com
- ▶ Bill Methenitis                      william.methenitis@ey.com

**Ernst & Young LLP (United States), Detroit**

- ▶ Javier Quijano                      javier.quijano@ey.com
- ▶ Alexa Reed                              alexa.reed@ey.com

**Ernst & Young LLP (United States), Houston**

- ▶ Michael Leightman                      michael.leightman@ey.com
- ▶ Bryan Schillinger                      bryan.schillinger@ey.com

**Ernst & Young LLP (United States), Irvine**

- ▶ Robert Smith                      robert.smith5@ey.com
- ▶ Todd Smith                              todd.r.smith@ey.com

**Ernst & Young LLP (United States), New York**

- ▶ Parag Agarwal                      parag.agarwal@ey.com
- ▶ Oleksii Manuilov                      oleksii.manuilov@ey.com

**Ernst & Young LLP (United States), Portland**

- ▶ James Lessard-Templin                      james.lessardtemplin@ey.com

**Ernst & Young LLP (United States), San Diego**

- ▶ Lynlee Brown                      lynlee.brown@ey.com

**Ernst & Young LLP (United States), San Jose**

- ▶ Michael Heldebrand                      michael.heldebrand@ey.com

**Ernst & Young LLP (United States), Seattle**

- ▶ Dennis Forhart                      dennis.forhart@ey.com

**Ernst & Young LLP (United States), Washington, DC**

- ▶ Douglas M. Bell                      douglas.m.bell@ey.com
- ▶ Robert Schadt                      robert.schadt@ey.com

**About EY**

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit [ey.com](https://ey.com).

Indirect Tax

© 2019 EYGM Limited.  
All Rights Reserved.

EYG no. 001143-19Gbl

1508-1600216 NY  
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

**[ey.com](https://ey.com)**