

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

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Executive summary

In response to last week's United States (US) increase in duties from 10% to 25% on US\$200 billion¹ of Chinese origin products (US List 3)² in place since September 2018, China's Customs Tariff Commission (Customs) announced it would implement increased tariff rates of 10%, 20% or 25% on approximately 4,500 specific items that represent a significant portion of the \$60b of annual commerce with the US (China List 3).³ China List 3 was in response to the US actions last fall. Notably, China Customs also specified over 500 items that will remain at the current 5% punitive rate. In response and as previously signaled, on 13 May 2019, the US began the necessary proceedings to subject the remaining \$300b of China origin imports to a potential additional ad valorem duty of up to 25% under Section 301 of the *Trade Act of 1974*⁴ (US List 4).

Also on 13 May, in a separate announcement, China's Customs stated that it will begin a trial of its tariff exclusion program for imported US origin goods.⁵ Similar to the US Section 301 exclusion process, the China process allows certain eligible goods to be excluded from the scope of retaliatory tariffs imposed on the US goods. Refunds of the tariffs are also possible.

Detailed discussion

US List 4

On 13 May 2019, the Office of the US Trade Representative (USTR) released a proposed product list covering \$300b in Chinese-origin imports, comprised of 3,805 tariff codes, to potentially be subject to up to 25% punitive duties under Section 301 of the *Trade Act of 1974*.

The Annex to the USTR's notice includes two sections of covered products. Section 1 covers over 3,700 8-digit Harmonized Tariff of the United States (HTSUS) codes spanning nearly all chapters. Section 1 includes previously avoided products such footwear and apparel as well as consumer technology products such as cell phones and laptops. Important to many importers, Section 2 contains 16 specific 10-digit HTSUS codes including children's booster seats and high chairs as well as the recently created HTSUS 8517.62.0090, a special carve out from the initial announcement of US List 3. HTSUS 8517.62.0090 essentially created a separate US tariff line item for smart wearable technology from other transmission data devices, the latter of which remained subject to the List 3 initial tariff of 10%. As proposed, items previously subject to the carve out will now be included under List 4.

Further, the announcement specifically highlights the continued exclusion of pharmaceuticals, certain pharmaceutical inputs, select medical goods, rare earth materials, and critical minerals as well as affirming that product exclusions granted previously by the USTR will not be affected. While the notice did not provide specific tariff numbers for the excluded goods, the following table summarizes the key HTSUS headings.

Type of good	Applicable HTSUS
Pharmaceuticals	Chapter 30
Pharmaceutical products	3407, 4014
Pharmaceutical inputs	2935, 2938, 3821, 3822
Medical goods	2936, 2937, 2941, 8713, 9019, 9020, 9402
Rare earth metals & critical minerals	2504, 2519, 2526, 2602, 2603, 2605, 2606, 2608, 2609, 2610, 2611, 2613, 2704, 2716, 2846, 7401, 7802, 7901, 7902, 8001, 8002, 8003, 8103, 8110, 8111

As occurred with the prior three lists, and in advance of determining the final list of subject goods and applicable rates, the USTR is seeking public comment with respect to any aspect of the proposed action, including:

- ▶ The specific tariff subheadings to be subject to increased duties, including whether the subheadings listed in the Annex should be retained or removed, or whether subheadings not currently on the list should be added.
- ▶ The level of the increase, if any, in the rate of duty.
- ▶ The appropriate aggregate level of trade to be covered by additional duties.

After the public comment period and the public hearing, the USTR will announce the final list of products and the effective date of the punitive tariffs.

Important dates:

- ▶ 10 June 2019: Due date for filing requests to appear and a summary of expected testimony at the public hearing.
- ▶ 17 June 2019: Due date for submission of written comments. In addition, the Section 301 Committee will convene a public hearing in the main hearing room of the U.S. International Trade Commission, 500 E Street SW Washington DC 20436 that begins at 9:30 am EDT.

Moving forward, the US exclusion process announced for List 1⁶ and List 2⁷ is most likely to also apply for List 3 and List 4 as well. To date, four tranches of exclusions for relief of punitive duties on certain products⁸ have been announced; however, all four have been applicable to the List 1 duties and to date only denials have been issued for List 2. The USTR has indicated that an exclusion process would be announced shortly for List 3. Once this proposed List 4 is confirmed, it would be expected that the USTR will provide an exclusion process for List 4 based on prior actions. However, the process has proven to be slow and rate of approvals remain below 20%.

China List 3

China's announcement is in reaction to the USTR action that the US will move forward with increasing the tariffs on US List 3 from 10% to 25%, as originally intended when implemented on 24 September 2018.

The China List 3 consists of 5,207 product lines covering \$60b of commerce with the US. These products have been subject to additional tariffs of 5% and 10% ad valorem since 24 September 2018. The announcement also notes that

the increase does not apply to China List 3 items that are currently subject to 5% additional duties. The tariff increases are scheduled for 12:01 am Beijing time on 1 June 2019.

Of the 5,207 products, 4,545 items are presently subject to 10% additional tariffs and 662 items are subject to 5% additional duties. The list includes liquefied natural gas, auto parts, medical devices, various types of machinery, furniture, minerals, chemicals, leather products, wood products, as well as food and beverage products such as meat, coffee, nuts and alcoholic drinks. On 1 January 2019, 67 automotive products that were subject to 5% additional tariffs were removed from the list,⁹ leaving a total of 5,140 items on the List 3 and 595 items subject to the 5% additional tariff.

Beginning 1 June 2019, of the remaining 5,140 items on the list, 2,493 items will be subject to 25% additional tariffs, 1,078 items will be subject to 20% additional tariffs, 974 items will be subject to 10% additional tariffs, and 595 items will continue to be subject to 5% additional tariffs.

Below is a comparison of the additional tariff rates for China List 3 items before and after 1 June 2019.

Current rate	New rate	Number of tariff lines	Tariff Chapters
5%	5%	595	28-29;30-39;40;41;43-44; 47-49; 84-89; 90
10%	10%	974	01,04-05,07,09;11-13;16-19;20-23,25-26; 28-29;30-39;40;52;54-59;60-69;70-76; 78-79;80-86; 88; 89;90-97
10%	20%	1,078	05-08;11-13; 15-19;20-23;25;26; 28-29;31-35; 37-39; 40-49; 50-52; 54-59; 60-65; 67-69; 70-76; 79; 80-86; 88; 89; 90-97
10%	25%	2,493	05-08; 11-13; 15-19; 20-23;25;26; 28-29; 31-35; 37-39; 40-49; 50-52; 54-59; 60-65; 67-69; 70-76; 79; 80-86; 88; 89; 90-97
		5,140	

Actions for businesses

With the majority of US-China trade now impacted by punitive tariffs, any company involved in US-China trade is encouraged to identify the potential impact of these additional duties and develop duty avoidance or mitigation strategies. Immediate actions for such companies could include:

- ▶ Fully understand the extent of products impacted taking special care to identify the 8 and 10-digit HTSUS codes mentioned in the US tariff lists.
- ▶ Consider filing comments in response to the newly announced lists in the US and based on degree of impact, companies should consider requesting to appear at the public hearing on 17 June 2019.
- ▶ Explore strategies to defer, eliminate, or recover the excess duties such as bonded warehouses, Foreign Trade Zones, substitution drawback, Chapter 98 and equivalent programs under China customs regulations.
- ▶ Explore 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.

Endnotes

1. Currency references in this Alert are to US\$.
2. See EY Global Tax alert, *US announces increase of tariffs on List 3 goods imported from China*, dated 8 May 2019.
3. "Announcement of the Customs Tariff Commission of the State Council with regard to Increasing Additional Tariffs on US\$16 Billion Imported Goods Originating from the United States " Customs Tariff Commission Announcement 2019 No 3, 13 May 2019, available at http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201905/t20190513_3256788.html.
4. https://ustr.gov/sites/default/files/enforcement/301Investigations/May_2019_Proposed_Modification.pdf.
5. "Announcement of the Customs Tariff Commission of the State Council with regard to the Trial of Tariff Exclusion Process for Goods Originating from the United States " Customs Tariff Commission Announcement 2019 No 2, 13 May 2019, available at http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201905/t20190513_3256786.htm.
6. "[USTR Issues Tariffs on Chinese Products in Response to Unfair Trade Practices](#)," 15 June 2018.
7. "[USTR Finalizes Second Tranche of Tariffs on Chinese Products in Response to Unfair Trade Practices](#)," 7 August 2018.
8. See EY Global Tax Alert, *USTR publishes fourth round of exclusions for Chinese-origin products; issues initial denials for next set of product requests*, dated 13 May 2019.
9. "Announcement of the Customs Tariff Commission of the State Council with regard to Suspension of Additional Tariffs on Imported Autos and Automotive Parts Originating from the United States" Customs Tariff Commission Announcement 2019 No 1, 31 March 2019, available at http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201903/t20190331_3209705.html.

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