

Administration Reveals New Two-Phase Section 301 Tariffs on Chinese Goods

by Dave Townsend and T. Augustine Lo

On August 13, 2019, the United States Trade Representative (USTR) announced a phased imposition of a new Section 301 10% tariff on roughly \$300 billion in annual imports from China that were not covered in three previous tariff lists announced during 2018. The first phase of this fourth list (List 4A) will take effect on September 1, and the second phase (List 4B) will take effect only on December 15. Many consumer items and certain industrial goods will be covered under List 4B, which appears timed to avoid dampening and disrupting consumer spending during the vital year-end U.S. holiday shopping period. In addition, the USTR announced that an exclusion process will allow U.S. importers to seek exclusions of items covered on Lists 4A and 4B, similar to the exclusion processes provided under the three earlier rounds of tariffs. The USTR's office will soon announce details about this latest exclusion process.

To date, the USTR's three lists of Section 301 tariffs on imports of Chinese goods have already come into effect, covering approximately \$250 billion in annual imports from China. On August 2, after the last round of high-level trade talks in Shanghai ended without significant progress, President Trump threatened to impose a 10% tariff on substantially all remaining Chinese-origin goods that currently enter the United States. Even before that August 2 statement, the USTR had proposed a tentative List 4 and had already been weighing public comments to that draft list of additional Chinese goods.

The USTR's published List 4A and List 4B now follow through on President Trump's statement. However, List 4A and 4B will exclude certain pharmaceutical items and pharmaceutical inputs, select medical goods, rare earth materials and critical minerals, allowing these items to continue to be imported from China into the United States without being subject to 10% or 25% Section 301 duties.

Significantly, some of the goods that appear on List 4A and 4B are items that USTR had earlier considered for the three previous lists, but which USTR removed because of adverse public comment (such as flat-screen television sets). It is unclear exactly why those goods once reprieved will now be subject to the new 10% tariffs, and it is equally

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uncertain whether, if the further trade talks with China do not produce satisfactory results, the USTR might then further escalate the 10% tariffs to the same 25% ad valorem rate under Lists 1, 2 and 3 already in effect.

The Administration began imposing tariffs on Chinese-origin goods in mid-2018 because, in 2017, the USTR had determined under Section 301 that alleged acts, policies, and practices relating to technology transfers from the United States to China impede U.S. commerce. The USTR then devised and began implementing a series of Section 301 tariff lists meant to persuade China into trade concessions. Unbowed by that pressure, however, China responded with its own countermeasure tariffs starting in mid-2018. After the last U.S. tariff hike in June 2019, China imposed a second round of retaliatory tariffs on U.S.-origin goods. Mirroring U.S. practice, China also announced two windows for Chinese interested parties to request tariff relief (see [here](#) for an update on the Chinese exclusion process).

To mitigate the potential harm to U.S. importers because of the List 1, 2 and 3 tariffs, the USTR instituted certain tariff relief procedures for each of those three lists. The deadlines for List 1 and 2 exclusion requests are already past at this point, but U.S. importers may still request relief from the List 3 tariffs until September 30 (see our earlier update of this development [here](#)). USTR has confirmed it will also announce similar exclusion procedures for the Chinese-made goods on Lists 4A and 4B.

Visibly upset at this latest tariff move by the United States, China responded sharply by ordering all state-owned enterprises in the food and agriculture sector to cease buying American products. Virtually all U.S. farm and food industry groups, with many members already facing dire financial circumstances and increasing numbers of farm failures and bankruptcies, have expressed increasing concerns about what may become a long-term loss of the Chinese market to foreign competitors such as Australia, Brazil, Canada, the EU and other countries.

Many analysts expect China will also continue its efforts to mitigate the adverse economic effect of the U.S. tariffs on its export trade by finding and expanding into other foreign markets, by spurring more domestic consumption and investment, and by further hobbling foreign competitors in the Chinese market. China will likely respond to the List 4A and List 4B tariffs by a combination of more punitive tariffs on American-made goods and other non-tariff measures, which could then lead to yet more U.S. reactions against China.

The United States and China thus continue to expand their differences over trade and seem unable or at least unwilling at this point to reach a mutually acceptable settlement. The Administration's continued reliance on punitive Section 301 tariffs, the effect of which falls predominantly on U.S. importers and U.S. end users, will likely cause more and more adverse effects on the American economy. American consumers will now face higher prices for thousands of products made in China or that contain Chinese-made parts, and American producers will be paying more for tens of thousands of inputs from China that are used to make their products, leading to price hikes that will make those American products less attractive in comparison to their foreign competition. Even if a

U.S. producer sources exclusively from American suppliers, its U.S. suppliers may increase their own prices in the absence of effective competition from foreign sources such as China. Some analysts now believe these combined adverse effects could contribute to a significant U.S. economic slowdown in the remainder of 2019 and into 2020 and may lead to more international economic consequences.

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