# United States to impose third set of Section 301 tariffs on $200 billion of Chinese-made products

by T. Augustine Lo and Karen Yiqin Fan

Since July 2018, the Trump Administration has imposed two sets of tariffs on goods made in China under Section 301 of the Trade Act of 1974 ("Section 301") (19 U.S.C. § 2411) that cover an estimated $50 billion in imports annually.  Section 301 tariffs on $34 billion in goods from China ("List 1") have already been in effect since early July, and another round of Section 301 tariffs on an additional $16 billion ("List 2") took effect on August 23.  However, the Administration is now weighing a third potentially much larger and more widely applicable set of Section 301 tariffs that will cover an estimated $200 billion in annual imports from China, and those proposed tariffs will be hiked from 10% to 25% ("List 3").  For affected U.S. companies and their suppliers in China, the time period for U.S. parties to submit written comments on this third, broadest set of tariffs ended on September 6, and October 9 will be the next deadline for U.S. importers to seek exclusions from the List 1 tariffs that came into effect on July 6.  The Trump Administration has not yet issued the procedures for exclusion requests for the List 2 tariffs, but they are likely to resemble the current process for List 1.  The List 3 tariffs still await full adoption and announcement of an effective date, which may be imminent based on recent statements from President Trump.

**Related People**

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**Related Capabilities**

- International Trade
- China
- Hong Kong

**Background**

Section 301 empowers the U.S. Trade Representative ("USTR"), following an investigation, and subject to the President's direction, to counter any foreign government's trade agreement violations; act, policy, or practice creating an unjustified burden or restriction on U.S. commerce; and acts, policies or practices that are unreasonable or discriminatory and that burden or restrict U.S. commerce.  The Administration's announced Section 301 tariffs are based on a USTR investigation begun in August 2017 to address China's alleged unfair trade practices that adversely affect U.S. businesses doing business in China.  In particular, the Administration has criticized strongly a national industrial policy in China, the "Made in China 2025" initiative, adopted by the Chinese government in 2015.  That policy aims to shift China's economy into higher value-added manufacturing sectors, such as robotics, aerospace and energy-saving vehicles, through development or acquisition of more “Chinese” technologies. The Administration has interpreted that industrial policy as a *de facto* directive to misappropriate American industrial trade secrets and intellectual property to achieve the policy’s stated goals for greater domestic Chinese content of manufactured products in a number of identified areas of advanced technology.

The USTR published its Section 301 investigation findings in March 2018, which eventually led to three sets of Section 301 tariffs, each of which has been the subject of public hearings and comments. In June, the USTR announced a finalized List 1 covering an estimated $34 billion in annual imports from China that took effect on July 6. At the same time, the USTR announced that it was considering a List 2, covering about another $16 billion in annual imports from China. (The finalized version of List 2 took effect on August 23.) In response, China announced its own retaliatory tariffs on U.S. manufactured goods and agricultural products such as soybeans and pork, which threatened to create political pressure against the Trump Administration in specific regions across the United States. Reacting to those Chinese retaliatory tariffs, the Trump Administration then announced in July that it would impose yet more Section 301 tariffs on List 3 at 10%, which will cover a much broader range of Chinese-made goods estimated at $200 billion annually. On August 1, the USTR announced that the List 3 tariffs would increase to 25%. U.S. companies that might be adversely affected by the new List 1 tariffs have until October 9 to submit individual exclusion requests. Estimates vary, but it appears about 1,300 exclusion requests have already been sent to the USTR regarding the adverse effects of the List 1 tariffs and more can be expected as affected U.S. companies face these 25% tariffs.

The current version of each of the three announced Section 301 tariffs lists are available at:

**List 1: https://ustr.gov/sites/default/files/enforcement/301Investigations/List%201.pdf**

**List 2: https://ustr.gov/sites/default/files/enforcement/301Investigations/Final%20Second%20Tranche.pdf**

**List 3: https://ustr.gov/sites/default/files/301/2018-0026%20China%20FRN%207-10-2018_0.pdf**

**Goods Subject to Section 301 Tariffs**

It should be noted that Section 301 tariffs are based on the country of origin, not country of export. Currently, the additional Section 301 tariffs apply only to goods that are considered products of China under customs law. Accordingly, imported goods that are legitimately the product of other customs territories, such as Hong Kong or Macau, are not subject to these additional Section 301 tariffs even if shipped from a port in mainland China.

The three lists issued thus far by the USTR specify the goods subject to the Section 301 tariffs, and the applicable Section 301 tariffs at 25% will be assessed on any goods for which customs entry is made on or after the effective date of the respective Section 301 list. The products covered by these lists are identified according to the U.S. tariff classification codes used for customs entry, which are found in the Harmonized Tariff Schedule of the United States ("HTSUS").

**Section 301 tariffs under List 1**

In June, the USTR imposed a Section 301 25% tariff on goods from China that are classifiable under any of 818 different HTSUS tariff subheadings under List 1 covering about $34 billion in imports from China. The types of goods covered in List 1 include certain machinery, parts and components, certain vehicles and vehicles parts, and miscellaneous industrial products. The List 1 tariffs took effect on July 6.

On July 11, the USTR also announced an application process by which interested U.S. parties can request that particular products under List 1 be excluded from the additional 25% tariff. The deadline for exclusion requests under List 1 is October 9.

**Section 301 tariffs under List 2**

On August 16, the USTR released List 2 with another 279 individual HTSUS tariff subheadings comprising approximately $16 billion worth of imports from China that are subject to a 25% tariff. The type of goods covered in List 2 includes certain chemicals, plastics, metal articles, machinery, and vehicles. The tariffs in List 2 took effect on August 23. The USTR has indicated that there will also be an exclusion process for the goods covered under List 2 but has not yet published the procedures for that process as it had done previously for List 1 goods.

**Section 301 tariffs under List 3**

Because the Trump Administration increased the proposed List 3 tariffs from 10% to 25% on August 1, the USTR had extended the public comment period for List 3 until September 6. The USTR is currently considering those comments before implementing the List 3 tariffs, which could occur at any time. The proposed List 3 includes over 6,000 HTSUS subheadings and thus covers a much wider range of goods that would affect about $200 billion of annual imports from China, including both manufactured goods and agricultural products. If implemented, List 3 will probably have significant impact on U.S.-China trade relations and potentially could cause significant disruptions in supply chains because of the widespread use of Chinese-origin raw materials and products itemized on List 3 that are imported into the United States for manufacturing purposes or as finished goods each year.

**Procedure for Product Exclusion Requests**

The USTR's exclusion request process for List 1 items gives U.S. stakeholders relying on targeted imports from China an opportunity to seek specific relief from the Section

301 tariffs.  The exclusions will be effective for a period of one year from the publication of the exclusion determination in the Federal Register, and will apply retroactively to July 6, 2018, when List 1 first took effect.  The deadline for filing such exclusions requests with the USTR is October 9, 2018, less than a month from now, so adversely affected U.S. stakeholders should act promptly if they wish to seek such an exclusion from the USTR.

Although these harsh 301 tariffs will clearly affect both U.S. importers and Chinese exporters, the USTR has made clear that the formal product exclusion process to escape assessment of the Section 301 tariffs is only open to persons who are considered to be U.S. stakeholders.  The USTR will therefore not accept any such requests directly from a Chinese exporter whose goods are subject to the Section 301 tariffs (unless the Chinese exporter also has a U.S. affiliate that is itself an actual importer of record for those Chinese goods or is itself a U.S. manufacturer that uses those Chinese goods (e.g., parts or components) to produce American end items) so that such U.S. affiliate could be considered a U.S. stakeholder.  Instead, as a practical matter, a Chinese exporter that is adversely affected should generally work in close collaboration with its key U.S. stakeholders, such as its key American importers, customers or end users who would be recognized as such by the USTR.  Because an effective Section 301 tariff exclusion request may take considerable effort and information from both the U.S. and Chinese parties, the Chinese exporter's cooperation and support to the U.S. stakeholders may be extremely valuable and even essential in some cases.

**Stated Criteria for Exclusion**

The USTR has announced the criteria for granting such exclusions from its 301 tariffs, as explained below.  The USTR will make exclusion determinations on a product-by-product basis.  A particular exclusion, if granted, would then apply to all imports of the excluded product, regardless of who filed the exclusion request for that product.  If an exclusion is granted, that exclusion will then apply not only to the requesting company but to any other imports of the same product by other importers.  (Indeed, the USTR does not allow requestors to identify their products on the basis of the producer, importer, user, or trade name.)

The USTR will consider the following factors as relevant in weighing an exclusion request:

(a) whether the particular product is available only from China; and in addressing this factor, specifically whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries;

(b) whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other United States interests (such as any potential harm to U.S. jobs);

(c) whether the particular product is strategically important or related to China's "Made in

China 2025" policy or any other similar Chinese industrial policy programs; and

(d) any other information considered relevant by the USTR to an evaluation of the request.

**Dorsey & Whitney Resources in Section 301 Matters**

Dorsey & Whitney attorneys can assist both U.S. and Chinese companies in determining whether their goods are subject to any of the Section 301 tariffs in Lists 1, 2 or 3, as well as other existing or tariffs on imports into the United States, such as the separate Section 232 tariffs on certain foreign-made steel and aluminum articles or other tariffs imposed on foreign products as trade remedies (such as "antidumping" and "countervailing" duties on aluminum extrusions from China, and "safeguard" duties on foreign-made residential washing machines and solar cells and modules). As part of that process, Dorsey & Whitney can also help both U.S. and Chinese companies to understand key information such as the proper tariff classification and "country of origin" of their goods and potentially seek clarification on such questions from U.S. Customs and Border Protection, the key agency that will assess and collect these new tariffs.

Dorsey & Whitney also can help to coordinate and support the cooperation between affected U.S. and Chinese companies in regard to exclusion requests by U.S. stakeholders to seek relief from the Section 301 tariffs on Chinese-origin goods under Lists 1, 2 or 3 and to prepare such U.S. stakeholder exclusion requests. The firm has fully bilingual attorneys fluent in Chinese and English in its offices in its Beijing, Shanghai and Hong Kong offices in Greater China and also in its offices in Seattle and New York City in the United States.

The firm may also be able to help support certain approaches by U.S. companies to the Chinese Government in regard to the retaliatory tariffs in China that are to be assessed against many U.S.-made products.