

USTR Announces List 4 Tariffs on \$300B Imports from China While Continuing to Accept Exclusion Requests for List 3 Tariffs

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The U.S.-China trade dispute escalated yet again as the Office of the U.S. Trade Representative (USTR) announced a fourth round of tariffs of 10 percent on an estimated \$300 billion of goods imported from China not already subject to Section 301 tariffs. At the same time, the USTR continues to accept List 3 exclusion requests and is working to complete review of List 1 and List 2 exclusion requests.

1. USTR Announces Section 301 Tariffs on \$300B of US Imports from China (Lists 4A and 4B).

The USTR announced the fourth round of Section 301 tariffs of 10 percent on an estimated \$300 billion of U.S. imports from China in a press release dated Aug. 13, 2019. The official notice was published in the Federal Register on Aug. 20, 2019. 84 FR 43304. These tariffs are in addition to the estimated \$250 billion already subject to 25 percent tariffs. All these tariffs have been imposed pursuant to Section 301 of the Trade Act of 1974, following the USTR's investigation and determination that China's acts, policies, and practices regarding technology transfer, intellectual property, and innovation were unreasonable and discriminatory, and burdened or restricted U.S. commerce. In this announcement, the USTR justified this newest round of tariffs, stating China is not addressing the acts, policies, and practices that the Section 301 tariffs intended to curb, but instead has levied retaliatory tariffs on approximately \$110 billion worth of U.S. goods, backtracked in its trade negotiations, and devalued its currency.

This Aug. 20, 2019 tariff announcement comes after a May-June 2019 period of public comment and public hearings. The USTR noted it had removed certain tariff subheadings from the final fourth round list because of health, safety, national security, and other factors. The USTR also divided this fourth round of 10 percent tariffs into two sublists with different effective dates. List 4A is to take effect on **Sept. 1, 2019**, and consists of a wide range of goods where the share of U.S. imports is less than 75 percent from China. List 4B is to take effect on **Dec. 15, 2019**. The USTR stated the delay of a few months for List 4B was to provide "a longer adjustment period for U.S. interested persons" because this list consists of goods where the share of U.S. imports is 75 percent or greater from China, including, for example, cell phones, laptops, computers, video game consoles, certain toys, computer monitors, and certain items of footwear and clothing. The USTR also confirmed it will institute an exclusion request process for Lists 4A and 4B and it will publish a separate notice describing the procedures in the future.

The chart below summarizes the Section 301 tariffs imposed to date.

Tariff List – Value of Imports from China	Number of Tariff Subheadings on List*	Date tariff levied	Tariff	Exclusion Request Deadline
List 1 – \$34B	818	July 6, 2018	25%	Oct. 9, 2018
List 2 – \$16B	279	Aug. 23, 2018	25%	Dec. 18, 2018
List 3 – \$200B	5,733	Sept. 24, 2018	10%	Sept. 30, 2019
		Jan. 1, 2019 (postponed); Mar. 2, 2019 (postponed); May 10, 2019	25%	
Lists 4A and 4B – \$300B	3,805*	September 1, 2019 (List 4A) December 15, 2019 (List 4B)	10%	Deadline not yet announced

* Number of tariff subheadings for Lists 4A and 4B are the number of the tariff subheadings proposed in the May 17, 2019 Federal Register notice concerning proposed List 4 tariffs. The USTR Notice published in the Federal Register on Aug. 20, 2019 states a certain number of tariff subheadings were removed from the final list based on health, safety, national security, and other factors.

2. USTR Accepting List 3 Exclusion Requests through Next Month

For List 3, the USTR began accepting exclusion requests on June 30, 2019 via its online portal, and the submission deadline is **Sept. 30, 2019**. As with the exclusions from the first and second round of tariffs, a List 3 exclusion granted will be retroactive to Sept. 24, 2018, the day the tariffs were initially imposed. See our alert [here](#) about the USTR announcement of the List 3 exclusion request process. The USTR has received over 9,000 exclusion requests to date, is reviewing requests on a rolling basis, and has granted 15 exclusion requests.

3. Status of Exclusion Requests for Lists 1 and 2

The USTR's Aug. 16, 2019 updates for List 1 and 2 exclusion requests indicate continued progress in processing the backlog of requests. The USTR has completed its initial substantive review based on its product exclusion criteria (Stage 2). For List 1, a new round of exclusions was granted with a notice published in the Federal Register on July 9, 2019, bringing the total exclusions granted to 2,813, or 26 percent of the total. There are 6,762, or 62 percent, denied List 1 requests and 1,247, or 19 percent, List 1 pending requests in Stage 3, in which the requests are evaluated with input from U.S. Customs and Border Protection (CBP) to determine whether they can be administered. Notably, since our last update, there are 1,263 fewer requests in Stage 3, but the number of granted exclusions only increased

by 856, meaning a significant number of exclusion requests were denied as not administrable. Also notable is the first round of List 2 exclusion requests published in the Federal Register on July 31, 2019. Ten percent or 292 List 2 requests have now been granted. There are 1,143 of 2,920 (39 percent) List 2 requests that remain pending in Stage 3 and 1,484, or 51 percent, that have been denied. The chart below summarizes the status of the exclusion request process for Lists 1 and 2.

Updated Status of Exclusion Requests for Lists 1 and 2		
Tariff List	List 1 – \$34B	List 2 – \$16B
Date Tariff Levied	Jul. 6, 2018	Aug. 23, 2018
Date Exclusion Request Process Announced	Jul. 11, 2018	Sept. 18, 2018
Exclusion Request Deadline	Oct. 9, 2018	Dec. 18, 2018
Total Number of Exclusion Requests	10,822	2,920
Requests in Stage 1 (Public Comment Period)	0	0
Requests in Stage 2 (Initial Substantive Review)	0	1 (0%)
Requests in Stage 3 (Administrability Review)	1247 (12%)	1,143 (39%)
Requests in Stage 4 (Granted and publication in progress)	0	0
Granted	2,813 (26%)	292(10%)
Denied	6,762 (62%)	1,484 (51%)

Note: Exclusion request data is compiled from the most recent USTR exclusion request index updates for List 1 and List 2 dated Aug. 16, 2019.

Dinsmore & Shohl LLP continues to work with its clients during this U.S.-China trade dispute to evaluate options and develop strategies to mitigate the effects of Section 301 tariffs, including reviewing tariff classifications on the Harmonized Tariff Schedule, reviewing the country of origin of imported products, evaluating potential changes to product supply chains and the possibility of setting up a foreign-trade zone (FTZ), and preparing product exclusion requests.

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