

Section 301 Tariffs, Proposals & Product Exclusions Updates and Resources

In August 2017, the U.S. Trade Representative (USTR) initiated an investigation into China's acts, policies and practices related to technology transfer, intellectual property and innovation. The [Section 301 investigation](#) found that China's policies and practices related to forced transfer of American technology and intellectual property are hurting the United States.

Latest Developments

On January 15, 2020, President Trump and China's President Xi signed a ["phase-one" trade deal](#). As part of the deal, the U.S. [will cut in half](#) its 15% tariff on about \$120 billion in Chinese goods – the so-called “List 4A,” which covered a number of aluminum products – effective on February 14. It also suspended indefinitely planned duties that were set to take effect on December 15. Roughly \$250 billion of Chinese imports (List 1,2 and 3) will continue to face a 25% tariff.

List 4: 7.5% Tariff on List 4A, Effective February 14

Goods on [List 4A](#) were subject to a 15% additional tariff effective September 1, 2019. As part of the "phase one" trade deal with China, those tariffs will be [reduced to 7.5% on February 14](#).

A [Federal Register Notice](#) was previously published on August 20 to implement the fourth round of Section 301 tariffs on additional products from China – the so-called “List 4” that covers about \$300 billion worth of Chinese imports – with two phases of tariffs that began on September 1. The first, List 4A, covers roughly 85 percent of product lines from the full “List 4” and took effect on September 1. The second, List 4B, covers roughly 15 percent of the full list and was delayed until December 15. As of August 30, the [tariff rate was modified](#) to increase tariffs for goods on List 4A and 4B to 15%, not 10% as previously indicated—effective September 1, 2019, for List 4A products.

- USTR [announced](#) on August 13 the implementation of President Trump's plans to impose Section 301 tariffs on additional products from China – the so-called “List 4” that covers about \$300 billion worth of Chinese imports – with two phases of tariffs. President Trump took to Twitter on August 1 to announce that USTR would begin imposing a 10 percent tariff on \$300 billion in Chinese imports as of September 1.
- On May 13, USTR announced a proposed expansion of Section 301 tariffs on imports from China to cover an additional 3,805 full and partial tariff subheadings, or approximately \$300 billion worth of goods. This latest round of tariffs would cover essentially all imports from China not previously covered under three previous rounds of Section 301 tariffs. The Federal Register Notice is available [HERE](#), and the listing of the various tariff classifications affecting aluminum products under HTS Chapter 76 begins on pages 59 of the [document](#). Notably, any product exclusions granted by USTR on prior tranches of Section 301 tariffs will not be affected.
- As with previous rounds of proposed Section 301 tariffs, USTR sought public comment and held a public hearing regarding this proposed modification that started on June 17.

- The Association [testified](#) at the public hearing regarding the proposed “List 4” expansion of Section 301 tariffs on imports from China and submitted [formal follow-up comments](#) to USTR to oppose the [request](#) for an exclusion on cansheet and end/lid sheet (under HTS 7606.12.3045 and HTS 7606.12.3055) and support the requests from [AMG Aluminum](#) and [FX Minerals](#) to exclude from the proposed tariffs certain raw material inputs for aluminum production that fall outside of HTS Chapter 76 – specifically titanium salts, boron salts and zirconium salts (HTS 2826.90.90), artificial corundum, crude (HTS 2818.10.10.00), and aluminum oxide, other than artificial corundum (HTS 2818.20.00.00).

List 3: Subject to Increased 25% Tariffs on May 10, 2019 - Rate Increases by 5% in October

- On June 24, USTR published details on the Section 301 “List 3” exclusion process [HERE](#). A new portal for submitting exclusion requests (<http://exclusions.USTR.gov>) is now available.
- USTR determined on May 8 to modify its "List 3" action by increasing the rate of additional duty from 10 percent to 25 percent. A Federal Register Notice is available [here](#), and the increased duty rate took effect at 12:01am on Friday, May 10. USTR also announced it would establish an exclusion process for "List 3" under a separate notice.
 - The increase tariff rate applies to products that arrive in U.S. ports after the implementation date and time AND were exported from China on or after that date. CBP is working on new procedures for goods that were exported before the new tariff rate took effect but have not yet arrived at a U.S. port. While they work on those procedures, a [technical message](#) from CBP clarifies that products arriving on or after today will be temporarily subject to a 25% rate. Importers can either seek to get excess payments refunded using CBP’s Post Summary Correction (PSC) process or can delay filing entries until after procedures are update. USTR has also posted to its website a pre-publication [Federal Register notice](#) that covers a few logistics for imports in this situation.
 - CBP has created a new code (9903.88.09) to cover these types of products. This was subsequently confirmed by another [CBP message](#).
 - Products in this situation are eligible for the lower rate as long as those products enter the United States before June 1, 2019.
 - Products that were admitted into a foreign trade zone (FTZ) with “privileged foreign status” will keep that status and thus pay the duty rate applicable when the product was admitted
- On June 24, USTR published details on the Section 301 “List 3” exclusion process [HERE](#). A new portal for submitting exclusion requests (<http://exclusions.USTR.gov>) will go live on June 30. The deadline for submitting exclusion requests is September 30, 2019. Responses to individual exclusion requests are due 14 days after the request is posted on USTR's online portal. Any replies to responses to an exclusion request are due the later of 7 days after the close of the 14-day response period, or 7 days after the posting of a response

- President Trump [announced](#) on September 17, 2018, that the United States would impose a 10% tariff on about \$200 billion worth of Chinese imports – finalizing the third round of “Section 301” tariffs – effective Monday, September 24. The final list for this round of tariffs is available in the [FRN here](#). USTR removed about 300 goods from the final version of the list, including the HTS codes for manganese (HTS 8111.00.47 and 8111.00.49) that the Association highlighted in its [comments](#). A number of aluminum products under HTS Chapter 76 remained on the final list, however.
- China’s Ministry of Finance [announced](#) that it would implement retaliatory tariffs of 5 or 10 percent on 5,207 goods, also starting on September 24.
- USTR previously [announced](#) on July 10, 2018, its proposal to impose tariffs on a third list of products. The [Federal Register Notice](#) includes the full list of Harmonized Tariff System (HTS) codes that cover about \$200 billion worth of Chinese imports. While USTR initially proposed a 10% tariff on these imports, USTR [announced](#) on August 1 its intention to instead consider applying a 25% tariff on “List 3” products from China. A [Federal Register Notice with the details of the change](#) was published on August 7. USTR [requested public comments](#) with respect to any aspect of the proposed supplemental action, including: 1) 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; 2) the level of the increase, if any, in the rate of duty; 3) the appropriate aggregate level of trade to be covered by additional duties. In commenting on the inclusion or removal of particular tariff subheadings listed in the Annex, USTR requests that commenters address specifically whether imposing increased duties on a particular product would be practicable or effective to obtain the elimination of China's acts, policies, and practices, and whether maintaining or imposing additional duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers. USTR held [public hearings](#) from August 20-26, with more than 350 witnesses.
 - The Aluminum Association submitted [comments](#) requesting the Administration not impose tariffs on key inputs for aluminum producers, including manganese and cathode blocks.

List 2: Subject to Tariffs

- USTR released a final [Federal Register Notice](#) on August 16, 2018, with a list of products that would be subject to a 25% tariffs under “List 2,” covering \$16 billion in Chinese imports. Those tariffs took effect on August 23. CBP issued [guidance](#) to customs brokers about collecting the 25 percent duty on the “List 2” products. This finalized list is almost identical to the [draft list](#) that was announced by USTR in June. A Fact Sheet prepared by USTR is available [here](#).
- In response, the Chinese government [announced its own matching tariff list](#) of \$16 billion in U.S. exports, an identical 25 percent tariff rate and an identical August 23 implementation date. China's Ministry of Finance issued [a formal release](#) and government notice – as well as a final version of its list that represents some revisions. The list swapped out a number of products, removing some items in sectors such as energy (such as crude oil), chemicals and plastics, but added a mix of other products from the automotive sector and other areas ranging from wood

and paper, rubber, and plastic to textiles and fibers and metal scrap. This list adds to the \$34 billion worth of U.S. exports that the Chinese had already begun imposing on July 6 under List 1 and is separate from their August 3 proposal to hit \$60 billion of U.S. exports at four different tariff rates (25%, 20%, 10% and 5%). In a brief official statement, the Ministry of Commerce stated that the U.S. decision to “trump international law with domestic law” was unreasonable, and that Chinese actions were in support of not only its own interests but “the multilateral trading system.”

- USTR held a [public hearing](#) on July 24-25, and a list of witnesses is available [here](#). The interagency 301 Committee heard testimony from over 80 witnesses on whether to include certain tariff lines in List 2, and the government panel's questions fell into several broad categories related to how new duties would affect the cost or availability of equipment and why current U.S. manufacturing capacity is not available to meet U.S. demand. The Committee was also interested to know how long would it take to increase production in the U.S., or to requalify a new non-Chinese supplier.

List 1: Subject to Tariffs

- Starting on July 6, 2018, imports from China that fall under more than 800 Harmonized Tariff Schedule (HTS) codes – valued at approximately \$34 billion – are subject to an additional 25% tariff. The full list is available [here](#). USTR took off 515 products from the initial list, which was [published](#) on April 6, 2018, after a public comment period. USTR took public comments on its first round of proposed tariffs, with a [public hearing](#) on May 15 (archived video [here](#)).
- China responded to this first list by [releasing](#) a list of 545 product categories that cover about \$34 billion in exports from the United States, and those U.S. exports will be subject to an additional 25% tariff starting July 6. China’s retaliatory tariffs primarily target automobile exports (trucks, passenger cars, hybrids, all electric vehicles, off-road vehicles and “other manned vehicles”) as well as agricultural products (soybeans, corn, wheat, beef, pork and poultry). China also announced their own second set of tariffs that would be imposed at a later date, focusing on coal and gasoline as well as medical devices.

Section 301 Product Exclusion Requests

Guidance on the Section 301 exclusion process is available [here](#).

For List 1: USTR [announced](#) the procedures and criteria for product exclusion requests from the Section 301 tariffs (details [here](#)). Interested parties have 90 days to file a request for a product exclusion, and the request period will end on October 9. An exclusion request should provide information about whether the particular product is available only from China and whether the imposition of additional duties on the particular product would cause severe economic harm to the requester or other U.S. interests. Following a request's public posting on [Regulations.gov](#), the public will have 14 days to comment on the product exclusion request. After the window for public comments is closed, interested persons will have an additional 7 days to reply to any responses received in support of (or opposition to) the request.

For List 2: A [Federal Register notice](#) outlined the process for stakeholders to formally request – and support or object to – product exclusions from the Section 301 latest tariffs. Exclusions would be effective for one year following the publication of a final determination in the federal register, and that companies and associations that receive product exclusions would be eligible to seek return of duties paid going back to August 23 (implementation date for List 2). All requests for a product submission must be received no later than December 18, 2018. Any responses or rebuttals of exclusion requests must be received no later than 14 days after that request is formally posted in the USTR docket, and any replies to those follow up responses/rebuttals must be received no later than 7 days after that (thus, 21 days after the initial request is posted). The notice did not provide explicit deadlines for USTR to post received applications, or to make final determinations.

- As with List 1 exclusions, applicants must provide data showing the annual quantity/value of Chinese-origin products imported by the company or association’s members for each of the last three years. However, the notice also asks applicants for List 2 exclusions to provide:
 - The percentage of their total gross sales in 2017 that sales of the Chinese-origin product accounted for imports sold as final products.
 - The percentage of the total cost of producing the final product(s) for which the Chinese-origin input accounts and the percentage of their total gross sales in 2017 for which sales of the final product(s) accounted when the request is made for imports used in the production of a final product (e.g. input or raw material)/

For List 3: On June 24, USTR published details on the Section 301 “List 3” exclusion process [HERE](#). A new portal for submitting exclusion requests (<http://exclusions.USTR.gov>) is now available. The deadline for submitting exclusion requests is September 30, 2019. Responses to individual exclusion requests are due 14 days after the request is posted on USTR’s online portal. Any replies to responses to an exclusion request are due the later of 7 days after the close of the 14-day response period, or 7 days after the posting of a response.

For List 4: [The exclusion process](#) for items on List 4A opened October 31, 2019 and will close January 31, 2020.

China's Retaliatory Tariffs

After USTR’s escalation of tariffs on “List 3” last week, China’s Ministry of Finance has announced ([in Chinese](#)) formal tariff retaliation to take effect on 12:01 am on June 1 – with elevation of tariff levels up to 25% based on its own previously published China “List 3” (covering \$60 billion worth of U.S. exports). Products impacted by these tariffs are nearly identical to those in MOF’s September 2018 [notice](#), with [product lists](#) that have been under tariffs of either 5% or 10% since September 24, 2018 – with the exception of auto tariffs that have been suspended late last year.

According to the MOF notice and statement, tariffs will be raised on more than 4,500 separate tariff lines: from 10 to 25 percent on 2,493 tariff lines listed in [Group 1](#); from 10 to 20 percent on 1,078 tariff lines listed in [Group 2](#); and from 5 to 10 percent on 974 tariff lines listed in [Group 3](#). Tariffs would also

stay at 5 percent for an additional 595 products listed in [Group 4](#). That final Group 4 continues to exclude roughly 70 tariff lines covering auto parts that were on the [originally-announced list](#) but were exempted by the Ministry of Finance in December 2018 following the agreement between the two presidents to delay tariff increases in order to negotiate. A consolidated spreadsheet is available [here](#).

If you have questions about the Section 301 investigation or the tariffs, please contact us at policy@aluminum.org.