
USTR Releases “List 4” of Chinese Products Potentially Subject to Section 301 Duties; China Announces Retaliatory Measures on “List 3”

MAY 14, 2019

On May 13, the Office of the US Trade Representative (USTR) released another list of Chinese products that may become subject to an additional duty of up to 25% *ad valorem*, pursuant to Section 301 of the Trade Act of 1974. The proposed product list (“List 4”)—covering 3,805 full and partial tariff lines totaling approximately \$300 billion in imports—encompasses essentially all products not already subject to Section 301 duties, including such key consumer products as cell phones, televisions, toys, footwear, and textiles. The list also includes a variety of agricultural products.

As discussed in our prior alerts, the United States is already subjecting three earlier lists of Chinese products to an additional 25% *ad valorem* duty. The first list (“List 1”)—covering 818 tariff lines totaling approximately \$34 billion in imports—took effect on July 6, 2018. The second list (“List 2”)—covering 279 tariff lines totaling approximately \$16 billion in imports—took effect on August 23, 2018. The third list (“List 3”)—covering 5,745 tariff lines totaling approximately \$200 billion in imports—took effect on September 24, 2018.

President Trump initially set the duty rate for List 3 at 10% *ad valorem*. On May 5, however, he announced his intention to increase the tariffs to 25% *ad valorem*, effective May 10, following reports that China was backsliding on commitments it had previously made. At the same time, he also directed USTR to begin the process that led to yesterday’s announcement on List 4.

As the USTR Federal Register notice explains, List 4 as proposed would cover essentially all products from China that are not currently subject to Section 301 duties, excluding only pharmaceuticals, certain pharmaceutical inputs, select medical goods, rare earth minerals, and critical minerals. Notably, the proposed list includes a number of tariff subheadings that USTR previously excluded after the public comment periods on Lists 1, 2, and 3—including those covering such products as high chairs and child safety seats. However, the proposed increase in duty will not affect products covered by product-specific exclusions granted with respect to Lists 1–3.

As with the prior three product lists, USTR will conduct a public notice and comment process on the proposed List 4, including a hearing, before determining the final list of products that will be subject to the additional duties. The fact that the proposed list includes tariff subheadings that USTR explicitly *removed* from Lists 1–3—presumably because it was persuaded at the time that the imposition of tariffs on products covered by those subheadings would cause disproportionate economic harm to US interests—may mean the process this time is more of a formality than a genuine opportunity to remove tariff subheadings from the final list. However, it may also be a negotiating tactic and an effort to achieve as large a proposed list as possible and to induce more US and Chinese company lobbying within China.

The applicable dates for the notice and comment period are as follows:

- June 10 – Deadline to request to appear at the hearing and provide a summary of testimony
- June 17 – Deadline for submission of written comments
- June 17 – Public hearing
- Seven days after last day of public hearing – Deadline for submission of post-hearing rebuttal comments

When USTR announced the increase in List 3 duties from 10% to 25% *ad valorem*, it also confirmed that it would establish a product-specific exclusion process for List 3. It has not yet published the details of that process, however. It also has not announced whether it will establish a similar process for List 4.

It is unclear how China will respond to this latest potential tariff increase. As WilmerHale has previously reported, China responded to the previous Section 301 duties by imposing similar duties on US imports. For example, on May 13, China responded to the increase in List 3 duties by escalating its own duties effective June 1 on \$60 billion in US imports originally imposed in 2018. At the same time, China's State Council issued a statement that it "hopes the two sides will return to bilateral economic and trade consultations and strive to reach a mutually beneficial and win-win agreement on the basis of mutual respect."

Further, on May 13, the State Council Customs Tariff Commission announced China's own tariff exclusion process in response to the US tariffs. Applications may be submitted by enterprises in China that import, manufacture or use the imported goods, or by their trade associations or chambers of commerce. Chinese subsidiaries of foreign companies are therefore eligible to apply.

The deadlines for application are as follows:

- June 3–July 5 – Deadline for application for exclusion from tariffs imposed in retaliation for the first \$34 billion and the subsequent \$16 billion of imports from China (corresponding in amount to the total of USTR List 1 and List 2) subject to *ad valorem* duties in the United States
- September 2–October 18 – Deadline for application for exclusion from tariffs imposed in retaliation for the \$200 billion of imports from China (corresponding in amount to USTR List 3) subject to *ad valorem* duties in the United States

These latest developments followed an unproductive negotiating session last week, when China reportedly indicated an unwillingness to commit to making changes to its laws covering intellectual property, technology transfer, and subsidies, which are the core issues involved in the negotiations. Indeed, according to US officials, China effectively backtracked from earlier commitments and refused to commit to more far-reaching reforms. Nevertheless, further negotiations are likely, as Chinese officials have already invited USTR Lighthizer to Beijing, and President Trump plans to meet with Chinese President Xi Jinping at the G20 summit next month in Japan.

WilmerHale continues to monitor these developments closely and is prepared to advise clients on how to respond to these latest developments.

Authors



**Ambassador
Charlene
Barshefsky**
RETIRED PARTNER

☎ +1 202 663 6000



David J. Ross
PARTNER
Chair, International Trade,
Investment and Market Access
Practice Group

✉ david.ross@wilmerhale.com

☎ +1 202 663 6515



Lester Ross
PARTNER
Partner-in-Charge, Beijing
Office

✉ lester.ross@wilmerhale.com

☎ +86 10 5901 6588



**Stephanie
Hartmann**
COUNSEL

✉ stephanie.hartmann@wilmerhale.com

☎ +1 202 663 6564