

US Trade Representative Issues Federal Register Notice Implementing “List 4” Tariffs; China Promises Countermeasures

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On August 15, 2019, the Office of the US Trade Representative (USTR) published a Federal Register notice formally implementing an additional ten percent tariff on approximately US\$300 billion in annual imports from China (“List 4” goods) pursuant to Section 301 of the Trade Act of 1974.

As previously announced by USTR on August 13, the additional tariff will be imposed in two stages: (1) certain products covered by List 4 will be subject to the additional ten percent tariff as of September 1, 2019 (“List 4A” goods); and (2) certain consumer goods more commonly imported from China relative to other sources (e.g., cell phones, laptops, and apparel) will be subject to the additional ten percent tariff as of December 15, 2019 (“List 4B” goods). USTR’s Federal Register notice provides further clarification regarding the implementation of, and rationale for, the additional tariff, and is summarized below.

Effective date of tariff increase

USTR’s Federal Register notice clarifies that products covered by List 4A will be subject to the additional tariff if they are “entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 am eastern daylight time on September 1, 2019”, regardless of the date on which such products were exported to the United States. USTR has not excluded from the additional tariff goods that already were in transit to the United States at the time the additional tariff was formally announced, as it did when implementing the recent tariff increase (from ten percent to 25 percent) on “List 3” goods in May 2019. Thus, goods on List 4A that already are in transit to the United States will be subject to the additional tariff if they are entered on or after September 1, even if they were exported before the United States confirmed the implementation and final product coverage of the List 4 tariffs. Similarly, goods on List 4B will be subject to the additional tariff if they are “entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 am eastern daylight time on December 15, 2019”, regardless of the date on which they were exported.

Criteria for inclusion on Lists 1 and 2

The Federal Register notice confirms previously-reported statements from USTR regarding the composition of the two lists, namely that List 4A “includes tariff subheadings where China’s share of U.S. imports from the world is less than 75 percent for each subheading”, whereas List 4B “includes products where China’s share of U.S. imports from the world is 75 percent or greater for each subheading.” The notice does not elaborate on the rationale for the delay of the List 4B tariffs or the 75 percent threshold, stating only that “[t]o provide a longer adjustment period for U.S. interested persons, the additional duty of ten percent *ad valorem* for [List 4B] is delayed until December 15, 2019.” However, the Trump administration in recent days has repeatedly indicated that the delay is intended to mitigate the tariffs’ impact on US consumers during the 2019 holiday

shopping season. The products included on List 4A are estimated to have an annual import value of approximately US\$112 billion, whereas the products on List 4B are estimated to have an annual import value of approximately US\$160 billion.

Rationale for List 4 tariffs

The Federal Register notice seeks to justify the imposition of the List 4 tariffs as a response to “China’s...defensive actions taken to maintain [the] unfair acts, policies, and practices” targeted by the Section 301 investigation, and China’s recent “[retreat] from specific commitments made in previous rounds” of bilateral negotiations with the United States. It states that:

- “China has decided to impose tariffs on approximately \$110 billion worth of U.S. goods, with the goal of pressuring the United States to cease its efforts to obtain the elimination of China’s unfair policies. China has further taken or threatened to take additional countermeasures, including non-tariff measures, against commerce of the United States... to further protect the unreasonable acts, policies, and practices identified in the investigation[.]” This response “has shown that the current [Section 301] action no longer is appropriate.”
- The United States and China held another round of negotiations from July 29 to July 31, 2019; however, “[a]t the conclusion of that round, China remained unwilling to return to the specific commitments it had offered in prior rounds of negotiations.” Furthermore, USTR states that “as found by the Department of the Treasury, China has taken concrete steps to devalue its currency.”

In light of these developments, and “in accordance with the specific direction of the President,” USTR has determined to modify once again the action taken in the Section 301 investigation by imposing the additional tariff on List 4 goods.

Exclusion process

The Federal Register notice confirms that “USTR will establish a process by which interested persons may request that particular products classified within an HTSUS subheading covered by [Lists 4A and 4B] be excluded from the additional duties.” The notice states that USTR will publish a separate notice initiating the List 4 exclusion process, but does not indicate when USTR plans to do so.

Outlook

The United States and China have not confirmed if or when substantive negotiations will resume following the imposition of the List 4 tariffs. Prior to the United States’ announcement of the latest tariff increase, the two sides had planned to hold further negotiations at the ministerial level in September in Washington, DC, but neither side has confirmed whether the meeting will still occur given the recent escalation of the dispute. Moreover, China’s State Council Tariff Commission announced today that China will take “necessary countermeasures” in response to the imposition of the List 4 tariffs, stating that “[t]he US move seriously violated the consensus reached between [Presidents Trump and Xi] in Argentina and Osaka, Japan, and deviated from the right track of settling differences through consultations[.]” Thus, while the specific countermeasures to be taken by China are not yet known, it appears likely that the dispute will escalate further over the coming weeks, worsening prospects for a negotiated solution in the near term.

USTR’s Federal Register notice is available [here](#). The statement from China’s State Council Tariff Commission can be viewed [here](#).

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