

Tariff Increase for \$200B of Chinese Imports Announced and Process for Importers to Request an Exemption Forthcoming

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The Trump administration's significant escalation of the trade dispute with China after months-long U.S.-China trade talks have faltered is a major news headline as the week concludes. The U.S. followed through on its warnings and increased tariffs on an estimated \$200 billion of Chinese goods from 10 percent to 25 percent starting May 10th. At the same time, the U.S. announced importers will be able to apply for an exemption from these tariffs. Trade talks continued through today and ended without any deal. U.S. importers affected by the tariff increase will need to evaluate their options given this tariff increase and the uncertainty surrounding the U.S.-China trade dispute.

This latest tariff increase announced on May 9th in the Federal Register by the Office of the U.S. Trade Representative (USTR) is imposed pursuant to Section 301 of the Trade Act of 1974 after the USTR investigated and determined China's policies and practices with respect to technology transfer and intellectual property were unreasonable and discriminated and burdened U.S. companies. Section 301 tariffs of 10 percent had already been levied on the estimated \$200 billion of Chinese goods (List 3) as of September 24, 2018. The increase in tariffs to 25 percent had been scheduled to go into effect on January 1, 2019, but then were postponed pending the outcome of U.S.-China trade talks until March 2nd, and then again indefinitely. See Summary Chart below of Section 301 tariffs imposed to date.

President Trump warned about this List 3 tariff increase last weekend, saying it would be a response to the slow pace of talks and China's attempts to renegotiate commitments it had made. The president also warned the USTR would begin preparing to impose tariffs on a fourth list containing the balance of U.S. imports from China with an estimated value over \$300 billion.

The May 9th USTR announcement also confirmed the USTR would put in place a process for importers to apply for an exemption from these List 3 tariffs. The USTR announced it would publish a separate notice describing this product exclusion process. Exclusion request processes were put in place for the previous rounds of Section 301 25 percent tariffs levied on \$34 billion of Chinese goods (List 1) and \$16 billion of Chinese goods (List 2). The deadlines for filing those requests passed months ago and the USTR continues to process those requests. While the USTR has made significant progress in processing the nearly 11,000 List 1 exclusion requests, which had a deadline in October 2018, with 5,312 or half denied and 1,442 or 13 percent granted, the nearly 3,000 List 2 exclusion requests, which had a deadline in December 2018, all remain in process, with none

granted or denied to date. See Summary Chart below summarizing the status of exclusion requests for Lists 1 and 2.

If the List 3 exclusion process remains the same as the process for List 1 and List 2, the application window would be open for three months, the exclusions would be retroactive to May 10th and they would be effective for one year after being granted. In addition, the criteria by which the requests would be evaluated would be: (1) whether the product is available only from China; (2) whether the tariff on the product would cause severe economic harm to the requestor or other U.S. interests; and (3) whether the product is strategically important or related to Chinese industrial programs such as the 'Made in China 2025' program focused on high technology industries. The current backlog for List 1 and List 2 exclusion requests, coupled with the fact that List 3 encompasses four times the trade volume of Lists 1 and 2 combined, indicates importers who apply for exclusion requests will need to be patient in trying to mitigate the effects of the List 3 tariff increase via the exclusion process.

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	5,769*	Sept. 24, 2018	10%	Deadline not yet announced
		Jan. 1, 2019 (postponed)	25%	
		Mar. 2, 2019 (postponed)		
		May 10, 2019		

*Number of Tariff subheadings for List 3 reflects the USTR's amendment and modification of List 3 as published in the Federal Register on September 28, 2018.

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	10,837	2,919
Requests in Stage 1 (Public	0	1

Comment Period)		
Requests in Stage 2 (Initial Substantive Review)	1082 (10%)	1408 (48%)
Requests in Stage 3 (Administrability Review)	3001 (28%)	1510 (52%)
Requests in Stage 4 (Granted and publication in progress)	0	0
Granted	1442 (13%)	0
Denied	5312 (49%)	0

Note: Exclusion request data is compiled from the most recent USTR exclusion request index updates for List 1 and List 2 dated May 3, 2019.

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