

USTR Announces List 4A Exclusion Request Process and Other US-China Trade Developments

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The U.S.-China trade dispute continues to simmer with multiple significant developments in the past several weeks:

1. The Office of the U.S. Trade Representative (USTR) announced the exclusion process for Chinese imports subject to List 4A Section 301 tariffs will open on Oct. 31, 2019 and conclude on Jan. 31, 2020.
2. List 4A and 4B tariffs on an estimated \$300 billion of goods imported from China, effective Sept. 1, 2019 and Dec. 15, 2019, were increased from 10 percent, when announced, to 15 percent.
3. The USTR suspended the increase that was to take effect on Oct. 15, 2019 of List 1, 2, and 3 tariffs from 25 percent to 30 percent, due to the U.S. and China reaching an agreement in principle on the first phase of a new trade agreement.
4. The USTR List 3 exclusion request submission deadline passed on Sept. 30, 2019, and the USTR completed review of exclusion requests for Lists 1 and 2 on Oct. 2, 2019, with the publication of the final granted exclusions for those lists.

1. USTR Announces List 4A Exclusion Request Process

The USTR issued the procedures for parties adversely affected by the List 4 Section 301 China tariffs to seek an exemption—the procedures were published in the Federal Register on Oct. 24, 2019. 84 FR 57144. List 4 is the fourth round of tariffs on an estimated \$300 billion of Chinese goods the U.S. 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.

When the USTR announced List 4 tariffs in August, it confirmed such an exclusion request process would be forthcoming. This exclusion request process, however, is only for List 4A tariffs that became effective on Sept. 1, 2019 and not for List 4B tariffs scheduled to take effect on Dec. 15, 2019. List 4B 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. See our [alert here](#) for more about List 4 tariffs.

The process for seeking an exemption from the List 4A tariffs will be similar to the process that was in place for the previous rounds of tariffs. The evaluation criteria for exclusions remain the same:

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.

Requests will remain specific to products imported at the HTSUS 10-digit level and must clearly and succinctly identify the physical characteristics so U.S. Customs can administer the exclusion. Just as with List 3, the USTR will require the requester’s gross revenues, relationship to the product, whether alternative sourcing was contemplated, and the product’s function, application, and principal use. In addition, the requester may report if it satisfies the Small Business Administration’s size standard for a small business. Unlike with prior exclusion requests, requestors will now need to state if a product is subject to an antidumping or countervailing duty order.

The USTR will begin accepting exclusion requests on **Oct. 31, 2019** via its online web portal, exclusions.ustr.gov, and the submission deadline is **Jan. 31, 2020**. As with previous exclusions, a List 4 exclusion granted will be retroactive to the day the tariffs were initially imposed—Sept. 1, 2019 for List 4A—but they will be valid for a shorter period of time. Any exclusion of a List 4A product will only be effective for one year total, starting from the Sept. 1, 2019 date on which the tariffs were levied. In contrast, List 1 and 2 exclusions are effective for one year after an exclusion was granted, and List 3 exclusions are valid until the uniform expiration date of Aug. 7, 2020—almost two years total. Affected parties should consider preparing and submitting exclusion requests as soon as possible, given the inevitable backlog of requests. The USTR included an example of the exclusion request form in the Federal Register notice to help parties begin preparing requests.

2. POTUS Tweet to USTR Policy in a Week: List 4 Tariffs Increased from 10 to 15 Percent

The importance of the USTR’s announcement of the List 4A exclusion request process for affected parties is magnified by the recent increase in List 4A and 4B tariffs from 10 to 15 percent. When the USTR published its initial notice of the List 4 tariffs in the Federal Register on Aug. 20, 2019, it announced a tariff rate of 10 percent. See our [alert here](#) for more about List 4 tariffs. China responded to this U.S. announcement on Aug. 23, 2019 by announcing it would impose tariffs on \$75 billion worth of U.S. products. President Trump then responded the same day, declaring in a tweet that the U.S. would respond by increasing List 4 tariffs from 10 to 15 percent. The USTR confirmed the increase in a press release the same day. One week later, on Aug. 30, 2019, the USTR formally announced the increase in a notice published in the Federal Register. 84 FR 45821.

3. U.S. Suspends List 1, 2, and 3 Tariff Increases in Response to Tentative Trade Agreement with China

On Aug. 23, 2019, the USTR also announced it would increase List 1, 2, and 3 tariffs from 25 percent to 30 percent effective Oct. 1, 2019 following a notice and comment period, in response to China's plan to impose additional tariffs on U.S. products. , It published the official notice for public comment on the proposed increase on Sept. 3, 2019. 84 FR 46212. On Sept. 11, 2019, President Trump announced in a tweet the increase would be delayed until Oct. 15, 2019 in an act of goodwill ahead of formal negotiations on a possible trade agreement with China, because the People's Republic of China was celebrating the 70th anniversary of its founding on Oct. 1, 2019. On Oct. 11, 2019, President Trump announced, in a press conference at the conclusion of a round of trade negotiations with China in Washington, the U.S. would be halting the increase to 30 percent after the U.S. and China had reached an agreement in principle on the first phase of a trade agreement. There was no mention of any delay in the imposition of the List 4B tariffs scheduled to take effect on Dec. 15, 2019.

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
		October 15, 2019 (postponed)	30%	
List 2 – \$16B	279	Aug. 23, 2018	25%	Dec. 18, 2018
		October 15, 2019 (postponed)	30%	
List 3 – \$200B	5,733	Sept. 24, 2018	10%	Sept. 30, 2019
		Jan. 1, 2019 (postponed)	25%	
		Mar. 2, 2019 (postponed)		
		May 10, 2019	October 15, 2019 (postponed)	
Lists 4A*	3,805**	Sept. 1, 2019 (List 4A)	40%	January 31, 2020
			15%	

Lists 4B*		Dec. 15, 2019 (List 4B)	10% 15%	Deadline not yet announced
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*The annual aggregate trade value of List 4 imports is approximately \$300 billion.

** Number of tariff subheadings for Lists 4A and 4B are the number of the tariff subheadings 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.

4. The List 3 Exclusion Request Deadline Passed While the USTR Completed the List 1 and List 2 Exclusion Review Process

The USTR List 3 exclusion request submission deadline passed on Sept. 30, 2019. Similar to List 1 and List 2 exclusions, a List 3 exclusion will be retroactive to Sept. 24, 2018, the day the tariffs were initially imposed. The USTR received over 30,000 List 3 exclusion requests and is reviewing them on a rolling basis. With the USTR's publication of a new set of List 3 exclusions in the Federal Register on Oct. 28, a total of three notices granting List 3 exclusion requests have been published to date.

Earlier this month, the USTR completed its review of List 1 and 2 exclusion requests, in which it granted more than one-third of all exclusion requests submitted for each list. The USTR issued its final exclusions by publishing notices in the Federal Register on Oct. 2, 2019. In our last update in late August, a little over 1,000 exclusion requests each had remained pending for List 1 and List 2; they were in Stage 3, being evaluated with input from U.S. Customs and Border Protection (CBP) to determine whether they could be administered. Almost two-thirds of these remaining List 1 exclusion requests were granted, resulting in final totals for List 1 of 3,656 of 10,814 exclusion requests granted (34 percent). Almost three-quarters of these remaining List 2 exclusion requests were also granted, resulting in final totals for List 2 of 1,074 of 2,869 requests granted (37 percent). The chart below summarizes the exclusion request process for Lists 1 and 2.

Final Results -- 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
Exclusion Request Review Process Completed	Oct. 2, 2019	Oct. 2, 2019
Total Number of Exclusion Requests	10,814	2,869
Granted	3,656 (34%)	1,074 (37%)

Final Results -- Exclusion Requests for Lists 1 and 2		
Denied	7,158 (66%)	1,795 (63%)

Note: Exclusion request data is compiled from the final USTR exclusion request index updates for List 1 and List 2, dated Oct. 3, 2019, reflecting both the final exclusions granted and the final denials.

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