

Administration Moves to Implement 25 Percent Retaliatory Duties Against China

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Today, June 15, the United States Trade Representative (USTR) released two lists of imported Chinese products to retaliate against China's unfair trade practices, based on the USTR's Section 301 determination that "China's acts, policies and practices related to technology transfer, intellectual property, and innovation are unreasonable and discriminatory, and burden U.S. Commerce." The administration is targeting retaliatory duties on \$50 billion in imported Chinese products.

The [first set](#) of products subject to 25 percent retaliatory duties is scheduled to be implemented on July 6, 2018. This first list of products is a subset of the USTR's original [proposed list](#) that was subject to notice and comment over the past several months. As a result of comments received, the USTR reduced the initial list from 1,333 to 818 tariff lines, with the revised list covering an estimated \$34 billion in Chinese imported products. The products removed from the initial proposed list appear to be largely pharmaceutical products and consumer goods.

The [second set](#) of 284 tariff items is a new list of products not previously identified by the USTR. This list, representing approximately \$16 billion in Chinese imported products, will undergo a public comment period similar to the period for the initial list. Details on when the public comment period will commence, the period of review, and scheduling of any public hearings before the USTR has not yet been made available. Duties for these additional products will not go into effect until the USTR completes the comment and hearing process and publishes its final list of additional products.

Implementation and Potential Challenges

A. Implementation for First List of Products

USTR has announced that 25 percent retaliatory duties for products in the first set will be implemented on July 6, 2018. Importers should carefully review the new tariff list to identify whether their products are included in the subject merchandise, and consider the potential duty exposure. Companies should carefully review the tariff classification of any potentially subject merchandise to confirm that any potentially subject products are correctly classified.

Further, importers should evaluate whether changes in companies' supply chains may be implemented, either to affect the tariff classification of the imported products or to move assembly and production activities outside of China that would result in a change of the origin of the imported product under United States Customs and Border Protection's substantial transformation test. Further, importers should consider revisions to their continuous entry bonds in light of the additional duty exposure.

B. Procedures for the Second List of Products

The second set of products published today contains 284 new tariff lines not previously identified by the USTR. This new list is designed to compensate for those items removed from the initial list while allowing the administration to hit its targeted retaliatory level of \$50 billion in Chinese imports. This set will undergo further public notice and comment, including a public hearing, in order to allow the public and other stakeholders a chance to voice their comments to the USTR. While the USTR has not officially announced the dates for the notice and comment period, it is expected that the period and further details will be announced within the next few weeks. Companies with products that are identified in the second set, as well as those companies and investors that have interests in China, or may be contemplating potential tie-ups or investments with Chinese companies, should consider commenting on these proposals. It is important that companies organize quickly to submit comments and to prepare for USTR hearing when those dates are announced.

C. Proposed Exclusion Process

The USTR has noted that it will implement a formal process to allow for exclusion requests for certain products impacted by the additional tariffs. Details regarding such a procedure will be issued within the next few weeks.

China's Response

China has announced that it will swiftly retaliate against these additional tariffs. The Chinese Foreign Ministry stated that "[i]f the United States takes unilateral, protectionist measures harming China's interest, we will quickly react and take necessary steps to resolutely protect our far, legitimate rights." The U.S., however, has threatened additional duties if China retaliates against the duties announced today.

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