



# UPDATE



## U.S. – China Tariffs

There is a lot going on in the U.S. – China tariff conflict. Here's a brief update on the current situation and options importers have to reduce or avoid tariffs.

### Section 301

On August 18, 2017, the Office of the United States Trade Representative (USTR) began an investigation under Section 301 of the Trade Act of 1974 in response to the Chinese government's unfair trade practices related to "the forced transfer of American technology and intellectual property." On April 3, 2018 the U.S. published the first proposed list of products that would be subject to the new 25% tariffs. Since then several additional lists have gone into effect.

### Exclusions

USTR created an exclusion process for Lists 1 and 2 in 2018. Where granted, these exclusions were retroactive to the tariff start date and remain in place for one year. Successful applicants have provided substantial additional factual foundation and legal analysis, coupled with a compelling policy argument to convince USTR to grant an exclusion.

USTR's exclusion application process closed for List 3 on September 30, 2019. List 4 was split into two lists. For List 4A, the tariff rate of 15% was implemented on September 1, 2019 and for List 4B, the tariff rate of 15% will become effective on December 15, 2019. **USTR announced on October 18, 2019 that exclusion applications for List 4A will be accepted from Oct. 31, 2019 through Jan. 31, 2020.** The exclusion process for List 4B has yet to be announced.

### Lists 1 & 2

List 1 includes aircraft parts, X-ray tubes, and electromedical imaging components. List 2 includes semiconductors, chemicals, plastics, and other medical devices and related components.

- List 1 includes 818 tariff lines, List 2 includes 279 tariff lines
- List 1 valued at \$34 billion worth of imports; List 2 valued at \$16 billion worth of imports
- List 1's 25% tariff started on July 6, 2018; List 2's 25% tariff started on August 23, 2018
- List 1 exclusion deadline was October 9, 2018, List 2 exclusion deadline was December 18, 2018

### List 3

Includes seafood, other human and animal foods and ingredients, and cameras used in medical contexts.

- Includes 5,745 tariff lines
- Valued at \$200 billion worth of imports
- 10% tariff level Sept. 24, 2018- May 9, 2019
- 25% tariffs started May 10, 2019
- Exclusion application process closed on September 30, 2019
- USTR is issuing exclusion decisions on a rolling basis, so interested parties will want to monitor additions regularly

### Lists 4A & 4B

Includes most imports not covered by Lists 1-3 except for pharmaceuticals, select medical goods, rare earth materials and critical minerals.

- Together includes 3,805 tariff lines
- Together valued at \$300 billion worth of imports
- Initially they were to be at a 10% rate; however, they are now set at 15%
- List 4A in effect since September 1, 2019, List 4B to begin on December 15, 2019
- **Exclusion applications for List 4A will be accepted from Oct. 31, 2019 through Jan. 31, 2020.**
- Exclusion application process date for List 4B has yet to be announced

# U.S. – China Tariffs: Strategies for Importing Goods

As the U.S. and Chinese governments face off on tariffs, companies in both countries will have to plan how to continue to do business within a changed trade environment. Here we describe steps to consider and issue cautions about options which are generally not advisable.

## What Options Exist for Impacted Companies?

Companies should be looking broadly at their business, distribution and supply chains. We recommend you:

- ✓ **Do** determine whether your goods fall into one of the HTS provisions to which the tariffs apply. **If your products are on list 4B keep an eye out for the exclusion process announcement date.**
- ✓ Importers of List 4A or List 4B products who either plan to request exclusion themselves or who have planned for a competitor to apply for an exclusion to the same/similar product will want to take steps with Customs to **preserve their right to refunds** on entries made since the tariffs went into effect and while USTR is considering the application.
- ✓ **Do** assess contracts with your suppliers and customers to see if there are options available to you, even if prices are already set with fixed terms. Clauses may exist that you can make use of under the circumstances.
- ✓ **Do** investigate alternative sources of supply or processing locations.
- ✓ **Do** consider using duty drawback, bonded warehouses, foreign trade zones, or temporary importation bonds (TIBs).
- ✓ **Do** get a binding ruling from Customs if you elect to reclassify goods.

At the same time, there are several things we strongly caution you to avoid:

- × **Do not** transship goods through another country to try to evade the tariffs.
- × **Do not** misclassify goods in an attempt to avoid tariffs at the border.
- × **Do not** change the way you have classified materials without consulting with a lawyer and assessing the risks of a Customs inquiry.

While importers should look to possibly reclassifying goods and changing production so as to change country of origin, they should not do this without speaking to a lawyer. In addition, it is a best practice to obtain a binding ruling from U.S. Customs, because these issues are highly fact dependent and U.S. Customs has announced that these areas will be subject to extra scrutiny.

## **Customs evasion may be subject to steep penalties.**

If you know, or suspect, that one or more of the tariff actions is going to cost you revenue or market share, then let us help you determine what to do next.

Our Customs and Trade attorneys work closely with the attorneys in our FDA practice and can help you evaluate your options, including submitting exclusion requests and reviewing product classification.