SECTION 301 CHINA TARIFFS

Section 301 of the Trade Act of 1974 provides the United States with the authority to enforce trade agreements, resolve trade disputes, and open foreign markets to U.S. goods and services. It is the principal statutory authority under which the United States may impose trade sanctions on foreign countries that either violate trade agreements or engage in other unfair trade practices.

SECTION 301 ACTIONS

USTR can launch investigations on its own and can take action if it is determined that a country has violated international law:

- Insufficient IP Protection
- Discriminatory Market Access
- Low labor standards

Actions can include:

- Withdraw country's benefits under trade agreements
- Impose tariffs, quotas, or fees
- Require country to enter into a binding agreement to change practices
- Other actions within the President's power

SECTION 301 TARIFFS

Tariffs imposed following Section 301 China Investigation by the U.S. Trade Representative (USTR). Concerns related to China's "Made in China 2025" program to rapidly develop self-sufficient manufacturing industries.

- Aerospace, new energy vehicles, robotics, and advanced machinery and equipment
- 80% of domestic new energy car sales being Chinese made by 2020
- Acquisition of advanced technologies
- Additional plan to achieve dominance in artificial intelligence by 2030

USTR's Investigation found that China:

- Uses foreign investment restrictions to increase technology transfer (requiring technology transfer in exchange for licensing and regulatory approval)
- Supports Chinese companies' acquisition of foreign firms with technology and desired IP
- Controls negotiation of technology licensing that limits U.S. firms from obtaining fair terms.
- Supports cyber espionage to obtain IP, trade secrets, and other business information.

FOUR TRANCHES OF TARIFFS ON CHINESE GOODS

Tranche 1 - $34 Billion U.S. Imports / 818 Products

- 25% Additional Duty – Effective July 6, 2018 *(HTS# 9903.88.01)*
- Deadline to file Exclusion Requests – Oct. 9, 2018
- Eight (8) lists of Product Exclusions granted

Tranche 2 - $16 Billion U.S. Imports / 284 Products

- 25% Additional Duty *(HTS# 9903.88.02)*
- Effective August 23, 2018
- Deadline to file Exclusion Requests – Dec. 18, 2018
- Three (3) lists of Product Exclusions granted

Tranche 3 - $200 Billion U.S. Imports / 6,031 Products

- 10% Additional Duties – Effective Sept. 24, 2018 *(HTS# 9903.88.03 / 9903.88.04)*
- 10% "On the Water Provision" – Effective 5/10/19-6/15/19 *(HTS# 9903.88.09)*
- 25% Additional Duties – Effective June 15, 2019
- Deadline to file Exclusion Requests – September 30, 2019
- Fourteen (14) lists of Product Exclusions granted

Tranche 4 - $300 Billion U.S. Imports / Remaining Products

- List 4A Effective Date – September 1, 2019 *(HTS# 9903.88.15)*
  - 15% Additional Duties – Reduced to 7.5% effective February 14, 2020
  - Exclusion Request process for List 4A was October 31, 2019 - January 31, 2020
- Eight (8) lists of Product Exclusions granted
- List 4B Effective Date – SUSPENDED INDEFINITELY *(HTS# 9903.88.16)*

TO see if your product is subject to these tariffs, see the China Tariff Tracker on our website by searching with the product Harmonized Tariff Schedule (HTS).

USTR APPROVED PRODUCT EXCLUSIONS

The USTR's decisions to impose additional tariffs on goods from China included a decision to establish a Product Exclusion process. The USTR opened public dockets, for each tranche, for the trade to request product specific exclusions from the additional tariffs. As a result, hundreds of exclusions were granted for all four tranches of Section 301 Tariffs. Lists of the specific product exclusions can be found on the UTSR China Section 301 page, and a compiled list can be found on our website here.

When granted, the exclusions were retroactive to the effective date the tranche took effect and were effective for one year, or a specified date provided in the publication in the Federal Register. Over 2,000 product specific exclusions were granted in thirty-three (33) separate lists covering all four tranches. All importers were able to take advantage of the granted exclusions.

Exclusion Extensions

As the exclusions expired, the USTR opened comment periods where the trade could request extensions for specific exclusions. Five hundred and forty-nine (549) of the previously granted exclusions were extended at various times; however, almost all expired by December 31, 2020.

COVID Related Exclusions

In response to shortages of medical-care products needed to address the COVID-19 outbreak, the USTR opened a comment period for possible modifications to existing exclusions and to remove the duties from additional medical-care products. The USTR designated 100 specific products for exclusion from the tariffs. Most of the COVID-19 related exclusions are currently in effect until November 30, 2022. See USTR Lists here.

Reinstated Exclusions

On October 5, 2021, USTR announced that it was starting a review to possibly reinstate the 549 previously extended exclusions. On March 28, 2022, the USTR announced the reinstatement of 352 previously expired exclusions; retroactive to October 12, 2021. See the USTR announcement and list of products here.

CHINA RETALIATORY TARIFFS ON U.S. IMPORTS

List 1 - $34 Billion U.S. Goods / 545 Products

- Effective July 6, 2018
- 25% Additional Duty
  - Automobiles
  - Soybeans, Corn, Wheat, Rice Sorghum, Tobacco, Cigars, Alcohol, Dog/Cat Food
  - Beef, Pork, Poultry, Fish/Shellfish, Dairy products, Nuts, Vegetables

List 2 - $16 Billion U.S. Goods / 333 Products

- Effective: August 23, 2018
- 25% Additional Duty
  - Cole, Coke (fuel), Crude Oil, Diesel, and Kerosene Gas
  - Textile materials, Metals Waste/Scrap, Other Vehicles, Motorcycles
  - Medical Equipment

List 3 - $60 Billion U.S. Goods / 5,207 Products

- Effective: September 24, 2018
- Additional Duties:
  - Annex 1 – 10% increased to 25%
  - Annex 2 – 5% increased to 20%
  - Annex 3 – 5% increased to 10%
  - Annex 4 – 5% with no increase
    - Honey, Veg/Plant Oils, Sugars, Coffee and Tea, Spices,
    - Plastic Leather, wood and paper products
    - Home and industrial machines and Electronics

List 4 - $75 Billion U.S. Goods / 5,079 Products

- Effective: September 1, 2019
  - 10% on 916 products in Annex 1
  - 5% on 801 products in Annex 1
- Effective December 15, 2019
  - 10% on 913 products in Annex 2
  - 5% on 2,449 products in Annex 2
- Effective February 14, 2020
  - Tariffs reduced by 50% on 1,717 products

CHINA GRANTED EXCLUSIONS

- September 17, 2019, two lists of exclusions granted and effective to September 16, 2020
  - List 1, Part 1 covers 12 U.S. products such as shrimp and prawn seedlings, lubricants and alfalfa meal
  - List 1, Part 2 covers four (4) U.S. products including release agents, whey for fodder, Iso-alkane solvent, and lubricating base oil.
- December 26, 2019, a second list of product exclusions were granted, covering six (6) U.S. goods, and are effective until December 25, 2020
- February 17, 2020, two new lists of exclusions granted effective February 28, 2020, to February 27, 2021.
  - The two lists include timber, presswork, hydraulic motor, diaphragm pump, aircraft parts, and medical equipment like non-invasive ventilators and temperature sensors
    - List 1 covers 55 U.S. Products
    - List 2 covers 10 U.S. Products
- February 17, 2020, China will exempt 696 products from additional tariffs based on the commitments made in the Phase One trade deal.
  - The 696 products include pork, beef, soybeans, wheat, corn, sorghum, ethanol, liquefied natural gas, crude oil, steel rails, and some medical equipment.
  - Chinese companies can submit applications starting March 2, 2020.
- May 19, 2020, tariff exemptions cover 79 products, including rare earth ores, chemicals and certain aircraft and medical products.

U.S. CHINA "PHASE ONE" DEAL

On December 13, 2019, the U.S. and China agreed to the "Phase One Deal". The deal was later signed on January 15, 2020 and requires structural reforms and other changes to China's economic and trade regime in the areas of intellectual property, technology transfer, agriculture, financial services, and currency and foreign exchange.

Tariffs

- U.S. Agreed to indefinitely suspend implementation of List 4B tariffs of 15%
- U.S. Agreed to reduce List 4A tariffs by half (15% reduced to 7.5%) effective February 14, 2020
- China agreed to reduce tariffs on 1,717 U.S. goods, reducing some tariffs from 10% to 5% and others from 5% to 2.5% effective February 14, 2020

Expanding Trade

- China agreed to increase purchase of U.S. goods and services by $200 Billion over two years
  - US$ 78 billion in additional manufactured goods;
  - US$ 54 billion in additional energy purchases;
  - US$ 32 billion in additional farm products purchases; and
  - US$ 38 billion worth of services.

Intellectual Property

- Trade secrets, pharmaceutical-related intellectual property, geographical indications, trademarks, and enforcement against pirated and counterfeit goods

Technology Transfer

- Binding and enforceable obligations to address unfair technology transfer practices of China that were identified in USTR's Section 301 investigation

Financial Services and Currency

- Addresses trade and investment barriers to U.S. providers of a wide range of financial services, including banking, insurance, securities, and credit rating services
- Addresses unfair currency practices by requiring high-standard commitments to refrain from competitive devaluations and targeting of exchange rates

Enforcement / Dispute Resolution

- Sets forth an arrangement to ensure the effective implementation of the agreement and to allow the parties to resolve disputes in a fair and expeditious manner

IMPACT TO BUSINESS – CONSIDERATIONS:

- Bond sufficiency – Additional duties may require a bond increase
- Pay duties on ACH / Periodic Monthly Statement (PMS)
- For Exporters – Duty Drawback is allowed

OPTIONS FOR MITIGATING IMPACT OF 301 ADDITIONAL DUTIES

Product Classification

- Review possibility of reclassification into HTS code outside scope of 301
- Tariff Engineering – redesign of product to fit a different category
- Determine if product can ship as parts or full unit

Country of Origin

- Review production process to identify opportunity to move production
- Review supply chain and define production in each country to determine process can determine alternate country of origin

Product Valuation

- Negotiate with suppliers on pricing
- Evaluate terms of sale to ensure that duty is not pain on non-dutiable charges (discounts, international freight, insurance etc.)
- Explore option of utilizing First Sale Valuation to lower entered value for duty assessment

Note Regarding Reasonable Care:

If an Importer makes any changes to Product Classification (HTS), Country of Origin, or Value, the company will need to exercise Reasonable Care, and maintain documentation that substantiates the legal basis for those changes.