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# Hughes Hubbard & Reed

## USTR Announces Section 301 List 4 Tariffs Exclusion Process

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**October 28 2019** – On October 24, 2019, the Office of the United States Trade Representative (“USTR”) published an exclusion process for items subject to tariffs under “List 4” of the Section 301 tariffs that the Trump Administration has imposed on Chinese imports into the United States. The announcement gives businesses an opportunity to request that their products be excluded from the 15 percent List 4 tariffs.

### Background

As reported previously ([here](#)), the Trump Administration has imposed tariffs on nearly all U.S. imports of Chinese goods under Section 301(b) of the Trade Act of 1974, which allows the President to implement trade sanctions against foreign countries engaged in unfair trade practices.

The current status of the 301 tariffs is as follows:

List 1 goods: 25% tariff since July 19, 2018

List 2 goods: 25% tariff since August 23, 2018

List 3 goods: 10% tariff from September 24, 2018 to May 9, 2019; increased to 25% effective May 10, 2019

List 4A goods: 15% tariff since September 1, 2019

List 4B goods: 15% tariff to go into effect on December 15, 2019

Shortly after List 4 was announced, the status of the Section 301 tariffs was again thrown into flux when President Trump decided to increase the tariffs in light of ongoing trade tensions with China, exacerbated by the failure of the United States and China to reach a trade agreement despite continuing negotiations. President Trump indicated that the 25 percent tariffs on Lists 1, 2, and 3 would be increased to 30 percent.

On September 11, 2019, the Trump Administration announced that it would delay the tariff increases until October 15, 2019, citing the move as a gesture of goodwill to move along the trade negotiations with China. The USTR has not yet implemented the tariff increase, leaving the 25 percent tariff in place for now.

## List 4 Exclusion Process

When the List 4 notice was published, USTR explained that it would establish an exclusion process through which U.S. stakeholders could request certain Chinese imports covered by the list be excluded from the applicable tariffs. On October 22, 2019, USTR announced the [exclusion procedures](#), which largely mirror the exclusion request process for Lists 1, 2, and 3.

The List 4 exclusion requests can be submitted via an electronic portal at <https://exclusions.USTR.gov>, which opens for submission on October 31, 2019. The window for submitting List 4 exclusion requests closes on January 31, 2020. Once a respondent submits a request, responses either in support or opposition may be filed for 14 days after posting. The original submitter then has an opportunity to reply.

Substantively, the information required in the List 4 exclusion requests largely corresponds with prior exclusion request processes. Submitters must identify the product at issue through a description and its Harmonized Tariff Schedule (HTS) classification. The request also should include information about the availability of the product at issue in the United States and third countries, the company's attempts to source from the United States and third countries, the detrimental impact of the Section 301 tariffs, and whether the product is part of the "Made in China 2025" plan. One notable difference between the List 4 exclusion request process and the List 3 exclusion request process is that the List 4 exclusion request process asks whether the product at issue is currently subject to an antidumping or countervailing duty order, suggesting that an existing order on a particular product may factor into USTR's analysis.

## Impact

If USTR grants a List 4 exclusion request, it would be effective for one year, starting from the September 1, 2019 effective day of the first round of List 4 tariffs. Importers can request a refund of any 301 duties paid on qualifying entries on or after that date. Exclusions are product specific, rather than submitter specific, so exclusions granted by USTR will apply to any import of the product that meets the description.

While the exclusion requests give U.S. businesses the opportunity to mitigate the immediate impact of the Section 301 tariffs, USTR has shown reluctance to grant high volumes of requests, and the sheer number of requests means that the process can be lengthy. For the List 3 exclusions, there are currently 30,329 submitted requests. As of October 28, 2019, 2,018 requests had been denied, while only 156 had been granted. In other words, 28,155 requests remain pending, and only about 8 percent of requests have been given a final determination, not counting requests still pending from the Lists 1 and 2 exclusion processes. Once the List 4 request process opens on October 31, the number of requests pending before USTR will increase further, possibly holding up the process further. Even so, exclusion requests may be worthwhile with the possibility of obtaining a refund of duties paid.

If you have questions about other developments in regard to the Section 301 tariffs, please contact one of the experienced attorneys in Hughes Hubbard's International Trade practice.

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