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# Shelter from trade wars: Considering tariff exemptions by the U.S. and Chinese governments

Consumer companies on both sides of the Pacific are feeling the impact of the U.S.-China trade war. Targeted by the retaliatory tariffs imposed by both governments and already feeling price pressure as consumer confidence has declined, consumer companies are under particular pressure. The previous rounds of Section 301 tariffs for List 1, 2, and 3 covered many imported consumer goods, but now with the latest list (List 4) announced by the US, consumer products subject to significant US import duties include toys, electronic devices, laptops, apparel and footwear, food and beverage, chemical and textile intermediates, as well as an array of fuel products, metal tools, housewares, furniture, vehicle components and construction materials.

In September 2019, the Chinese government announced a new round of tariffs, imposing 5 percent or 10 percent tariffs on U.S. products valued at \$75 billion.

The U.S. government announced the imposition of 15 percent ad valorem duties on up to \$300 billion Chinese goods (List 4). Both the U.S. and Chinese tariffs are being implemented in two batches: the first batch took effect on September 1 (List 4A) and the second batch is scheduled to take effect on December 15, 2019 (List 4B).

Recognizing that this is bad news for a number of industries, both the U.S. and Chinese governments have implemented formal tariff exclusion processes for multiple tranches of tariffs. Under these processes, an affected company may apply for an exemption for targeted products if certain requirements are met (e.g., difficulty finding alternative sources; severity of economic harm to the company and national interests; and severity of impact of tariffs on the industry).

## Why do businesses need to take note?

The United States Trade Representative (USTR) is accepting “List 3” exclusion request for imported Chinese goods until September 30, 2019. The USTR also intends to conduct an exclusion application process for the List 4 Chinese products subject to the additional tariffs. On the China side, China’s Customs Tariff Commission (CTC) will accept exclusion applications from companies, business associations, and chambers of commerce from September 2 to October 8, 2019, for the tariffs imposed on \$60 billion worth of U.S. goods last year (List 2). The CTC will launch a later process to allow parties to obtain exclusions from the tariffs imposed in September 2019 on \$75 billion of U.S. goods.

Exclusion applications that are approved by the USTR or CTC are retroactive. It is worth considering a request if the tariffs have a significant impact on your business, as the process appears to provide for a meaningful review of the need for potential exclusions. On the U.S. side, we have seen a wide variety of companies from automobile, food and beverage, and manufacturing sectors requesting such exclusions. So far, our experience is that, over half of the requests we have filed have been fully approved and three-quarters of the requests for exclusion from the tariffs on goods in Lists 1 and 2 under Section 301 procedure have moved to Stage 3, which means they have been reviewed by the Section 301 Committee and sent to U.S. Customs for a determination as to their “administrability.”

## How we help

Hogan Lovells International Trade and Investment group has extensive experience with the U.S. Section 301 process and the associated Chinese duty and duty exclusion process. Our team includes experienced private practitioners, several of whom also have experience in government service. Warren Maruyama, Craig Lewis, Chandri Navarro, Jonathan Stoel and Jared Wessel regularly assist U.S. companies and U.S. trading partners in proceedings under Section 301 of U.S. trade law. Roy Zou, Ben Kostrzewa and Stephanie Sun, our bilingual trade attorneys based in China, have been advising both U.S. and Chinese clients for their trade related matters from Sino-U.S. perspectives.

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To discuss how we can help your company in connection with the exclusion process in the U.S., China, or both, please contact Warren Maruyama, Craig Lewis, Chandri Navarro, Jonathan Stoel, Jared Wessel, Roy Zou, Ben Kostrzewa or Stephanie Sun.



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