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U.S. Announces New Exclusion Process for Latest Tariffs on Chinese Imports

Exclusions available for tariffs on approximately $112 billion in goods; requirements largely mirror most recent exclusion process

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On October 18, 2019, the U.S. Administration announced the launch of a new product-specific exclusion request process for tariffs on approximately $112 billion in Chinese imports that were imposed on September 1, 2019. The exclusion process will close on January 31, 2020, and its requirements are similar to those applicable to the latest exclusion process for an earlier round of tariffs.

The new exclusion process applies to one of the several rounds of tariffs affecting imports from China that the U.S. has imposed under Section 301 of the Trade Act of 1974 since mid-2018. The Section 301 tariffs are based on the Administration's determination in March 2018 that China's technology transfer and intellectual property (IP) policies are harming U.S. companies. As explained further below, the current tariffs on Chinese imports have been implemented through four tariff lists, with the fourth divided into two tranches—the first implemented on September 1, 2019, and the second slated for December 15, 2019:

- **List 1**: 25 percent tariffs on $34 billion in Chinese imports took effect on July 6, 2018; the Administration has granted certain product-specific exclusions.
- **List 2**: 25 percent tariffs on $16 billion in Chinese imports took effect on August 23, 2018; the Administration has granted certain product-specific exclusions.
- **List 3**: A 10 percent tariff on $200 billion in Chinese imports was initially imposed on September 24, 2018, though this rate increased on May 10, 2019, to 25 percent after the Administration cited "lack of progress" in negotiations and concerns that China had backtracked from earlier commitments.
- **List 4**: On August 20, 2019, the U.S. Administration published its plans for a fourth set of tariffs on nearly $300 billion in Chinese imports, dividing the list into two separate tranches of goods subject to an additional 10 percent tariff—one tranche taking effect on September 1, 2019, and a second taking effect on December 15, 2019. Major consumer products such as laptops, cell phones, and video game consoles were included on the latter delayed tranche. The notice also stated that an exclusion process would be forthcoming. In late August, the Administration decided to increase the level of both tranches of List 4 tariffs from 10 to 15 percent, and the first tranche took effect on September 1 as planned.

In late August 2019, the Administration proposed increasing the List 1, 2, and 3 tariffs from 25 to 30 percent but has not implemented this increase. (Our analysis of this proposal is here.) The increase was originally slated for October 1, 2019, but the U.S. delayed implementation until October 15 in a gesture of "good will," citing a request from China and the October 1 commemoration of the 70th Anniversary of the founding of the People's Republic of China. Then, with the October 11 announcement of a tentative "phase one" trade agreement with China, the U.S. suspended the planned increase. (Our analysis of the phase one announcement is here.)

The newly announced exclusion process applies to the first tranche of List 4 tariffs that went into effect on September 1, 2019, covering approximately $112 billion in Chinese imports. The process will open on October 31, 2019, and its requirements appear to be similar to those that governed the last round of exclusions on List 3 tariffs. (See our analysis of the List 3 exclusion process here.) Specifically:

- **Use of online portal:** Requestors must submit their exclusion requests on an online portal, located at https://exclusions.ustr.gov.
- **Support for exclusion:** As in prior rounds, requestors must indicate whether the product in question is available only from China, whether the imposition of duties will cause severe economic harm to U.S. interests, and whether the product is strategically important or related to Chinese industrial programs such as "Made in China 2025." Parties must also detail any attempts to source the product from suppliers outside of China.
- **Detailed product and financial data:** Consistent with the List 3 exclusion process, requestors are required to submit detailed product information along with revenue and purchase data.
- **Overlapping antidumping and countervailing duty coverage:** For the first time, requestors must indicate whether the product for which an exclusion is sought is currently subject to antidumping or countervailing duties.

The public will have a 14-day window to respond to all exclusion requests. The original requestor then has 7 days to submit a reply in support of the exclusion. An exclusion, if granted, will be effective retroactive to September 1, 2019 (the effective date of the first tranche of List 4 tariffs), and will expire on September 1, 2020.

Companies with interests in U.S.-China trade relations should move quickly to assess the new exclusion process and consider whether to submit an exclusion request by January 31, 2020. Companies should also closely monitor developments in ongoing bilateral trade talks, which could affect further tariff-related developments.

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