

## Client Alert

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## China retaliatory tariff updates in response to the Phase One Deal

### Background

Amid the trade tension with the US, China's Tariff Commission of the State Council (the "**Tariff Commission**") during the past two years announced three batches of retaliatory tariff measures on US goods to counter a flurry of Section 301 tariffs imposed by the US on Chinese goods:

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Retaliatory Measure	Implementation Date(s)	Impacted Goods	Rate	Value	Product Exclusion Results
<b>First Batch</b>	6 Jul 2018; 23 Aug 2018	Agricultural products, automobiles, aquatic products, chemicals, etc.	25%	\$50 Billion	Two lists
<b>Second Batch</b>	1 Jun 2019	Agricultural products, chemicals, textiles, etc.	5% - 25%	\$60 Billion	One list
<b>Third Batch</b>	1 September 2019 (rates reduced effective 14 February 2020)	Additionally applies to certain products in the first two batches and some additional goods	2.5% - 5%	\$75 Billion	Pending

In a bid to deescalate the trade conflict, the two countries entered into a much anticipated trade agreement on 15 January 2020 ("**Phase One Deal**"). In connection with the Phase One Deal, the following measures, amongst others, were agreed upon or given effect:

- reduction of US Section 301 tariffs on List 4A goods from 15% to 7.5%;
- suspension of US Section 301 tariffs to be imposed on List 4B goods; and
- purchase by China in 2020-21 of an additional \$200 billion in US goods and services (above the 2017 baseline amount).

In response to these commitments, the Chinese government has recently announced important developments affecting its retaliatory tariff measures on US goods.

### Reduction of retaliatory tariffs for the third batch of products

On 6 February 2020, the Tariff Commission announced through Circular [2020] No. 1 that, effective 14 February 2020, retaliatory tariffs imposed on goods listed in the first tariff list attached to Tariff Commission Circular [2019] No. 4 (click [here](#) to see the affected tariff list) will be reduced as follows:





- tariff rate applicable to products in Parts 1 and 2 is reduced from 10% to 5%
- tariff rate applicable to products in Parts 3 and 4 is reduced from 5% to 2.5%

This reduction only applies to the third batch of retaliatory tariffs and does not affect the earlier measures.

## Product exclusion results for the second batch of products

Chinese importers could apply for product exclusions on the first two batches of retaliatory tariff measures. Previously, the Tariff Commission already released product exclusion results for the first batch of products through Circulars [2019] No. 6 on 11 September 2019 and [2019] No. 8 on 19 December 2019.

A similar product exclusion application process for batch two closed on 18 October 2019. The results were published as two product exclusion lists in Circular [2020] No. 3 on 21 February 2020:

- The first product exclusion list (click [here](#)) covers 55 products, including wood products, pumps, filters, machine tools and x-ray equipment. These products will be exempted from retaliatory tariffs from 28 February 2020 to 27 February 2021. Within six months of from the circular's publication, the importer may request Customs to reimburse previously paid retaliatory tariffs.
- The second product exclusion list (click [here](#)) covers 10 products, including sensors, spectrometers and cytometer. These products will be exempted from retaliatory tariffs from 28 February 2020 to 27 February 2021, and any paid retaliatory tariffs cannot be refunded.

All Chinese importers of goods falling within the above lists may benefit from the exclusions, so businesses should carefully review the lists for cost saving opportunities. The Tariff Commission is expected to publish more product exclusion lists in the future.

## New product exclusion process pursuant to the purchase commitment under the Phase One Deal

On 17 February 2020, the Tariff Commission announced in Circular [2020] No. 2 a new product exclusion process to help China fulfill its purchase commitments under the Phase One Deal ("**Purchase Commitment Exclusion**"). This unique process differs from the previous product exclusion processes, and is targeted to exempt successful applicants from retaliatory tariffs imposed on specific goods based on the approved purchase amount.

### (a) Eligible applicant

Any Chinese domestic enterprise seeking to purchase and import the eligible products (as described below) from the US may submit a product exclusion application as long as the products have not been excluded from retaliatory tariffs in earlier lists. It does not matter whether previous applications were made.



### (b) Eligible products

The Tariff Commission has published a list of 696 Chinese tariff codes at the eight-digit level (click [here](#)) that are eligible for the exclusion process. Enterprises may request to additionally include products that are not currently on the list.

### (c) Scope of the Purchase Commitment Exclusion

Subject to the discretion of the Tariff Commission, an exclusion may be granted to the applicant for a specified purchase amount (determined based on value) which will be determined in part based on the applicant's purchase plan. Once granted, any importation by the applicant within the approved purchase amount will be exempted from retaliatory tariffs within one year from the date of approval. Any imports exceeding the approved purchase amount will still be subject to retaliatory tariffs unless an increase in the approved purchase amount is obtained.

Exclusions under this process are only granted to successful applicants, and other importers of the same products cannot benefit from this process. Also, any retaliatory tariffs paid prior to the issuance of the approval will not be refunded.

Subsequent to the approval, applicants must negotiate the purchase agreement according to the approved purchase amount and provide the transaction information, including the actual purchase amount, to the authorities. If an applicant has entered into a transaction that exceeds the approved purchase amount, then it may timely file a supplemental application to increase its approved purchase amount. That said, unused approved purchase amounts cannot be carried forward after expiration.

### (d) Application process

Interested parties may file their applications through the Ministry of Finance (MOFCOM) website at <https://gszx.mof.gov.cn>. The application process is open from 2 March 2020 and there is currently no published deadline.

An applicant may submit one application per month, with one purchase plan pertaining to each tariff code. The relevant supporting information to be submitted during the application process includes the planned purchase quantity and value. For requests to add a new product onto the eligible list, an applicant is required to explain and show how the applicable retaliatory tariffs adversely impact its business.

## Recommendations

Businesses impacted by the retaliatory tariff measures imposed by China should consider the above developments closely to identify potential duty savings opportunities. As the Purchase Commitment Exclusion is granted on an entity-specific basis, businesses that wish to benefit from this process should apply as promptly as practicable. The exclusions are only effective from the date of approval, and no refund is allowed for retaliatory tariffs paid prior to approval.

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