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ASTA Trade and Tariff FAQ Document

What is a tariff?

A tariff is a duty assessed on goods that are imported into the United States. Tariffs are used by a country as a way to protect industries, place barriers to trade with countries seeking to export goods to the U.S., raise revenue, or even as a form of retaliation against a country with which there is international conflict.

What is a Section 301 tariff?

Tariffs imposed under Section 301 of the Trade Act of 1974 are one type of tariff that can be imposed by a U.S. President. This section provides the executive branch with the authority to respond to unfair, unreasonable or discriminatory trade practices and gives the Office of the U.S. Trade Representative (USTR) the ability to take action to compel another country to eliminate the offending act, policy or practice with the president's approval. The tariffs that President Trump imposed on China beginning in 2018 were implemented under Section 301 as a means to achieve leverage on the Chinese government for negotiating trade related policies.

How big is the U.S. trading economy?

The U.S. is the world's largest trading nation with the total value of exports for the U.S. in 2017 estimated at over $1.5 trillion, and the value of imports at almost $2.5 trillion.[1] Jobs supported by export of U.S. goods and services is an estimated 11.3 million jobs in 2013.[2]

Are all goods that come into the U.S. subject to a tariff?

No. Whether or not a good is subject to a tariff depends on the commodity, the country of export and even the country of origin. There are a variety of commodities and countries that are exempt from a particular tariff for any number of reasons. The International Trade Administration (ITA)[3] references different ways and reasons that goods may be exempt from tariffs when entering the United States.

Who collects the tariff money?

Tariffs are paid to the customs authority of the country imposing the tariff. Tariffs on imports coming into the United States, for example, are collected by the U.S. Customs and Border Protection (CBP) acting on behalf of the Commerce Department.

Where does the money from tariffs go?

Generally, the money the government receives from tariffs is treated as tax revenue and becomes part of the general budget of the United States. Although the company importing the goods may pay the tariff to the government, companies can and will pass on the increased cost of goods within the supply chain.

[1] https://wits.worldbank.org/CountrySnapshot/en/USA/textview

[2] https://ustr.gov/issue-areas/economy-trade

[3] https://www.trade.gov/

May 12, 2020

What date is a new tariff implemented?
The date of enactment is specified by notice from the federal government, either from the United States Trade Representative (USTR), in the Federal Register, or through a presidential proclamation. As an example, a tariff increase from 10 to 25 percent in May 2019 on goods from China became effective[4] with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on May 10, 2019, and for goods exported to the United States on or after May 10, 2019.

What spices are subject to tariffs?
The tariff rates for spices are included in the Harmonized Tariff Schedule and vary from country to country and product to product. The tariff rate can depend on the country of origin of the spice and the spice itself. The easiest way to check on whether there is a current tariff on a spice and what the rate is would be go to the Harmonized Tariff Schedule.

What is the situation regarding U.S. tariffs on Chinese products?
President Trump begin implementing tariffs on goods coming into the U.S. from China beginning in June 2018, and the tariff rates continue to change. There have been several rounds of different lists of goods that are subject to additional, increased tariffs, as well as a scaling back of some of those tariffs.

On July 10, 2018, the USTR proposed imposing 25 percent tariffs on a list known as "List 3", which includes garlic and several other spices imported from China. The tariffs were implemented in a step-wise manner on September 24, 2018 at an initial rate of 10%. On May 10, 2019 the USTR initiated the additional 15% tariff on these goods, completing the full 25% tariff escalation on List 3. On August 20, the USTR released additional lists tariffs,[5] "List 4", which includes essentially all remaining goods imported from China. Included on the list were many additional spices, listed below.

What imported Chinese spices face additional tariffs?
The following products, when imported from China, face a supplemental 25% tariff as of May 10, 2019:

- 0712.90.40 Dried garlic, whole, cut, sliced, broken or in powder, but not further prepared
- 0712.20.40 Dried onions whole, cut, sliced or broken, but not further prepared
- 0712.20.40 Dried onion powder or flour
- 0712.90.60 Dried fennel, marjoram, parsley, savory and tarragon, crude or not manufactured
- 0712.90.65 Dried parsley nesoi, whole, cut, sliced, broken or in powder, but not further prepared
- 0712.90.70 Dried fennel, marjoram, savory and tarragon nesoi, whole, cut, sliced, broken or in powder, but not further prepared
- 1207.40.00 Sesame seeds, whether or not broken
- 1207.50.00 Mustard seeds, whether or not broken
- 1207.91.00 Poppy seeds, whether or not broken

Additionally, the August 20 list of proposed tariffs includes *ad valorem* tariffs on many additional spices imported from China imposed at a rate of 7.5%[6] beginning on February 14, 2020, including:[7]

- 0904.11.00 Pepper of the genus Piper, neither crushed nor ground
- 0904.12.00 Pepper of the genus Piper, crushed or ground
- 0904.21.20 Paprika, dried neither crushed nor ground
- 0904.21.40 Anaheim and ancho pepper, dried, neither crushed nor ground
- 0904.21.60 Fruits of the genus Capsicum, other than paprika or anaheim and ancho pepper,

[4] https://www.govinfo.gov/content/pkg/FR-2019-05-09/pdf/2019-09681.pdf
[5] https://www.govinfo.gov/content/pkg/FR-2019-08-20/pdf/2019-17865.pdf
[6] https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Modification-January_2020.pdf
[7] 84 Fed. Reg. 44304 at page 43347.

- dried, not crushed or ground
- 0904.21.80 Fruits of the genus Pimenta (including allspice), dried
- 0904.22.20 Paprika, crushed or ground
- 0904.22.40 Anaheim and ancho pepper, crushed or ground
- 0904.22.73 Mixtures of mashed or macerated hot red peppers and salt, nesoi
- 0904.22.76 Fruits of the genus capsicum, crushed or ground, nesoi
- 0904.22.80 Fruits of the genus Pimenta (including allspice), crushed or ground
- 0905.10.00 Vanilla beans, neither crushed nor ground
- 0905.20.00 Vanilla beans, crushed or ground
- 0906.11.00 Cinnamon (Cinnamomum zeylanicum Blume) neither crushed nor ground
- 0906.19.00 Cinnamon and cinnamon-tree flowers,nesoi, neither crushed nor ground
- 0906.20.00 Cinnamon and cinnamon-tree flowers, crushed or ground
- 0907.10.00 Cloves (whole fruit, cloves and stems), neither crushed nor ground
- 0907.20.00 Cloves (whole fruit, cloves and stems), crushed or ground
- 0908.11.00 Nutmeg, neither crushed nor ground
- 0908.12.00 Nutmeg, crushed or ground
- 0908.21.00 Mace, neither crushed nor ground
- 0908.22.20 Mace, crushed or ground, Bombay or wild
- 0908.22.40 Mace, crushed or ground, other than Bombay or wild mace
- 0908.31.00 Cardamoms, neither crushed nor ground
- 0908.32.00 Cardamoms, crushed or ground
- 0909.21.00 Seeds of coriander, neither crushed nor ground
- 0909.22.00 Seeds of coriander, crushed or ground
- 0909.31.00 Seeds of cumin, neither crushed nor ground
- 0909.32.00 Seeds of cumin, crushed or ground
- 0909.61.00 Seeds of anise, badian, caraway or fennel; juniper berries; neither crushed nor ground
- 0909.62.00 Seeds of anise, badian, caraway or fennel; juniper berries; crushed or ground
- 0910.11.00 Ginger, neither crushed nor ground
- 0910.12.00 Ginger, crushed or ground
- 0910.20.00 Saffron
- 0910.30.00 Turmeric (curcuma)
- 0910.91.00 Mixtures of spices
- 0910.99.05 Thyme; bay leaves, crude or not manufactured
- 0910.99.06 Thyme, other than crude or not manufactured
- 0910.99.07 Bay leaves, other than crude or not manufactured
- 0910.99.10 Curry
- 0910.99.20 Origanum, crude or not manufactured
- 0910.99.40 Origanum, other than crude or not manufactured
- 0910.99.50 Dill
- 0910.99.60 Spices, nesoi

Are the Section 301 tariffs on Chinese goods in addition to already existing tariffs?
Yes. As an example, 0712.20 onion powder already has a 29.8% duty when imported from China, to which the additional 25% duty would raise the rate to 54.8%.

What is the ASTA position on the 301 tariffs?
The ASTA Board of Directors initially discussed if ASTA should take a position on these tariffs in 2018 and chose not to take a position on this action because our membership includes both companies involved in U.S. production of garlic and onions as well as importers from China. Then, the Board of Directors re-visited this issue again after the release of “list 4”, which included a broad array of spices. At that time, the Board reaffirmed the previous decision that ASTA should not take a position on the tariffs due to their controversial nature amongst the membership, as well as concerns raised related to the low likelihood of success.

May 12, 2020

What about the recent Section 301 tariffs on European Goods?

There was a longstanding trade dispute between the U.S. and the EU regarding EU airplane subsidies to Airbus. In October 2019, the World Trade Organization (WTO) arbitration panel ruled in favor of the USA and awarded a $7.5 billion arbitration award. The USTR list [8] of Section 301 retaliatory tariffs for EU products exported into the U.S did not include spices, and while oleoresins appeared under tariff code 3301.90.10 on the original list, they were not on the final list of goods subject to tariff. However, in December 2019, the USTR issued another request for comment on the list of tariffs[9] and whether the USA should establish different tariffs under the arbitration award. The tariff is an *ad valorem* tariff of up to 100%. On February 21, 2020 the USTR released a modified list of tariffs [10] which did not include oleoresins.

Does the country of origin matter for a tariff?

That depends on many different circumstances. In some cases, yes, the country of origin does matter, depending on both the country of origin and the country of import and whether any processing steps occur in a location between the country of origin and the final country of import. It also depends on whether a tariff exists in the Harmonized Tariff Schedule for the country of origin or the country of export. The existence of a trade agreement, such as the North America Free Trade Agreement (NAFTA) or the U.S.-Mexico-Canada Agreement (USMCA) may also determine whether or not a tariff exists on a good, as may some other free trade, partnership agreement or a Tariff Rate Quota (TRQ). There may also be an intermediary country involved in the transaction, which may or may not modify the amounts of tariffs due on an imported product. The situation may become complicated, in which case it may be best to consult legal counsel.

What is "substantial transformation" for tariff purposes?

A substantial transformation, as defined by the United States International Trade Commission (ITC), is this legal principle to determine the origin of the item for purposes of recording trade data, assessing duties, marking or applying other measures. When an item does not come entirely from a single country or underwent a fundamental change as a result of something such as processing or manufacturing, then a new product is found to have resulted from the process[11] which may be subject to a different tariff code than the components of the product. One example is a mixed vegetable bag that was assembled in Country A but contained components from Countries B, C, D and E. Certain spices are exempt from marking under 19 USC §1034(g)[12] depending on their classification section of the HTS.

What other trade and tariff programs are there?

The U.S. has many different trade and tariff programs through the USTR and the International Trade Administration. The U.S. engages in free trade agreements with other countries, which reduce barriers to U.S. exports and protect U.S. interests.[13] Free trade agreements can be bilateral, between two parties, or multilateral, like the United States-Mexico-Canada Trade Agreement. The U.S. has free trade agreements in effect with 20 different countries as of 2019.

The U.S. Generalized System of Preferences (GSP) is a different type of trade program that is designed to promote economic growth in the developing world. GSP provides preferential duty-free treatment for over 3,500 products from a wide range of designated beneficiary countries. An additional 1,500 products

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[8] https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Determination_and_Action_Pursuant_to_Section_301-Large_Civil_Aircraft_Dispute.pdf

[9] https://www.femaflavor.org/system/files/2019-12/2019-26741.pdf

[10] https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Modification_of_Section_301_Action_Enforcement_of_U.S._WTO_Rights_in_Large_Civil_Aircraft_Dispute.pdf

[11] https://www.usitc.gov/elearning/hts/media/2017/SubstantialTransformation.pdf

[12] https://www.govinfo.gov/content/pkg/USCODE-2011-title19/pdf/USCODE-2011-title19-chap4-subtitleII-partI-sec1304.pdf

[13] https://www.trade.gov/fta/

are GSP-eligible only when imported from least developed countries. The GSP program was instituted on January 1, 1976 and authorized under the Trade Act of 1974 (19 USC 2461 *et seq*.). GSP eligible products, including spices, as of June 2018 are available on the USTR website.[14] Poppy seeds, several dried herbs including parsley and many dried vegetables are on the current GSP list. In addition to GSP, the USTR runs several other preference programs[15] to assist other countries in the developing world.

The list of GSP products and countries that can participate in the GSP program frequently changes. In March 2019, President Trump informed the USTR that he planned to end preferential trade treatment for India and Turkey through GSP.

On May 17, 2019 President Trump removed Turkey[16] as a beneficiary country under the GSP program. The President determined that Turkey was no longer a developing country and therefore not eligible to remain in the program. Turkey did not oppose the country's delisting.

On May 31, President Trump announced that India,[17] one of the largest recipients of GSP, would be withdrawn from the program. The withdrawal went into effect on June 5, despite a letter from Congress urging the President not to remove India from GSP and at least two offers from India to try to address the U.S. complaints that India provide equitable and reasonable access to its markets.

What is a "no trade/sanction" list?

The U.S. Department of Treasury Office of Foreign Assets Control (OFAC) administers and enforces economic sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.[18] The active sanction programs and countries subject to sanctions are available on the OFAC website.

What are the potential penalties for violating trade rules?

Enforcement of the customs, navigation and related laws has been an important function of the U. S. Customs Service since the foundation of the Federal government under the U.S. Constitution in 1789. Today, penalties are assessed on trade and tariff violations by the Customs and Border Patrol,[19] including under the Trade Facility and Trade Enforce Act of 2015.[20] The agency has full authority to assess penalties and liquidated damages claims and to seize merchandise for violations of Customs or other laws enforced by the Customs Service.[21]

[14] https://ustr.gov/sites/default/files/gsp/GSP%20eligible%20products%20for%20all%20BDC%20June%202018.pdf
[15] https://ustr.gov/issue-areas/preference-programs
[16] https://ustr.gov/sites/default/files/Proc_9887_Turkey_GSP_Termination.pdf
[17] https://ustr.gov/sites/default/files/Proclamation_9902.pdf
[18] https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx
[19] https://www.cbp.gov/trade/programs-administration/penalties
[20] https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa/definitions
[21] https://www.cbp.gov/trade/programs-administration/penalties

What can I do if I'm unsure about which tariff code to use to bring in a product into the United States?

There are different ways for individual companies to go about addressing what tariff code is appropriate for a particular product, as there may be several tariff codes that could apply. Any individual company can request a binding ruling from the U.S. Customs and Border Patrol (CBP), which is binding only on that member but which would provide guidance to others in a similar position. A company can also collaborate with CBP on an Informed Compliance Publication (ICP), which reflects CBP's interpretation for educational purposes. A company can also request a meeting with CBP's Office of International Trade (OIT), which also responds to allegations of commercial fraud and predatory trade practices. Additionally, there are legal firms that you can consult with who specialized in tariff related issues that can provide additional information for you.

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