

USTR issues amendments to granted exclusions to Lists 1 and 2 for Chinese-origin goods; grants new exclusions to List 3

EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

Executive summary

On 17 December 2019, the United States (US) Trade Representative (USTR) published three separate Federal Register Notices (FRNs) related to exclusions for goods subject to the punitive tariffs levied on Chinese origin goods.

The first two FRNs detail certain amendments to exclusions previously granted to Chinese-origin goods on List 1¹ and List 2,² which cover US\$34b³ and \$16b worth of Chinese-origin goods, respectively. The amendments correct technical and ministerial errors in original publications to prior FRNs granting the initial exclusions.

The third FRN announces specific new exclusions granted to Chinese-origin goods subject to punitive tariffs on List 3,⁴ which covers \$200b worth of Chinese-origin goods.⁵ The FRN includes exclusions for nine new 10-digit Harmonized Tariff Schedule of the US (HTSUS) subheadings and 35 new products based on product descriptions.

Detailed discussion

In August 2017, the USTR initiated an investigation into China's laws, policies or practices surrounding intellectual property rights, innovation, and technology developments under the authority of Section 301 of the *Trade Act of 1974*

(Section 301) to determine if they caused harm to the US economy and commerce. The investigation ultimately determined that Chinese laws, policies and practices around the aforementioned areas did cause harm to US commerce and were discriminatory against American companies. The USTR subsequently proposed 25% punitive duties on \$34b worth of Chinese-origin goods (List 1).⁶

The US ultimately imposed three additional rounds of tariff actions on Chinese-origin goods: 25% punitive tariffs on another \$16b and \$200b of Chinese-origin goods (List 2⁷ and List 3,⁸ respectively), as well as 15% punitive tariffs covering \$300b on two separate lists; List 4A effective 1 September 2019 and List 4B scheduled to have been imposed on 15 December. The latter tariffs have now been impacted by the Phase One Agreement reached on 13 December between the US and China, with List 4A anticipated to be reduced from 15% to 7.5% and List 4B tariffs of 15% being delayed indefinitely (See EY Global Tax Alert, [US and China reach Phase One Agreement on Trade](#), dated 16 December 2019).

Under its process for determining potential harm to US interests by these tariffs, the USTR provided the opportunity for US stakeholders to request the exclusion of specific products classified within an 8-digit HTSUS subheading covered by each of the four tranches by establishing exclusion request processes. In each, the requestor was asked to provide rationale for the request, specifically including:

- ▶ Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the US and/or third countries.
- ▶ Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other US interests.
- ▶ Whether the particular product is strategically important or related to “Made in China 2025” or other Chinese industrial programs.

Following the review of the exclusion request, the USTR issued a denial or a grant, at its discretion, based upon specified criteria and facts presented by the submitted request.

Amendments to exclusions granted

On 17 December 2019, the USTR published two FRNs that amended previous exclusions for Lists 1 and 2. The FRN applicable to List 1 products includes 14 amendments, while the FRN applicable to List 2 includes 9 amendments. In both FRNs, the USTR noted the amendments were occurring in order to correct technical and ministerial errors, as well as to conform to the USTR’s intent to grant certain exclusions requested.

The below chart highlights examples of amendments as they pertain to exclusions granted to Chinese-origin goods subject to punitive tariffs on List 1:

Original exclusion text	New exclusion text	Applicable HTSUS
Aluminum electrolytic capacitors each valued not over \$1.50	Aluminum electrolytic capacitors each valued at not over \$4	8532.22.0055
Metal-oxide transistors on a silicon-carbide substrate, with a dissipation rate of less than 1 W and an operating frequency of less than 100 MHz	Metal-oxide transistors on a silicon-carbide substrate, with a dissipation rate of 1 W or more	8541.29.0095
Digital tire pressure gauges, each valued not over \$2	Digital tire pressure gauges, each valued not over \$8.50	9026.20.4000

The below chart highlights examples of amendments as they pertain to exclusions granted to Chinese-origin goods subject to punitive tariffs on List 2:

Original exclusion text	New exclusion text	Applicable HTSUS
Sheets of polyvinyl chloride, measuring 2.44 mm or more but not exceeding 3.66 m in width, 3.05 or more but not exceeding 5.18 m in length and 0.5 cm in thickness imported	Sheets of polyvinyl chloride, measuring 2.44 m or more but not exceeding 3.66 m in width, 3.05 or more but not exceeding 5.18 m in length and 0.5 cm in thickness imported	3920.43.5000
DC motors, each of an output exceeding 25 W but not exceeding 2.0 kW	DC motors, each of an output exceeding 750 W but not over 1.8 kW	8501.32.2000
DC motors, each of an output not exceeding 25 W	Deleted	8501.32.2000

List 3 exclusions

Also on 17 December, the USTR announced new exclusions for products otherwise subject to Section 301 punitive tariffs on Chinese-origin goods, outlined below.

The FRN includes a new specific 8-digit HTS code, 9903.88.36, for reporting the products now covered by the latest exclusions. The exclusions cover nine 10-digit HTSUS subheadings and 35 products based on product descriptions. Some examples include:

- ▶ Mixed seasoning of Himalayan salt, tomato flake, lemon peel, basil, black pepper and sage imported under HTSUS 2103.90.8000
- ▶ Gates for confining children or pets, of steel not coated or plated with precious metals imported under HTSUS 7323.99.9040
- ▶ Certain handheld electronic calculators imported under HTSUS 8470.10.0040
- ▶ Wheel hubs of cast iron, for off-road vehicles imported under HTSUS 8708.99.5300
- ▶ Chairs, each with four legs, a frame of aluminum held together by elastic cord and textile seating material, for outdoor non-household use imported under HTSUS 9401.79.0015
- ▶ Electric household table lamps, with bases of wood, presented with shades, not more than 64 cm in height, each weighing not more than 3 kg imported under HTSUS 9405.20.8010

Total granted and denied exclusions for all four lists are further illustrated in the below table.

	Total requested	Pending	CBP Review	Granted	% Granted	Denied	% Denied
List 1	10,814	0	0	3,656	33.78%	7,158	66.22%
List 2	2,869	0	0	1,074	37.43%	1,795	62.57%
List 3	30,287	21,534	96	313	1.03%	8,344	27.55%
List 4	987	987	0	0	0%	0	0%
Total	100%	50.09%	.21%	5043	11%	17297	38%

Actions for businesses

Companies importing goods from China that have utilized and benefited from product exclusions are encouraged to review the FRNs where amendments have been issued regarding previously granted exclusions to understand any impact to products or potential refunds.

We also note considering recent exclusions granted, companies importing Chinese-origin goods which are granted exclusions should take action to seek refunds on any punitive duties previously paid. In determining applicability of the USTR Annex for HTS exclusions, companies should exercise due diligence in determining ability to support any post-importation reviews of eligibility through review of determining the accuracy of the tariff number of a given product and that all requirement criteria are met for making the exclusion claim.

Endnotes

1. See 84 FR 69016.
2. See 84 FR 69011.
3. Currency references in this alert are to the US\$.
4. List 3 covers \$200b worth of Chinese origin goods.
5. See 84 FR 69012.
6. See 83 FR 28710.
7. See 83 FR 40823.
8. See 84 FR 26930.

For additional information with respect to this Alert, please contact the following:

Ernst & Young LLP (United States), Global Trade

▶ Robert Smith, <i>Irvine</i>	robert.smith5@ey.com
▶ Michael Leightman, <i>Houston</i>	michael.leightman@ey.com
▶ Lynlee Brown, <i>San Diego</i>	lynlee.brown@ey.com
▶ Michael Heldebrand, <i>San Jose</i>	michael.heldebrand@ey.com
▶ Nathan Gollaher, <i>Chicago</i>	nathan.gollaher@ey.com
▶ Todd Smith, <i>Irvine</i>	todd.r.smith@ey.com
▶ Bill Methenitis, <i>Dallas</i>	william.methenitis@ey.com
▶ Armando Beteta, <i>Dallas</i>	armando.beteta@ey.com
▶ Bryan Schillinger, <i>Houston</i>	bryan.schillinger@ey.com
▶ Michelle F. Forte, <i>New York</i>	michelle.forte@ey.com
▶ Dennis Forhart, <i>Seattle</i>	dennis.forhart@ey.com
▶ Douglas M. Bell, <i>Washington, DC</i>	douglas.m.bell@ey.com
▶ Nesia Warner, <i>Austin</i>	nesia.warner@ey.com
▶ Jay Bezek, <i>Charlotte</i>	jay.bezek@ey.com
▶ Helen Xiao, <i>Chicago</i>	helen.xiao@ey.com
▶ Sharon Martin, <i>Chicago</i>	sharon.martin1@ey.com
▶ Scott Fife, <i>Chicago</i>	scott.fife@ey.com
▶ Javier Quijano, <i>Detroit</i>	javier.quijano@ey.com
▶ James Grogan, <i>Houston</i>	james.grogan@ey.com
▶ Nicholas Baker, <i>Houston</i>	nicholas.baker@ey.com
▶ Oleksii Manuilov, <i>New York</i>	oleksii.manuilov@ey.com
▶ Parag Agarwal, <i>New York</i>	parag.agarwal@ey.com
▶ James Lessard-Templin, <i>Portland</i>	james.lessardtemplin@ey.com
▶ Amy Papendorf, <i>San Francisco</i>	amy.papendorf@ey.com
▶ Robert Schadt, <i>Washington, DC</i>	robert.schadt@ey.com
▶ Sara Schoenfeld, <i>New York</i>	sara.schoenfeld@ey.com
▶ Alexa Reed, <i>Detroit</i>	alexa.reed@ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Indirect Tax

© 2019 EYGM Limited.

All Rights Reserved.

EYG no. 005868-19Gbl

1508-1600216 NY

ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com