

US grants additional tariff exclusion status to limited set of imports from China

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Executive summary

In a 21 March 2019 notice,¹ the United States Trade Representative (USTR) announced it was granting an exclusion to 87 additional Chinese origin products currently subject to a 25% punitive tariff as part of the 818 tariff lines covering US\$34 billion² worth of imports from China annually (US List 1).³ The announcement continues the agency's process of reviewing claims by companies that their imports are not available outside of China and that the tariffs otherwise harm United States (US) interests.

This is the second USTR action towards approving exemptions from the tariffs since late 2018.⁴ As of 22 March, the agency has received 10,837 requests. It has denied 49.02% of those requests, granted 9.27%, while the remainder are still under consideration. As of the same date, there continues to be no action taken relative to exclusions on the 279 tariff lines covering \$16b worth of imports from China annually (US List 2).⁵

Detailed discussion

On 22 March 2018, US President Trump executed a Presidential Memorandum directing the Administration to take a full range of action responding to China's acts, policies and practices involving unfair and harmful acquisition

of US technology.⁶ The USTR subsequently proposed, and US President Trump ordered, punitive duties of 25% to be imposed and collected on 818 tariff lines covering US\$34 billion worth of imports from China annually as of 6 July 2018 (US List 1).

The USTR's 20 March 2019 Federal Register Notice (FRN) reaffirms that product exclusion decisions will be made based on the criteria stated in the notices establishing the exclusion process. Specifically, the criteria requires applicants to provide the following detailed information for consideration of a determination to grant an exclusion: (1) availability of the product outside of China; (2) harm to US interests due to additional tariffs; (3) significance of the product to Chinese industrial policy; and (4) whether an exclusion would undermine the objective of the Section 301 investigation.

Product exclusions apply to any product that meets the description contained in the FRN Annex which are entered for consumption or withdrawn from warehouse on or after 12:01 EST on 6 July 2018 and are not limited to the particular requestor. Exclusions apply retroactively to when the tariffs were implemented, 6 July 2018, and extend for one year after publication of the exclusion notice.

The FRN notice added one 10-digit Harmonized Tariff Schedule (HTS) code to the list of products that would be excluded: 9903.88.06. This exemption covers 24 separate requests. In addition, the USTR approved 63 requests for separately identified products under 33 categories. These products include those imported under the following HTSUS:

- ▶ 8412.21.0045 which provides for "Other engines and motors and parts thereof, hydraulic power engines and motors, telescoping"
- ▶ 8430.31.0040 which provides for "Other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snowplows and snowblowers, coal or rock cutters and tunneling machinery: self-propelled, rock breaking machines"
- ▶ 8607.21.1000 which provides for "Parts of railway or tramway locomotives or rolling stock, Brakes and parts thereof: Air brakes and parts thereof: For vehicles of heading 8605 or 8606"

Other products described by their function include Impeller housing of cast iron imported under HTSUS 8413.91.9095, compressor housings designed for turbochargers imported

under HTSUS 8414.90.4165, machinery for water filters imported under HTSUS 8421.21.0000, and electric motors with a permanent split capacitor type imported under HTSUS 8501.10.4020, among others.⁷

Actions for businesses

There are continued actions to be taken by companies around 301 tariffs.

Trade negotiations between the US and China continue to remain uncertain despite both countries indicating that a deal could be close. The US has announced that US negotiators will be in Beijing the week of 25 March for the eighth formal round of meetings and China has announced that it will attend a round of meetings in Washington, DC the week of 1 April to continue discussions. While details of any agreement remain unavailable at this time, US President Donald Trump has indicated that the US negotiators are looking to leave tariffs in place "for a substantial period of time."

With the tariffs expected to remain in place, any company involved in US-China trade is encouraged to continue to identify the potential impact of additional duties and explore mitigation strategies. Close monitoring of the negotiations and any political developments is warranted, as companies will want to assess any liability under a changing tariff regime. Terms of any deal reached are likely to contain specific conditions that may impact certainty, and possibly duration, of outcome and will need to be closely analyzed once made available.

Immediate actions for such companies to consider include:

- ▶ Mapping their complete, end-to-end supply chain to fully understand the extent of products impacted, potential costs, alternative sourcing options, and to assess any opportunities to mitigate impact such as tariff engineering to address potential increases in 301 tariffs.
- ▶ Identifying strategies to defer, eliminate, or recover the excess duties paid under Section 301 such as bonded warehouses, Free Trade Zones, substitution drawback, Chapter 98, and equivalent programs under China customs regulations.
- ▶ Exploring strategies to minimize the customs value of imported products subject to the additional duties under either 301 tariffs, re-evaluating current transfer pricing approaches, and for US imports, considering US customs strategies, such as First Sale for Export.

Endnotes

1. https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Product_Exclusions_03.20.19.pdf.
2. Currency references in this Alert are to US\$.
3. 83 FR 28711.
4. See EY Global Tax Alert, *US grants limited exemptions from Section 301 duties and announces annual special review of Section 301; continued uncertainty ahead*, dated 2 January 2019.
5. [USTR Finalizes Second Tranche of Tariffs on Chinese Products in Response to Unfair Trade Practices](#), 7 August 2018.
6. <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-actions-united-states-related-section-301-investigation/>.
7. See https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Product_Exclusions_03.20.19.pdf for the complete list.

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