

## USTR publishes fourth round of exclusions for Chinese-origin products; issues initial denials for next set of product requests

---

### **NEW!** EY Tax News Update: Global Edition

EY's new 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

In a 9 May 2019 notice,<sup>1</sup> the United States Trade Representative (USTR) announced it was granting exclusions to an additional 35 Chinese-origin products meeting specific listed descriptions and for products covered by five 10-digit Harmonized Tariff of the United States (HTSUS) subheadings. The selected products are currently subject to a 25% punitive tariff as part of the 818 tariff lines covering US\$34 billion<sup>2</sup> worth of imports from China annually (US List 1).<sup>3</sup> This announcement mirrors the prior three exclusion announcements of 21 December 2018,<sup>4</sup> 21 March 2019<sup>5</sup> and 18 April 2019<sup>6</sup> in that it provides relief from the punitive tariffs for one year from the notice date as well as retroactive relief back to the date the tariffs were implemented (6 July 2018) for products meeting the listed descriptions.

With this fourth action, the percentage of granted exclusions to date has increased to 18.06% while denials have increased to 55.41% of the total requested exclusions (10,837 requests were filed under US List 1 which covered \$34b of imports from China). Additionally, the USTR released the first set of denials for List 2, covering \$16b of imported products from China. While no exclusions have yet to be granted, the USTR has now denied 956 requests, or approximately 33%. List 3, which covers \$200b of imports from China and which the USTR moved forward on 9 May 2019 with an increase of 15% to the

punitive tariff rate, now set to 25% for exports from China after 9 May, remains without a procedure for importers to request an exclusion. For details, see EY Global Tax Alert, [US announces increase of tariffs on List 3 goods imported from China](#), dated 8 May 2019.

The USTR has recently indicated that it will meet its obligation as established by recent Congressional action to provide an exclusion request process in the near future. Importantly, and unlike the five listed 10-digit HTSUS subheadings, while a tariff code is listed for each of the 35 product descriptions, the exclusion covers only products meeting the description provided, and is not eligible for all products classified under the listed tariff code. Instructions for obtaining refunds on previously imported products covered by the first three exclusion announcements can be found in three Cargo System Messaging Services announcements (CSMS).<sup>7</sup> These include filing Post Summary Corrections (PSC) or Protests if the entry has liquidated. Presumably, importers can expect a similar announcement for this fourth set of exclusions.

The notice also provides for the addition of the appropriate HTSUS classification number that importers should reference on future imports of the excluded products, specifically, HTSUS 9903.88.08.

## Detailed discussion

On 22 March 2018, United States (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.<sup>8</sup> The USTR subsequently proposed, and US President Trump ordered, punitive duties of 25% to be imposed and collected on 818 tariff lines covering \$34b worth of imports from China annually as of 6 July 2018 (US List 1).

The USTR's 9 May 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 require 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 products that meet 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 individual requestor. Exclusions apply retroactively to when the tariffs were implemented, 6 July 2018, and extend for one year after publication of the exclusion notice.

In addition to the HTSUS that is to be declared to reference the excluded products upon entry, 9903.88.08, the FRN notice added five 10-digit HTSUS codes to the list of products that would be excluded and 35 products meeting specific descriptions. This exemption covers roughly 515 separate requests, with the excluded 10-digit subheadings covering 86 separate requests, and the 35 specially prepared product descriptions covering approximately 429 separate requests. These descriptions are highly specific and while they include products that certainly straddle industry sectors, they appear to be predominately concentrated in heavy industrial tools and equipment with a few electronic products, very similar to the third exclusion list.

The full list of excluded products is:

The five 10-digit HTSUS	
(i)	8407.21.0040: Marine propulsion engines; Outboard motors less than 22.38kW
(ii)	8427.10.4000: Fork-lift trucks; other works trucks fitted with lifting or handling equipment: Self-propelled trucks powered by an electric motor: Rider-type, counterbalanced fork-lift trucks
(iii)	8473.40.1000: Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8470 to 8472: Parts and accessories of the machines of heading 8472: Printed circuit assemblies for automatic teller machines of subheading 8472.90.10
(iv)	8481.10.0090: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof: Pressure-reducing valves: Other
(v)	8483.50.9040: Flywheels and pulleys, including pulley blocks: Other: Grooved pulleys

The 35 product specific descriptions	
(i)	8421.21.0000: Apparatus, including pitchers, bottles, and units designed for incorporation into refrigerators, appliances or sink faucets, the foregoing fitted with filters for filtering or purifying water
(ii)	8421.21.0000: Filtering apparatus, fitted with pumps, designed for use in pools, spas or similar contained bodies of water
(iii)	8421.21.0000: Filtering or purifying machinery or apparatus of a kind used for waste water treatment
(iv)	8421.21.0000: Submersible machinery for filtering water, designed for use in pools, basins, aquariums, spas or similar contained bodies of water
(v)	8421.21.0000: Water distillation machinery and apparatus not covered by heading 8419
(vi)	8421.39.8015: Air purification equipment, electrically powered, weighing less than 36 kg
(vii)	8421.39.8015: Dust collection equipment for cement, minerals and mining industries
(viii)	8428.39.0000: Apron-type chain conveyor
(ix)	8428.39.0000: Roller conveyors
(x)	8428.39.0000: Vibrating conveyors
(xi)	8438.80.0000: Machinery for mixing beverages in single servings for direct human consumption, designed for use in commercial food service establishments
(xii)	8438.80.0000: Machinery for reconstituting single serving beverages for consumption from frozen pre-packaged portions, designed for use in commercial food service establishments
(xiii)	8481.90.9040: Armatures designed for use in hydraulic solenoid valves
(xiv)	8481.90.9040: C-poles, of steel, designed for use in hydraulic solenoid control valves
(xv)	8481.90.9040: Housings designed for hydraulic ball valves, of cast iron or steel, each measuring 5.7 cm by 3.2 cm and weighing 0.528 kg
(xvi)	8481.90.9040: Metering spools, of aluminum, designed for use in hydraulic solenoid control valves
(xvii)	8481.90.9040: Metering spools, of steel, designed for use in hydraulic solenoid control valves
(xviii)	8481.90.9040: Poles, of steel, designed for use in hydraulic solenoid control valves
(xix)	8481.90.9040: Push pins, of steel, designed for use in hydraulic solenoid control valves
(xx)	8481.90.9040: Retainers, of steel, designed for use in hydraulic solenoid control valves
(xxi)	8501.10.4060: DC electric motors, of an output of less than 18.65 W, valued over \$4, other than brushless

(xxii)	8501.52.8040: AC electric motors, multi-phase, of an output exceeding 14.92 kW but not exceeding 75 kW, other than for use in civil aircraft
(xxiii)	8505.90.7501: Coils, coil assemblies and other parts of electromagnets
(xxiv)	8526.92.5000: Radio remote control apparatus for garage doors
(xxv)	8526.92.5000: Radio remote control apparatus for pet collars and pet food dispensers
(xxvi)	8526.92.5000: Remote control devices, hand held and battery powered, designed for use with toy model vehicles and aircraft
(xxvii)	8529.90.8100: Bezels, covers and housings, the foregoing designed for motor vehicle cameras
(xxviii)	8536.49.0075: Electromechanical relays, for a voltage exceeding 60 V but not over 250 V, with contacts rated at 10 A or more
(xxix)	8536.50.9035: Push-button switches, rated at over 5 A, measuring no more than 2.9 cm by 2.9 cm by 2.9 cm, with 4 spade or brass terminals, with an actuator shaft with D-shaped cross section
(xxx)	8536.50.9035: Push-button switches, rated at over 5 A, measuring no more than 4.8 cm by 2.8 cm by 2.8 cm, with 2 spade or brass terminals
(xxxi)	8536.50.9035: Push-button switches, rated at over 5 A, measuring no more than 5 cm by 1.7 cm by 1.9 cm, with 2 spade or brass terminals, with an actuator shaft with D-shaped cross section
(xxxii)	8536.50.9040: Snap-action switches, each designed for installation in a wall-mounted enclosure or electrical box
(xxxiii)	9011.10.8000: Stereoscopic microscopes, not provided with a means for photographing the image, valued not over \$500 per unit
(xxxiv)	9011.90.0000: Adapter rings, tubes and extension sleeves, stands and arm assemblies, stages and gliding tables, eyeguards and focusing racks, all the foregoing designed for use with compound optical microscopes
(xxxv)	9018.20.0040: Ultraviolet or infrared LED light therapy devices for the professional treatment of pain or of ailments of the skin

## Actions for businesses

Companies who have paid punitive duties on these now excluded products should consider preparing a request for administrative refund by filing a PSC or by filing a protest if the entry has already liquidated. The descriptions of excluded products are highly specific. Consequently, it is imperative that importers carefully review their products against the published descriptions of the excluded products.

With the expiration date of the exclusions being one year from the date of the notice as a potential signal that these tariffs are here to stay for at least a year, and with more than half of the List 1 exclusion requests already denied to date, as well as the recent increase of List 3 tariffs from 10% to 25% effective as of 9 May 2019, companies should continue to consider the following activities to potentially mitigate impact:

- ▶ 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.
- ▶ Identifying strategies to defer, eliminate, or recover the excess duties such as bonded warehouses, Foreign 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, 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\\_05.09.19.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Product_Exclusions_05.09.19.pdf).
2. Currency references in this Alert are to US\$.
3. 83 FR 28711.
4. <https://ustr.gov/sites/default/files/enforcement/301Investigations/2018-28277.pdf>.
5. [https://ustr.gov/sites/default/files/enforcement/301Investigations/84\\_FR\\_11152.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/84_FR_11152.pdf).
6. <https://www.federalregister.gov/documents/2019/04/18/2019-07758/notice-of-product-exclusions-chinas-acts-policies-and-practices-related-to-technology-transfer>.
7. See CSMS#19-000155, CSMS#19-00052 and CSMS#19-000212.
8. <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-actions-united-states-related-section-301-investigation/>.

---

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

### Ernst & Young LLP (United States), Chicago

- ▶ Nathan Gollaher [nathan.gollaher@ey.com](mailto:nathan.gollaher@ey.com)
- ▶ Helen Xiao [helen.xiao@ey.com](mailto:helen.xiao@ey.com)

### Ernst & Young LLP (United States), Dallas

- ▶ Armando Beteta [armando.beteta@ey.com](mailto:armando.beteta@ey.com)
- ▶ Bill Methenitis [william.methenitis@ey.com](mailto:william.methenitis@ey.com)

### Ernst & Young LLP (United States), Houston

- ▶ Michael Leightman [michael.leightman@ey.com](mailto:michael.leightman@ey.com)
- ▶ Bryan Schillinger [bryan.schillinger@ey.com](mailto:bryan.schillinger@ey.com)

### Ernst & Young LLP (United States), Irvine

- ▶ Robert Smith [robert.smith5@ey.com](mailto:robert.smith5@ey.com)
- ▶ Todd Smith [todd.r.smith@ey.com](mailto:todd.r.smith@ey.com)

### Ernst & Young LLP (United States), New York

- ▶ Jeroen Scholten [jeroen.scholten1@ey.com](mailto:jeroen.scholten1@ey.com)

### Ernst & Young LLP (United States), Portland

- ▶ James Lessard-Templin [james.lessardtemplin@ey.com](mailto:james.lessardtemplin@ey.com)

### Ernst & Young LLP (United States), San Diego

- ▶ Lynlee Brown [lynlee.brown@ey.com](mailto:lynlee.brown@ey.com)

### Ernst & Young LLP (United States), San Jose

- ▶ Michael Heldebrand [michael.heldebrand@ey.com](mailto:michael.heldebrand@ey.com)

### Ernst & Young LLP (United States), Seattle

- ▶ Dennis Forhart [dennis.forhart@ey.com](mailto:dennis.forhart@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](http://ey.com).

Indirect Tax

© 2019 EYGM Limited.  
All Rights Reserved.

EYG no. 002314-19Gbl

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](http://ey.com)**