

Procedure for Section 301 Tariff Exemption Requests Released

JULY 11, 2018

The U.S. Trade Representative (USTR) has announced a process for applying for exclusion of products from the newly imposed 25% additional duty on certain items imported from China.

On July 6, 2018, in response to the USTR's findings regarding Chinese policies and practices related to technology transfer, intellectual property, and innovation, Customs began collecting an additional 25% duty on certain products imported from China, identified by tariff classification.¹ (See our [prior briefing](#) for more information.) The additional 25% duty is imposed on top of the duty that is already collected. For example, if a good of Chinese origin were currently subject to a 10% *ad valorem* rate of duty, the product would be subject to a 35% rate of duty after the additional duties were applied.²

Also on July 6, the USTR released information regarding the process for applying for product exclusion.³ Under this process, U.S. stakeholders may request that particular products classified within a covered tariff classification be excluded from the additional duties. All exclusion requests must be received by **October 9, 2018**.

Importantly, any exclusion granted by the USTR will be effective retroactively from the July 6, 2018 effective date of the additional duties, and extend for one year after the publication of the exclusion determination in the Federal Register.

As stated in the notice, any request for exclusion must include the following information:

- Identification of the particular product in terms of the physical characteristics (e.g., dimensions, material composition, or other characteristics) that distinguish it from five other products within the covered eight-digit subheading.
- The 10 digit subheading of the HTSUS most applicable to the particular product requested for exclusion.
- Requestors must provide the annual quantity and value of the Chinese-origin product that the requestor purchased in each of the last three years.
- Whether the particular product is available only from China. In addressing this factor, requestors should address specifically whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.

- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to “Made in China 2025” or other Chinese industrial programs.⁴

If you have any questions about the process for applying for an exclusion from the 25% tariffs, please contact one of the attorneys listed below or your usual Winston & Strawn contact.

¹ A list of the tariff lines upon which the additional duty is being imposed can be found here: <https://ustr.gov/sites/default/files/enforcement/301Investigations/List%201.pdf>.

The USTR is also considering imposing additional duties on a second set of tariff lines, which can be found here:

<https://ustr.gov/sites/default/files/enforcement/301Investigations/List%202.pdf>.

² 83 FR 14906, April 6, 2018, <https://www.federalregister.gov/documents/2018/04/06/2018-07119/notice-of-determination-and-request-for-public-comment-concerning-proposed-determination-of-action>.

³ USTR Releases Product Exclusion Process for Chinese Products Subject to Section 301 Tariffs, July 6, 2018, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/july/ustr-releases-product-exclusion>.

⁴ Procedures to Consider Requests for Exclusion of Particular Products from the Determination of Action Pursuant to Section 301: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, USTR-2018-0025, <https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-14820.pdf>

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