

## USTR publishes new exclusions for Chinese-origin products

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### Executive summary

In an 18 April 2019 notice,<sup>1</sup> the United States Trade Representative (USTR) announced it was granting an exclusion to an additional 21 Chinese-origin products meeting specific listed descriptions, increasing the percentage of granted exclusions to 10% while denials have increased to 49% of the total requested exclusions. 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 two exclusion announcements of 21 December 2018<sup>4</sup> and 21 March 2019<sup>5</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.

Importantly, while a tariff code is listed for each product description, 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 two exclusion announcements can be found in two Cargo System Messaging Services announcements (CSMS).<sup>6</sup> These include filing Post Summary Corrections (PSC) or Protests if the entry has liquidated. Presumably, importers can expect a similar announcement for this third set of exclusions.

The notice also provides for a typographical correction to U.S. note 20(i)(24) in the Harmonized Tariff of the United States (HTSUS) and includes the addition of the appropriate HTSUS classification number that importers should reference on future imports of the excluded products, specifically, HTSUS 9903.88.07.

## 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>7</sup> The USTR subsequently proposed, and US President Trump ordered, punitive duties of 25% to be imposed and collected on 818 tariff lines covering \$34 billion worth of imports from China annually as of 6 July 2018 (US List 1).

The USTR's 18 April 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 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 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 8-digit HTSUS code to the list of products that would be excluded: 9903.88.07. This exemption covers 348 separate requests for the approved 21 product descriptions. 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.

The full list of excluded products as they appear in the Annex to the FRN are:

- (i) 8413.19.0000: Pumps designed for countertop appliances for serving beer, the foregoing that control the level of carbonation by means of sonic waves
- (ii) 8420.10.9080: Roller machines designed for cutting, etching or embossing paper, foil or fabric, manually powered
- (iii) 8421.21.0000: Water oxidizers and chlorinators
- (iv) 8425.39.0100: Ratchet winches designed for use with textile fabric strapping
- (v) 8428.33.0000: Continuous action elevators and conveyors, designed to convey mineral materials
- (vi) 8431.20.0000: Counterweight castings of iron or steel designed for use on fork lift and other works trucks
- (vii) 8431.20.0000: Tines, carriages, and other goods handling apparatus and parts designed for use on fork lift and other works trucks
- (viii) 8466.93.9885: Parts of drill sharpening machines
- (ix) 8479.90.9496: Outer shells of hydraulic accumulators, of iron or non-alloy steel, cylindrical with hemispherical heads on each end
- (x) 8479.90.9496: Parts of mechanical awnings and shades
- (xi) 8479.90.9496: Reject doors, pin protectors, liners, front walls, grates, hammers, rotor and end disc caps, and anvil and breaker bars, of iron or steel, the foregoing parts of metal shredders
- (xii) 8479.90.9496: Steering wheels designed for watercraft, of stainless steel, having a wheel diameter exceeding 27 cm but not exceeding 78 cm
- (xiii) 8481.10.0090: Pressure regulators of brass or bronze, whether high or low inlet type, having a rated flow rate of 55,000 - 150,000 BTU/hr, maximum inlet pressure of 0.17 MPa to 1.72 MPa, inlet connection with POL or thread type of fitting
- (xiv) 8481.90.9040: Pipe brackets of aluminum, each with 4 ports, the foregoing measuring 27.9 cm x 20.3 cm x 17.8 cm and weighing 11.34 kg, designed for installation into air brake control valves
- (xv) 8481.90.9040: Push pins and C-poles of steel, designed for use in variable force solenoid valves
- (xvi) 8482.10.5032: Ball bearings of a width not exceeding 30 mm

- (xvii) 8504.90.9690: Inductor baseplates of aluminum, each with a length measuring 149.20 mm or more but not over 275 mm, with a width measuring 119.40 mm or more but not over 232 mm and with a depth of 10.50 mm or more but not over 19 mm, with a weight of 0.48 kg or more but not over 3.2 kg
- (xviii) 8515.90.4000: Parts of soldering irons and soldering machines
- (xix) 8536.50.9065: Motor vehicle gear shift switch assemblies, comprised of a plunger, connector and gear shift lever
- (xx) 8536.50.9065: Pressure switches designed for use in heat pumps and air-conditioning condensers having a rating of 1.90 megapascals or more but not over 4.55 megapascals
- (xxi) 9030.33.3800: Instruments for measuring or checking voltage or electrical connections; electrical circuit tracers

## Actions for Businesses

Companies who have paid punitive duties on these items now excluded should consider preparing a request for administrative refund by filing a PSC or by filing a protest

if 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 approximately half of the List 1 exclusion requests already denied to date, 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, 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, re-evaluating current transfer pricing approaches, and for US imports, considering US customs strategies, such as First Sale for Export.

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## Endnotes

1. <https://www.federalregister.gov/documents/2019/04/18/2019-07758/notice-of-product-exclusions-chinas-acts-policies-and-practices-related-to-technology-transfer>.
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. See CSMS#19-000155 and CSMS#19-00052.
7. <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-actions-united-states-related-section-301-investigation/>.

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