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U.S. Trade Representative Announces New Process for Product Exclusions from New Section 301 Tariffs on Chinese Imports

7.9.2018

In prior client alerts, we discussed the imposition of tariffs on various products from China of 25%, based on a finding by the President of violations of section 301 of the Trade Act of 1974 by China related to U.S. intellectual property rights (see client alerts June 21, 2018, June 15, 2018, and April 4, 2018).

The final list of 818 tariff items subject to the 25% tariffs recently imposed by President Trump on products imported from China was released on June 15, 2018, covering some \$34 billion in products. The President imposed the tariffs under Section 301 of the Trade Act of 1974 that took effect July 6, 2018. The administration previously indicated that a product exclusion process would be announced, presumably similar to the one the Department of Commerce has put in place for the steel and aluminum tariffs issued under section 232 of the Trade Expansion Act of 1962 earlier this year. The section 232 process which was administered by the Commerce Department has been roundly criticized for being burdensome and complex – after 3 months, only 100 or so of the over 20,000 applications have been fully processed, and almost half of that number were denied.

The new exclusion process, which is being administered by the Office of U.S. Trade Representative for products subject to section 301 is as follows:

- A request must be received by October 9, 2018.
- Interested parties can respond to an exclusion request within 14 days after it is posted by the U.S.T.R.
- Parties that submitted requests may file a reply to any response submitted within 7 days after the close of the 14th day response period.
- Requests must identify a specific product, and provide supporting data and the rationale for the requested

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CLIENT ALERTS

exclusion.

- U.S.T.R. will review each submission on a “case-by-case” basis taking into account “whether the exclusion would undermine the objective of the Section 301 investigation”
- If an exclusion is granted it will be retroactive to July 6, 2018, the effective date of the tariffs and will be in effect for one year.

Some specific criteria for each exclusion request are set out below:

*Separate requests must be made for each individual product.

*Identification of the particular product in terms of the physical characteristics (e.g., dimensions, material composition, or other characteristics) that distinguish it from other products within the covered 8-digit subheading. USTR will not consider requests that identify the product at issue in terms of the identity of the producer, importer, ultimate consumer, actual use or chief use, or trademarks or tradenames. USTR will not consider requests that identify the product using criteria that cannot be made available to the public. This is to allow opposing parties sufficient information to submit responses to the exclusion request.

* The 10 digit subheading of the HTSUS applicable to the particular product requested for exclusion. If a company is not the importer of record it should obtain this 10 digit number from the importer or customs broker.

* Requesters also may submit information on the ability of U.S. Customs and Border Protection to administer the exclusion.

*Requesters must provide the annual quantity and value of the Chinese-origin product that the requester purchased in each of the last three years. If precise annual quantity and value information is not available, please provide an estimate and explain the basis for the estimation.

With regard to the rationale for the requested exclusion, each request for exclusion should address the following factors:

* Whether the particular product is available only from China. In addressing this factor, requesters 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 requester or other U.S. interests.

* Whether the particular product is strategically important or related to “Made in China 2025” or other Chinese industrial programs.

*Requesters may also provide any other information or data that they consider relevant to an evaluation of the request.

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Any request that contains business confidential information must be accompanied by a public version. The public version will be posted on [regulations.gov](https://www.regulations.gov). This is a departure from the earlier Section 232 exclusion process on steel and aluminum products that did not allow the submission of confidential information. If confidential information is included, a non-confidential version must also be submitted.

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