

CLIENT ALERTS

United States Trade Representative Begins Issuing Product Exclusions for Section 301 Tariffs; Good News Whether or Not You Filed!

1.2.2019

If you have a product covered by the 25% Section 301 tariffs imposed on Chinese goods in July of 2018 (List 1), (see discussion in Butzel Long Client Alerts dated July 9, June 21, June 15, and April 4, 2018) the United States Trade Representative may have a belated holiday present for you. The newly published exclusions are available to any product that meets a description in the notice, whether or not you applied for a product exclusion in the fall of 2018. The exclusions granted by the USTR in its first announcement of decisions on exclusion requests under its section 301 investigation of China, (see 248 Fed Reg. 67463, December 28, 2018), will be good for 1 year from the date of publication of the notice (i.e., until 12/28/2019), and retroactive to July 6, 2018.

The product exclusions, which are laid out in an annex to the USTR's announcement in the Federal Register, cover seven 10-digit HTSUS subheadings (8412.21.0075, 8418.69.0120, 8480.71.8045, 8482.10.5044, 8482.10.5048, 8482.10.5052, and 8525.60.1010), and 24 specially prepared product descriptions (including items such as certain spark-ignition engines for marine propulsion, stainless steel stretchers, roller machines with dies for embossing paper, plastic salad spinners, water filtration apparatus, winches, elevators, belt conveyors, work stands, thermostats, stainless steel guards, stainless steel scrapers, and stainless steel suction boxes.

The USTR received over 10,000 Section 301 exclusion requests. It granted 984 individual exclusion requests and rejected approximately 1000. The remaining requests are still undergoing review. An index of all "List 1" exclusion requests and their status in the review process was also released by the USTR. The notice indicates that "The Trade Representative will continue to issue decisions on pending requests on a periodic basis", presumably on List 2 Exclusion Requests as well. Currently, there is no

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Exclusion Request process in place for products covered by List 3.

Section 301 product exclusions must be claimed using new HTSUS subheading 9903.88.05. The exclusions are available for any product that meets the specific product description, regardless of whether the importer filed an exclusion request. The USTR has instructed U.S. Customs and Border Protection to issue instructions on entry guidance and implementation. We are available to assist you in determining whether your products are covered by an exclusion and in claiming the exclusions both prospectively and retroactively.

Butzel Long attorneys have been assisting clients with both Section 301 and Section 232 (steel and aluminum) tariff exclusion requests. While the Section 301 Exclusion Request process is currently closed, we remind you that the steel and aluminum tariffs exclusion process remains in place. Unlike the Section 301 process, you must apply individually for a Section 232 exclusion (even if it has been granted to a purchase of the identical product).

If your product has not been excluded in this announcement or otherwise, there are a number of options still available. Butzel Long attorneys have arranged number visits on Capitol Hill to discuss pending exclusion requests and obtain a letter of support from members of Congress. Additionally, requests can be filed with Customs and Border Protection (CBP) to seek a ruling that your product falls into a tariff classification that is not covered by the new tariffs. If your product is subject to duties, protests can also be filed with CBP to preserve your rights to a refund if the Presidential actions are eventually overturned by the courts. Finally, some companies have considered moving processing operations from China to other countries, which, if compliant with customs, substantial transformation rules can result in a change in country of origin.

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