porterwright

INTERNATIONAL BUSINESS ALERT

APRIL 28, 2020

YUANYOU (SUNNY) YANG
412.235.1484
yyang@porterwright.com

Further tariff exemptions for medical products of Chinese origin announced in response to COVID-19 and additional U.S.-China trade considerations

As the United States and China work on implementing Phase I of the Trade Deal entered into in January 2020, the United States Trade Representative (USTR) continues to evaluate Section 301 product exclusion requests that they have received, and, in some instances, has decided to grant them. In a recent Notice, the USTR announced the standards it considers in evaluating whether to grant or deny a Section 301 exclusion request for products of Chinese origin. Those considerations include:

- Whether the particular product is available only from China and whether that 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; and
- Whether the particular product is strategically important or related to "Made in China 2025" or other Chinese industrial programs.

USTR also recently announced that it has prioritized tariff exclusions for medical-care products needed to address the COVID-19 outbreak in consultation with the Department of Health and Human Services (HHS), with a focus on personal protective equipment products and other medical-care related products. Consistent with this announcement, the USTR recently issued further announcements excluding certain medical products of Chinese origin from Section 301 tariffs to align the U.S. trade policy with the domestic medical needs during the COVID-19 public emergency.

Information about COVID-19 and its impact on local, state and federal levels is changing rapidly. This article may not reflect updates to news, executive orders, legislation and regulations made after its publication date. Visit our COVID-19 resource page to find the most current information.

Additional tariff exemptions available for medical products of Chinese origin

First, the USTR has granted additional Section 301 exclusions for certain medical products of Chinese origin. These newly added product exclusions apply to 19 additional HTSUS numbers and relate to a wide range of medical products such as certain bowls of molded plastics (3926.90.9990), certain cold packs (6307.90.9889) and certain protective articles (9004.90.0000). The full list of excluded products under the Notice can be found on the Annex of the Notice. This exclusion is effective immediately until September 1, 2020.

The new product exclusions are available for any product listed in the Annex, regardless of whether a company filed for an exclusion request. Similar to the previously announced Section 301 product exclusions, the March 17 product exclusions are retroactive in nature and entities can seek refunds of the Section 301 tariffs that they have paid on the excluded products dating back to September 1, 2019 by filing a Post Summary Correction within the permitted time frame.

In addition, the USTR has announced that it will accept new Section 301 exclusion requests relating to other products that can be used in the battle against COVID-19 during the public emergency. Those products could include any end-use products or items used in the production of certain medical-care products. According to the USTR, such exclusion requests can be filed for any product that can be used to address the COVID-19 pandemic that has not yet been granted by the USTR, including products with previously denied or currently pending exclusion requests, as well as for products for which requests have not been filed. Businesses are further invited to submit public comments on possible further medical modifications to the tariffs list.

Requests for exclusion should identify the particular product of concern in terms of the physical characteristics that distinguish the product from other products, its applicable 10-digit subheading of HTSUS number, and further should explain how the product can be used to respond to the COVID-19 outbreak. For example, the comment may address whether a product is directly used to treat COVID-19 or to limit the outbreak, and/or whether the product is used in the production of needed medical-care products. Exclusion requests can be submitted through the online portal regulations.gov by searching the docket number USTR–2020–0014, but the deadline to request such exclusion ends on June 25, 2020, unless extended by the USTR. Additional information on how to file comments can be found here. Decisions will be made on a rolling basis. Any responses to exclusion requests should be submitted within three business days after a request is posted.

For more information please contact Yuanyou Yang or any member of Porter Wright's International Business & Trade Practice Group.