

# INTERNATIONAL BUSINESS ALERT

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## USTR accepting comments on whether to continue section 301 exclusions for products of Chinese origin

On April 30, 2020, the Office of the U.S. Trade Representative (USTR) published two notices, seeking public comments on whether to continue certain Section 301 exclusions for \$50 billion worth of products of Chinese origin that it granted in July 2019.<sup>1</sup> [1] If the USTR determines not to continue the exclusions, each product will become subject to Section 301 duties at a rate of 25% after the current exclusions expire in July 2020. Under the two notices, comments must be submitted to the USTR for consideration by June 1, 2020.

### Background and original section 301 exclusion

On July 9, 2019, the USTR granted a [Notice of Product Exclusions](#), granting Section 301 exclusion for certain products of Chinese origin. The covered products under this notice were listed in the [Annex](#), which covers 110 specially-described products identified under numerous 10-digit statistical reporting numbers of the Harmonized Tariff Schedules of the United States (HTSUS), including heat exchangers; water tanks for certain boilers; certain compression-ignition engines; aircraft gas turbine compressor cases of steel and Inconel alloy; numerous types of power and water pumps and related parts and assemblies; certain compressors;

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<sup>1</sup> Request for Comments Concerning the Extension of Particular Exclusions Granted Under the July 2019 Product Exclusion Notice From the \$34 Billion Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation can be found at <https://www.federalregister.gov/documents/2020/04/30/2020-09237/request-for-comments-concerning-the-extension-of-particular-exclusions-granted-under-the-july-2019>, and Request for Comments Concerning the Extension of Particular Exclusions Granted Under the July 2019 Product Exclusion Notice from the \$16 Billion Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation can be found at <https://www.federalregister.gov/documents/2020/04/30/2020-09235/request-for-comments-concerning-the-extension-of-particular-exclusions-granted-under-the-july-2019>.

propane-powered forklift trucks; certain shovel loaders; parts of passenger or freight elevators; certain counterweights for industrial equipment; certain parts and assemblies for seeders or spreaders; certain check or pressure-reducing valves; certain electric AC/DC motors; furnace casings and structural components for industrial furnaces; certain capacitors; and certain contactors and rotary switches. Those Section 301 exclusions are scheduled to expire on July 9, 2020.

On July 31, 2019, the USTR issued another [Notice of Product Exclusions](#) which granted additional Section 301 exclusions for products of Chinese origin. The covered products under this notice were listed in the [Annex](#), which covers 69 specially-described products that are identified under numerous 10-digit statistical reporting numbers in the HTSUS, including but not limited to: various polyethylene film; certain polyvinyl chloride film; certain spark-ignition rotary motors; certain gasoline or liquid propane engines; certain spark-ignition internal combustion engines; certain bearing housings; certain antenna amplifiers; certain thermometers; and certain fingertip pulse oximeters. Those Section 301 exclusions are scheduled to expire on July 31, 2020.

### **USTR considering possible extensions**

As the above discussed Section 301 exclusions are set to expire in July 2020, the USTR has decided to consider a possible extension for up to 12 months and are inviting the public to submit comments on whether particular products should continue to receive such Section 301 exclusions. In determining whether a particular product would continue to receive Section 301 exclusion, the USTR will consider the following factors:

- Whether the particular product and/or a comparable product is available from sources in the U.S. and/or in third countries;
- Any changes in the global supply chain since August 2018 with respect to the particular product or any other relevant industry developments;
- The efforts, if any, the importers or U.S. purchasers have undertaken since August 2018 to source the product from the United States or third countries;
- Whether the product covered by the exclusion is subject to an anti-dumping or countervailing duty order issued by the U.S. Department of Commerce; and
- Whether the imposition of additional duties on the products covered by the exclusion will result in severe economic harm to the commentator or other U.S. interests.

### **Take away**

With the extremely short comment period, importers and purchasers of a Chinese product should immediately submit their comments to the USTR to avoid possible supply chain interruptions should the Section 301 exclusion not be continued. The importers and purchasers should be prepared to discuss the five factors listed above under their own



## INTERNATIONAL BUSINESS ALERT

circumstances. In particular, importers and purchasers should identify the quantity and value of the products they imported in 2018 and 2019, whether such products were sold as a final product or as an input, whether their Chinese suppliers have lowered prices for the product following the imposition of the Section 301 duties on the product in 2018, and whether or not the purchases can be made from the U.S. or any other countries. Comments must be submitted via the USTR [web portal](#) by June 1, 2020.

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