

INTERNATIONAL BUSINESS ALERT

JUNE 1, 2020

YUANYOU (SUNNY) YANG

412.235.1484

yyang@porterwright.com

Additional Section 301 tariffs exemption granted to products of Chinese origin

Following the Section 301 tariffs exemption granted to certain medical and sanitary products as part of the effort to fight COVID-19 discussed in this previous [Porter Wright Law Alert](#), the U.S. Trade Representative (USTR) announced in its [Notice](#) on May 8, 2020, that it will exempt a wide range of products of Chinese origin from Section 301 tariffs, retroactively from Sept. 24, 2018 to Aug. 7, 2020.

Background

Effective Sept. 24, 2018, [the USTR imposed additional 10% ad valorem duties](#) on goods of Chinese origin classified in 5,757 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) with an approximate annual trade value of \$200 billion, as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. In May 2019, [the USTR increased the additional duty](#) to 25% ad valorem.

As trade negotiations between the U.S. and China progressed, [the USTR initiated a product exclusion process](#) on June 24, 2019, under which stakeholders could submit a request for exclusion of particular products classified within an 8-digit HTSUS subheading covered by the \$200 billion action from the additional duties. According to the June 24, 2019 notice, the USTR will consider the following factors in deciding whether to grant a request for exclusion:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable

This law alert is intended to provide general information for clients or interested individuals and should not be relied upon as legal advice. It does not necessarily reflect the views of the firm as to any particular matter or those of its clients. Please consult an attorney for specific advice regarding your particular situation.

Please see our other publications at www.porterwright.com/media.

product is available from sources in the United States and/or 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;
- Whether the particular product is strategically important or related to “Made in China 2025” or other Chinese industrial programs; and
- Whether an exclusion would undermine the objective of the Section 301 investigation.

All requests for exclusions under the June 24, 2019 notice were submitted by Sept. 30, 2019. Following the submission of requests for exclusion, the USTR announced its decisions periodically, with an initial set of exclusion requests granted in Aug. 2019 and additional requests granted throughout September 2019 to present. (See 84 FR 49591, 84 FR 57803, 84 FR 61674, 84 FR 65882, 84 FR 69012, 85 FR 549, 85 FR 6674, 85 FR 9921, 85 FR 15015, 85 FR 17158, and 85 FR 23122.)

Additional exemption granted under the May 8 Notice

The May 8, 2020 notice granted additional exclusion requests, as specified in the Annex to the Notice. Those exclusions are reflected in two 10-digit HTSUS subheadings (6902.20.5020 [certain refractory blocks, tiles and similar refractory ceramic constructional goods] and HTSUS 4819.50.4060 [certain packing containers, including record sleeves]) and 144 specially prepared product descriptions. Some examples of the 144 specifically prepared product descriptions include:

- Certain catalysts (HTSUS 3815.19.00.00);
- certain vibration control goods (HTSUS 4016.99.55.00);
- certain backpacks (HTSUS 4202.92.31.20);
- certain laminated flooring (HTSUS 4412.10.90.00);
- certain sinks and sink pedestals of natural granite for bathroom and kitchen use (HTSUS 6802.93.00.90);
- certain rear view mirrors for specific types of vehicles (HTSUS 7009.10.00.00);
- microscope slides (HTSUS 7017.90.10.00);
- certain laboratory glassware (HTSUS 7017.90.50.00);
- certain machine tool castings (8466.93.1560);
- certain reversing valves (HTSUS 8481.80.90.05); and
- certain other valves covered by HTSUS 8481.80.90.15.

The exclusions are available for any product that meets the description in the Annex, regardless of whether the importer benefiting from the exclusion filed an exclusion request or not.

We anticipate the USTR may consider extending the exclusion period beyond Aug. 7, 2020 and may publish notices requesting public comments

on whether to further extend the exclusion beyond Aug. 7, 2020. Stakeholders should carefully monitor any USTR notices and file comments accordingly.

How to request refund of tariffs paid

Importers must file a Post Summary Correction via the Automated Commercial Environment to the U.S. Customs and Border Protection (CBP) to request a refund of the tariffs paid. While not specific to the May 8 notice, the CBP has previously explained in [CSMS #41878462 - GUIDANCE: Section 301 China – Additional Product Exclusions and Amendments to Previous Exclusion Rounds on Certain Products Covered under Tranche 1 - \\$34B –Action](#) that “[t]o request a refund of Section 301 duties paid on previous imports of products granted duty exclusions by the USTR, importers may file a Post Summary Correction (PSC) if within the PSC filing timeframe. If the entry is beyond the PSC filing timeframe, but within 180 days of the liquidation action, importers may protest the liquidation.” Thus, it is very important for companies to carefully evaluate their past imports to identify any products that fall under the exemption list and to accordingly file their PSC request within the allowed timeframe. Stakeholders should also carefully monitor CBP notices for additional instructions on entry guidance and refund procedures for additional duties that were imposed on products that are now subject to product exclusion.

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