

INTERNATIONAL BUSINESS ALERT

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YUANYOU (SUNNY) YANG

412.235.1484

yyang@porterwright.com

Additional List 1 and List 4A Section 301 tariff exclusions for products of Chinese origin granted by the USTR

As trade negotiations between the U.S. and China progressed in 2019 and 2020, the Office of the U.S. Trade Representative (USTR) has initiated multiple product exclusion processes for products of Chinese origin otherwise governed by its numerous notices, under which stakeholders could submit a request for exclusion of particular products from China from the Section 301 tariffs. The USTR, in its ongoing review of requests already submitted, has recently granted numerous exclusion requests which would entitle importers of products of Chinese origin to Section 301 tariff exemptions and refund of tariffs that importers already paid.

List 1 Section 301 tariff exclusion extension granted

In addition to the tariff exemptions granted, discussed in more detail in the previous alerts [here](#), [here](#) and [here](#), the USTR issued the [Notice of Product Exclusion Extensions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation](#) on June 2, 2020, extending the timetable for seeking certain Section 301 tariff exclusions for products of Chinese origin on List 1 through December 31, 2020.

To explain the background, List 1 refers to the \$34 billion trade action first initiated by the USTR on June 20, 2018. On that date, the USTR imposed Section 301 tariffs on goods of China with an annual trade value of approximately \$34 billion (List 1) 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, effective July 6, 2018. The USTR initiated an exclusion process in July 2018 and to date, has granted 10 sets of exclusions from the \$34 billion action. The fifth set of exclusions was published in June 2019 and expired in June 2020. On March 20, 2020,

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the USTR published a [notice](#) under which a process was established for public to file comments on whether to extend particular exclusions granted in June 2019 for up to 12 months. This June 2 Notice is the decision in response to the March 20, 2020 Notice.

Products which continue to be eligible for a Section 301 tariff exemption under this June 2 Notice include certain oil well and field long-stroke and beam pumps (8413.50.0010), certain centrifugal pumps (8413.70.2004) and certain submersible pumps incorporating a magnetic drive motor (8413.70.2004). The full list of product exclusions that were granted extensions can be found in the [Annex](#) to the June 2 notice.

Additionally, on July 9, 2020, the USTR published the [Notice of Product Exclusion Extensions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation](#), granting additional extensions for Section 301 tariff exclusions on 12 products. Those products include certain pump casings and bodies (8413.91.9095), certain structural components for industrial furnaces (8514.90.8000), certain aluminum electrolytic capacitors (8532.22.0085) and others. (See 85 Fed. Reg. 41267.) The full list of product exclusions that were granted extensions can be found in the [Annex](#) to the July 7 Notice. However, it is worth noting that while some product exclusions were granted, a number of extension requests were denied.

List 4A Section 301 tariff exclusions granted

On June 12, 2020, the USTR issued the [Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation](#) (June 12 Notice), this time granting additional Section 301 tariff exclusion for numerous products of Chinese origin on List 4A.

List 4 refers to the \$300 billion trade action first initiated by the USTR on September 1, 2019 with 15% tariffs rate. When the Phase One Trade Agreement with China was first announced on December 13, 2019, the USTR lowered tariffs to 7.5% on approximately \$120 billion of Chinese goods (i.e. List 4a), and further suspended the tariffs on \$160 billion of Chinese goods (i.e., List 4B).

Under the June 12 Notice, the USTR inserted a new heading 9903.88.49 in numerical sequence in subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS). Products eligible for tariff exemptions under the June 12 Notice include a variety of products, such as printed books (4901.99.0093), certain cotton sheeting (5210.11.4040 and 5210.11.6020), cotton gloves (6116.10.4400, 6116.10.5520, 6116.10.6500, 6116.93.8800, 6216.00.1720), certain pillows and comforters (6307.90.9889), certain lithium-ion batteries (8507.60.0020), certain LCD modules (9013.80.9000), and certain child safety seats (9401.90.1085). The scope of each exclusion is governed by the specified product description and not the descriptions found in any particular request.

Those exclusions are retroactive from Sept. 1, 2019 (when the tariffs originally were applied) and will remain in place until Sept. 1, 2020.

Take away

The exclusions are not company-specific in nature. In addition to the companies that filed the granted exclusion requests, any company that imports any products covered by the terms of the product exclusions can seek a refund of those duties from U.S. Customs and Border Protection (CBP) by filing a Post Summary Correction with the CBP. Pursuant to [CSMS #41878462 - GUIDANCE: Section 301 China – Additional Product Exclusions and Amendments to Previous Exclusion Rounds on Certain Products Covered under Tranche 1 - \\$34B –Action](#), “[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 that companies 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.

Additionally, the USTR likely will publish further notices in the Federal Register in the near future seeking comments on whether to extend the product exclusions previously announced. With the increasing amount of products being denied the continuation of product exclusion, companies should be aware of the need to specifically submit comments requesting for tariff exclusion for certain products, as continuance of product exclusion will likely be denied if no comments were submitted specifically requesting such exclusion. Companies should additionally draft their requests carefully, and be ready to explain the reason in detail in submitting such comments in order for the continuance request to be granted.

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