

PUBLICATION

China Publishing Tariffs Exclusion Process for U.S.-Origin Goods and Products: What U.S. Exporters Should Know

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In response to the Trump Administration's recent decision to increase tariffs on approximately \$200 billion of Chinese imports, the Chinese government retaliated by increasing the tariff rates on more than 5,000 U.S. products imported to China totaling approximately \$60 billion beginning June 1. Due to the importance of many U.S. products to Chinese companies and the potential adverse effect of the tariffs to the overall Chinese economy, the Customs Tariff Commission of the State Council of China (the Commission) announced a new program whereby affected entities are eligible to apply for certain U.S. imports to be excluded from the increased tariffs for a limited time period. The exclusion process, a first for China, became available on June 3.

1. Who May Apply for the Exclusion

According to the three-page Explanation Regarding Tariffs Exclusion Process For U.S. Goods And Products (the Explanation) published by the Commission, domestic Chinese importers, manufacturers or users of the affected products, and trade associations or chambers representing such companies and other entities that have an interest in the affected products, including foreign invested entities registered in China, such as WFOEs and Sino-Foreign joint ventures, are eligible to apply for the exclusions. The Commission is encouraging companies to have their relevant trade association or chamber file exclusion requests on their behalf.

2. U.S.-Origin Products Eligible for Tariff Exclusion and Timeline

U.S.-origin products included in China's Batch 1 (both list 1 and list 2) and Batch 2 retaliatory tariffs are eligible for the new exclusion process. Products include certain food and beverage goods, mineral products, chemical industry and related industrial products, textile raw materials, steel and steel products, machines, mechanical products, electrical equipment and components, vehicles, aircrafts, ships and related transport equipment. However, imported products whose tariffs have been lifted or are suspended, including automobiles and automobile parts, are not included within the scope of the exclusion process.

Companies seeking to avail themselves of the exclusion process must submit exclusion requests for Batch 1 products beginning June 3, 2019 through July 5, 2019, and products identified on the Batch 2 list beginning September 2, 2019 through October 18, 2019.

3. Basis for Exclusion

Companies seeking an exclusion must submit applications online at <https://gszx.mof.gov.cn>. The applications should include certain basic information about the goods for which the exclusion is sought, including import history and data for three years, detailed impact on the entities being affected, and specific grounds for requesting the exclusion, including 1) any difficulties in finding substitute products in alternative markets; 2) any serious financial and economic damages to the applicant caused by the tariffs; and 3) an analysis of any significant impact on industrial development, technological progress, employment and environmental protection, and an analysis of any major social consequences of the tariffs.

Applicants seeking an exclusion for goods with different HTS (harmonized tariff schedule) codes must submit a separate application for each product.

The Tariff Commission of the State Council will review applications on a case-by-case basis, together with the results of any internal investigation, research, consultation with relevant experts, associations and departments. No public hearing with interested parties will be held.

Applications for tariff refunds should be submitted to the Chinese customs authorities within six months from the date of publication of the exclusion list (May 13, 2019).

Recommendations and Key Takeaways for Those Who Export Goods to China:

- Consider whether it is possible to change the HTS subheading of your product(s) by breaking it apart or combining components that provide an opportunity to assign a different, non-tariffed HTS subheading.
- Although the Explanation lacks specifics and the ultimate decision regarding an application will be somewhat subjective and very likely influenced by political considerations, for those companies selling goods to China, it is recommended that companies consider filing an exclusion application and that they retain a legal professional with China experience to help assess the merits and strength of an exclusion request.
- If you decide to submit a tariff exclusion application, consider whether it makes sense to submit the request under the name of an industry association or chamber of commerce, or to submit the application separately under your company's name. Because many industry associations and chambers of commerce are connected to the government, consider whether the interests of these organizations align with your own company interests. Also, if you file through an industry association or chamber of commerce, consider the risk that you may provide your competitors with an opportunity to see sensitive company information, like trade secrets and other confidential trade data.
- For those foreign companies that do not have a China presence, they should consider reaching out to downstream Chinese parties involved in the supply chain in order to encourage and to assist these parties in filing their own applications seeking an exclusion from the tariffs.