

A Guide to China's Exclusion Procedure for Additional Tariffs on the Import of U.S. Goods

by Ray Liu Esq. and Helen Jiang

As the countermeasure tariffs imposed on the U.S. - and China-origin imports between the two countries continue, Chinese authorities for the first time have established an exclusion procedure for Chinese imports of U.S.-origin goods (the "Procedure"). On May 13, 2019, the Customs Tariff Commission of the State Council announced the Procedure in a notice. The Procedure provides a relatively narrow window of time for affected entities to apply for their goods to be excluded from countermeasure tariffs on a case-by-case basis.

The Procedure is unquestionably a lifeline for companies in the protracted U.S.- China trade war (for background, please see our earlier updates [here](#) and [here](#)). It potentially protects companies that lack viable non-U.S. substitutes for their products, and domestic industries that may be significantly damaged by the increased tariffs. It also may spare Chinese customers and producers from increased costs.

Goods that are successfully excluded under the Procedure will not be levied with countermeasure tariffs for one year beginning from the implementation date of the Procedure. Furthermore, importing entities whose goods bear the 8-digit tariff HS code that fall within the scope of exclusion can also apply for tariff refund for the countermeasure tariffs already imposed.

According to the three-page bare-bones implementation measure issued by the Customs Tariff Commission of the State Council of China (the "Tariff Commission") on May 13, 2019, not only domestic Chinese importers, manufacturers or companies that use the goods, but all entities that have an interest in the affected products – including foreign invested entities registered in China – are eligible to apply for exclusions. Such entities can be companies, industrial associations or chambers of commerce. It is encouraged that industrial associations or chambers of commerce apply on behalf of their members to avoid duplicative applications.

In light of the benefits and short window for application, affected entities in China should

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therefore take full advantage of this opportunity to mitigate the adverse impact felt from the protracted trade war.

Scope of Exclusion

Two batches of U.S.-origin imports are eligible to apply for exclusions:

- First batch:
 - List of goods subject to countermeasure tariffs per the Notice on Imposing Tariffs to Imports of U.S. \$50 Billion U.S.-Origin Imports (Tariff Commission Bulletin [2018] No.5), effective from July 6, 2018
 - List of goods subject to countermeasure tariffs per the Notice on Imposing Tariffs to Imports of U.S. \$16 Billion U.S.-Origin Imports (Tariff Commission Bulletin [2018] No.7), effective from August 23, 2018
- Second batch: goods listed in Annex 1 to 4 of the Notice on Increasing Tariff Rate for Certain U.S.-Origin Imports (Second Batch) (Tariff Commission Bulletin [2018] No.6)

However, imports whose tariffs are lifted or suspended do not fall within this scope, such as automobiles and parts of automobiles. (Tariff Commission Bulletin [2018] No.10 and No.11, issued in December 2018 and March 2019 respectively, have suspended the tariffs levied on automobiles and parts.)

Grounds for Exclusion

The Procedure requires on-line submission of information explaining the grounds for the application, and addressing the following three issues:

- Difficulties in obtaining substitutes for the U.S.-origin imports
- Severe economic damage to the applicant incurred by the increased tariffs, and
- Analysis of the major structural repercussions on the relevant industry (including the impact on industry-wide development, technological progress, environmental protection, among others), or analysis of major social consequences of the tariffs.

Applications should include facts substantiated with evidence and quantitative data.

Time and Method of Application

An applicant (entity, industry association or chamber of commerce) should submit the application through the website of the Tariff Policy Research Center of the Ministry of Finance (<http://gszx.mof.gov.cn>). Goods with different tariff HS codes should be filed via separate applications. The applicant should register as a user in the system and submit basic information about the goods for which the exclusion is sought, import history and data for three years, detailed impact on the entities being affected, and specific grounds for exclusion.

Applications can be submitted from June 2, 2019 to July 5, 2019 for goods listed in the first batch. For goods belonging to the second batch, the application period is from September 2, 2019 to October 18, 2019. The Tariff Commission of the State Council will

review applications on a case-by-case basis, together with internal investigation, research, consultation with relevant experts, associations and departments. No public hearing with interested parties will be held. The exclusion list will be published in due course.

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).

Dorsey & Whitney can assist companies in the United States, China or any third country who would be adversely impacted by the imposition of the proposed American or Chinese tariffs on their products. For the exclusion process, Dorsey's attorneys are able to assist companies to select goods for exclusion, prepare applications for exclusion, and advise on grounds of exclusion, among other topics.