

Trade Compliance Flash: Product Exclusion Process Offers Relief from Additional 25 Percent Tariff on Chinese Imports

International Alert

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On July 6, 2018, the United States implemented a 25 percent *ad valorem* tariff on products from China classified in 818 subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), covering a trade value of approximately \$34 billion. The subject tariff lines, set out in Annex A of the Federal Register notice published at [83 FR 28710](#) on June 20, 2018, were identified by the Office of the U.S. Trade Representative (USTR) as benefitting from China's industrial policies, including the "Made in China 2025" program. The 25 percent tariff is in addition to all other applicable import duties and fees, including antidumping and countervailing duties.

In conjunction with the imposition of the tariff, the USTR [announced](#) that it is establishing a product exclusion process whereby companies and trade associations can request product-specific relief from the new tariff. The USTR's announcement provided a [link to the text](#) of a Federal Register notice that explains the exclusion process and establishes what elements an exclusion request should contain.

Requests for exclusions must include the following information:

Identification of the particular product in terms of the physical characteristics (*e.g.*, dimensions, material composition, or other characteristics) that distinguish it from other products within the covered eight-digit subheading.

The 10-digit subheading of the HTSUS applicable to the particular product requested for exclusion.

Information on the ability of U.S. Customs and Border Protection to administer the exclusion.

The annual quantity and value of the Chinese-origin product that the requester purchased in each of the last three years. If precise annual quantity and value information are not available, provide an estimate and explain the basis for the estimation.

The rationale for the exclusion, which must address the following factors:

- Whether the particular product is available only from China. In addressing this factor, requesters should address specifically whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries;
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requester or other U.S. interests; and
- Whether the particular product is strategically important or related to "Made in China 2025" or other Chinese industrial programs.

Key Dates:

- Exclusion requests must be submitted by **October 9, 2018**, via www.regulations.gov.
- Responses to requests must be submitted within 14 days of the request being posted on www.regulations.gov. Replies to such responses must be submitted within seven days after the close of the respective 14-day response period.
- Any exclusions granted by the USTR will be retroactive to July 6, 2018, and will be in effect for one year.

Following an earlier notice and comment period, the USTR removed over 500 HTSUS subheadings, which generally covered consumer goods, from the tariff list. This new exclusion process will provide companies and trade associations an additional opportunity to explain why tariffs on specific products do not advance the objective of the Section 301 tariffs (*e.g.*, because the products do not benefit from China's industrial trade policies), and may be an avenue of relief to many U.S. businesses.

Please contact us if you have questions regarding the exclusion process or would like assistance in submitting an exclusion request.

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