

## CLIENT ALERT

### China Releases Product Exclusion Process for Certain U.S. Products Subject to Additional Retaliatory Tariffs

May.15.2019

On May 13, 2019, the Chinese Customs Tariff Commission of the State Council (CTCSC) issued CTCSC Announcement [2019] No. 3 announcing China's retaliatory measures in response to the United States' latest increase of Section 301 tariffs from 10% to 25% on \$200 billion worth of Chinese imports.

According to the CTCSC Announcement [2019] No. 3, 2493 items would be hit with a new additional tariff of 25%, 1078 items will be subject to additional 20% tariff, 974 items will be subject to additional 10% tariff, and the additional tariff on the 595 items will remain unchanged at 5%. China's retaliatory tariffs will come into effect as of June 1, 2019.

Of note, one important tariff relief measure was also announced by the CTCSC. In the CTCSC Announcement [2019] No. 2, the CTCSC released a long-awaited process to obtain product exclusions for particular products classified within covered tariff subheadings from the additional duties in effect on certain products originated from the U.S..

#### Eligible Parties to Submit Exclusion Requests

Product exclusion requests can be submitted by "interested persons," which include "companies in China" that are impacted by the retaliatory tariffs on covered U.S.-origin products, such as importers, manufacturers, users, and trade associations, or chambers representing such companies. Subject to the CTCSC's further clarification, "companies in China" usually would be interpreted to include not only wholly owned Chinese companies, but also WFOEs (Wholly Foreign-Owned Enterprises) or joint ventures registered in China by foreign companies. Companies are encouraged by the CTCSC to have relevant trade associations or chambers to file exclusion requests on their behalf.

#### Eligible Products

Only products that fall within the lists of products subject to China's retaliatory tariffs in effect would be eligible for exclusion from the retaliatory tariffs. Products for which China has terminated or suspended imposition of retaliatory tariffs would not be within the scope of eligible products.

Specifically, interested parties may request exclusion from China's retaliatory tariffs for the following products:

- List 1 (Batch 1), covering 545 items (worth \$34 billion), the retaliatory tariff rate for which is 25%, effective as of July 6, 2018. 28 lines of auto and auto part products on this list will be excluded;
- List 1 (Batch 2), covering 333 items (worth \$16 billion), the retaliatory tariff rate for which is 25%, effective as of August 23, 2018. 116 lines of auto and auto part products on this list will be excluded;
- List 2 (Batch 1), covering 2493 items, the retaliatory tariff rate for which was 10% as of September 24, 2018, but will be increased to 25% as of June 1, 2019;

- List 2 (Batch 2), covering 1078 items, the retaliatory tariff rate for which was 10% as of September 24, 2018, but will be increased to 20% as of June 1, 2019;
- List 2 (Batch 3), covering 974 items, the retaliatory tariff rate for which was 5% as of September 24, 2018, but will be increased to 10% to be effective on June 1, 2019; and
- List 2 (Batch 4), covering 662 items, the retaliatory tariff rate for which was 5% as of September 24, 2018, and will continue to be 5% as of June 1, 2019. 67 lines of auto and auto part products on this list will be excluded.

The products subject to the retaliatory tariffs imposed in response to the U.S.' additional duties under Section 232 were not included within the current lists of products eligible for exclusion.

### **Exclusion Request Process and Timeline**

Exclusion requests shall be filed via <http://gszx.mof.gov.cn>, the website of the Tariff Policy Research Center of the Chinese Ministry of Finance. This website is not accessible at this point for request submissions.

Generally, the CTCSC will accept and review exclusion requests in two stages. In stage 1, the CTCSC will start to accept exclusion requests for List 1 products as of June 3, 2019, and the deadline for filing List 1 product exclusion requests will be July 5, 2019. In stage 2, the CTCSC will accept exclusion requests for List 2 products from September 2, 2019 to October 18, 2019. However, the CTCSC has not imposed a deadline for making determinations on such requests and stated only that it will publish approved exclusion lists according to relevant exclusion procedures.

Each request must identify a specific product under a specific 8-digit Chinese HS code. Interested parties seeking to exclude products under two or more 8-digit Chinese HS codes are required to submit a separate request for each product. The CTCSC will review and investigate each exclusion request on a case-by-case basis. In making its determination on requests, the CTCSC may consult with relevant experts, trade associations and governmental departments.

If a company has submitted information to a trade association or chamber and the trade association or chamber has filed a collective exclusion request for a particular product, the company may not file a separate request for the same product.

No response and reply procedures were provided in the CTCSC Announcement [2019] No. 2 for relevant parties to provide comments in support or opposition of relevant exclusion requests.

### **Rationales for Exclusion Requests**

Interested parties must provide relevant facts and data to support the rationale for their requested exclusions. The CTCSC will consider various rationales for granting a product exclusion on a case-by-case basis. However, the CTCSC notes the following necessary rationales for the requests:

1. Difficulties in seeking alternative sources of the subject product;
2. Severe economic harm to the requester as a result of the imposition of additional duties on the subject product; and
3. Significant negative structural impacts on relevant industries (including impacts on industry development, technological progress, employment, environmental protection and so on) or any other severe social consequences.

## Effects of A Successful Exclusion

Granted requests will be effective for one year as of the implementation date of relevant exclusion lists; no additional duties would be imposed on concerned products during this one-year period.

Chinese importers may, within six months of the publication date of the relevant exclusion lists, apply to China Customs for the refund of additional duties imposed by the Chinese government if certain “refund conditions” are met. No further guidance was provided on the definition or scope of “refund conditions.” The CTCSC Announcement [2019] No. 2 also did not specify whether the exclusion would be retroactive to the effective date of the relevant retaliatory tariff lists. However, according to the Regulations of the People's Republic of China on Import and Export Duties, where an importer discovers that it paid any import taxes in excess of that required by law, it may apply to China Customs for a refund within one year of the date of payment of such taxes. It is not clear at this stage whether any special rules would apply to products subject to the U.S.-China trade dispute. Where China has terminated or suspended imposition of additional duties on concerned products before the publication of exclusion lists, no duties imposed would be refunded to importers.

The CTCSC Announcement [2019] No. 2 provides that, under the following two situations, the refund conditions are deemed to be met:

1. The products on an exclusion list were excluded on the basis of relevant Chinese HTS codes; and
2. The products on an exclusion list are part of the products covered under relevant Chinese HTS codes, and China Customs is administratively capable of granting the refund, i.e., when supplementary Chinese HTS codes are provided for the products on the exclusion list.

Please note, requesters will be held responsible for the accuracy of the information submitted by them. Requests will not be considered by the CTCSC if any false information was provided. The information submitted by requesters will be used for exclusion purposes only, and will not be disclosed to any third parties without the consent of the requesters. Please note, however, that the information will be released upon the request of the government or requirement of laws or policies.

Crowell & Moring has extensive experience in advising U.S. and China multinationals from various industries on the application of special tariff and trade issues, including product exclusion issues. Please do not hesitate to contact us should you have any questions.

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