



The Window for Tariff Exclusion Applications is Closing

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U.S. importers must act soon to seek relief from 25% tariffs on Chinese imports. U.S. businesses that cannot pass through the increased tariffs in a price competitive manner can still seek an exclusion or implement another mitigation strategy to avoid significant profit margin hits.

On June 30, 2019, the Office of the U.S. Trade Representative ("USTR") began accepting exclusion requests relating to the third tranche of Section 301 tariffs ("List 3") imposed on Chinese imports. USTR will continue accepting exclusion applications via its online portal through September 30, 2019.

List 3 tariffs affect over 5,700 product types, valued at an estimated \$200 billion. The initial 10% additional duty applied to List 3 goods beginning on September 24, 2018, and it increased to 25% on May 10, 2019.

USTR List 3 exclusion grants apply retroactively to September 24, 2018, and will remain in effect for one year from the exclusion's publication in the Federal Register.

The exclusion application process includes submitting financial and other confidential business information (which USTR will protect from public disclosure). Applicants should allow sufficient time for information gathering and analysis, as well as discussion with legal counsel. For this reason, Burr recommends interested parties contact their international trade/tariff counsel without delay for a preliminary determination into whether an exclusion is warranted for their situation.

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For applicants unlikely to qualify, or whose application is denied by USTR, Burr can help with other mitigation opportunities, including confirmation of tariff classifications, or design or character modifications that may allow re-classification. Other alternatives include country of origin changes, such as sourcing outside of China, or moving assembly locations to take advantage of substantial transformation rules. Some tariffs can even be delayed or avoided through the use of bonded warehouses and foreign trade zones. U.S. companies importing Chinese goods (finished or components) for export to other countries may have additional mitigation alternatives, such as duty drawback.

It is also worth noting that denied applicants could still qualify for an exclusion if USTR grants a later request covering the same 10-digit HTS (Harmonized Tariff Schedule, used by US Customs to classify goods). That said, there are a number of instances where USTR granted a specific request and created a new HTS carve-out limited to the specific products described in the granted request. In such cases, only products meeting the description set forth in the new carve-out would qualify for the exclusion.

Contact Jim Denning or Allen Sullivan for more information about the exclusion process or to discuss mitigation strategies.

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