

## Update on Exclusion Requests for Additional Section 301 Tariffs on Chinese-Origin Products

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June 17, 2019

The U.S. Trade Representative ("USTR") has announced an increase from 10% to 25% in the Section 301 tariff rate on approximately \$200 billion USD worth of "List 3" Chinese imports. The List 3 tariff increase, published in a notice on May 9, 2019, applies to Chinese-origin products that are covered by a subheading or product description listed in Note 20(f) or 20(g) to Chapter 99, Subchapter III, of the Harmonized Tariff Schedule of the United States.

The increased 25% duty rate applies to List 3 products that enter into the United States for consumption, or are withdrawn from a warehouse for consumption on or after May 10, 2019, and were exported to the United States on or after May 10, 2019. The USTR implementing notices published on May 15, 2019 and June 10, 2019 provide that List 3 products that are exported to the United States before May 10, 2019, and entered into the United States before June 15, 2019, are eligible for the preexisting 10% additional duty rate. As of the date of this Alert, the above transit time had expired.

In addition to announcing the additional duty increase, the May 9 notice further announced that USTR would establish a process by which interested persons may request that particular goods be excluded from the additional duties. No formal exclusion procedures have been approved as of the date of this Alert; however, USTR published a notice on May 21, 2019 seeking requests for emergency review and clearance on or about June 20, 2019 on the form that would be used to submit exclusion requests and the relevant response and reply forms.

According to the May 21 notice, USTR anticipates that the window for submitting exclusion requests will open on or around June 30, 2019, and estimated that it would receive 60,000 exclusion requests. Requests for exclusion will have to identify a particular product and provide supporting data and the rationale for the requested exclusion. Comparing with the exclusion request forms for List 1 and List 2 products, the draft 301 Exclusion Request Form ("List 3 Exclusion Request Form") attached to the May 21 notice requires much more information. Factors that are relevant to exclusion requests according to the List 3 Exclusion Request Form include, but are not limited to:

- whether the product or a comparable product is available from sources in the United States;
- whether the product or comparable product is produced in any country other than China;
- whether the additional duty will result in severe economic harm to the requestor or other U.S. interests, and;
- whether the product of concern is strategically important or related to "Made in China 2025" or another Chinese industrial program.

The May 21 notice, including the proposed Exclusion Request/Response/Reply forms, are available at [https://ustr.gov/sites/default/files/enforcement/301Investigations/84\\_FR\\_23146.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/84_FR_23146.pdf).

We will continue to track the development of the List 3 exclusion process and include further developments in subsequent alerts. If you have questions on the exclusion requests for Section 301 additional tariffs, please contact your Miller Canfield attorney.