

China's tariff exclusion process

25 June 2019

On 13 May 2019 China's State Council Tariff Commission announced a [tariff exclusion process](#) in which importers of certain U.S. goods subject to retaliatory tariffs can apply for exclusions from Chinese tariffs on a product-by-product basis. The exclusion process followed China's 1 June 2019 decision to increase tariffs on US\$60 billion of U.S. goods to as high as 25 percent, perhaps signaling that the Chinese government seeks to avoid the higher tax rate on products that are not easily substitutable in China's domestic market. The exclusion process offers the possibility of product-specific relief from onerous import duties into the China market.

The exemption application process will proceed in two phases, with each phase covering separate products. The first phase opened on 3 June and is currently underway. Entities can apply for an exclusion from the Chinese tariffs imposed on [6 July 2018](#) and on [23 August 2018](#) (Chinese only). Entities must submit their applications by 5 July 2019.

Phase two will begin on 2 September and close on 18 October 2019. Entities can apply for an exclusion from Chinese tariffs imposed on U.S. imports on [24 September 2018](#).

Application process

Companies may apply [online](#) for an exclusion for a listed product. Companies will need to provide a wide variety of detailed information regarding their company, import records, and description of the product. Most importantly, however, the applicant must address the following three reasons for why a product should be ex:

- Difficulties arising from finding sources for substituted products.
- The severity of the economic impact of tariffs on the company.
- The severity of the impact of tariffs on the industry (including but not limited to, development of the industry, technological advancement, employment, and protection of the environment).

These conditions are vague, leaving room for subjective interpretation and political intervention. Nevertheless, applicants in China would do well to follow a similar strategy as applicants in the United States: they should emphasize the lack of substitutability, the negative impacts on the downstream Chinese industries, and, perhaps most importantly, on job creation.

We also recommend reaching out to Chinese companies that use your product or are involved in the supply chain, as they may have helpful insights and arguments that could bolster your case or be willing to advocate on your behalf.

Applicants should take care to avoid inadvertently releasing any trade secrets or intellectual property during the application process. Companies should also focus on the fundamental business reasons for exclusion and avoid any criticism of the trade policies of Washington, D.C. or Beijing that could cause concern in future interactions with either government.

Applicants particularly sensitive to exposure can also consider applying through their relevant trade association, which would allow applicants to remain anonymous in the applications.

The Tariff Commission has said that in addition to reviewing the requests submitted by relevant parties it will also conduct industry surveys and seek advice from subject matter experts, industry associations, and government departments concerned before it decides on any particular product.

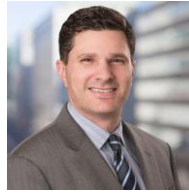
After the review is concluded, the government will create an exclusion list of approved products. This exclusion list will apply to all listed products imported into China, regardless of the importer. The tariff exemption is valid for one year from the date of implementation of the list. With regards to the goods excluded from the additional tariffs, the importing enterprise may apply to the China Customs for a refund of the tariffs previously imposed. There have been no specific timelines for the publication of the exclusion lists.

For further assistance on your product exclusion process, please contact any of the lawyers below.

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