



General Subject

Aug. 9 Webinar Question

NOTE: Text appearing in [brackets] is redacted so as not to disclose identifiable information about the company/product.

Post-Webinar Response

All responses are based on information available as of Aug. 15, 2018. As these are evolving issues, we urge you to check our Trade Resources page online at www.mema.org/trade

Country of Origin vs Country of Export

Is Taiwan (R.O.C) affected by the new tariffs?

The Section 301 duties currently only apply to products of China, and are based on the country of origin, not country of export.

Country of Origin vs Country of Export

We have material from China shipped to Mexico, then back into the USA. Does the 25% Tariff apply to both transactions?

The Section 301 duties currently only apply to products of China, and are based on the country of origin, not country of export. Whether the product is somehow transformed in Mexico to a product that is no longer considered Chinese is a complex question for which your counsel and customs broker need to be consulted.

Scope of Tariffs

Our big question is for China "work in progress" that was procured but not received prior to the new Section 301 will the tax be grandfathered? It was never accounted for at the time of our purchase

The Section 301 duties on the first tranche were effective July 6, 2018 and apply to all imports received after that date regardless of date of purchase. Suggest noting this hardship in your product exclusions application and working with legal counsel.

Application Form

If my Chinese supplier is a directed source by my customer, would this be reasonable grounds for an exclusion?

We cannot speculate on what the USTR will consider grounds for granting or denying exclusion applications. However, that said, we urge companies to include any and all aspects of why an exclusion is warranted for a specific HTS code, and this could include customer's product specifications, sourcing specifications/limitations, Ts & Cs of current customer contracts, and any other supporting information or corroborating correspondence or documentation.

Tariff Refunds

What is the process to receive a refund of the tariffs already paid if an exclusion is granted?

Upon approval of an exclusion, U.S. Customs and Border Protection (CBP) will post a notice regarding how refunds of the duty can be obtained. Note, this is not technically duty drawback. Rather, it is a duty refund. Duty drawback is a different program. We note that Duties are eligible for drawback. This process is administered through the CBP. For more information, please visit

https://csms.cbp.gov/viewmssg.asp?Recid=23618&page=&srch_argv=18-000419&srchtype=all&btype=&sortby=&sby=



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Scope of Tariffs

How long are the current additional duties in place?

Indefinitely.
 Section 301 first tranche effective July 6, 2018.
 Section 301 second tranche effective Aug. 23, 2018.
 Section 301 third tranche still in "notice and comment" phase.
Sec. 301 of the Trade Act of 1974 provides the President authority to respond to restrictive foreign trade barriers constructed as a result of a partner country's violation of a trade agreement, or unreasonable or discriminatory practices that burden or restrict U.S. commerce.

Application Review/Decision

Are you aware of any exclusions for Chinese Manufacturing facilities that are wholly owned by USA company ?

As of Aug. 15, no exclusions have been granted or denied.

Timing

When will list 3 docket be started?

The third tranche (List 3) is in the midst of the USTR's "notice and comment" period. USTR published its request for comments on July 10, 2018; but subsequently revised the notice because the president directed the USTR consider increasing the proposed tariff rate from 10% to 25%. As a result, the comment period deadlines were extended to Sept. 6, 2018. A public hearing will take place Aug. 20-23, 2018 (MEMA will testify). List 3 is included as an annex to the July 10 notice, which you can find here:

<https://www.federalregister.gov/documents/2018/07/17/2018-15090/request-for-comments-concerning-proposed-modification-of-action-pursuant-to-section-301-chinas-acts>

Country of Origin vs Country of Export

If a product is shipped from Europe, but the country of origin is China, is it subject to the 301 tariffs?

The Section 301 duties currently only apply to products of China, and are based on the country of origin, not country of export. So, yes, it would still be subject to the Section 301 duties.



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Scope of Tariffs

Do you see any sign of the US reviewing the existing list of categories targeted for Tariffs and taking them off, specifically electronics parts that are not made in the US

Actions taken under Sec. 301 are at the discretion of the president and can be adjusted. Considering that the aim of the administration is to get China to change its behavior, steady and increasing pressure exerted by the US on an expanding the scope of tariffs on imports from China is not likely to wane unless there are some meaningful changes / progress made in trade talks.

Application Form

We are a company with HQ in Europe and production site in China, selling as Tier2 [our subcomponent part] to an US customer who puts [them] in [their] own [finished] products and [sells them] to OEMs in the US. And furthermore we are selling [other subcomponent parts] to an other Customer in the US used [in non-automotive finished products].

The Section 301 duties currently only apply to products of China, and are based on the country of origin, not country of export. If your products are manufactured in China, the duties apply regardless of the US customer. Likely your US customer would be in the best position to request the exclusion. Suggest contacting your customers and work with them.

Do we now have to ask for an exclusion or is such an exclusion request necessary to

Timing

When will exclusion requests for the 3rd tranche begin being accepted?

As of Aug. 15, the USTR has only offered a product exclusions process for the first and second tranches. It is not yet been announced/determined if USTR will offer a product exclusions process for the third tranche. Please note too that we do not yet know which of the third tranche products will have the additional duties--we expect a decision in September on the third tranche.



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Application Form

Questions 8 and 9: Do you have any idea on thresholds for "is this available in the U.S." and "is this available from other countries?" -- If China is source of 80%/90%/95% of some raw product

We cannot speculate on what the USTR will consider grounds for granting or denying exclusion applications. However, that said, we urge companies to include any and all aspects of why an exclusion is warranted for a specific HTS code, and this could include customer's product specifications, sourcing specifications/limitations, Ts & Cs of current customer contracts, and any other supporting information or corroborating correspondence or documentation.

Application Review/Decision

Are the exclusion request company specific? If one company is granted an exclusion for a HTS will any company be

It is our understanding that if USTR grants an exclusion for an HTS code that it applies to that code for everyone. In other words, a blanket exclusion.

Application Form

Do we need to file an exclusion form by product or by product line?

File by HTS code/tariff line at the 10-digit subheading applicable to the particular product requested for exclusion; a correct reference to the product's 8-digit HTSUS subheading must be included.
The USTR has explicit instructions listed in its Federal Register notice, as well as in its Filing Guidelines document, both of which you can find here:

<http://www.federalregister.gov/documents/2018/07/11/2018-14820/procedures-to-consider-requests-for-exclusion-of-particular-products-from-the-determination-of>

<https://ustr.gov/sites/default/files/enforcement/301Investigations/Section%20301%20Exclusion%20Request%20Guidelines.pdf>



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Application Form

We have over 100 size/material specific variations to a single HTS code. Can they be handled under a single exclusion submission?

If the variant is covered at the 10-digit subheading, then yes. If the variants fall into different 10-digit subheadings, you will need to do separate exclusions for each 10-digit subheading. The USTR has explicit instructions listed in its Federal Register notice, as well as in its Filing Guidelines document, both of which you can find here:

<http://www.federalregister.gov/documents/2018/07/11/2018-14820/procedures-to-consider-requests-for-exclusion-of-particular-products-from-the-determination-of>

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Application Review/Decision

In general, what departments have been responsible for monitoring and managing these tariffs?

Sec. 301 tariffs are under the jurisdiction of the U.S. Trade Representative. Sec. 232 tariffs are under the jurisdiction of the U.S. Dept. of Commerce. In both cases, changes to the tariffs, or other trade actions, are at the discretion of the president.

Note: The U.S. Customs and Border Protection administer/assess the tariffs.



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Application Form

Even if the HTSUS code is the same, are we supposed to fill out an exclusion request per part that uses that code if they are used by multiple suppliers?

File by HTS code/tariff line at the 10-digit subheading applicable to the particular product requested for exclusion; a correct reference to the product's 8-digit HTSUS subheading must be included. If the same code is applicable to multiple suppliers, then only one request needs to be made. The USTR has explicit instructions listed in its Federal Register notice, as well as in its Filing Guidelines document, both of which you can find here:

<http://www.federalregister.gov/documents/2018/07/11/2018-14820/procedures-to-consider-requests-for-exclusion-of-particular-products-from-the-determination-of>

<https://ustr.gov/sites/default/files/enforcement/301Investigations/Section%20301%20Exclusion%20Request%20Guidelines.pdf>

Application Form

Is the exclusion best submitted by the importer of record? We buy affected parts domestically and are unsure if we should submit.

It is recommended that you consult with your customers and your legal /trade counsel to get advice on the best way to proceed based on your specific company's needs.

Application Review/Decision

Can you comment on the possibility that exclusion requests related to an item that is already subject to antidumping duty will be looked upon favorably?

It is not likely that it will be looked upon favorably in the sense that the US government has already decided the product is unfairly traded. We are aware of some solar products from China that are covered by AD/CVD orders, the Section 201 additional duties and ALSO are on the Tranche 2 list even after comments and witnesses testified that the products should be removed from the Section 301 list.

Application Review/Decision

If there are exclusions requested by an automotive OEM does that exclusion apply to Tier 1 and Tier 2 automotive suppliers? Or do the Tier 1 and Tier 2 suppliers have to

It is our understanding that if USTR grants an exclusion for an HTS code that it applies to that code for everyone. In other words, a blanket exclusion.



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Application Form

We have a wholly owned subsidiary in China that assembles our finished goods that we import into the US. How should question 8/9 be answered in this case, if we could maybe move these production lines

It is recommended that you consult with your legal /trade counsel to get advice on the best way to proceed based on your specific company's needs.

Application Review/Decision

Are list 1 tariffs retroactive if an exclusion request is granted?

Yes. Granted exclusions for List 1 products will apply retroactively to July 6, 2018, the date of the imposition of the additional duties. Exclusions will be valid for one year.

Application Form

If our company wanted our hand held to assure we properly complete the exclusions application, who could we have review in detail our exclusions for so we have a

It is recommended that you consult with your legal /trade counsel to get advice on the best way to proceed based on your specific company's needs.

Country of Origin vs Country of Export

If a component is made in China but shipped through Mexico to the US is it subject of the tariff?

The Section 301 duties currently only apply to products of China, and are based on the country of origin, not country of export. Whether the product is somehow transformed in Mexico to a product that is no longer considered Chinese is a complex question for which your counsel and customs broker need to be consulted.

Timing

Did the 2nd comment section get moved out from August 17th ?

Because the president directed the USTR to consider raising the tariff rate from 10% to 25% on the proposed third tranche, the USTR extended the comment period from Aug. 17 to Sept. 6, 2018. The dates for the public hearing are the same - Aug. 20-23, 2018 in Washington, DC (note: the deadline to submit requests to testify was Aug. 15, 2018).



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Timing

When will exclusion requests for #3 tranche begin appearing on www.regulations.gov?

The third tranche (List 3) is in the midst of the USTR's "notice and comment" period. USTR published its request for comments on July 10, 2018; but subsequently revised the notice because the president directed the USTR consider increasing the proposed tariff rate from 10% to 25%. As a result, the comment period deadlines were extended to Sept. 6, 2018. A public hearing will take place Aug. 20-23, 2018 (MEMA will testify). List 3 is included as an annex to the July 10 notice, which you can find below. Please also note that we do not yet know which of the third tranche products will have the additional duties--we expect a decision in September on the third tranche.

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Application Review/Decision

Will granted exclusions be published?

The USTR will post submissions in the docket for public inspection, except for business confidential information. Submissions to the **first tranche** product exclusions process can be viewed on www.regulations.gov website and search for Docket ID No. USTR-2018-0025.

The USTR indicated that a separate *Federal Register* notice for the **second tranche** product exclusions process will soon be published. When it does, it is likely that a separate docket identification will be designated for the second tranche; but again, that is unclear as of today.

The USTR did not indicate in its notice how long their review/response process would be. So it is unclear exactly when the applications will receive their grant/deny decisions.



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Timing

After an exclusion request has been submitted, and the 14 day window for comments on the exclusion, are their limitation on whom can comment on the exclusion request, ie can a trade association or organization representing an

The USTR invites "interested persons" the opportunity to reply to the response, which implies all interested parties, including associations.

Scope of Tariffs

A new tariff code was designated for the 25% / list #. Will there be another code assigned for round #2 tariff increase..

We believe this question is referring to the CBP instructions that "Any article classified in a subheading covered by this list that is a product of China would be subject to a 25% ad valorem duty rate, in addition to the general (Column 1) rate of duty for that particular subheading. In addition to reporting the Chapters 1-97 HTSUS classification of the imported merchandise, importers shall also report the 9903.88.01 special tariff number for goods subject to the additional duty assessment of 25% ad valorem as a result of the Section 301 trade remedy: 9903.88.01: 25% ad valorem additional duty for articles the product of China." If so, yes, a special tariff number likely will need to be reported for additional Section 301 tariffs.

Scope of Tariffs

Is this a requirement and applicable to raw materials? We get our raw materials imported. So, we are required to fill out the form and submit or is our supplier?

The three tranches announced so far have all included raw materials in their HTS code lists. You can access those lists from MEMA's Trade Resources page at www.mema.org/trade
It is recommended that you consult with your legal /trade counsel to get advice on the best way to proceed based on your specific company's needs.



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Assessing Tariffs

Our big question is for China “work in process” that was procured but not received prior to the new Section 301 -- will the tariff be grandfathered?

Unfortunately, there is not any grandfathering of purchases made prior to the enactment of Sec. 301 tariffs. It is recommended that you include the history of your particular circumstances and related hardships the Sec. 301 tariff will cause your company in your exclusions application.

Subject to the tariffs are:
First tranche, effective July 6, 2018.
Second tranche, effective Aug. 23, 2018.
Third tranche, TBD.

Assessing Tariffs

How are the Section 301 duties assessed in respect to sets packaged for retail sale, which contain components covered by the Section 301 remedy?

From US CBP website:
"When importing goods put up in sets for retail sale (in accordance with General Rule of Interpretation 3) that contain articles subject to the Section 301 remedy, if the product that imparts the essential character to the set (i.e. the HTSUS provision under which the entire set is classified) is covered by the Section 301 remedy, then the entire set will be subject to the additional 25% duties.
If the HTSUS provision under which the entire set is classified is not covered by the Section 301 remedies, but the set contains components that are classified in a subheading covered by the 301 list, the 301 duties will not be assessed on the individual components."



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Steel and Aluminum Tariffs

Did I hear correct, that Steel and Aluminum has no deadline to submit?

For Section 232 tariffs on steel and aluminum, applications for product exclusions can be submitted on a rolling basis to the Bureau of Industry and Security at the Dept. of Commerce. Decisions from the DOC/BIS will be made on a case-by-case basis. U.S. parties have 30 days after an application is submitted to file objections. DOC/BIS then has approximately 60 days to review the submission and any objections. All exclusion requests will be made public. Exclusions, if granted, are only good for one (1) year and may be eligible for a retroactive refund. Granted product exclusions are retroactive to the date the request for exclusion was posted for public comment at regulations.gov.

The product exclusions process was described in detail in DOC/BIS March 19, 2018 *Federal Register* notice below. More instructions for submitting applications can be found on BIS's website pages:

*Steel <https://www.bis.doc.gov/index.php/232-steel>

* Aluminum <https://www.bis.doc.gov/index.php/232-aluminum>

Please note that there are separate federal dockets to which you upload your applications.

<https://www.gpo.gov/fdsys/pkg/FR-2018-03-19/pdf/2018-05761.pdf>



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Steel and Aluminum Tariffs

Have the Section 232 Steel & Aluminum exclusions been decided upon by USTR? If yes, what was the average turnaround time for the USTR to complete its decision making process for the exclusion?

The turnaround time on Sec. 232 steel/aluminum product exclusion applications will vary, but, generally, has taken longer than BIS initially anticipated due to the high volume of applications. Many industry stakeholders and Members of Congress have asked Dept. of Commerce to provide a comprehensive list of granted/denied applications. Until then, the only way is to view product exclusion decisions that are posted on www.regulations.gov and then search by docket number ID; within each docket, you can search by keywords or HTS code. Steel = BIS-2018-0006 and Aluminum = BIS-2018-0002

Steel and Aluminum Tariffs

US mills are raising prices to what the tariffs are. So how is the government handling that issue?

Commerce Secretary Ross stated at a Senate Finance Committee Hearing June 20, that they are investigating recent steel price hikes to determine whether some market participants are “illegitimately profiteering” from new tariffs. Ross indicated that the price of steel in the U.S. market has risen far more than justified by the 25 percent tariff imposed by the Trump administration, possibly because of “speculative activity,” with some market intermediaries holding back inventories. (SOURCE: Reuters)