



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

Application Form

Can only U.S.-based companies apply for exclusions?

The USTR has confirmed that interested persons and trade associations can file for exclusions, provided they include the member information when filing.

CAUTION: Do not presume that the last two digits are “00”. Certain product categories, have no “00” subheading.

Application Form

USTR asks for 10-digit codes, but what if the product I have only has 8-digits?

Product exclusions will be granted at the 10-digit HTSUS level. If you are unsure of the 10-digit HTSUS subheading, you should check with the importer of record or refer to the HTSUS to determine the classification.

Application Form

How would my company know if a particular product is “strategically important or related to ‘Made in China 2025’ or other Chinese industrial programs”?

The “Made in China 2025” is publicly available online. The general focus of the program is next generation technology, including in the aviation, rail, new energy vehicle, and agricultural sectors. Exclusion requests should address whether or not the particular product is considered a high-technology or innovative product. Older, lower-technology products may be more likely to be granted an exclusion.

Timing

For this first tranche, is it true that there is only one opportunity to apply by Oct. 9? In other words, it is NOT a rolling submission, like the Dept of Commerce process for Sec. 232 steel and aluminum tariff exclusions, correct? Are there advantages to waiting to apply early in the timeframe or later?

Unlike the Section 232 steel and aluminum tariffs, Section 301 has a hard deadline by which all product exclusion requests must be submitted: October 9, 2018.

Because the USTR will “periodically” announcing decisions on product exclusion requests, an advantage of applying early is that you will know whether your product has been excluded from the tariffs sooner.

An advantage of applying later is that you can learn from granted and denied requests to see what arguments are most successful



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Timing

Are there any legal timeline requirements for USTR to make their final determinations? If so, why are those not stipulated in the FRN?

There is no timeline from USTR to make its decision.

Application Review/Decision

Is there a place to see what exclusions have already been submitted?

All submitted exclusions will be posted publicly on regulations.gov Docket USTR-2018-0025. Currently, there is about a 10-day delay between filing and public posting. That gap will likely increase as more exclusions are filed. The USTR docket is searchable by party name and HTSUS subheading. However, it is unlikely that the USTR will release a running list of approved and denied exclusion requests.

Application Review/Decision

If an exclusion is granted, it is confusing if it applies to one (1) year from the date of publication of the exclusion determination (which would vary applicant to applicant), or is it retroactive to one (1) year of the effective date which is July 6, 2018.

All granted product exclusions are retroactive to July 6, 2018. It is unclear whether the exclusion will actually be valid only from July 6, 2018-July 5, 2019, or for one year from the date of posting on regulations.gov, plus back to July 6, or one year from the approval, plus back to July 6, 2018.
