

China Tax Alert

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The Tariff Commission of the State Council issued the Announcement on the Exclusion of Goods under Market-oriented Procurement from Additional Tariff against U.S.

Regulations discussed in this issue:

- Announcement on the Exclusion of Goods under Market-oriented Procurement from Additional Tariff against U.S. (Announcement No. 2 [2020] of the Tariff Commission)

Background

On 17 February 2020, the Tariff Commission of the State Council issued the announcement on the exclusion of goods under market-oriented procurement from additional tariff against U.S. ("Announcement 2"), deciding upon the applications of domestic enterprises in China, to not impose additional counter-tariff against the action of the U.S. under Section 301 for a certain period of time on imported goods that are procured from the U.S. in line with the conditions and under the market-oriented and commercial principle. It is the first time for the Tariff Commission of the State Council to issue an announcement on excluding US products from additional tariffs since China and the US announced the first phase of their Economic and Trade Agreement on 13 December 2019 and officially signed the agreement on 16 January 2020. The applicable scope for the excludable products has been expanded based on the first two rounds of exclusion work, and the exclusion process has been further optimised. These developments have drawn the attention of import and export entities, particularly in light of the outbreak of the novel coronavirus epidemic.

Policy

Applicants

- Eligible applicants consist of Chinese domestic enterprises that intend to sign contracts to purchase and import products from the United States.
- We understand that, in contrast to the application process for the first two rounds of exemptions, applicants for the additional tariff exemption should be characterised by their "intention to sign a contract" with respect to the "purchase and import of products from the United States;" and they should also be "domestic Chinese enterprises." These criteria further define the scope of eligible applicants. Based on these criteria, industrial associations and non-import enterprises are not eligible to apply for these exemptions.

Scope of products that are eligible for the exclusion application process

- We understand that the scope of products that are eligible for the exclusion application process has been expanded and is not limited to batches. The product scope is listed in the attachment, and the products not on the lists are eligible for the application for an additional exclusion. The attachment also specifies the scope of products that can be automatically excluded without going through the application process. The details are set out in the table below:

| List of products eligible for the exclusion application process | Products eligible for the application for an additional exclusion | Products automatically eligible for exclusion without going through the application process |
|--|--|--|
| <ul style="list-style-type: none">• Certain products for which the additional tariffs China imposed in response to the US Section 301 Tariff Measures have not been stopped or suspended• Includes products under 696 8-digit HS codes, e.g. agricultural products such as soybeans, energy products such as crude oil, and other types of products | <ul style="list-style-type: none">• Products not on the lists attached to the announcement, such as animal and plant products, food, chemical products, textile products, steel products, electrical products, electromechanical equipment and electronic products, etc. | <ul style="list-style-type: none">• Products imported from the US under the import and export tariff reduction or exemption policies that have been introduced and that will be introduced after approval is granted• Products imported and exported through express delivery• Products that have been included in the additional tariff exemption lists for US imports within the period of exclusion |

Application methods and deadline

- Applicants may complete and submit the exclusion applications on the Ministry of Finance's Tariff Policy Research Centre Website (<https://gszx.mof.gov.cn>).
- The exclusion declaration system will begin accepting applications on 2 March 2020, and no deadline has been stipulated yet.

Filing requirements for applications

- For products on the lists, HS codes, planned procurement amounts and other information shall be entered in the exclusion application.
- When submitting an application for an additional exclusion, the impact of the additional tariffs on the applicant and other necessary explanations must also be provided in the application in addition to the above-mentioned information.
- We understand that, compared with the first two rounds of exclusion applications, the declaration procedures have been simplified, and there is less stress on irreplaceability and industry influence and more focus on the planned procurement amount.

Application results

- The application will be approved by the Tariff Commission of the State Council, which will directly notify applicants of their results.

- Where the exclusion application is approved, the exclusion period for the applicants' products will be valid for 1 year following the date of approval. The amount to be excluded is subject to the approved import amount, with any excess not eligible for exclusion.
- The above-mentioned exclusion measures also apply to excess amounts that are clearly specified in the import contract, but the quantity of the excess amount cannot exceed 10% of the approved import quantity.
- The policy also specifies that additional tariffs that were imposed on the products before approval cannot be refunded.

Procurement implementation

- Applicants must upload the transaction information in a timely manner. The unexecuted part of the approved procurement plan will automatically become invalid at the end of the month. An additional exclusion application must be submitted within the required timeframe for the part of the procurement plan that extends beyond the current month, and products under that part of the plan cannot be excluded until approval is granted by the Tariff Commission of the State Council.
- Before the import declaration, applicants must submit a self-declaration and obtain the exclusion number so that they can fill in their declaration files.

KPMG observations

Since China and the US entered into the first phase of the Economic and Trade Agreement, the issuance of Announcement 2 can be understood as part of China's unremitting efforts to solve the current trade friction between the two countries. The implementation of Announcement 2 will reduce costs issues for enterprises and boost their development by minimising tax burdens in relation to products procured and imported from the US. Announcement 2 will give a "heart-strengthening shot" to import and export entities, especially in light of the outbreak of the coronavirus epidemic. Therefore, we suggest that related import enterprises take advantage of this opportunity and fully assess their exclusion requests. Particular attention should be paid to the following issues:

- The range of products that may be exempted from additional tariffs for market-oriented procurement has been broadened. Products under the 696 8-digit HS codes are included in the lists, but products not on the lists can apply for the additional exclusion. We recommend that enterprises sort out their actual imported products that are subject to additional tariffs by dividing them into products on the lists and products not on the lists according to the attachment to Announcement 2. Also, enterprises must draw up the scope for the exclusion application and make a procurement plan for products in order to apply for the exclusion. This plan must include the procurement quantity, procurement intention/ agreement, and procurement time.
- As the exclusion policy puts certain restrictions on applicants, enterprises need to come up with a reasonable plan based on the practical nature of their import and export businesses as soon as possible. This is especially important for group companies, which must specify which of their import companies will serve as the applicant and actually apply for the exclusion.

- Moreover, since the procurement plan serves as a basis for the exclusion application, enterprises must carry out procurement in strict accordance with the plan and break down the schedule into monthly work plans in both the application stage and the implementation stage. In order to ensure the smooth implementation of the exclusion work, we suggest that enterprises formulate a reasonable procurement plan as soon as possible so that they can avoid wasting their exclusion quota as a result of differences in the imported amount, and avoid having to submit additional applications as a result of importing products in excess of the approved amount.
- The exclusion application process will focus on the applicants, and the assessment results will be transmitted to the applicant directly rather than being published publicly. Enterprises should proactively start the application process in order to safeguard their vital interests as there is no “free ride” provided by the policies anymore. Where the exclusion application is approved, imported products will obtain the tariff exemption by declaring the “exclusion number.” Enterprises should also strengthen their focus on related internal operational procedures and update such procedures.
- Announcement 2 does not set a deadline for applications, and the announcement provides an option for an additional application, which indicates that the exclusion application work will be ongoing and become standardised. In order to maximise the policy’s benefits, related enterprises should actively follow-up on policy development and implementation, fully prepare their exclusion applications, and familiarise themselves with the import procedures that apply after the products have been excluded from additional tariffs.
- Although the outbreak of the novel coronavirus has had a negative impact on the economy, this exclusion application policy has been launched in a timely manner and is in line with the exemption on import taxes for donated supplies that was launched previously. These policies demonstrate the Chinese government’s resolve in prevailing over the epidemic. Against this backdrop, we suggest that enterprises take advantage of the opportunities, overcome the current difficulties, and minimise losses resulting from the suspension of work, production and delivery caused by the outbreak.

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