



China Tax Alert

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China Government Is Ready to Implement Product Exclusion Process for Retaliatory Tariffs on US Origin Products

Regulations discussed in this issue of Express:

- Circular [2019] No. 2 released by the Tariff Commission of the State Council, "Circular Regarding the Trial Implementation of Product Exclusion Process for Retaliatory Tariffs on US Origin Products"

Background

Since April this year, escalation of the economic and trade conflict between China and the US adversely affected companies in both countries. On May 13th 2019, the Tariff Commission of the State Council (hereinafter referred to as "the Tariff Commission") issued "*Circular Regarding the Trial Implementation of Product Exclusion Process for Retaliatory Tariffs on US Origin Products*" ("Circular No. 2"), to announce that the application can start to be submitted from June 3rd 2019. Circular No. 2 outlines that products could be granted exclusion from paying retaliatory tariffs if they meet with certain criterion and retaliatory tariffs can be refunded for products that fulfil with certain conditions.

Measures to apply for product exclusion

Eligible applicants

- Chinese enterprises who import, process, or use the relevant imports of US origin products;
- Relevant industry associations and chambers of commerce.

Scope of products that can be applied for exclusion

Batch One:

- Products subject to retaliatory tariffs since July 6th 2018, according to List 1 attached to Tariff Commission Circular [2018] No. 5;
- Products subject to retaliatory tariffs since August 23rd 2018, according to List 2 attached to Tariff Commission Circular [2018] No. 7;

Batch Two:

- Products subject to retaliatory tariffs since September 24th 2018 (of which some of the retaliatory tariff rates will be raised since June 1st 2019), according to List 1-4 attached to Tariff Commission Circular [2018] No. 6.

Note: Automobiles and spare parts thereof, which are temporarily suspended from retaliatory tariffs according to Tariff Commission Circular [2018] No. 10 and Tariff Commission Circular [2019] No. 1, are not within the scope.

Application channel and timelines

- Applications should be submitted through the relevant website of Ministry of Finance (<https://gszx.mof.gov.cn/>);
- Products under different 8-digit tariff items shall be applied separately;
- Batch One products shall be applied during June 3rd 2019 to July 5th 2019, and Batch Two products shall be applied during September 2nd 2019 to October 18th 2019.

Review focus of the Tariff Commission

The Tariff Commission will review applications for product exclusion mainly from the following three angles:-

- Difficulties in finding replacement products;
- Severe financial harms caused by retaliatory tariffs on the applicants; and
- Significant structural harms on the relevant industries or severe social consequences caused by retaliatory tariffs.

Benefits from a successful product exclusion application

- Products on exclusion lists will be exempted from corresponding retaliatory tariffs for one year, starting from the enforcement date of the exclusion lists;
- The relevant importers can apply for the refund of retaliatory tariffs levied, in the event that refund conditions can be satisfied (e.g., the product is under an 8-digit tariff item entirely excluded from retaliatory tariffs, or the product is distinguished with a specific HS code).

KPMG Observation

KPMG recommends that Chinese importers of US origin products subject to retaliatory tariffs to seize this opportunity and fully assess the impact of retaliatory tariffs on business and the necessity of product exclusion application. Before raising a product exclusion application, attention should be paid to the following matters:-

Format requirements for product exclusion applications

As stipulated by Circular No. 2, applications should be submitted through the website of the Tariff Research Center of Ministry of Finance. However, Circular No. 2 only provided general guidance without sufficient details. Companies that would like to join the application are

required to prepare in advance the information that may need to be filled based on Circular No. 2, and then revise and supplement necessary information to fulfill with the application format as soon as the website is online, in order to ensure that the content of the application could meet the requirements of the Tariff Commission.

Retroactive period for tariff refund

Circular No. 2 stipulates that refund can be granted to importers for retaliatory tariffs levied if necessary conditions are satisfied, without a clarification about the retrospective period of the refund. We understand that such retroactive period as well as other practical matters related to the refund may be published along with the exclusion list once the exclusion list is in place.

US origin automobile and spare parts

Circular No. 2 mentioned that automobiles or spare parts that originate from China are suspended or ceased being subject to the retaliatory tariffs, hence cannot be applied for product exclusion. In view of the fact that some automobile parts have not been included into the list attached to Circular [2019] No. 3 regarding raising the rates of retaliatory tariffs, many media and professionals speculate that the "suspension of retaliatory tariffs" have been changed to "discontinue of retaliatory tariffs". According to our understanding, in the absence of further policies announced by the Tariff Commission, automobile and automobile parts are still under the status of being "suspended" from retaliatory tariffs, which means China government may resume the retaliatory tariffs on US origin automobiles and spare parts in the future.

Suggestions from KPMG

Any importers or business that decides to submit an application for product exclusion need to prepare in accordance with the three aspects concerned by the Tariff Commission. The applicant can state relevant objective facts and quantitative data in connection with negative impacts from retaliatory tariffs, and demonstrate the necessity of putting the relevant product into the exclusion lists from the following perspectives:

- Chinese business are not able to acquire replacement products from reliable source other than the US, the retaliatory tariffs cannot attain its goal as a countermeasure to the US;
- The impacts of additional tariff burdens on the enterprise and its related upstream and downstream industries are severe; and
- The imposed retaliatory tariffs on the relevant products may bring significant negative influences to China's social development.

KPMG Trade and Customs team has extensive experience in assisting enterprises to participate in tariff policy-making and cope with challenges under the climate of China-US trade conflict. Our team can provide valuable guidance and assistance to enterprises in selecting products for exclusion applications, researching for and developing the arguments for product exclusion applications, and establishing communication channels.



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