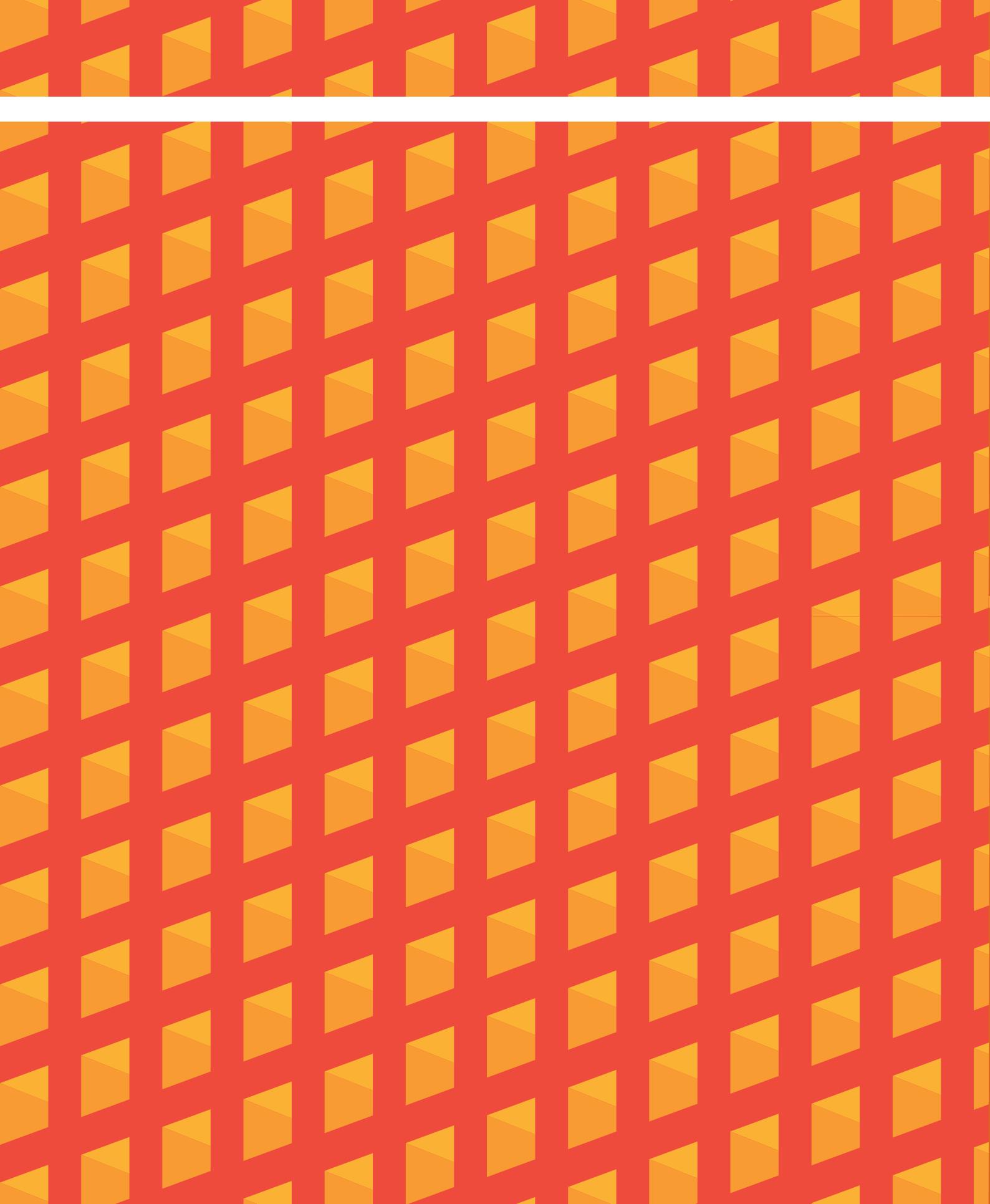




China Customs & Trade Alert

The Customs Tariff Commission
of the State Council Notice [2020]
No.2 - Further Tariff Exclusion
Requests for US Products Subject to
China Retaliatory Tariffs



Overview/Background

With the joint efforts of both China and the US, the bilateral trade frictions started to show signs of slowing down as we sailed into 2020. In January 2020, China and the US signed the Phase One Economic and Trade Agreement. The US determined to reduce the additional tariff rates on certain China products by half at the same time. In response to the modification of the US Section 301 tariffs, China announced to halve the additional tariff rates on certain US products in February 2020.

The signing of Phase One Agreement and the modification of retaliatory tariffs have effectively alleviated the tensions of the ongoing Sino-US trade friction. Under current circumstances, in order to satisfy the needs of domestic consumers and support companies in China to import goods from the US out of commercial considerations, the Customs Tariff Commission of the State Council (the “Tariff Commission”) issued the Notice Regarding the Initiatives on Tariff Exclusion for US Imports under Market-Oriented Principle (the “Notice [2020] No.2”) on February 18 2020, to launch a tariff exclusion process for its retaliatory tariffs on certain US products that are purchased from the US under market-oriented principle.

The Tariff Commission will start to process applications from March 2 and will not impose relevant retaliatory tariffs against the US Section 301 tariffs within certain period on the eligible US products that are purchased from the US based on “market-oriented and commercial principles”.

China Retaliatory Tariffs Exclusion Request Process for US Products Purchased under Market-Oriented Principle

Based on our understanding of the Notice [2020] No.2 released by the Tariff Commission, the general process for retaliatory tariffs exclusion request is as follows:



The basic requirements for the exclusion request are listed in the table below:

Applicants	Enterprises in China planning to sign contracts to purchase and import relevant products from the US are eligible to apply for tariff exemption.
Scope of Products Eligible for Exclusion Request	<ul style="list-style-type: none">Products in the list attached to the Notice [2020] No.2 with a total of 696 items under 8-digit HS codes.Applicants can apply for additional listing.Products imported under duty-reduction/exemption program or express courier imports are automatically exempted from additional tariffs.
Application Channel and Time	Applications can be submitted online at the website of Research Center for Tariff Policy of the Ministry of Finance (http://gszx.mof.gov.cn) from March 2.
Application Filing Requirements	Applicants shall fill in HS codes and planned purchase amount of the US products, etc.
Exclusion Application Results	Within one year from the date of approval, no retaliatory tariffs against the U.S. Section 301 will be imposed on the approved amount of imports.
Import Declaration Requirements	The company shall obtain exclusion numbers through the exclusion application system and quote the numbers on import declaration forms.

PwC Observations

Compared with the previous tariff exclusion request process for the \$50 billion list and the other for the \$60 billion list implemented in 2019, the release of the Notice [2020] No.2 is of significant importance to those entities being impacted by the Sino-US trade friction.

1. Broaden the scope of US products eligible for retaliatory tariff exclusion

Since the beginning of the Sino-US trade friction, China's retaliatory tariffs exclusion mechanism has been developing from nonexistence to where it stands currently, the exclusion process has been in constant improvement. The Trial Measures on the Exclusion for US Products Subject to Additional Tariffs released in May 2019 is mainly for general exclusion of specific US products. All enterprises that import the excluded US products can enjoy exemption of additional tariffs. While the Notice [2020] No.2, reviews and grants the exclusion permit on a purchase transaction basis, i.e. each enterprise shall submit their own exclusion applications for their own import purchases, regardless of whether other enterprises has

obtained the retaliatory tariff exclusion approval for the specific products.

The Tariff Commission released two exemption notices on September 11 2019 and December 19 2019 respectively, which exempts only 22 types of US products from the China retaliatory tariffs. Instead, the list of products eligible for exclusion application in the Notice [2020] No.2 involves a total of 696 products under 8-digit HS codes in 17 categories and 46 chapters, covering products in various fields and industries like resources and energy, agriculture, food and beverages, chemical products, machinery, instruments and etc., which significantly broadens the scope of products that stand a chance to enjoy the additional tariffs exemption(as summarized in the table below). In addition, applicants also can submit additional listing for the US products not yet included the list.

Lists of US products eligible for exclusion application	Batch 1			Batch 2	
	25%	25%	20%	10%	5%
Meat, fish, etc.	✓				
vegetables, fruits, grains and beans like radish	✓				
Other food and beverages				✓	
Mineral products, chemical products, etc.	✓		✓		✓
Plastic and rubber products				✓	
Wood and products of paper		✓	✓		✓
Precious metals, jewelry, etc.			✓		
Base metals and products thereof			✓		
Machinery, mechanical products and parts				✓	
Equipment for optical, measuring, inspection, etc.				✓	

2. Reduce the cost and difficulty in applying for retaliatory tariff exclusion

According to the Notice [2020] No.2, applicant only need to submit basic information of products such as HS codes, planned purchase amount for the Tariff Commission's review when applying for exclusion for the products in the attached list, which is different from the objective and methods of exclusion outlined in the Trail Measures on the Exclusion Work for US Products Subject to Additional Tariffs. We understand that these two different exclusion methods may be implemented in parallel in the future; hence companies can opt for their preferred approach of conducting the exclusion request based on their actual conditions and needs.

Although there has not been any more detailed interpretation or operation guide for the recently announced exclusion application process, it can be expected that applicants will spend less time and efforts in explaining the impacts of retaliatory tariffs and the reasons for exclusion request (such as whether there is alternative sourcing in the market, the major impacts of additional tariffs on industries and society, etc.). The approval rate and the efficiencies of review are expected to be higher compared to previous exclusion process as well.

In summary, the release of the Notice [2020] No.2 is expected to significantly reduce the cost and difficulty of enterprises in applying for retaliatory tariff exclusion.

3. Release positive signals and strengthen enterprises' confidence

Although the Sino-U.S. trade frictions show signs of easing off recently, it is still possible that the retaliatory tariffs will become normalized and last for a long while. In this context, the implementation of retaliatory tariff exclusion request in the Notice [2020] No.2 will help remove the market uncertainty, stabilize the expectations

of enterprises and enhance their confidence in the market as well. Especially under current epidemic situation of the novel coronavirus, the newly announced measure shall play a positive role in lowering the cost pressures of enterprises and improving certain business conditions as a whole.

We foresee more and more enterprises will benefit from the release of the Notice [2020] No.2. We recommend that enterprises shall pay close attention to the following and take full advantage of the benefits of this new policy.

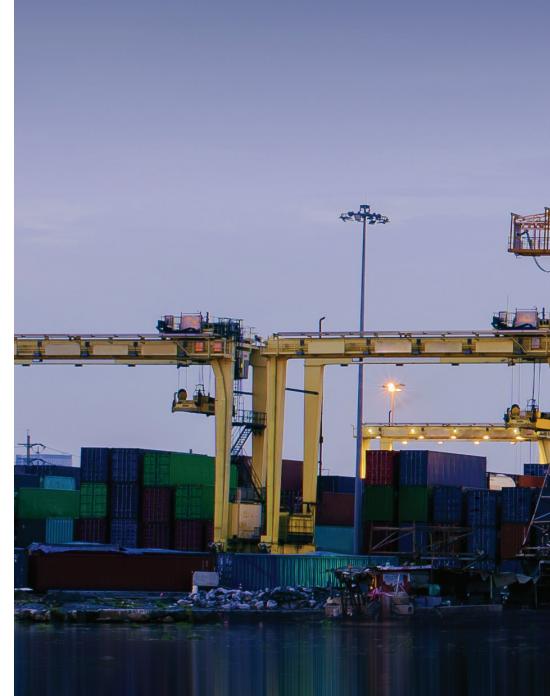
1. Timely confirm the information of imported products

Considering that the exclusion application for US products in the list attached ton the Notice [2020] No.2 may be easier to be approved, enterprises should promptly confirm the declaration information of the products to be imported from the US and make a comprehensive comparison with the product list in the Notice [2020] No.2 to prevent from missing any opportunity of retaliatory tariff exclusion.

For products out of the list, enterprises still stand a chance to apply for additional listing to seek for further duty saving opportunities. Given that there are more stringent \ requirements for applying for additional listing, if the products to imports are not on the list, it would be more efficient for the enterprises to fully assess the feasibility in the first place and carry out relevant preparations prior to any official application with the authorities.

2. Fully understand the restrictions of retaliatory tariff exclusion policies

In addition to promoting the retaliatory tariff exclusion request process, the Notice [2020] No.2 also clarifies



certain restrictions on the exemption of retaliatory tariffs, there are a few areas outlined below for your attention.

- **Products are purchased from the US under “market-oriented and commercial principles”.** It remains to be seen how the Tariff Commission apply the principle in their actual review on the exclusion applications. The enterprises shall pay close attention to any further details on policy interpretation and evaluate thoroughly whether the actual conditions of enterprises can meet the requirements set out by the Tariff Commission, in order to avoid the risk of failing to enjoy the retaliatory tariff exemption due to certain issues such as import trade modes for example.

- **Products eligible for additional tariff exclusion should be imported within the planned amount approved by the Tariff Commission; excess beyond the approved amount shall not be excluded and applicants needs to bear the cost of the additional tariffs.** Applicants should carefully consider the planned purchase amount of US products based on their business needs at the time of exclusion application. If actual purchase amount exceeds the approved amount, it may lead to additional tariffs. In addition,



companies should pay attention to the authenticity and accuracy of application information. Inauthentic or inaccurate information can lead to failure of exclusion and have negative impacts on the reputation and the credit rating of the enterprises with relevant government authorities (e.g. Customs AEO rating).

- **The retaliatory tariff exclusion is reviewed on specific purchase transaction basis, not for specific products.** Different from the Trail Measures on the Exclusion Work for US Products Subject to Additional Tariffs released by the Tariff Commission in 2019, the Notice [2020] No.2 reviews and grant permit of the exclusion based on each individual purchase transaction. In other words, a company getting approval on additional tariff exclusion for certain US products does not mean that the other companies can enjoy the additional tariff exclusions on the same products concerned without making any further exclusion request to the authorities. In the contrary, each company has to submit each of their own exclusion applications for their own import transactions even though they are importing the same products from the US.

3. Stay tuned for further details on the policy interpretation and requirements by the authorities

The Notice [2020] No.2 indicates that the exclusion applications can be submitted online through the exclusion application system (the website of Research Center for Tariff Policy of the Ministry of Finance). At the current stage, only limited information are made available to public regarding the detailed information to submit and declare, there are still a few areas pending for further clarifications, for example:

- Whether the planned purchase amount need to be submitted monthly;
- How to apply for additional exclusions for the additional transaction beyond the approved purchase amount of the current month due to actual business needs;
- Whether applicants need to provide related commercial documents such as import purchase contracts, etc.;
- Whether applicants need to separately apply for exclusion for products of different specifications and models;
- Whether an exclusion number obtained can be used in different customs declaration forms for different circumstances such as

part shipments, different bills of lading for one shipment, etc.

When preparing any relevant information in advance in accordance with the Notice [2020] No.2, applicants should also pay close attention to any further details on policy interpretations, filing instructions / guidelines which may be published subsequently by relevant authorities, to stay alert and timely acquire the latest information for the exclusion application.

4. Make full use of other relevant policies to improve business conditions

In recent years, China authorities have implemented a series of policies to encourage and promote imports/ exports and improve the overall environment for doing business in China. It would be worthwhile for the companies who wish to better improve business conditions to explore any appropriate lobbying opportunities to make policy recommendations to the government on various subject matters, e.g. increase the export refund rates on products/materials of high-tech contents, reduce the import tariff rates for certain medical equipment, rare raw materials and key parts/ components, etc. Enterprises may consult third party professionals to develop a strategy and action plan for carrying out the work where needed.

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PwC's Customs & Worldtrade Practice

Customs and worldtrade in China is complex, but with the right approach is manageable. A planned and structured approach results in cost savings, higher levels of compliance and fewer unwanted surprises during an audit. PricewaterhouseCoopers' specialists within our Greater China customs and international trade practice provide a wide range of advice and services related to creating value, ensuring compliance, and managing risk in relation to the movement of goods into and out of China.

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