

September 12, 2019

## China 301 Exclusion Requests: How to Obtain Favorable Results and Secure Duty Refunds



### Featured Speaker:

John Brew

Partner

*Crowell & Moring*



### SFIA Guest:

Bill Sells

Senior Vice President of Government & Public Affairs

*SFIA*



### Webinar Host:

Alli Schulman

Coordinator, Communications & Marketing

*SFIA*

The logo for Crowell & Moring, featuring the word "crowell" in a lowercase serif font, a red square graphic, and the word "moring" in a lowercase serif font.The SFIA logo, featuring a stylized red figure in motion to the left of the letters "SFIA" in a bold, white, sans-serif font.

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Scott McLean  
Senior Manager

**Exponent**  
Engineering and Scientific Consulting



Michelle Gilboe  
Partner

**BB** *Bowman and Brooke* LLP

September 17, 2019

2:00 PM (EST)

# Racing Ahead & Keeping Pace in Wearable Technology: Evolution of the Industry and its Legal Risks

# Sports and Fitness Industry Association

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## China 301 Exclusion Requests: How to Obtain Favorable Results and Secure Duty Refunds

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# Agenda

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- China Trade War – Background
- China 301 Proceedings – Overview
- China 301 Proceedings – Impact on SFIA Members
- China 301 Proceedings – Exclusion Process
- China 301 Proceedings – Required Information
- Preserving Rights to Duty Refunds
- China 301 Proceedings – List 4 Impact and Process
- China 301 – Status and Resources

# China Trade War – Background

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- Section 301 U.S. Law to Counter Unfair Trade Practices
- Office of the United States Trade Representative and 301 Committee
- WTO Inconsistent
- China IP Investigation (August 2017)
- USTR Report (March 2018)
- Remedy Phase
- Harmonized System (HS) Classification

# China 301 Proceedings – Overview

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- USTR Remedy Phase – Four Separate Proceedings
- List 1: April 2018 – \$50 billion proposed list of products at 25%
- List 1: Effective July 6, 2018 on \$36 billion at 25%
- List 2: June 2018 – \$16 billion proposed list of products at 25%
- List 2: Effective August 23, 2018 on \$16 billion at 25%
- List 3: July 2018 – \$200 billion proposed list of products at 25%
- List 3: Effective September 24, 2018 on \$200 billion at 10%
- List 3: Increased to 25% effective May 10, 2019

# China 301 Proceedings – Overview

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- List 4: May 2019 – \$300 billion proposed List of Products at 25%
- List 4A: Effective September 1, 2018 – 15%
- List 4B: Effective December 15, 2019 – 15%
- Lists 1-3: September 2019 – proposed increase from 25% to 30% to be effective October 1, 2019



# China 301 Proceedings – Impact on SFIA Members

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## List 3 Includes

HS Code	Product Description
3926	plastic articles, baseball gloves, sports gloves, certain apparel and accessories
4015	rubber gloves
4202	sports bags, coolers, smart phone carriers
4203	leather baseball gloves, sports gloves
5903	certain sports tapes
6505/6506	hats, headwear, caps
6502	helmet components
8308	helmet components
8504/8537	exercise equipment
9106	timers
9401	folding chairs

# China 301 Proceedings – Exclusion Process

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- Exclusions
- Product Specific Requests for Lists 1, 2 and 3 only
- Retroactive and good for at least 1 year
- List 1 request closed October 2018
- List 2 requests closed December 2018
- List 3 exclusions closes September 30, 2019
- List 4 TBD
- Over 15,000 requests filed – 2,800 requests granted – 6,700 requests denied – approximately 30% approval rate

# China 301 Exclusions – Required Information

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- 10 digit HS Code
- Product name, description, function, application and use
- Pictures, specification sheets, CBP rulings
- Role of requestor (*e.g.*, importer, producer, association)
- Is product available in U.S., if not why?
- Is product not available in third countries?
- Describe attempts to source outside of China
- Import data (2017 – Q1 2019)

# China 301 Exclusions – Required Information

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- Details if product is an input material (% of finished good and of company sales)
- Arguments why imposition of tariffs harms your company or other U.S. interests
- Business confidential information must be identified
- Submission of List 1 or 2 requests
- Strategic importance to China 2025

# China 301 Exclusions – Good Facts

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- No U.S. sources
- No third country sources, or small percentage with imports from other countries
- Product requires special certifications or testing to meet standards
- Input material for U.S. production and exports
- Chinese producer is a U.S. subsidiary
- Efforts to find third country sources
- Price increase costs U.S. jobs and consumers
- Not critical to China 2025

# China 301 Exclusions – Bad Facts

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- U.S. sources, who may file objections
- Large percentage of imports from third countries
- Finished product, not input material
- Price increase absorbed by Chinese suppliers
- Critical to China 2025

# China 301 Exclusions – Reasons for Denial

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- Wrong list
- Wrong HS code
- Bad product description
- Multiple products in one petition
- Domestic opposition
- Reasonably available alternative or U.S. sources
- Subjectivity

# Preserving Rights to Duty Refunds

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- Duties on List 3 imposed in September 2018
- Customs “liquidates” entries 314 days after entry
- Importers may request customs extend liquidation upon request
- Importers must protest liquidation 180 days to protest customs liquidation
- Importers should monitor entries, request extension of liquidation and/or file protective protests



# China 301 Proceedings – List 4 Import and Process

HS Code	Product Descriptions
6110/6114/6116/6201/6203/6204	Apparel: pullovers, uniforms, gloves, outer wear
6216	Sports gloves
6302/6307	Towels, and other textile articles
6402/6404	Sports footwear
6506	Helmets and headgear
6601	umbrellas
9004	Eyewear
9506	Sports equipment, golf club parts, tennis racquets, baseballs, raquet balls, other balls, ice skates, baseball bats, hockey sticks and other spots equipment and games

- List 4 Process TBD – likely similar to List 3

# China Section 301 – Status and Resources

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- U.S. – China Negotiations
- Potential Outcomes
  - Status Quo: Announce List 4 exclusion process and continue to make determinations
  - Delay: Based on October negotiations, delay increase to Lists 1-3 tariffs
  - Increase: Raise tariffs on List 4, and continue to raise tariffs
  - Resolution: Will pending requests be granted if agreement is reached?
  - Crowell Trade Blog – [cmtradelaw.com](http://cmtradelaw.com)
  - USTR Website – <https://exclusions.ustr.gov/s/login/?startURL=%2Fs%2F&ec=302>



**Questions?**



**Thank You!**



# MARK YOUR CALENDARS



**"Racing Ahead & Keeping  
Pace in Wearable  
Technology"**  
2:00 PM (EST)  
September 17, 2019



September 25, 2019  
Baltimore, MD



September 25-26, 2019  
Baltimore, MD

## Expert Panelist:

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Partner

## SFIA Guest:

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## Host:

Alli Schulman  
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Coordinator, Communications &  
Marketing

## Have any questions?

Additional questions or  
contact information can be  
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[webinars@sfia.org](mailto:webinars@sfia.org)

*Thank you to all of our participants!*