



**MAY 10, 2019 UPDATE:
CHINA SECTION 301 LIST 3 TRADE REMEDY RATE INCREASE FROM 10% TO 25%**

The USTR has announced changes to the scheduled increase from 10% to 25% for China goods subject to Section 301 List 3 which (a) create a new HTS provision which limits application of the 10% rate for in-transit goods exported before May 10, 2019 and entered by May 31, 2019, and (b) recognize FTZ Privileged Foreign (PF) status. For FTZ merchandise, this new “gap” provision for China origin merchandise exported before May 10 should not require Customs entry by May 31 to qualify for the 10% rate. This provides a significant FTZ benefit. More details follow:

HTSUS PROVISIONS

Late last night the USTR posted a [notice](#) of “implementing modification” (which will be published later in the [Federal Register](#)) to its prior notice, and Customs published a CSMS [message](#) this morning. The USTR notice creates a new HTSUS subheading 9903.88.09 provision which applies the 10% rate to China Section 301 List 3 goods which are:

- (1) exported to the United States before May 10, 2019,
- (2) entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on May 10, 2019, and
- (3) entered for consumption, or withdrawn from warehouse for consumption, before 12:01 a.m. eastern daylight time on June 1, 2019.

The USTR indicates the new tariff provision was created to account for “customs enforcement factors” and average China-U.S. ocean transport times (although we note that covered China-origin goods may be exported to the United States from other countries such as Korea, Singapore, Japan, Canada, and Mexico). It also eliminates any FTZ software changes. The CSMS message confirms that for China goods (a) entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on May 10, 2019, and (b) exported to the United States on or after May 10, 2019, the 25% rate applies to HTSUS subheadings 9903.88.03/04. The text is silent on which HTS Chapter 99 provision should be used for FTZ admissions.

PRIVILEGED FOREIGN STATUS

Significantly, the USTR notice confirms that China-origin goods admitted into an FTZ in PF status will retain the China Section 301 List 3 duty rate in effect at the time of admission, as follows:



The products of China covered by the September 2018 action that are admitted into a foreign-trade zone (FTZ) in “Privileged Foreign” status shall retain that status consistent with 19 CFR 146.41(e) and will be subject, at the time of entry for consumption, to the additional duty rate that was in effect at the time of FTZ admission of said product.

This is the first time a USTR notice has included FTZ language which is substantially similar to the Presidential Steel/Aluminum Proclamations. Unfortunately, the text is silent on any other FTZ management issues. PF status is required by the Federal Register notices but are silent on FTZ implementation language on use of the 10% duty rate.

Questions remain on the impact of China goods exported to the United States prior to May 10, 2019 which are admitted into FTZs between May 10 and May 31, 2019. In the past, on China Section 301 issues where USTR documentation has been silent, CBP Headquarters has issued guidance that normal FTZ rules and processes apply. Although we understand Customs Headquarters will be issuing additional guidance via CSMS message on FTZs early next week, it is not certain exactly what will be stated by CBP Headquarters. We have the following recommendations:

FTZ CONSIDERATION

1. FTZ-Bound China Section 301 List 3 Goods Exported May 9 or Earlier.

a. PF Status HTS.

- i. **Defer e214 Filing.** e214s are not required to be filed today, Monday, or Tuesday as long as the 15-day arrival rule is not violated and the product has not been received into your ICRS. CBP final guidance should be issued by early next week.
- ii. **e214 Filing.** If you must file an e214 immediately, there is no certain Chapter 99 HTS of the two options to use, but most probably HTSUS subheading 9903.88.09 should be appropriate. It may require a “delete and replace” of the e214 once there is clear guidance.

b. **Customs Entry.** The option of Customs entry should be considered for China Section 301 List 3 goods exported May 9 or earlier, unless the goods will subsequently be exported.

2. **Documentation.** Clients must secure and maintain very complete documentation, including the Bill of Lading, to substantiate the date of export of May 9 or earlier.
3. **Customs Bond.** Clients should investigate the impact on entry bond sufficiency for the increased China Section 301 List 3 duties.

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As always, we offer advice and counsel 24/7 on import, export, and FTZ effective Trade Remedy management. Please contact [Marshall Miller](#), [Brian Murphy](#), or [Sean Murray](#) with questions or for assistance.

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