

USTR Announces Exclusion Request Process for Third Wave of Section 301 Tariffs

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On June 24, 2019, the U.S. Trade Representative (“USTR”) formally announced a product exclusion request process for List 3 of the Section 301 tariffs on Chinese imports, worth \$200 billion. Beginning at 12pm EST on June 30, 2019, interested parties may submit exclusion requests via the online portal at <http://exclusions.USTR.gov>, which will become active at that time. The deadline for submitting exclusion requests for List 3 is September 30, 2019.

As our previous briefings describe, Section 301 tariffs on products imported from China have been enacted in three waves, taking effect in July, August, and September 2018, respectively. The third wave was initially set at a 10% tariff rate, and it increased to 25% on May 10, 2019. A proposed fourth wave of tariffs, which represents \$300 billion worth of products, including clothing, electronics, metal alloys, food, beverages, and sporting equipment, will likely take effect later this year.

Similar to previous rounds of exclusion requests, interested parties will have 14 days to respond after an exclusion request is posted, and reply comments must be submitted within 7 days. If granted, exclusions will apply retroactively from when the tariffs took effect on September 24, 2018, and extend for one year after the exclusion determination is published in the Federal Register. According to the Federal Register notice, which includes a facsimile exclusion request form to assist parties in preparing their submissions, each request must “specifically identify a particular product, and provide supporting data and the rationale for the requested exclusion.” As the USTR evaluates each request, it will consider “the asserted rationale for the exclusion, whether the exclusion would undermine the objective of the Section 301 investigation, and whether the request defines the product with sufficient precision.”

As the notice explains, interested parties must include the following details in their submissions:

- 10-digit or 8-digit HTSUS subheading applicable to product
- Product name and detailed description, including physical characteristics
- Product function, application, principal use, and unique physical features
- Relationship to product (Importer, U.S. Producer, Purchaser, Industry Association, Other)
- Quantity and value of product requester purchased in 2017, 2018, and first quarter of 2019

- Requester’s gross revenues for fiscal year 2018, first quarter of 2018, and first quarter of 2019
- Percentage of total 2018 sales that sales of Chinese-origin product accounted for
- Percentage of total cost of producing final product and percentage of total 2018 sales that sales of final product accounted for

In addition to the exclusion request form, interested parties may submit additional exhibits that help distinguish the product, such as specification sheets, photographs, and written briefs explaining why an exclusion is needed.

The USTR will consider the following four factors when deciding whether to grant exclusion requests:

- “Whether the particular product is available only from China and whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries. The requester must provide an explanation if the product is not available outside of China or the requester is not sure of the product availability.”
- “Whether the requester has attempted to source the product from the United States or third countries.”
- “Whether the imposition of additional duties (since September 2018) on the particular product has or will cause severe economic harm to the requester or other U.S. interests.”
- “Whether the particular product is strategically important or related to ‘Made in China 2025’ or other Chinese industrial programs.”

If you seek to file exclusion requests for List 3 products, or if you have other questions regarding these complex matters, we recommend seeking the guidance of counsel. Please contact any of the attorneys listed below or your usual Winston & Strawn LLP contact for assistance.

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