

[Billing Code 3290-F0]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Number USTR-2019-0005

Procedures for Requests to Exclude Particular Products from the August 2019

**Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to
Technology Transfer, Intellectual Property, and Innovation**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: In a notice published on August 20, 2019, the U.S. Trade Representative announced that the Office of the U.S. Trade Representative (USTR) would establish a process by which U.S. stakeholders may request an exclusion from additional duties of particular products classified within a tariff subheading covered by the August 2019 action. This notice announces that USTR will open an electronic portal for submission of exclusion requests on October 31, 2019 for products covered by Annex A of the August 2019 action, and sets out the specific procedures for submitting requests.

DATES:

October 31, 2019 at noon EDT: The web portal for submitting exclusion requests -

<https://exclusions.USTR.gov> - will open.

January 31, 2020 at 11:59 PM EDT: Last day for submitting exclusion requests.

Responses to individual exclusion requests are due 14 days after USTR posts the request on the online portal. Any replies to responses to an exclusion request are due the later of 7 days after the close of the 14-day response period, or 7 days after the posting of a response.

ADDRESSES: You must submit all requests, responses to requests, and replies to responses through the online portal: <https://exclusions.ustr.gov>.

FOR FURTHER INFORMATION CONTACT: For questions about the product exclusion process, contact Assistant General Counsels Philip Butler or Megan Grimball at (202) 395-5725. For questions on customs classification or implementation of additional duties, contact traderemedy@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

A. August 2019 Action

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), and 84 FR 22564 (May 17, 2019).

In a notice published on August 20, 2019, the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an additional 10 percent *ad valorem* duty on products of China with an annual aggregate trade value of approximately \$300 billion. 84 FR 43304 (August 20, 2019). The August 20 notice contains two separate lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, was effective September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, currently is scheduled to take effect on December 15, 2019. On August 30, 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A and Annex C of the August 20 notice.

B. Procedures to Request the Exclusion of Particular Products

USTR invites interested persons, including trade associations, to submit requests for exclusion from the additional duties for products covered by List 1 of the August 2019 action. As explained in more detail below, each request specifically must identify a particular product, and provide supporting data and the rationale for the requested exclusion. USTR will evaluate each request on a case-by-case basis, taking into account 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. Any exclusion will be effective for one year, starting from the September 1, 2019 effective date for Annex A of the August 20, 2019 notice. USTR will periodically announce decisions on pending requests.

To submit an exclusion request, requesters must first register on the portal at <https://exclusions.ustr.gov>. As noted above, the portal will open at noon EDT on October 31, 2019. After registration, the requester can fill out and submit one or more exclusion request forms.

Fields on the exclusion request form marked with an asterisk (*) are required fields. Fields with a green (Public) notation will be publicly available. Fields with a gray (BCI) notation are for Business Confidential Information and the information entered will not be publicly available. Additionally, parties will be able to upload documents and indicate whether the documents are BCI or public. Requesters will be able to review the public version of their submission before the submission is posted.

In order to facilitate preparation of requests prior to the October 31 opening of the web portal, a facsimile of the exclusion request form to be used on the portal is attached

as an annex to this notice. Please note that the color-coding of public fields and BCI fields is not visible on the attached facsimile, but will be apparent on the actual form used on the portal.

Set out below is a summary of the information to be entered on the exclusion request form.

Each requester must provide contact information, including the full legal name of the organization making the request, whether the requester is a third party (law firm, trade association, or customs broker) submitting on behalf of an organization or industry, and the primary point of contact (requester and/or third party submitter). The requester may report whether the requester's business satisfies the Small Business Administration's size standards for a small business, which are identified by North American Industry Classification Systems Codes and are found in 13 CFR 121.201.

With regard to product identification, any request for exclusion must include the following information:

- The 10-digit subheading of the HTSUS applicable to the particular product requested for exclusion. If no 10-digit subheading is available (*i.e.*, the 8-digit subheading does not contain breakouts at the 10-digit level), requesters should use the 8-digit subheading and add "00". Different models classified under different 8-digit or 10-digit subheadings are considered different products and require separate exclusion requests.
- Product name and a detailed description of the product. A detailed description of the product includes, but is not limited to, its physical characteristics (*e.g.*, dimensions, weight, material composition, etc.). Requesters may submit a range of comparable goods within the product definition set out in an exclusion request. Thus, a product request may

include two or more goods with similar product characteristics or attributes. Goods with different SKUs, model numbers, or sizes are not necessarily different products.

- The product's function, application (*e.g.*, whether the product is designed to function in or with a particular machine or other device), principal use, and any unique physical features that distinguish it from other products within the covered 8-digit HTSUS subheading. Requesters may submit attachments that help distinguish the product (*e.g.*, CBP rulings, photos and specification sheets, and previous import documentation). Documents submitted to support a requester's product description must be made available for public inspection and contain no BCI. USTR will not consider requests that identify the product using criteria that cannot be made available for public inspection.
- Whether the product is currently subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce.

Requesters must provide their relationship to the product (Importer, U.S. Producer, Purchaser, Industry Association, Other) and provide specific data on the annual quantity and value of the Chinese-origin product, domestic product, and third-country product the requester purchased, in 2017, 2018, and the first half of 2019.

Requesters must provide information regarding their gross revenues for 2018 and the first half of 2019.

For imports sold as final products, requesters must provide the percentage of their total gross sales in 2018 that sales of the Chinese-origin product accounted for.

For imports used in the production of final products, requesters must provide the percentage of the total cost of producing the final product(s) the Chinese-origin input

accounts for and the percentage of their total gross sales in 2018 that sales of the final product(s) accounted for.

As noted in the attached facsimile, required information regarding the requester's purchases and gross sales and revenue is BCI and the information entered will not be publicly available.

With regard to the rationale for the requested exclusion, each requester will be asked to address the following:

- 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 on the particular product 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.

In addressing each factor, the requester should provide support for their assertions. To provide information about the possible cumulative effects of the Section 301 tariff actions, requesters also may submit information about any exclusion requests submitted by the requester under the initial \$34 billion tariff action (Docket ID: USTR-2018-0025), the additional \$16 billion tariff action (Docket ID: USTR-2018-0032), or the additional \$200 billion tariff action (Docket ID: USTR-2019-0005) and the value of the

requester's imports covered by the previous tariff actions. Requesters also may provide any other information or data that they consider relevant to an evaluation of the request.

C. Responses to Requests for Exclusions

After a request for exclusion of a particular product is posted on USTR's online portal, interested persons will have 14 days to respond to the request, indicating support or opposition and providing reasons for their view. A response to a product exclusion request must be submitted using USTR's online portal at <https://exclusions.ustr.gov>. To file a response, an interested party does not have to register. Responses will be publicly available.

D. Replies to Responses to Requests for Exclusions

After a response is posted on USTR's online portal, the requester will have the opportunity to reply to the response using the same portal. Any reply must be submitted within the later of 7 days after the close of the 14-day response period, or 7 days after the posting of a response. A reply to a response must be submitted using USTR's online portal at <https://exclusions.ustr.gov>. Replies to responses will be publicly available.

E. Submission Instructions

As noted above, interested persons must submit requests for exclusions in the period between the opening of the portal on October 31, 2019, and January 31, 2020. Any responses to those requests must be submitted within 14 days after the requests are posted. Any reply to a response must be submitted within the later of 7 days after the close of the 14-day response period, or 7 days after the posting of a response. Interested persons seeking to exclude two or more products must submit a separate request for each

product, *i.e.*, one product per request. As noted above, a single product may include two or more goods with similar product characteristics or attributes.

By submitting an exclusion request, a response, or a reply, the submitter certifies that the information provided is complete and correct to the best of his or her knowledge.

F. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, USTR submitted a request to the Office of Management and Budget (OMB) for emergency review and clearance of this information collection request (ICR) titled *301 Exclusion Requests*. OMB assigned control number 0350-0015, which is due to expire on December 31, 2019. USTR has submitted the information collection to OMB for review and approval of a three-year extension of the control number. 84 FR 43853 (August 22, 2019).

Joseph Barloon
General Counsel
Office of the U.S. Trade Representative.

Exclusion Request Form

1. Submitter Information

Full Organization Legal Name * **(Public)**

Requestor First Name * **(BCI)**

Requestor Last Name * **(BCI)**

Requestor Mailing Address

Street Address Line 1 * **(BCI)**

Street Address Line 2 **(BCI)**

City * **(BCI)**

State * **(BCI)**

Zip Code * **(BCI)**

Country * **(BCI)**

Requestor E-mail Address * **(BCI)**

Requestor Phone Number * **(BCI)**

Does your business meet the size standards for a small business as established by the Small Business Administration? * **(Public) YES/NO/Not Sure**

Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? * **(Public) YES/NO**

Note: If you are submitting on behalf of an organization/industry, the information below is required.

Third Party Firm/Association Name **(Public)**

Third Party First Name **(BCI)**

Third Party Last Name **(BCI)**

Third Party Mailing Address

Street Address Line 1 **(BCI)**

Street Address Line 2 **(BCI)**

City **(BCI)**

State **(BCI)**

Zip Code **(BCI)**

Country (BCI)

Third Party E-mail Address (BCI)

Third Party Phone Number (BCI)

Who will be the primary point of contact? (Select One) * (BCI)

- Requestor
- Third Party Submitter
- Requestor and Third Party Submitter

2. **Please provide the 10-digit HTSUS item number* for the product you wish to address in this product exclusion request. A 10-digit HTSUS number is required. * (Public)**

Use numerical characters only with no special characters (Example: 1023456789). For help with finding the HTSUS item number associated with your product, see <https://hts.usitc.gov/>.

3. **Is this product subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce? ***

4. **Please provide a complete and detailed description of the particular product of concern.** (A detailed description of the product includes, but is not limited to, its physical characteristics (e.g., dimensions, weight, material composition, etc.), whether product is designed to function in or with a particular machine (application), the unit value of the product (please provide a range if necessary), and any unique physical features that distinguish it from other products within the covered 8-digit HTSUS subheading. If needed, please attach images and specification sheets, CBP rulings, court decisions, and previous import documentation below.) **Please also describe the product's principal use.**

Note: USTR will not consider requests that identify the product using criteria that cannot be made available to the public. USTR will not consider requests in which more than one unique product is identified.

Product Name * (Public)

Product Description (e.g. dimensions, weight, material composition, etc.) * (Public)

Product Function, Application, and Principal Use * (Public)

Please upload any relevant attachments that will help identify and distinguish your product (e.g. CBP rulings, photos and specification sheets, and previous import

2019 Value (Jan-Jun): 2019 Quantity (Jan-Jun):

Are the provided figures estimates?: * (BCI) YES/NO

Are any of these purchases from a related company? * (BCI) YES/NO

Please list the name and relationship of the related company. (BCI)

- 10. Please provide the value in USD and quantity (with units) of the product of concern that you purchased from any third-country source in 2017, 2018, and the first half of 2019 (Jan-Jun). Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. * (BCI)**

2017 Value: 2017 Quantity:

2018 Value: 2018 Quantity:

2019 Value (Jan-Jun): 2019 Quantity (Jan-Jun):

Are the provided figures estimates?: * (BCI) YES/NO

- 11. Please provide the value in USD and quantity (with units) of the product of concern that you purchased from domestic sources in 2017, 2018, and the first half of 2019 (Jan-Jun). Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. * (BCI)**

2017 Value: 2017 Quantity:

2018 Value: 2018 Quantity:

2019 Value (Jan-Jun): 2019 Quantity (Jan-Jun):

Are the provided figures estimates?: * (BCI) YES/NO

- 12. Please provide information regarding your company's gross revenue in USD for 2018 and the first half of 2019 (Jan-Jun). * (BCI)**

Fiscal Year 2018:

First Half of 2018 (Jan-Jun):

First Half of 2019 (Jan-Jun):

Are the provided figures estimates?: * (BCI) YES/NO

- 13. Is the Chinese-origin product of concern sold as a final product or as an input used in the production of a final product or products? * (Public)**

a) For imports sold as final products, please provide: (BCI)

% of your company's total, U.S. gross sales in 2018 that the Chinese-origin product accounted for.

b) For imports of inputs used in the production of final products, please provide: (BCI)

% of the total cost of producing the final product(s) the Chinese-origin input accounts for.

% of your company's total, U.S. gross sales in 2018 that sales of the final product(s) incorporating the input accounts for.

- 14. Please comment on whether the imposition of additional duties on the product you are seeking to exclude will result in severe economic harm to your company or other U.S. interests. In addressing this factor, please address the number of employees in your company and the number of employees potentially affected. * (BCI)**
- 15. Please provide any additional information in support of your request, taking account of the instructions provided in Section [B] of the Federal Register notice. (Submitter Determines BCI or Public)**
- 16. Did you submit exclusion requests for the Section 301 \$34 billion (Docket ID: USTR-2018-0025), the \$16 billion (Docket ID: USTR-2018-0032), and/or the \$200 billion (Docket ID: USTR-2019-0005) tariff actions? * (Public) YES/NO**

Please enter the total value of your company's imports applicable to the tariff action for which you submitted one or more exclusion request: (BCI)

Initial \$34 Billion Tariff Action:

Additional \$16 Billion Tariff Action:

Additional \$200 Billion Tariff Action:

- 17. Please comment on whether the particular product of concern is strategically important or related to "Made in China 2025" or other Chinese industrial programs. You must explain in the box below why you believe the product of concern is or is not strategically important or related to "Made in China 2025" or other Chinese industrial programs. * (Public)**

- 18. Include any additional attachments that should be considered along with this exclusion request (e.g., customs rulings, court decisions, previous import documentation, etc.). Please do not include attachments that contain your written argument. (Submitter Determines BCI or Public)**