



[Billing Code 3290-F9]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Number USTR-2019-0005

Procedures for Requests to Exclude Particular Products from the September 2018 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 May 9, 2019, the United States Trade Representative (Trade Representative) announced that the Office of the U.S. Trade Representative (USTR) would establish a process by which U.S. stakeholders may request exclusion of particular products classified within a tariff subheading covered by the September 2018 action in this investigation from the additional duties. This notice announces that USTR will open an electronic portal for submission of exclusion requests on June 30, 2019, and sets out the specific procedures for submitting requests.

DATES:

June 30, 2019 at noon EDT: The web portal for submitting exclusion requests -

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

September 30, 2019: Deadline for submitting exclusion requests.

Responses to individual exclusion requests are due 14 days after the request is posted on USTR's 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: <http://exclusions.USTR.gov>.

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

SUPPLEMENTARY INFORMATION:

A. September 2018 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), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), as modified by 83 FR 49153 (September 28, 2018), and 84 FR 20549 (May 9, 2019), as modified by 84 FR 21892 (May 15, 2019) and 84 FR 26930 (June 10, 2019).

In a notice published on September 21, 2018 (83 FR 47974), the Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing 10 percent additional duties on products of China with an annual trade value of approximately \$200 billion. On September 28, 2018 (83 FR 65198), the Trade Representative issued a conforming amendment and modification of the September 21 action. The current notice refers to the September 21 action, as modified by September 28 notice, as the “September 2018 action.” In a notice published on May 9, 2019 (84 FR 20459), the Trade Representative,

at the direction of the President, increased the rate of additional duty for the September 2018 action to 25 percent.

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 under the September 2018 action. The September 2018 action covers the products classified within the Harmonized Tariff Schedule of the United States (HTSUS) subheadings set out in Annex A of the notice published at 83 FR 47974 (September 21, 2018) as amended and modified by 83 FR 49153 (September 28, 2018). As explained in more detail below, each request must specifically 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 starting from the September 24, 2018 effective date of the September 2018 action, and extending for one year after the publication of the exclusion determination in the *Federal Register*. USTR will periodically announce decisions on pending requests.

To submit an exclusion request, requesters must first register on the portal at <http://exclusions.USTR.gov>. As noted above, the portal will open at noon EDT on June 30, 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 gray (BCI) notation are for Business Confidential Information and

the information entered will not be publicly available. Fields with a green (Public) notation will 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 June 30 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 has to 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 standard 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 products function, application (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.

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 quarter of 2019.

Requesters must provide information regarding their company’s gross revenues for 2018, the first quarter of 2018, and the first quarter 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 (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.

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) or the additional \$16 billion tariff action (Docket ID: USTR-2018-0032) and the value of the requester's imports applicable to 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 <http://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 <http://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 June 30, 2019, and the September 30, 2019 submission deadline. 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 intends to submit the information collection to OMB for review and approval of a three-year extension of the control number.

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**

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 is your importer of record? (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. **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), 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.**

*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 documentation) (Public)

4. Requestor's relationship to the product (select all that apply) * (Public)
- Importer
 - U.S. Producer
 - Purchaser
 - Industry Association
 - Other
5. Is this product, or a comparable product, available from sources in the United States? (If you indicate "NO" or "NOT SURE," in the box below, you must explain why the product is unavailable or why you are unsure of the product's availability.) * (Public)
- YES
 - NO
 - NOT SURE

Please explain why the product is unavailable or why you are unsure of the product's availability. (Submitter Determines BCI or Public)

6. Is this product, or a comparable product, available from sources in third countries? (If you indicate "NO" or "NOT SURE," in the box below, you must explain why the product is unavailable or why you are unsure of the product's availability.) * (Public)
- YES
 - NO
 - NOT SURE

Please explain why the product is unavailable or why you are unsure of the product's availability. (Submitter Determines BCI or Public)

7. Please discuss any attempts to source this product from United States or third countries. * (Public)

8. Please provide the value in USD and quantity (with units) of the Chinese-origin product of concern that you purchased in 2017, 2018, and the first quarter of 2019. 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 Q1 Value:

2019 Q1 Quantity:

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)

- 9. 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 quarter of 2019. 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 Q1 Value: 2019 Q1 Quantity:

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

- 10. 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 quarter of 2019. 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 Q1 Value: 2019 Q1 Quantity:

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

- 11. Please provide information regarding your company's gross revenue in USD for 2018, the first quarter of 2018, and the first quarter of 2019. * (BCI)**

Fiscal Year 2018:

First Quarter 2018:

First Quarter 2019:

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

- 12. 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.

- 13. Please comment on whether the imposition of additional duties (since September 2018) on the product you are seeking to exclude has resulted in severe economic harm to your company or other U.S. interests. * (BCI)**
- 14. 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)**
- 15. Did you submit exclusion requests for the Section 301 \$34 billion (Docket ID: USTR-2018-0025) and/or the \$16 billion (Docket ID: USTR-2018-0032) 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:

- 16. 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)**
- 17. 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)**

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