



[Billing Code 3290-F0]

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**Docket Number USTR-2020-0027**

**Request for Comments Concerning the Extension of Particular Exclusions Granted Under the \$300 Billion 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:** On August 20, 2019, at the direction of the President, the U.S. Trade Representative determined to modify the action being taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by imposing additional duties of 10 percent *ad valorem* on goods of China with an annual trade value of approximately \$300 billion. The additional duties on products in List 1, which is set out in Annex A of that action, became effective on September 1, 2019. On August 30, 2019, at the direction of the President, the U.S. Trade Representative determined to increase the rate of the additional duty applicable to the tariff subheadings covered by the action announced in the August 20 notice from 10 to 15 percent. On January 22, 2020, the U.S. Trade Representative determined to reduce the rate from 15 to 7.5 percent. The U.S. Trade Representative initiated a product exclusion process in October 2019, and as of June 12, 2020, had issued five product exclusion notices under this action. The product exclusions granted under these notices are scheduled to expire on September 1, 2020. The U.S. Trade Representative has decided to consider a possible extension for up to 12 months of

particular exclusions granted under these initial five product exclusion notices. The Office of the U.S. Trade Representative (USTR) invites public comment on whether to extend particular exclusions.

**DATES:** July 1, 2020: The public docket on the web portal at <https://comments.USTR.gov> will open for parties to submit comments on the possible extension of particular exclusions.

July 30, 2020 at 11:59 pm ET: To be assured of consideration, submit written comments on the public docket by this deadline.

**ADDRESSES:** You must submit all comments through the online portal: <https://comments.USTR.gov>.

**FOR FURTHER INFORMATION CONTACT:** Associate General Counsel Philip Butler or Assistant General Counsel Benjamin Allen at (202) 395-5725.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

For background on the proceedings in this investigation, please see prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 84 FR 22564 (May 17, 2019), 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019), 84 FR 69447 (December 18, 2019), 85 FR 3741 (January 22, 2020), 85 FR 13970 (March 10, 2020), 85 FR 15244 (March 17, 2020), 85 FR 17936 (March 31, 2020), 85 FR 28693 (May 13, 2020), 85 FR 32099 (May 28, 2020), and 85 FR 35975 (June 12, 2020).

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). 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 on September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, was 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 (List 1) and Annex C (List 2) of the August 20 notice. *See* 84 FR 45821. On October 24, 2019, the U.S. Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading covered by List 1 of the \$300 billion action from the additional duties. *See* 84 FR 57144 (the October 24 notice). Subsequently, the U.S. Trade Representative announced a determination to suspend until further notice the additional duties on products set out in Annex C (List 2) of the August 20 notice. *See* 84 FR 69447 (December 18, 2019). The U.S. Trade Representative later determined to modify the action being taken by reducing the additional duties for the products covered in Annex A of the August 20 notice (List 1) from 15 to 7.5 percent. *See* 85 FR 3741 (January 22, 2020).

The October 24 notice required submission of requests for exclusion from the \$300 billion action no later than January 31, 2020, and noted that the U.S. Trade

Representative periodically would announce decisions. As of June 12, 2020, the U.S. Trade Representative had issued five notices of product exclusions under the \$300 billion action. These exclusions are scheduled to expire on September 1, 2020.

**B. Possible Extensions of Particular Product Exclusions**

The U.S. Trade Representative has decided to consider a possible extension for up to 12 months of particular exclusions granted under the initial five product exclusion notices under the \$300 billion action. At this time, USTR is not considering product exclusion notices issued after June 12, 2020. Accordingly, USTR invites public comments on whether to extend particular exclusions granted under the following notices of product exclusions:

- 85 FR 13970 (March 10, 2020)
- 85 FR 15244 (March 17, 2020)
- 85 FR 17936 (March 31, 2020)
- 85 FR 28693 (May 13, 2020)
- 85 FR 35975 (June 12, 2020)

For exclusions amended or corrected by a later issued notice of product exclusions, Parties should provide their extension comments on the docket corresponding to the initial notice of product exclusions.

USTR will evaluate the possible extension of each exclusion on a case-by-case basis. The focus of the evaluation will be whether, despite the first imposition of these additional duties in September 2019, the particular product remains available only from China. In addressing this factor, commenters should address specifically:

- Whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- Any changes in the global supply chain since September 2019 with respect to the particular product or any other relevant industry developments.
- The efforts, if any, the importers or U.S. purchasers have undertaken since September 2019 to source the product from the United States or third countries.

In addition, USTR will continue to consider whether the imposition of additional duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.

### **C. Procedures to Comment on the Extension of Particular Exclusions**

To submit a comment regarding the extension of a particular exclusion granted under the above referenced product exclusion notices under the \$300 billion action, commenters first must register on the portal at <https://comments.USTR.gov>. As noted above, the public docket on the portal will be open from July 1 to July 30, 2020. After registration, the commenter may submit an exclusion extension comment form to the public docket.

Fields on the comment 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. Commenters will be able to review the public version of their comments before they are posted.

In order to facilitate the preparation of comments prior to the July 1 opening of the public docket, a facsimile of the exclusion extension comment form to be used on the portal is annexed 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 comment form used on the portal.

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

- Contact information, including the full legal name of the organization making the comment, whether the commenter is a third party (*e.g.*, law firm, trade association, or customs broker) submitting on behalf of an organization or industry, and the name of the third party organization, if applicable.
- The number for the exclusion on which you are commenting as provided in the Annex of the Federal Register notice granting the exclusion and the description. For descriptions, amended or corrected by a later issued notice of product exclusions, parties should use the amended or corrected description.
- Whether the product or products covered by the exclusion are subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce.
- Whether you support or oppose extending the exclusion and an explanation of your rationale. Commenters must provide a public version of their rationale, even if the commenter also intends to submit a more detailed business confidential rationale.
- Whether the products covered by the exclusion or comparable products are available from sources in the U.S. or in third countries. Please include information concerning

any changes in the global supply chain since September 2019 with respect to the particular product.

- The efforts you have undertaken since September 2019 to source the product from the United States or third countries.
- The value and quantity of the Chinese-origin product covered by the specific exclusion request purchased in 2018 and 2019. Whether these purchases are from a related company, and if so, the name of and relationship to the related company.
- Whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties.
- The value and quantity of the product covered by the exclusion purchased from domestic and third country sources in 2018 and 2019.
- If applicable, the commenter's gross revenue for 2018 and 2019.
- Whether the Chinese-origin product of concern is sold as a final product or as an input.
- Whether the imposition of duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.
- Any additional information in support of or in opposition to extending the exclusion.

Commenters also may provide any other information or data that they consider relevant.

#### **D. Submission Instructions**

To be assured of consideration, you must submit your comment between the opening of the public docket on the portal on July 1, 2020 and the July 30, 2020 submission deadline. Parties seeking to comment on two or more exclusions must submit a separate comment for each exclusion.

By submitting a comment, the commenter certifies that the information provided is complete and correct to the best of their knowledge.

**E. Paperwork Reduction Act**

In accordance with the requirements of the Paperwork Reduction Act of 1995 and its implementing regulations, the Office of Management and Budget has assigned control number 0350-0015, which expires January 31, 2023.

Joseph Barloon,  
General Counsel,  
Office of the United States Trade Representative.

ANNEX

OMB Control Number: 0350-0015

Expiration Date: January 31, 2023

### Exclusion Extension Comment Form

**1. Submitter Information**

Full Organization Legal Name **(Public)**

Commenter First Name **(BCI)**

Commenter Last Name **(BCI)**

Commenter Phone Number **(BCI)**

Commenter Mailing Address **(BCI)**

Contact Email Address **(BCI)**


**Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? **(Public)****

*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 Phone Number **(BCI)**

Third Party Mailing Address **(BCI)**

Third Party Email Address **(BCI)**


**2. a) From the Annex of the Federal Register Notice granting the exclusion, please provide the number and product description for the exclusion you are commenting on. For descriptions subsequently amended or corrected by a later notice, parties should use the amended or corrected description. Click the magnifying glass in the box below to search for and select the number and product description applicable to your comment. You may search by the HTS code or key words in the exclusion. **(Public)****

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

**3. Do you support extending the exclusion (yes or no)? Please explain your rationale. (You must provide a public version of your rationale.) **(Public)****

4. Please explain whether the products covered by the exclusion, or comparable products, are available from sources in the United States? (Please include information concerning any changes in the global supply chain since September 2019 with respect to the particular product or any other relevant industry developments.) (Public)

5. Please explain whether the products covered by the exclusion, or a comparable products, are available from sources in third countries? (Please include information concerning any changes in the global supply chain since September 2019 with respect to the particular product.) (Public)

6. a) Please provide the value in USD and quantity (with units) of the Chinese-origin product covered by the specific exclusion that you purchased in 2018 and 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)

2018 Value:

2018 Quantity:

2019 Value:

2019 Quantity:

Are the provided figures estimates? (BCI)

Are any of these purchases from a related company?  
(BCI)

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

Name:

Relationship:

b) Please discuss whether Chinese suppliers have lowered their prices for products covered by the exclusion following imposition of the duties. (BCI)

7. Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from any third-country source in 2018 and 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)

2018 Value:

2018 Quantity:

2019 Value:

2019: Quantity:

Are the provided figures estimates? (BCI)

8. Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from domestic sources in 2018 and 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)

2018 Value:	<input type="text"/>	2018 Quantity:	<input type="text"/>
2019 Value:	<input type="text"/>	2019 Quantity:	<input type="text"/>

Are the provided figures estimates? (BCI)

9. Please discuss any efforts you have undertaken since September 2019 to source this product from United States or third countries. (BCI)

10. Please provide information regarding your company's gross revenue in USD for 2018 and 2019. (BCI)

2018 Gross Revenue:	<input type="text"/>
2019 Gross Revenue:	<input type="text"/>

Are the provided gross revenue figures estimates? (BCI)

11. 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? (BCI)

12. Please comment on whether the imposition of additional duties on the product(s) covered by the exclusion you are seeking an extension for, will result in severe economic harm to your company or other U.S. interests. (BCI)

13. Please provide any additional information in support of your comment, taking account of the instructions provided in Section B of the Federal Register notice. (BCI)

14. You may upload additional attachments in support of your comment. Please specify whether the attachment is Public or contains Business Confidential Information. (Submitter Determines Public or BCI)