

U.S. Announces Product Exclusion Process for Tariffs Covering \$200 Billion in Chinese Imports

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International Trade; Public Policy

Earlier this week, the Office of the U.S. Trade Representative (USTR) [announced a process](#) through which companies can request that their products be excluded from duties imposed on \$200 billion in Chinese imports under Section 301 of the Tariff Act of 1974 (Section 301). Tariffs on these imports have been in effect since September 2018, and recently [increased](#) from 10 percent to 25 percent. The [long-awaited](#) announcement of an exclusion process for these “List 3” tariffs comes while the Administration is considering imposing tariffs on another [\\$300 billion](#) in Chinese imports, in a fourth tranche of tariffs that along with the three prior tranches now collectively cover almost all products imported from China.

As in earlier exclusion proceedings, parties requesting product exclusions must address whether the product is available only from China, whether the imposition of duties will cause severe economic harm to U.S. interests, and whether the product is strategically important or related to Chinese industrial programs such as “Made in China 2025.” However, the new exclusion process differs from prior proceedings in other respects. For example, parties must now submit their requests using a product exclusion form that requests detailed information about the product and the requesting entity. The new form requires revenue and purchasing data, as well as a description of any efforts to source the product from non-Chinese suppliers. The new form also allows parties to quantify how much of their imports are already subject to duties under the two prior tranches of tariffs collectively covering \$50 billion in Chinese imports.

In rolling out its List 3 exclusion process, USTR has also clarified what qualifies as a unique product for purposes of requesting an exclusion. Specifically, products that are classified under different 8-digit or 10-digit subheadings of the U.S. Harmonized Tariff Schedule should be treated as distinct products, while products with “similar” characteristics or attributes within the same classification can be grouped together into a single product request.

Product exclusion requests must now be submitted through a new electronic portal on USTR’s website. The electronic portal will open for the submission of exclusion requests on June 30, 2019, and will remain open to new requests through September 30, 2019. As in prior rounds, interested parties will have 14 days to submit comments opposing or supporting a particular request. The original requestor then has an opportunity to reply to any comments within the later of seven days after the close of the response period, or seven days after a response is posted on USTR’s portal.

USTR will evaluate each request on a “case-by-case basis,” taking into account the rationale supporting the exclusion, whether the exclusion would undermine the objective of the Section

301 investigation, and whether the request defines the product with “sufficient precision.” An exclusion, if granted, will apply for one year after notice of the exclusion is published in the *Federal Register* and will have retroactive effect to September 24, 2018 (the date on which tariffs were first imposed on the \$200 billion in Chinese imports, initially at a rate of 10 percent).

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