

Exclusion Process for China Section 301 Tariffs Updated as of September 17, 2018

On July 6, USTR formally [announced](#) a timeline and formally issued on July 11 a detailed [process](#) authorizing stakeholders to request – and object – to product exclusions from the tariffs on imports from China imposed by the U.S. government on July 6 ([List 1](#)). On July 18, USTR issued a [clarification](#) with greater detail on the types of information that companies should – and should not – include in product exclusion applications. On September 17, USTR issued a [notice](#) of the exclusion process with regard to tariffs that the U.S. government imposed on imports from China on August 23 ([List 2](#)).

Based on these formal notices from USTR, the NAM understands the exclusion process to work as follows:

Eligible Applicants: Any interested party, including companies and trade associations, are eligible to submit exclusion requests, unlike the product exclusion process for Section 232 steel and aluminum tariffs (which had limited this only those directly involved in relevant businesses.)

Product Identification: The processes direct requesters identify a particular product for potential exclusion by including the following information:

- Product exclusions should include a comprehensive physical description of the product (including physical characteristics such as weight, dimensions, composition) but not a description that's focused on the product's intended end-use. USTR will not consider requests that identify the product at issue in terms of the identity of the producer, importer, ultimate consumer, actual use or chief use, or trademarks or tradenames. Additionally, applications shouldn't be based on trade names, on subjective terms (such as "colorful" or "large), or on criteria not easily verified by Customs officials upon entry (such as thread count).
- More details for specific types of products, including rules for products that include sets of items, mixed components/materials, or that are subsidiaries of larger articles, as well as chemical products
- The 10-digit subheading of the HTSUS applicable to the particular product requested for exclusion.
- Information on the ability of U.S. Customs and Border Protection to administer the exclusion if desired.
- Applications should also include new proposed tariff language that would differentiate the excluded products from others, and should include correct tariff code references and references to any past CBP rulings.

Additional Information Required: In addition to product identification information, requesters seeking exclusions for either List 1 or List 2 products are also required to provide the following information:

- Annual quantity and value of the Chinese-origin product that the requester purchased in each of the last three years (for individual business) or such information based on members' data (for trade associations). If precise annual quantity and value information are not available, requesters are directed to provide an estimate and explain the basis for the estimation.

For those applying for List 2 exclusions, they are also required to provide:

- The percentage of their total gross sales in 2017 that sales of the Chinese-origin product accounted for imports sold as final products.
- The percentage of the total cost of producing the final product(s) for which the Chinese-origin input accounts and the percentage of their total gross sales in 2017 for which sales of the final product(s) accounted when the request is made for imports used in the production of a final product (e.g., input or raw material).

Bases for Granting Exclusions: The July 6 and September 17 notices state that each requested exclusion addresses specific factors that would form the basis for USTR consideration, including:

- Whether the product is available only from China versus from the United States or third countries;
- Whether the imposition of additional duties on the particular product would cause “severe economic harm” to the requester or other U.S. interests; and
- Whether the particular product is “strategically important” or related to “Made in China 2025” or other Chinese industrial programs.

Confidential Business Information: Companies are authorized to provide confidential business information and should mark any page containing that information with “business confidential” at the top of the page as well as marking the information in the text. Under those circumstances, the applicant should provide both a confidential and a public version, with the public version posted in the formal docket.

Effective Period for Exclusions: Exclusions will be effective for one year following the publication of a final determination in the *Federal Register*. Exclusions granted will also provide retroactive duty reimbursement for tariffs paid from the date when the tariffs began to be applied (July 6 for List 1; August 23 for List 2).

Timing and Deadlines: All requests for a product submission must be received no later than **October 9, 2018 for List 1 or December 18, 2018 for List 2**. The notices also set forth timelines for responses or rebuttals, which must be received no later than 14 days after that request is formally posted in the USTR docket, and any replies to those follow up responses/rebuttals must be received no later than 7 days after that (thus, 21 days after the initial request is posted). The notice did not provide explicit deadlines for USTR to post received applications, or to make final determinations.

Channel for Submissions: All exclusion requests must be submitted through the Federal rulemaking portal, on www.regulations.gov via docket USTR-2018-0025.

Exclusion Processes for List 3: These processes do not yet apply to [List 3](#) (\$200 billion worth of Chinese imports proposed for a 10% tariff, not yet in force). While List 3 could have a product exclusion process with similar parameters to those announced for List 1 or List 2, USTR has not publicly announced that these lists would have an exclusion process, much less what the process might be.

Index of Exclusions: USTR is periodically updating the exclusions that have been requested and their status [here](#).