

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procedures for Requests to Exclude Certain Machinery Used in Domestic Manufacturing From Actions Pursuant to the Section 301 Investigation of China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice and request for comments.

SUMMARY: In a notice published on September 18, 2024, the U.S. Trade Representative announced certain modifications to the actions taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. Additionally, the U.S. Trade Representative announced 14 temporary exclusions for solar manufacturing equipment and a list of subheadings eligible for consideration of temporary exclusion under an exclusion process for certain machinery used in domestic manufacturing. This notice announces that USTR will open an electronic portal for exclusion requests on October 15, 2024, and sets out the procedures for submitting requests.

DATES: October 15, 2024, at 12:01 a.m. EDT: The web portal for submitting exclusion requests will open at <https://comments.ustr.gov>.

March 31, 2025, at 11:59 p.m. EST: Deadline for submitting exclusion requests.

Responses to individual exclusion requests are due 30 days after the exclusion request is posted on USTR's online portal. Any replies to responses to an exclusion request are due

the later of 15 days after the posting of a response, or 15 days after the closing of the 30-day response period.

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

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Philip Butler and Megan Grimball, Chairs of the Section 301 Committee at 202.395.5725. For specific questions on customs classification, contact traderemedycbp@dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (July 6, 2018), and 83 FR 40823 (August 23, 2018).

On September 8, 2022, USTR announced that in accordance with Section 307(c)(3) of the Trade Act (19 U.S.C. 2417(c)(3)), the U.S. Trade Representative would conduct a review of the two actions taken, as modified, in this investigation. *See* 87 FR 55073.

Based on information obtained during the review, USTR, in consultation with the Section 301 Committee, prepared a comprehensive report that included findings on the effectiveness of the actions taken in this investigation in achieving the objectives of the investigation, other actions that could be taken, and the effects of such actions on the United States economy, including consumers. The report, *Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to*

Technology Transfer, Intellectual Property, and Innovation (Report), was published on May 14, 2024, and is available on the USTR website.

On May 14, 2024, taking into consideration the U.S. Trade Representative’s findings in the Report and recommendations, the President issued a Memorandum (President’s Memorandum) that directed the U.S. Trade Representative to: “maintain, as appropriate and consistent with this memorandum, the *ad valorem* rates of duty and lists of products subject to the [actions] taken under the Section 301 investigation” and “[t]o further encourage China to eliminate the acts, policies, and practices at issue, and to counteract the burden or restriction of these acts, policies, and practices, the Trade Representative shall modify the [actions taken in the investigation] to increase Section 301 *ad valorem* rates of duty” for certain specified products of China. *See* <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/05/14/memorandum-on-actions-by-the-united-states-related-to-the-statutory-4-year-review-of-the-section-301-investigation-of-chinas-acts-policies-and-practices-related-to-technology-transfer-intellectua/>.

The President also directed the U.S. Trade Representative to establish a process by which interested persons may request that particular machinery used in domestic manufacturing classified within a subheading under Chapters 84 and 85 of the Harmonized Tariff Schedule of the United States (HTSUS) be temporarily excluded from Section 301 tariffs, and directed the U.S. Trade Representative to prioritize, in particular, exclusions for certain solar manufacturing equipment.

B. Proposed Modifications

Consistent with the President’s direction, USTR issued a *Federal Register* notice with proposed modifications, including proposed increases in Section 301 duties on certain products. *See* 89 FR 46252 (May 28, 2024) (May 28 notice). Additionally, the U.S. Trade Representative proposed 312 subheadings eligible for consideration for temporary exclusion under a process by which interested persons may request that particular machinery used in domestic manufacturing and classified within certain subheadings under Chapters 84 and 85 of HTSUS be temporarily excluded. The May 28 notice announced that procedures for requesting exclusions under this process would be published in a separate notice. Finally, the U.S. Trade Representative proposed 19 temporary exclusions for solar manufacturing equipment.

In accordance with Section 307(a)(2) of the Trade Act (19 U.S.C. 2417(a)(2)), USTR invited comments from interested persons and opened a 30-day docket on May 29, 2024 (USTR–2024–0007). With respect to the machinery exclusion process, USTR requested comments on whether the 312 subheadings proposed should or should not be eligible for consideration in the machinery exclusion process and whether certain subheadings under Chapters 84 and 85 that cover machinery used in domestic manufacturing were omitted and should be included.

On September 18, 2024, the U.S. Trade Representative announced modifications to the actions, including certain adjustments to the modifications proposed in the May 28 notice. *See* 89 FR 76581 (September 18 notice). Regarding the 19 proposed temporary exclusions for solar manufacturing equipment, the U.S. Trade Representative determined to adopt 14. The U.S. Trade Representative also announced five additional subheadings

to be eligible for consideration of temporary exclusion under the machinery exclusion process. *See* 89 FR 76581.

C. Procedures to Request the Exclusion of Particular Machinery Used in Domestic Manufacturing

USTR invites interested persons, including trade associations, to submit requests for temporary exclusion from the Section 301 tariffs. The subheadings eligible for consideration of temporary exclusion under the machinery exclusion process are set forth in Annex E of the September 18 notice.

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 starting from the date of publication of the exclusion determination in the Federal Register and will extend through May 31, 2025. USTR is accepting exclusion requests on a rolling basis and will periodically announce decisions on pending requests.

The U.S. Trade Representative will monitor exclusions granted and the overall impact of exclusions, including the 14 temporary exclusions for solar manufacturing equipment announced in the September 28 notice, and the product specific exclusions extended on May 30, 2024,¹ in maintaining the appropriate amount of leverage with

¹ *Notice of Extension of Certain Exclusions*, 89 FR 46948 (May 30, 2024).

China to encourage China to eliminate the acts, policies, and practices covered in the Section 301 investigation.

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 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 manufacturing equipment 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”.
- A complete and detailed description of the manufacturing equipment. A detailed description of the manufacturing equipment includes, but is not limited to, its physical characteristics (*e.g.*, dimensions, weight, material composition, etc.), whether the manufacturing equipment is designed to function in or with a particular machine (application), the manufacturing equipment's principal use, the unit value of the manufacturing equipment (please provide a range if necessary), and any unique physical features that distinguish it from other manufacturing

equipment within the covered 10-digit HTSUS subheading. Requesters may attach images and specification sheets, CBP rulings, court decisions, and previous import documentation.

- Whether the manufacturing equipment of concern is subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce.
- Whether the manufacturing equipment will be used for domestic manufacturing, how the equipment will be used, and the manufacturing sector.
- If applicable, documents showing grant funding from, or grant application to, a federal investment program related to the domestic manufacturing at issue, such as the Inflation Reduction Act (IRA), CHIPS and Science Act, Build America Buy America (BABA), and Rural Energy for America Program (REAP).
- Whether the manufacturing equipment of concern, or comparable manufacturing equipment, is available from sources in the United States or third countries and any attempts of the requesting organization to source the manufacturing equipment from the United States or third countries.
- Whether the requesting organization has purchased the manufacturing equipment of concern from a source in the United States or in a third country in the past five years and why the manufacturing equipment is no longer available from this source.
- Whether the manufacturing equipment of concern 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. Requesters also may provide any other information or data that they consider relevant to an evaluation of the request.

D. 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 30 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://comments.USTR.gov>. Responses to exclusion requests, supporting or opposing, will be publicly available. To file a response, an interested party does not have to register. Responses may be in support of an exclusion request or in opposition. If the response is in support of the request, the rationale should be provided in the applicable field on the portal. If opposing the exclusion request, interested parties must address the following in a supplemental attachment available on USTR's comment portal:

- Their relationship to the manufacturing equipment identified (manufacturer, industry association, other).
- Reasons for objecting to the exclusion request.
- Whether the manufacturing equipment is currently manufactured in the United States or third countries, and the substitutability of equipment from the United States or third country sources as compared to the Chinese-origin manufacturing equipment identified in the exclusion request.
- A description of the manufacturing equipment from the United States or third country sources relative to the description cited in the exclusion request.

- Whether the objecting organization within the last two years attempted to sell, or successfully sold, the manufacturing equipment described in the exclusion request, or comparable manufacturing equipment, to the organization requesting the exclusion.

E. 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 15 days after the posting of a response, or 15 days after the closing of the 30-day response period. A reply to a response must be submitted using USTR's online portal at <http://comments.USTR.gov>. Replies to responses will be publicly available.

F. Submission Instructions

As noted above, interested persons must submit requests for exclusions in the period between the opening of the portal on October 15, 2024, and the March 31, 2025 submission deadline. Any responses to those requests must be submitted within 30 days after the requests are posted. Any reply to a response must be submitted within 15 days after the response is posted. Interested persons seeking to exclude two or more pieces of manufacturing equipment must submit a separate request for each product, *i.e.*, one product per request. 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.

You must submit written comments using the appropriate docket on the portal at <https://comments.ustr.gov/>. To submit written comments, use the docket on the portal

entitled Temporary Exclusions for Machinery Used in Domestic Manufacturing, docket number USTR–2024–0020. To submit an exclusion request, requesters must first register on the portal at <http://comments.USTR.gov>. As noted above, the portal will open on October 15, 2024, at 12:01 a.m. EDT. 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 Business Confidential Information (BCI) notation are for BCI that will not be made publicly available. Fields with a green (Public) notation will be viewable by the public. 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.

Clearly mark any page containing BCI as ‘BUSINESS CONFIDENTIAL’ on the top of that page and clearly indicate, via brackets, highlighting, or other means, the specific information that is BCI. If you request business confidential treatment, you must certify in writing that the information would not customarily be released to the public.

Parties uploading attachments containing BCI also must submit a public version of their comments. If these procedures are not sufficient to protect BCI or otherwise protect business interests, please contact the USTR Section 301 support line at 202.395.5725 to discuss whether alternative arrangements are possible. USTR will post attachments uploaded to the docket for public inspection, except for properly designated BCI. You can view submissions on USTR’s electronic portal at <https://comments.ustr.gov>.

G. 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 to reinstate an expired information collection request (ICR) titled 301 Exclusion Requests, control number 0350–0015, which is now due to expire on September 30, 2027.

Juan Millan,
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Office of the United States Trade Representative.