

FAQs FOR PRODUCT EXCLUSION PROCESS ON ADDITIONAL \$200 BILLION TRADE ACTION

Docket ID Number: USTR-2019-0005
Exclusions.USTR.gov

Q: When can individuals begin submitting exclusion requests for products subject to the \$200 billion trade action (List 3)?

A: Individuals can begin submitting exclusion requests on June 30, 2019 at 12 p.m. ET.

Q: What is the deadline to submit requests for product exclusions?

A: Interested persons must submit requests for exclusions by September 30, 2019.

Q: Who may request a product exclusion?

A: Any interested parties, including trade associations and other persons, may submit requests identifying particular products classified within an HTSUS subheading for exclusion from the additional duties, 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).

Q: How can an interested person file an exclusion request?

A: All exclusion requests must be submitted through the USTR Exclusions Portal: <https://Exclusions.USTR.gov>. Requesters must first register on the USTR Exclusions Portal. After registration, the requester can fill out and submit one or more exclusion request forms. For detailed instructions on how to submit an exclusion request, please refer to the Federal Register Notice published at 84 FR 29576 (June 24, 2019), and the USTR Exclusions Portal.

Q: Do individuals have to submit an exclusion request through the USTR Exclusions Portal?

A: Yes. Per the instructions in 84 FR 29576, all interested parties **must** submit exclusion requests through the USTR Exclusions Portal. Requests received by other means will not be considered.

Q: What information is required in a request for product exclusion?

A: Information requesters are required to provide includes:

- 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 10-digit subheading of the HTSUS applicable to the particular product requested for exclusion.
- Product name and a detailed description of the product.
- The requestor's relationship to the product, and their rationale for the requested exclusion.
- 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.
- 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.

Q: What if the 8-digit subheading for a product does not contain breakouts at the 10-digit level?

A: If the 8-digit subheading does not contain breakouts at the 10-digit level, requesters should use the 8-digit subheading and add “00”.

Q: What does a detailed physical description of the product include?

A: A detailed description of the product includes, but is not limited to, its physical characteristics (*e.g.*, dimensions, weight, material composition, etc.).

Requesters must include the product's 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).

With regard to product identification, USTR requests interested persons consult the Section 301 Exclusion Request Guidelines when determining how to draft a product description. The Guidelines are available on the USTR website under “Enforcement/Section 301 Investigations.” Interested persons may also visit www.cbp.gov/trade/rulings for instructions on filing a ruling letter and guidance on product identification.

Q: What should requestors address with regard to the rationale for the requested exclusion?

A: Requestors must address all of 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 Requestor must provide an explanation if the product is not available outside of China or the Requestor is not sure of the product availability.
- Whether the imposition of additional duties (since September 2018) on the particular product has or will cause severe economic harm to the Requestor or other U.S. interests.
- Whether the particular product is strategically important or related to “Made in China 2025” or other Chinese industrial programs.

Q: Can interested persons request exclusion for multiple products in a single exclusion request?

A: No. Interested persons seeking to exclude two or more products must submit a separate request for each product, i.e., one product per request.

Q: What is a single product?

A: A single product 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. Thus, a range of comparable goods may be included within the product definition set out in an exclusion request. In developing the product definition for an exclusion request, submitters should be mindful of the criteria set out in the Federal Register Notice published at 84 FR 29576 (June 24, 2019). For example, the notice requires identification of the applicable 10-digit subheading of the HTSUS. Accordingly, different models classified under different 10-digit subheadings would not be a single product. Similarly, the notice requests information on whether the product is available from U.S. or third country sources. If some models are available from non-Chinese sources, and other models are not, this would weigh against including those models in a single request.

Q: Will there be another hearing?

A: No. USTR will not hold hearings in connection with the exclusion requests for the \$200 billion trade action.

Q: After submitting a request for a product exclusion, will interested persons have an opportunity to comment on the request?

A: Yes. 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 through USTR's Exclusions Portal at <https://Exclusions.USTR.gov>. To file a response, an interested party does not have to register. Responses will be publicly available. For detailed instructions on how to comment on a posted exclusion request, please visit the USTR Exclusions Portal after 12 p.m. ET on June 30, 2019.

Q: Will interested persons have an opportunity to reply to responses?

A: Yes. 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. Replies to responses will be publicly available.

Q: How soon will exclusion determinations be made after I submit my request through the USTR Exclusions Portal?

A: USTR will evaluate each request on a case-by-case basis and will periodically announce decisions on pending requests.

Q: How do I track the status of my exclusion request?

A: The index on the USTR Exclusions Portal will indicate the status of each request in the review process.

Q: How will USTR announce its decision on which exclusion requests to grant or deny?

A: USTR will be reviewing all requests for exclusion as they are received. USTR will notify requesters by email when a decision has been made, and the decision letters will be posted on the USTR Exclusions Portal also.

Q: If my exclusion request is granted, when and for how long will the exclusion be effective?

A: Any exclusion will be effective starting from the September 24, 2018 effective date of the additional duties and extend through August 7, 2020. In other words, an exclusion, if granted, will apply retroactively to the September 24 date of the imposition of the additional duties.

Q: Will exclusions apply only to the company that submitted the request, or more broadly to the product?

A: An exclusion, if granted, will apply to the particular product covered by the exclusion, and will not be tied to particular producers or exporters.

Q: If an interested person has already submitted an exclusion request for a product that my company imports, purchases, or produces, can I still submit another exclusion request for the same product on behalf of my company?

A: Yes. Interested persons may submit an exclusion request for any product before September 30, 2019, regardless of whether a similar request has been made by another interested person. If the interested person understands, however, that a request is already pending on what appears to be the same product, the interested person is encouraged to file a timely comment on the pending request.

Q: How can an interested person know which products are being reviewed for exclusion?

A: Interested persons can view all exclusion requests on the Public Docket of the USTR Exclusions Portal. Interested persons can search by the product's 10-digit HTSUS code, the product name, or the organization name. Interested persons can also view the status of all submitted exclusion requests on the USTR Exclusions Portal.

Q: Will USTR establish a process for renewing exclusions?

A: If the trade action is still in effect, USTR will issue guidance—in advance of the date of the expiration of exclusions—on whether renewals are possible.

Q: Does USTR have an appeals or reconsideration process for its determinations on product exclusions?

A: No. USTR does not have an appeals or reconsideration process for its determinations on product exclusions.

Q: If we identify errors or mistakes, how do we bring them to USTR's attention?

A: USTR will examine exclusion decisions for technical or ministerial errors. Please call our Section 301 hotline. Our Section 301 hotline remains open during normal business hours (Monday - Friday, 9:00 AM - 5:00 PM ET) to answer questions from interested persons: (202) 395-5725.

Q: If my exclusion request is denied, and another company's request for the same product is subsequently granted, will that product exclusion also apply to my company even though my request was previously denied?

A: Yes. An exclusion, if granted, will apply to the particular product covered by the exclusion, and will not be tied to particular producers or exporters.

Q: Will granted exclusion requests apply retroactively?

A: Yes. Any exclusion, if granted, will be effective retroactively, starting from the September 24, 2018 effective date of the additional duties and extending through August 7, 2020.

Q: What steps can I take to ensure that duties already paid are not liquidated before my exclusion request is granted?

A: U.S. Customs and Border Protection (CBP) has provided guidance on how to file a liquidation extension request. Links to CBP's guidance can be found on USTR.gov.

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