

FAQs FOR PRODUCT EXCLUSION PROCESS ON \$16 BILLION TRADE ACTION

Docket ID Number: USTR-2018-0032

Regulations.Gov

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

A: USTR must receive all requests to exclude a particular product by December 18, 2018.

Q: Who may request a product exclusion?

A: USTR invites interested persons, including trade associations, to submit requests for exclusion from the additional duties of a particular product classified within an HTSUS subheading set out in Annex A of the notice published at 83 FR 40823 (August 16, 2018).

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

A: To submit requests via *www.regulations.gov*, enter document ID number USTR–2018–0032 on the home page and click “search.” The site will provide a search-results page listing the Federal Register Notice associated with this docket. Find a reference to this notice and click on the link titled “comment now!”. Once posted on the electronic docket, the exclusion request will be viewable in the “primary documents” section.

For detailed instructions on how to submit an exclusion request on the electronic docket, please refer to the Federal Register Notice published at 83 FR 47236 (September 18, 2018) and available on the USTR website under “Enforcement/Section 301 Investigations.”

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

A: Any request for exclusion must include the following information:

- Identification of the particular product in terms of the physical characteristics (*e.g.*, dimensions, material composition, or other characteristics) that distinguish it from other products within the covered 8-digit subheading. 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. USTR will not consider requests that identify the product using criteria that cannot be made available to the public. 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, which also provides guidance on product identification;
- The 10-digit subheading of the HTSUS applicable to the particular product requested for exclusion; and

- The annual quantity and value of the Chinese-origin product that the requester purchased in each of the last three years. For trade association requesters, please provide such information based on your members' data. If precise annual quantity and value information are not available, please provide an estimate and explain the basis for the estimation.
- For imports sold as final products, requesters must provide the percentage of their total gross sales in 2017 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 2017 that sales of the final product(s) accounted for.

Q: What factors should be addressed with regard to the rationale for the requested exclusion?

A: With regard to the rationale for the requested exclusion, each request for exclusion should address the following factors:

- Whether the particular product is available only from China. In addressing this factor, requesters 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;
- 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.

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.

Q: Will there be another hearing?

A: USTR does not plan to hold hearings in connection with the exclusion process.

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 docket number USTR-2018-0032, interested persons will have *14 days* to respond to the request, indicating support or opposition and providing reasons for their view. All responses must clearly identify the specific request for exclusion being addressed. After a response is posted on docket number USTR-2018-0032, interested persons will have the opportunity to reply to the response. Any reply must be posted within the later of *7 days* after the close of the 14-day response period, or *7 days* after

the posting of a response. All replies must clearly identify the specific responses being addressed. For detailed instructions on how to comment on a posted exclusion request, please refer to the Federal Register Notice published at 83 FR 47236 (September 18, 2018) and available on the USTR website under “Enforcement/Section 301 Investigations.”

Q: Can interested persons request exclusion for multiple products in a single exclusion request? What if I have multiple products that fall under one 10-digit HTSUS subheading?

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 83 FR 47236 (September 18, 2018). 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.

The notice also permits requesters to submit information on the administrability of a requested product exclusion. USTR requests that interested persons consult the Section 301 Exclusion Request Guidelines when determining how to classify multiple products that fall under one 10-digit subheading of the HTSUS. The Guidelines are available on the USTR website under “Enforcement/Section 301 Investigations.”

Q: How soon will exclusion determinations be made after I submit my request on Regulations.Gov?

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: On a weekly basis, USTR will post on its website an Index of the exclusion requests posted on Regulations.Gov. The Index 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 email decision letters to requesters when a decision has been made. The decision letters will be posted on Regulations.Gov, and the decision will be included on the Index of exclusion requests.

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 August 23, 2018 effective date of the additional duties, and extending for one year after the publication of the exclusion determination in the Federal Register. In other words, an exclusion, if granted, will apply retroactively to the August 23 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: Interested persons may submit an exclusion request for any product before December 18, 2018, 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 requests for exclusions on www.regulations.gov by entering docket number USTR–2018–0032 in the search field on the home page. Interested persons can also view the status of exclusion requests on the Index that will be posted on the USTR website under “Enforcement/Section 301 Investigations.”

Q: How will USTR make decisions on whether to grant or deny a product exclusion request?

A: USTR will evaluate each request on a case-by-case basis, taking into account whether the exclusion would undermine the objective of the Section 301 investigation. In evaluating each exclusion request, USTR may consider the following factors:

- Whether the particular product is available only from China. In addressing this factor, requesters 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;
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requester or other U.S. interests;
- Whether the particular product is strategically important or related to “Made in China 2025” or other Chinese industrial programs; and
- Whether an exclusion would be administrable by U.S. Customs and Border Protection.

Q: Will USTR establish a process for renewing exclusions following the 1-year expiry?

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: If an exclusion request is denied, will interested persons have the opportunity to appeal this decision?

A: All exclusion determinations are final.

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 will be effective starting from the August 23, 2018 effective date of the additional duties, and extend for one year after the publication of the exclusion determination in the Federal Register. An exclusion, if granted, will apply retroactively to the August 23 date of the imposition of the additional duties.

**This Q&A is for informational purposes only. It does not replace, modify, or supplement the official Federal Register Notice.

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