

Section 301 Tariffs - Exclusion Request Process Opened for Products on List 4A

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On September 31, 2019, the Section 301 tariff exclusion request process for products on List 4A opened. As we've previously described, these Section 301 tariffs were imposed in response to a government investigation that found China was engaging in unfair trade practices related to the forced transfer of American technology and intellectual property. The exclusion process allows interested parties to request that particular products be excluded from the tariffs, giving importers the chance to save significantly on the cost of importing the product. The U.S. Trade Representative (USTR) will be accepting exclusion requests at <https://exclusions.ustr.gov/s/> until January 31, 2020.

The USTR requires requesters to address the following questions in their exclusion request:

- 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.
- Whether the requester has attempted to source the product from the United States or third countries.
- Whether the imposition of additional duties on the particular product will 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.

Additionally, any request for an exclusion must include the following information:

- The 10-digit subheading of the HTSUS applicable to the particular product requested for exclusion.
- Product name and a detailed description of the product. A detailed description of the product includes, but is not limited to, its physical characteristics (e.g., dimensions, weight, material composition, etc.). Requesters may submit a range of comparable goods within the product definition set out in an exclusion request. Thus, a product request 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.
- The product's function, application (e.g., 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.

- Whether the product is currently subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce. Requesters must provide their relationship to the product (Importer, U.S. Producer, Purchaser, Industry Association, Other) and provide 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 half of 2019.
- Requesters must provide information regarding their gross revenues for 2018 and the first half 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.

The Federal Register notice setting out the exclusion request requirements can be found [here](#). If you have any questions about the process for applying for an exclusion from the Section 301 tariffs, please contact one of the attorneys listed below or your usual Winston & Strawn contact.

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