

USTR Will Open Online Portal for Section 301 Exclusion Requests for List 3 Chinese-Origin Products on June 30, 2019

June 25, 2019

The Office of the United States Trade Representative ("USTR") has published a notice in the Federal Register announcing the formal procedures for requests to exclude particular products pertaining to List 3 Chinese-origin products worth \$200 billion USD annually.[1]

According to the June 24, 2019, notice, USTR will open an online portal for submitting exclusion requests at noon EDT on June 30, 2019, with a deadline for submitting exclusion requests by September 30, 2019. Any exclusions granted will be retroactive to September 24, 2018, and will extend for one year after the publication of the exclusion determination in the Federal Register. USTR will periodically announce decisions on pending requests. Responses to individual exclusion requests are due 14 days after the request is posted on USTR's online portal. Any replies to the responses to an exclusion request are due the later of 7 days after the close of the 14-day response period, or 7 days after the posting of a response.

Compared to the exclusion request forms for List 1 and List 2 products, the Exclusion Request Form attached to the June 24 notice requires much more information, including more detailed business information about the requester and more supporting data about the requester's business, revenue and sales. With regard to product identification, any request for exclusion must include the following information:

- The 10-digit subheading of the Harmonized Tariff Schedule of the United States (HTSUS) applicable to the particular product requested for exclusion;
- Product name and a detailed description of the product;
- The product 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;
- 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 (since September 2018) on the particular product has or 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.

The actual form used in the online portal will contain color-coding of public fields and Business Confidential Information fields, so the requesters will be able to indicate whether the information and documents provided are public or confidential.

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The June 24 notice, including a copy of the Exclusion Request Form, is available at <https://www.govinfo.gov/content/pkg/FR-2019-06-24/pdf/2019-13376.pdf>.

Importers of List 3 Chinese-origin products should consider submitting exclusion requests. If you have questions on submitting an exclusion request for List 3 Chinese-origin products, please contact your Miller Canfield attorney or the authors of this alert.

[1] For the background of the Section 301 tariffs on List 3 products and the exclusion requests, please see our previous alert at <https://www.millercanfield.com/resources-China-Section-301-Tariff-Update.html>.