

USTR Will Open Online Portal for Section 301 Exclusion Requests for List 4A Chinese-Origin Products on October 31, 2019

October 25, 2019

On October 18, 2019, the Office of the United States Trade Representative ("USTR") published a notice announcing the procedures for requests to exclude particular products pertaining to List 4A Chinese-origin products (defined below) that are currently subject to an additional duty of 15%. According to notices published by USTR in August 2019, USTR, at the direction of the President, announced the imposition of a 15% additional duty on Chinese-origin products with an annual aggregate trade value of approximately USD 300 billion ("List 4"). The USTR notice published on August 20, 2019 contains two separate lists of tariff subheadings for List 4 products, with two different effective dates: the list set out in Annex A of the August 20 notice was effective September 1, 2019 ("List 4A"), and the list set out in Annex C of the August 20 notice currently is scheduled to take effect on December 15, 2019 ("List 4B").

According to the October 18 notice, USTR will open an online portal for submitting exclusion requests on October 31, 2019 at noon EDT, and the deadline for submitting exclusion requests is January 31, 2020 at 11:59 PM EDT. Any exclusions granted will be retroactive to September 1, 2019, and will extend for one year after the publication of the exclusion determination in 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.

The Exclusion Request Form attached to the October 18 notice is similar to the exclusion request form for List 3 products, but it requests additional information such as whether the particular product is currently subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce. Like the exclusive request form for List 3 products, the form for List 4A products requires detailed business information about requester, identification of a particular product, supporting data about the requester's business, revenue and sales, the rationale for the requested exclusion, etc. With regard to product identification, any request for exclusion must include the information in the following aspects:

- The 10-digit subheading of the HTSUS applicable to the particular product requested for exclusion;
- Whether the particular product is subject to antidumping or countervailing duty order issued by the U.S. Department of Commerce;
- 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 on the particular product has or will cause severe economic harm to the requester or other U.S. interests; the number of employees the requester has; and the number of employees

Continued

potential affected; and

- 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 (BCI) fields, so the requesters will be able to indicate whether the information and documents provided are public or BCI.

The October 18 notice, including copy of the Exclusion Request Form, is **available here**.

Importers of List 4A Chinese-origin products should consider submitting exclusion requests. If you have questions on the exclusion requests for List 4A Chinese-origin products, please contact: **Shusheng Wang**, Principal, +248.267.3353, wang@millercanfield.com; or **Zhiguo Du**, Associate, +248.267.3226, du@millercanfield.com.