

[Billing Code 3290-F0]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Number USTR-2019-0019

Request for Comments Concerning the Extension of Particular Exclusions Granted Under the December 2018 Product Exclusion Notice from the \$34 Billion Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: Effective July 6, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately \$34 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated the exclusion process in July 2018 and granted an initial set of exclusions in December 2018. The exclusions granted in December 2018 are set to expire on December 28, 2019. The U.S. Trade Representative has decided to consider extending particular exclusions granted in December 2018 for up to twelve months. The Office of the U.S. Trade Representative (USTR) invites public comment on whether to extend particular exclusions.

DATES:

November 1, 2019 at noon EDT: Docket Number USTR-2019-0019 will open for comments on the possible extension of particular exclusions.

November 30, 2019 at 11:59 PM EDT: To be assured of consideration, submit written comments by November 30, 2019.

ADDRESSES: Submit comments through the Federal eRulemaking Portal:

<http://www.regulations.gov>. The Docket Number is USTR-2019-0019. USTR strongly encourages all commenters to use Form A to submit comments. If applicable, you must submit Form B, which requests Business Confidential Information (BCI), along with a copy of the corresponding Form A, via email to 301bcisubmissions@ustr.eop.gov. See the submission instructions below.

FOR FURTHER INFORMATION CONTACT: Assistant General Counsels Philip Butler or Benjamin Allen (202) 395-5725.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 32181 (July 11, 2018), and 83 FR 67463 (December 28, 2018).

Effective July 6, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$34 billion. *See* 83 FR 28710. The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders could request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the \$34 billion action from the additional duties. The U.S. Trade

Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 32181 (the July 11 notice).

The July 11 notice required submission of requests for exclusion from the \$34 billion action no later than October 9, 2018, and noted that the U.S. Trade Representative periodically would announce decisions. In December 2018, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 83 FR 67463 (December 28, 2018) (December 2018 notice). These exclusions are set to expire on December 28, 2019.

B. Possible Extensions of Particular Product Exclusions

The U.S. Trade Representative is considering a possible extension of particular exclusions granted in the December 2018 notice for up to twelve months. USTR invites public comments on whether to extend particular exclusions granted in the December 2018 notice. At this time, USTR is not considering comments concerning possible extensions of exclusions granted under any other product exclusion notice.

USTR will evaluate the possible extension of each exclusion on a case-by-case basis. The focus of the evaluation will be whether, despite the first imposition of these additional duties in July 2018, the particular product remains available only from China.

In addressing this factor, commenters 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.
- Any changes in the global supply chain since July 2018 with respect to the particular product, or any other relevant industry developments.

- The efforts, if any, the importers or U.S. purchasers have undertaken since July 2018 to source the product from the United States or third countries.

In addition, USTR will continue to consider whether the imposition of additional duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.

USTR strongly encourages commenters to complete Form A, which USTR will post on its website before the docket opens, and submit the completed Form A through <http://www.regulations.gov>. The docket number is USTR-2019-0019. USTR will post completed Form A's on the public docket.

In addition to submitting Form A through [regulations.gov](http://www.regulations.gov), commenters who are importers and/or purchasers of the products covered by the exclusion should complete Form B, which USTR will post on its website before the docket opens. Form B requests BCI information, and will not be posted on the public docket. Submit Form B, along with a copy of the completed Form A, via email to 301bciextensions@ustr.eop.gov.

Facsimiles of Form A and Form B are in the Annex to this notice and will be available electronically at: <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china/34-billion-trade-action>.

Set forth below is a summary of the information to be entered on Form A:

- Contact information, including the full legal name of the organization making the comment, whether the commenter is a third party (*e.g.*, law firm, trade association, or customs broker) submitting on behalf of an organization or industry, and the primary point of contact (commenter and/or third party submitter).

- The publication date of the Federal Register notice containing the exclusion on which you are commenting. Since USTR at this time is only considering exclusions granted by the December 28, 2018 notice, this field must specify December 28, 2018.
- The full article description for the exclusion you are commenting on and the 10-digit code, as provided in the Federal Register notice granting the exclusion. Please indicate if the exclusion is a 10-digit HTSUS code covering all products under a single 10-digit HTSUS number.
- Whether the product or products covered by the exclusion are subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce.
- Whether you support or oppose extending the exclusion and an explanation of your rationale. Commenters must provide a public version of their rationale, even if the commenter also is submitting a Form B with more detailed, confidential information.
- Whether the products covered by the exclusion or comparable products are available from sources in the U.S. or in third countries. Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product.
- Whether the commenter will be submitting Form B.

As indicated above, information submitted on Form B will not be publically available. Form B requires commenters who are importers and/or purchasers of the products covered by the exclusion to provide the following information:

- The efforts you have undertaken since July 2018 to source the product from the United States or third countries.
- The value and quantity of the Chinese-origin product covered by the specific exclusion request purchased in 2018, the first half of 2018, and the first half of 2019, and whether

these purchases are from a related company, and if so, the name of and relationship to the related company.

- Whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties.
- The value and quantity of the product covered by the exclusion purchased from domestic and third country sources in 2018, the first half of 2018 and the first half of 2019.
- If applicable, the commenter's gross revenue for 2018, the first half of 2018, and the first half of 2019.
- Whether the Chinese-origin product of concern is sold as a final product or as an input.
- Whether the imposition of duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.
- Any additional information in support or in opposition of the extending the exclusion.

Commenters also may provide any other information or data that they consider relevant.

C. Submission Instructions

To be assured of consideration, commenters must submit their comments between the opening of the docket on November 1, 2019 and the November 30, 2019 submission deadline. By submitting a comment, the commenter certifies that the information provided is complete and correct to the best of his or her knowledge.

D. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, USTR submitted a request to the Office of Management and Budget (OMB) for emergency review and clearance of this information

collection request (ICR) titled *301 Exclusion Requests*. OMB assigned control number 0350-0015, which is due to expire on December 31, 2019. USTR issued notice and requested comments regarding its intent to seek approval of a three-year extension of the control number for the information request on August 22, 2019. 84 FR 43853.

Joseph Barloon
General Counsel
Office of the U.S. Trade Representative.

Exclusion Extension Comment Form A

Information in Form A should be submitted on the Public Docket at <http://www.regulations.gov>.

1 Submitter Information

Full Organization Legal Name **(Public)**

Commenter First Name **(Public)**

Commenter Last Name **(Public)**

Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? **(Public)**

Note: If you are submitting on behalf of an organization/industry, the information below is required.

Third Party Firm/Association Name
(Public)

Third Party First Name **(Public)**

Third Party Last Name **(Public)**

2

a) Please provide the publication date of the Federal Register Notice containing the exclusion you are commenting on. **(Public)**

b) Please provide the 10-digit subheading of the HTSUS applicable to the exclusion you are commenting on. A 10-digit HTSUS number is required. **(Public)**

c) From the Federal Register Notice, please provide the full article description for the exclusion. If the exclusion is a 10-digit code, please indicate. (Public)

d) Is this product subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce? (Public)

3 Do you support extending the exclusion (yes or no)? Please explain your rationale. (You must provide a public version of your rationale, even if you are also submitting a Form B with more detailed, confidential information.) (Public)

4 Please explain whether the products covered by the exclusion, or comparable products, are available from sources in the United States? (Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product or any other relevant industry developments.) (Public)

5 Please explain whether the products covered by the exclusion, or a comparable products, are available from sources in third countries? (Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product.) (Public)

6 Will you be submitting Form B? (Public)

Note: Responses to Form A should be submitted to the Public Docket at Regulations.gov (Information submitted in Form A will be posted on the Public Docket).

Exclusion Extension Comment Form B

Form B should be completed by Importers and Purchasers of the products covered by the exclusion.

Form B should be submitted via email at 301bcisubmissions@ustr.eop.gov and will not be available to the public. Please include Form A with your email submission of Form B.

NOTE: Form A should be submitted both on regulations.gov and with Form B, via email.

1

a.) Please provide the value in USD and quantity (with units) of the Chinese-origin product covered by the specific exclusion that you purchased in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:

2018 Quantity:

2018 (Jan-Jun)
Value:

2018 (Jan-Jun)
Quantity:

2019 (Jan-Jun)
Value:

2019 (Jan-Jun)
Quantity:

Are the provided figures estimates? (BCI)

Are any of these purchases from a related company? (BCI)

Please list the name and relationship of the related company. (BCI)

Name:

Relationship:

b.) Please discuss whether Chinese suppliers have lowered their prices for products covered by the exclusion following imposition of the duties. (BCI)

2 Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from any third-country source in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:

2018 Quantity:

**2018 (Jan-Jun)
Value:**

**2018 (Jan-Jun)
Quantity:**

**2019 (Jan-Jun)
Value:**

**2019 (Jan-Jun)
Quantity:**

Are the provided figures estimates? (BCI)

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3 Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from domestic sources in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:

2018 Quantity:

**2018 (Jan-Jun)
Value:**

**2018 (Jan-Jun)
Quantity:**

**2019 (Jan-Jun)
Value:**

**2019 (Jan-Jun)
Quantity:**

Are the provided figures estimates? (BCI)

4 Please discuss any efforts you have undertaken since July 2018 to source this product from United States or third countries. (BCI)

5 Please provide information regarding your company's gross revenue in USD for 2018, the first half of 2018, and the first half of 2019. (BCI)

Fiscal Year 2018:

First Half (Jan-Jun) 2018:

First Half (Jan-Jun) 2019:

Are the provided figures estimates? (BCI)

6 Is the Chinese-origin product of concern sold as a final product or as an input used in the production of a final product or products? (BCI)

7 Please comment on whether the imposition of additional duties on the product(s) covered by the exclusion you are seeking an extension for, will result in severe economic harm to your company or other U.S. interests. (BCI)

8 Please provide any additional information in support of your request, taking account of the instructions provided in Section [B] of the Federal Register notice. (BCI)