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# Hughes Hubbard & Reed

## USTR Releases Details of New Product Exclusion Process for China 301 Tariffs

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**May 20, 2019** – On May 20, 2019, the Office of the U.S. Trade Representative (“USTR”) issued a [request for comments](#) on a new process for requesting exclusion from 25% tariffs on certain imports from China.

### Background

Following an investigation by USTR into the government of China’s acts, policies, and practices related to technology transfer, intellectual property, and innovation under section 301 of the Trade Act of 1974 (“Section 301”), the President imposed tariffs on selected Chinese imports in three tranches:

- 25% tariff on \$50 billion in Chinese goods listed in tranches 1 and 2, and
- 10% tariff on \$200 billion in Chinese goods listed in tranche 3.

On May 9, 2019, the Trump Administration [increased the 10% tariff on products in tranche 3 to 25% for goods](#) “(i) entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on May 10, 2019, and (ii) exported to the United States on or after May 10, 2019.” At the same time, USTR announced a forthcoming exclusion process for products included in tranche 3.

As we noted in an [earlier alert](#), the [list of products included in tranche 3](#) contains 5,745 tariff lines and covers a wide range of imports including consumer electronics, food products, chemicals, automobile parts, apparel, building materials, paper products, fabrics, metals, and tools.

### New Product Exclusion Process

The May 20th request for comments provides an opportunity for companies to address the new product exclusion process, which is expected to commence on or around June 30, 2019. USTR noted the need to expedite review of

the new procedures “to avoid delay that could harm interested U.S. stakeholders and negatively effect [sic] trade and investment.”

While not yet final, the notice provides details about the exclusion process. This process is similar to the processes used for prior rounds of requests to exclude products from Section 301 measures. Requests must identify a particular product and provide both supporting data and a rationale for the requested exclusion. Within 14 days after online posting by USTR, interested persons can submit comments in support of, or opposition to, a request. The requestor is then allowed seven days to respond. It is not clear from the notice who can file an exclusion request, but prior Section 301 exclusion processes allowed “interested persons” within the United States to file, including U.S. producers, importers, distributors, retailers, and trade associations.

Draft forms are provided with the request for comments. Like the procedures to request exclusion for products listed in tranches 1 and 2, the form asks whether the product is available in the United States or third countries, whether imposition of additional tariffs would cause severe economic harm to the requestor 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. New to the form is whether the requestor submitted exclusion requests for prior rounds of tariffs and the total value of imports that are subject to China 301 tariffs – suggesting that the overall burden of such tariffs could play a role in whether a new exclusion request is granted.

No end date for requesting exclusion has been indicated. Previously, requests were due within three months. Previous exclusions were granted for the identified product and were not tied to particular requestors, producers, or exporters. Exclusions were effective for one year after publication in the Federal Register and were made retroactive to the imposition of the Section 301 tariff. We assume the same will apply for tranche 3 exclusions, and that there will be no opportunity to appeal denial of product exclusion requests.

USTR expects 60,000 product exclusion requests for imports of products listed in tranche 3, 7,000 responses to requests, and 3,000 replies – significantly greater numbers than before. USTR received nearly 1,000 requests for products listed in tranche 1, which resulted in exclusion of 125 different products (see [84 Fed. Reg. 11152](#), [84 Fed. Reg. 16310](#), [84 Fed. Reg. 21389](#)). Almost 3,000 requests were submitted for products listed in tranche 2, but none has yet been granted.

## **Comments**

USTR is requesting comments on whether (1) the proposed procedures are necessary and have practical utility; (2) USTR’s estimate of the burden imposed by the procedures is accurate, including whether there were errors in its methodology and/or assumptions; (3) there are ways to enhance the quality, utility, and clarity of the process; and (4) there are steps that could be taken to minimize the burden on those responding. Comments are due June 7, 2019.

If you have questions about developments in the application of Section 301 tariffs or the product exclusion process, please contact one of the experienced attorneys in Hughes Hubbard’s International Trade practice.

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