

Billing Code 3390-F2

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**Request for Comments on the Possible Reinstatement of Certain Exclusions in the
Section 301 Investigation of China's Acts, Policies, and Practices Related to
Technology Transfer, Intellectual Property, and Innovation**

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice and request for comments.

SUMMARY: In prior notices, the U.S. Trade Representative modified the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by excluding certain products from additional duties in multiple tranches. From the various tranches of granted exclusions, the U.S. Trade Representative subsequently extended 549 exclusions. Most of these extensions expired by December 31, 2020. The remainder expired earlier this year. USTR invites specific comments on whether to reinstate particular product exclusions.

DATES:

October 12, 2021 at 12:01 a.m. EDT: The public docket on the web portal at <https://comments.USTR.gov> will open for parties to submit comments on the possible reinstatement of particular exclusions.

December 1, 2021 at 11:59 PM EST: To be assured of consideration, submit written comments on the public docket by this date.

ADDRESSES: You must submit all comments through the online portal:

<https://comments.USTR.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice and request for comments, contact Associate General Counsel Philip Butler or Assistant General Counsel David Salkeld at (202) 395-5725.

SUPPLEMENTARY INFORMATION:

A. Background

In the course of this investigation the U.S. Trade Representative imposed additional duties on products of China in four tranches. *See* 83 FR 28719 (June 20, 2018); 83 FR 40823 (August 16, 2018); 83 FR 47974 (September 21, 2018), as modified by 83 FR 49153 (September 28, 2018); and 84 FR 43304 (August 20, 2019), as modified by 84 FR 69447 (December 18, 2019); and 85 FR 3741 (January 22, 2020). Each tranche is commonly known as a ‘List’, *e.g.*, List 1, List 2, etc. The fourth tranche is contained in Lists 4A and 4B. No tariffs on List 4B currently are in effect.

For each tranche, the U.S. Trade Representative established a process by which U.S. stakeholders could request the exclusion of particular products subject to the action. The first tranche of exclusions expired in December 2019 and the final tranche of exclusions expired in October 2020. Starting in November 2019, the U.S. Trade Representative established processes for submitting public comments on whether to extend particular exclusions. *See, e.g.*, 85 FR 6687 (February 5, 2019) and 85 FR 38482 (June 26, 2020). Pursuant to these processes, the U.S. Trade Representative determined to extend 137 exclusions covered under List 1¹, 59 exclusions on List 2², 266 exclusions on

¹ *List 1 Notices:* 84 FR 70616 (December 23, 2019); 85 FR 15849 (March 19, 2020); 85 FR 20332 (April 10, 2020); 85 FR 29503 (May 15, 2020); 85 FR 33775 (June 2, 2020); 85 FR 41267 (July 9, 2020); 85 FR 59587 (September 22, 2020); 85 FR 62782 (October 5, 2020).

² *List 2 Notices:* 85 FR 45949 (July 30, 2020); 85 FR 59595 (September 22, 2020); 85 FR 62786 (October 5, 2020).

List 3³, and 87 exclusions on List 4.⁴ With the exception of exclusions related to the COVID pandemic, all of these 549 exclusions have expired. In particular, the exclusions for most of these products expired by December 31, 2020, and the remaining exclusions expired on March 25, and April 18, 2021. *See* 85 FR 15849 and 85 FR 20332. USTR is separately addressing the possible extension of current COVID exclusions. *See* 86 FR 48280 and 86 FR 54011.

B. Possible Reinstatement of Previously Extended Product Exclusions

The U.S. Trade Representative is considering the possible reinstatement of previously extended exclusions granted under the notices referenced in notes 1-4 above. Accordingly, USTR invites public comments on whether to reinstate particular exclusions that previously were extended. Additionally, USTR invites public comments on the appropriate length of the reinstated exclusions.

USTR will evaluate the possible reinstatement of each exclusion on a case-by-case basis. The focus of the evaluation will be whether, despite the imposition of additional duties beginning in September 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 September 2018 with respect to the particular product or any other relevant industry developments.

³ *List 3 Notices*: 85 FR 48600 (August 11, 2020); 85 FR 57925 (September 16, 2020); 85 FR 63332 (October 7, 2020).

⁴ *List 4a Notices*: 85 FR 54616 (September 2, 2020); 85 FR 63330 (October 7, 2020).

- The efforts, if any, the importers or U.S. purchasers have undertaken since September 2018 to source the product from the United States or third countries.
- Domestic capacity for producing the product in the United States.

In addition, USTR will consider whether or not reinstating the exclusion will impact or result in severe economic harm to the commenter or other U.S. interests, including the impact on small businesses, employment, manufacturing output, and critical supply chains in the United States, as well as the overall impact of the exclusions on the goal of obtaining the elimination of China's acts, policies, and practices covered in the Section 301 investigation.

USTR will seek advice and consult with the agencies that make up the interagency Section 301 Committee, including the Small Business Administration.

Exclusions reinstated pursuant to this review would be retroactive with respect to merchandise entered, or withdrawn from warehouse, for consumption on or after the opening of the docket on October 12, 2021, for which the entries are not liquidated at the time the claim to apply the reinstated exclusion is made to U.S. Customs and Border Protection in accordance with their procedures.

C. How to Comment on the Reinstatement of Exclusions

The 549 previously-extended product exclusions can be found in the notices cited in notes 1-4 above. For ease of reference, USTR also is publishing a list of the previously extended exclusions on its website at:

<https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china-technology-transfer/china-section-301-tariff-actions-and-exclusion-process/reinstatement-certain-exclusions-previously-extended>.

To submit a comment either supporting or opposing the reinstatement of a particular exclusion, commenters first must register on the portal at <https://comments.USTR.gov>. As noted above, the public docket on the portal will be open for 50 days, starting October 12, 2021. After registration, the commenter may submit an exclusion reinstatement comment to the public docket.

A facsimile of the form containing the questions to be addressed on the comment docket is available on USTR's website at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china-technology-transfer/china-section-301-tariff-actions-and-exclusion-process/reinstatement-certain-exclusions-previously-extended>. Set out below is a summary of the information to be submitted.

- Contact information, including the full legal name of the organization making the comment, and whether the commenter is a third party.
- The previously extended exclusion you are commenting on.
- 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 reinstating the exclusion and an explanation of your rationale.
- Whether the commenter meets the size standard for a small business, as established by the Small Business Administration.
- The number of employees your business employs in the United States.

- Whether the products covered by the exclusion or comparable products are available from sources in the U.S. or in third countries.
 - The efforts you have undertaken since September 2018 to source the product from the U.S. or third countries.
 - As a domestic producer, your capacity to produce the product in the United States, your production in the United States, your efforts to produce domestically, and any constraints.
 - The value and quantity of the Chinese-origin product covered by the specific exclusion request purchased over the last three years.
 - 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 over the last three years.
 - If applicable, the commenter's gross revenues for the last three years.
 - Whether the Chinese-origin product of concern is sold as a final product or as an input.
 - Whether or not reinstating the exclusion will result in severe economic harm to the commenter or other U.S. interests.
 - Whether the additional tariffs had an impact on employment at your company.
 - Any additional information in support of or in opposition to reinstating the exclusion.
- Commenters also may provide any other information or data that they consider relevant.

D. Submission Instructions

To be assured of consideration, you must submit your comment during the 50-day period following the opening of the public docket on the portal. Parties seeking to comment on more than one exclusion must submit a separate comment for each exclusion. USTR's portal allows for the submission of Business Confidential Information (BCI). Fields with a (BCI) notation are for BCI and the information entered will not be publicly available. By submitting a comment, the commenter certifies that the information provided is complete and correct to the best of their knowledge.

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