

ALERT

USTR Issues Proposed Section 301 Exclusion Request Form for Certain Machinery Used in Domestic Manufacturing

August 16, 2024

On August 15, 2024, the Office of the U.S. Trade Representative (USTR) published an information collection request (ICR) with respect to its proposal, first announced in May, to allow importers to request temporary exclusions from the Section 301 tariffs applicable to certain machinery. The ICR sheds light on the information that USTR expects requestors to provide, and how it plans to administer the forthcoming exclusion process.

While the proposed exclusion request form is similar in many ways to forms previously used by USTR with respect to past exclusion processes, there are a number of notable differences in the proposed form. First, the scope of potential exclusions is narrowly tailored and only allows for exclusion requests for machinery used in domestic manufacturing that is classified within specific subheadings under Chapters 84 or 85 of the Harmonized Tariff Schedule of the United States (HTSUS). Second, the proposed exclusion request form only allows for parties to request an exclusion for “one unique piece of equipment,” indicating that parties requesting exemptions will not be able to use the process to import machinery for further distribution or retail sale.

In broad terms, the proposed exclusion process will require:

- Product-specific requests;
- Identification of the 10-digit HTSUS code for the item subject to the request;
- A detailed factual description of the product in terms of its physical characteristics, its primary use/application, its SKU or

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product number; and the manufacturer of the product, inclusive of any supporting materials like photos and specification sheets, customs rulings, etc.;

- Whether the manufacturer of the equipment is subject to an antidumping or countervailing duty order;
- Whether the equipment will be used for domestic manufacturing, and how it will be used;
- Information on whether the product is available outside of China, including in the United States, and any attempts made by the requestor to source the product outside of the United States;
- An explanation of how granting the request for the manufacturing equipment would support domestic manufacturing;
- Whether the manufacturing equipment is strategically important to or related to “Made in China 2025” or other Chinese industrial programs;
- A description of the supply chain of the manufacturing equipment and any planned future supply chain modifications; and,
- A description of projected future import trends of the manufacturing equipment.

As with the initial Section 301 exclusion process, there will be an opportunity for parties to comment on the proposed exclusion, whether in support or opposition, as well as an opportunity for the original requestor to file a rebuttal to comments in opposition.

Comments on the ICR – that is, on the form that USTR proposes to use in collecting exclusion requests – are due on September 16, 2024. This indicates that USTR is unlikely to open the formal process for requesting exclusions before that date.

Wiley has robust International Trade, Supply Chain, and Customs practices with extensive experience helping clients navigate Section 301 and broader trade issues. Should you have any questions regarding the proposed Section 301 exclusion process, please contact one of the listed attorneys.