

ALERT

USTR Issues Section 301 Exclusion Procedures for Certain Machinery Used in Domestic Manufacturing

October 21, 2024

On October 15, 2024, the Office of the U.S. Trade Representative (USTR) began collecting requests for exclusions from Section 301 tariffs for Chinese-made machinery imported for use in domestic manufacturing.

As noted in our prior client alert, USTR determined as part of its four-year review of the Section 301 tariffs to create a new process to allow importers to request temporary exclusions to Section 301 tariffs applicable to certain machinery classified under the Harmonized Tariff Schedule of the United States (HTSUS) Chapters 84 and 85. Although the new process is similar to prior Section 301 exclusion processes in many ways, it only allows requests to cover “one unique piece of equipment.” This means that parties cannot request exclusions to import machinery for further distribution or sale. As part of an exclusion request, USTR requires applicants to submit the following information:

- Identification of the 10-digit HTSUS code (or 8-digit if 10-digit not available) for the subject item;
- A detailed description of the item’s physical characteristics (including features distinguishing it from other equipment under the 10-digit HTSUS code), its primary use/application, its SKU or product number, its valuation, and the manufacturer of the product, inclusive of supporting materials like photos and specification sheets, customs rulings, etc.;
- Whether the equipment manufacturer is subject to an antidumping/countervailing duty order;

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Practice Areas

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Federal Infrastructure Resource Center
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Strategic Competition & Supply Chain

- Whether the equipment will be used for domestic manufacturing, and how it will be used;
- If applicable, documents showing grant funding or a grant application involving a federal investment program related to the domestic manufacturing at issue, such as the Inflation Reduction Act (IRA), CHIPS and Science Act, Build America Buy America (BABA), and Rural Energy for America Program (REAP);
- 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 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.

After a request for exclusion is posted on USTR’s online portal, interested persons have 30 days to respond to the request. Parties opposing an exclusion are required to address the following in their response:

- Their relationship to the manufacturing equipment identified (manufacturer, industry association, other);
- Reasons for objecting to the exclusion request;
- Whether the manufacturing equipment is currently manufactured in the United States or third countries, and the substitutability of such equipment for the Chinese-origin manufacturing equipment identified in the exclusion request;
- A description of the manufacturing equipment from the United States or third-country sources relative to the description cited in the exclusion request; and
- Whether they, within the last two years, attempted to sell, or sold equipment or comparable equipment to that described in the exclusion request.

Requestors will then be granted an opportunity to respond by the later of 15 days after the posting of a response or 15 days after the closing of the 30-day response period.

Requests for an exclusion under the new process are due no later than March 31, 2025.

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 Section 301 exclusion process, please contact one of the listed attorneys.