

**ALERT**

# USTR Soliciting Comments on Extension of First Round of “Tranche 1” Section 301 Duty Exclusions

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October 30, 2019

Since July 6, 2018, the Office of the U.S. Trade Representative (USTR) has levied additional duties, pursuant to Section 301 of the Trade Act of 1974, on four successive rounds of Chinese goods (Tranches 1, 2, 3, and 4A). USTR has opened exclusion processes for each of these rounds, allowing companies affected by the tariffs to petition for the removal of duties from specific products.

On December 28, 2018, USTR issued its first decisions granting certain petitions for the exclusion of specific imports from the scope of the Tranche 1 duties. The exclusions were granted for a one-year period, and are thus set to expire at the end of this year.

As USTR has continued to grant exclusions for the Tranche 1 tariffs, and has moved on to grant exclusions relating to the Tranche 2 and Tranche 3 duties, it has been an open question whether USTR would permit extensions of the one-year effective period for any given exclusion. A new draft *Federal Register* notice posted to the agency’s website late on October 28, 2019 provides the first indication that the answer may be yes.

In the notice, USTR indicates that it is seeking comments on whether to extend, for another year, the effective period of the “Tranche 1” exclusions it granted on December 28, 2018. USTR stresses that it is not seeking or accepting comments on exclusions that were granted later, or with respect to subsequent rounds of goods. The comment period will be open from November 1, 2019 through November 30, 2019.

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## Practice Areas

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International Trade

Notably, USTR states that comments may be filed either in support of the extension of any of the exclusions granted on December 28, 2018, or in opposition, but does not indicate that there will be any process for filing responses to comments. This indicates that any party aggrieved by such exclusions will have an up-front opportunity to make its views known, but that it should not count on being able to wait to see if the original filer or another party first requests an extension.

Commenters will be required to submit their comments through a form that USTR has made available on its website (Form A). All information presented on this form will be publicly accessible. To the extent that a commenter is an importer/purchaser of the product subject to the relevant exclusion, a second form (Form B) is being provided through which such importers/purchasers may submit confidential information on their imports/purchases of these products.

Form A, which must be filled out by all commenters, requires commenters to identify themselves, the exclusion petition/product on which they are commenting, and whether the product is subject to antidumping or countervailing duties. They will also be asked to state whether they support or oppose extension of the exclusion on which they are commenting, and provide their rationale. They must explain whether the product at issue is available from sources outside of China, and must also state whether they plan to file confidential Form B.

For its part, confidential Form B is to be filled out by commenters that are themselves importers/purchasers of the product at issue. This form requires identification of the volume and value of the commenter’s purchases of the Chinese-origin and non-Chinese-origin product described by the exclusion on which they are commenting. For Chinese-origin purchases, commenters will be asked whether such purchases are from a related party and, if so, the nature of the relationship. Commenters must supply information on their gross revenue, and are also being asked whether Chinese suppliers have lowered their prices in response to the duties, and to describe their efforts to source the product outside of China. Finally, commenters must describe the economic harm they will face if the exclusion is not extended.

As noted above, the current request for comments relates only to exclusions granted on December 28, 2018. However, this request suggests that USTR may make similar requests in the future as to later-granted petitions.