

# CLIENT ALERTS

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## Section 301 List 3 China Tariffs Exclusion Process and Exclusion Request Form Finalized by U.S. Trade Representative; Additional Confidential Business Information on Requester's Gross Revenues Now Required

6.21.2019

The United States Trade Representative (USTR) formally announced the long-awaited exclusion process for \$200 billion of products imported from China and subject to tariffs since September of 2018 under Section 301 List 3. The USTR has set out a procedure for exclusion requests for List 3 products that will differ somewhat from the process in place for the List 1 and 2 exclusions in a Federal Register notice to be published shortly. To submit exclusion requests, interested parties must register on the new USTR web portal for exclusions (<http://exclusions.USTR.gov>) that will open on June 30<sup>th</sup> at Noon EDT. After registration one or more exclusion request forms can be filled out.

We reported in earlier client alerts on the exclusion request processes for products subject to a 25% tariff under Lists 1 and 2; however, no exclusion process had been contemplated for the List 3 products until they increased to 25% from the original 10% rate last month. (See Client Alerts from May 6, 2019, February 25, 2019, January 16, 2019, July 9, June 21, June 15, and April 4, 2018.) The grounds for List 3 products exclusion are similar to those set out in the Lists 1 and 2 processes:

- availability of comparable products from sources in the U.S. and third countries;
- whether the requester has attempted to source the product from the United States or third countries;
- whether the imposition of the duties will cause "severe economic hardship to the requester or other U.S. interests"; and finally
- whether the particular product for which an exclusion is sought is "strategically important" for the "made in China 2025" initiative or other Chinese industrial programs.

### Related People

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## CLIENT ALERTS

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Significantly, the List 3 exclusion request form includes questions that will require data on the company's gross revenues, percentage of total gross sales the requested product represents, and the amount of sourcing of the product from domestic or third-country suppliers. The new form will have separate files for Business Confidential Information (BCI) and Public Information and documents can be uploaded with the form, and the Federal Register notice makes it clear that gross revenue information will be considered BCI and will not be publicly available. A draft of the proposed form is included in the draft Federal Register notice.

Requesters need not be importers of the goods but may also be purchasers and must provide specific data on the quantity and value of their imports or purchases for 2017, 2018, and the first quarter of 2019. Data on the company's gross revenues and for imports sold as final products (as compared to inputs into other products), the percentage of their total gross sales that are comprised of the Chinese origin product are required.

The window for applications will be open from June 30, 2019, until September 30, 2019. Similar to the Lists 1 and 2 exclusion processes, interested parties will have 14 days to file comments on the request, either in support or opposition and the submitter will have 7 days to reply to comments, which will run from the close of the 14 day response period or 7 days after the posting of the response, whichever is later.

Butzel Long attorneys are ready to assist clients in preparing their exclusion requests and in follow up activities with the USTR and Congress.

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