

ALERT

Section 301 Exclusion Process for Tranche 4A Tariffs on Chinese Goods to Open on October 31

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Since July of 2018, the Administration has imposed additional tariffs under Section 301 of the Trade Act of 1974 on four successive rounds of Chinese-origin goods. The latest round of tariffs, known as the “Tranche 4A” tariffs, went into place on September 1, 2019, at a rate of 15%.

At the time that the Tranche 4A tariffs were imposed, the Administration indicated that it would create a process whereby individual importers and other interested parties could petition for a temporary exclusion from the tariffs, with respect to specific products. The Office of the U.S. Trade Representative (USTR) recently announced that the petition period for Tranche 4A goods will open on October 31, 2019. The petition window will remain open through January 31, 2020.

The exclusion process for goods subject to the Tranche 4A tariffs will largely be consistent with the process used with respect to previous tranches, and most particularly the recently-closed Tranche 3 process. For example, as it did with the Tranche 3 process, USTR will require that all petitions be filed through an online system that requires petitioners to provide certain information and answer certain questions through a form. The process will also provide a window of opportunity for interested persons to comment on filed petitions, and for the original filers to reply to such comments.

In broad terms, the “Tranche 4A” exclusion process will require:

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- Product-specific requests;
- Identification of the 10-digit tariff code for the item subject to the request;
- A detailed factual description of the product in terms of its physical characteristics and primary use/application, inclusive of any supportive materials like technical drawings, customs rulings, etc.;
- Information on the volume/value of the requestor's recent imports of the product from China and third countries;
- Information on the degree to which the specific product contributes to the requestor's overall revenue;
- 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 the harm that the requestor faces or has faced by reason of the tariffs; and
- Information on the degree to which the product is related to targeted Chinese industrial policies.

That said, in its announcement of the Tranche 4 process, USTR indicated that it is making certain adjustments to the questions/form that it used for the Tranche 3 exclusion process. The most notable changes are as follows:

- USTR is now asking that requestors identify whether petitions cover goods that are subject to antidumping and/or countervailing duty orders;
- The agency is asking for petitioners to provide data on their purchases of the product subject to each request from January-June 2019, rather than only first quarter data;
- Similarly, USTR is asking for first-half 2018 and 2019 gross revenue data, rather than first quarter data; and
- The agency has clarified that the response to the question on economic harm should include information on the effects of the tariffs for U.S.-based employment.

As with the Tranche 3 process, once a petition is filed, there will be a 14-day period during which any party may comment on the petition, whether in support or opposition. Should a comment be filed, the original requestor will then have seven days from the filing of the comment to respond. Finally, as with the Tranche 3 process, USTR will treat certain data in petitions as confidential (such as gross revenue figures, the volume and value of a requestor's imports or purchases, and information on economic harm). Other information, such as the product description and a description of the requestor's efforts to obtain the product subject to the request outside of China, must be submitted publicly.

Should you have any questions regarding the Tranche 4A exclusion process, Wiley Rein's International Trade Practice is well-positioned to help.