



June 7, 2019

The Honorable Robert Lighthizer
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: 301 Exclusion Requests – Concerns Regarding the Proposed Section 301 Product Exclusion Process for “List 3” Tariffs

Dear Ambassador Lighthizer:

On behalf of the Americans for Free Trade Coalition, we write to urge you to address critical flaws in the proposed product exclusion process for the China Section 301 “List 3” tariffs, which were originally applied on September 24, 2018, at a rate of 10 percent and increased to a rate of 25 percent on May 10, 2019.

The concerns we identify in this letter arise from our perspective as a diverse coalition representing a cross-section of the U.S. economy, including manufacturers, farmers and agribusinesses, retailers, technology companies, service providers, natural gas and oil companies, importers and exporters, and other supply chain stakeholders. We are businesses that make innovative products and employ millions of Americans. We are workers who power the record growth of the American economy. And we are consumers who buy and use the very products and services we create to perpetuate growth and innovation.

We are united in our concern that indiscriminate tariffs negatively impact the American economy and all of us. While we agree that our trading partners must be held accountable for unfair trading practices, punishing American businesses and families with tariffs that they – not foreign countries – pay is not the answer. Without a well-designed and well-run product exclusion process, these negative costs on the U.S. economy and Americans will be exacerbated.

This letter specifically relates to the Federal Register Notice posted on May 21, 2019, that outlines the proposed method to administer a product exclusion request process for the “List 3” tariffs as well as the proposed exclusion request form to be used by applicants. We urge you to consider the following concerns and recommendations to improve the process.

Proposed Product Exclusion Request Concerns and Recommendations

- We question the relevance of a new question on the proposed exclusion request form (Question 11) regarding the applicant’s gross revenue figures for 2018 and 2019. It is unclear why USTR would require this information in assessing the merits of an exclusion request otherwise based on factors including whether the product is available only from

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China, whether the imposition of additional duties would cause severe economic harm to the requestor, and whether the product is strategically related to Chinese industrial programs. This question should be removed from the form.

- We believe USTR has underestimated the likely number of exclusion requests and the associated manpower required for review. While the estimate of 60,000 exclusion requests is nearly triple the number USTR received under the processes established for List 1 and List 2, List 3 contains by far the greatest number of HTS line items of any of the Section 301 tariff tranches. At nearly 6,000 line items, USTR's calculations would assume an average of only 10 requests per HTS code. We expect greater participation in this regulatory process, and we urge USTR to obtain adequate resources and staffing to process any and all requests in a timely manner, especially as it completes its review of exclusion requests under List 1 and List 2.
- Likewise, we believe that USTR has underestimated the burden on applicants of completing the proposed exclusion request form. USTR estimates completion time at just one hour for the gathering and documentation of complex regulatory and business information. The burden is particularly heavy on small and medium size enterprises that may have never engaged in this kind of process before. In any case, an hour significantly underestimates the amount of time that companies will dedicate to completing a regulatory request that will at least significantly increase its costs and could even determine its own viability. The notice also significantly underestimates the amount of time that businesses must dedicate to monitoring the federal register for any objections made to its exclusion request as well as preparing responses to specific arguments from any objections. USTR should simplify the form, focus its analysis on the compelling narratives of companies, publish guidance documents in plain language and provide clear notice of all relevant deadlines to requestors.
- The lack of a process for the submission of business confidential information (BCI) is disconcerting. Sensitive business information and trade secrets should be protected, especially when disclosing this information may be necessary to make a strong case for an exclusion request. Applicants should not have to choose between protecting their information and obtaining a tariff exclusion.
- The proposed process lacks any indication of the type of decision requestors may expect USTR to issue when analysis of their request is complete. USTR should establish clear criteria and weighting by which it will evaluate the product exclusion requests. It should then provide companies with a comprehensive and timely explanation of its decision based on these criteria. USTR should also establish procedures to ensure agency staff reviewing product exclusion requests and opposition filing apply common criteria consistently and that internal recommendations are reviewed to ensure consistency and procedural fairness prior to final determinations.

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- Americans for Free Trade opposes the inclusion of an end date for List 3 product exclusion applications. Imposing an end date runs counter to the administration's policies to encourage American innovation and product development. Restricting eligibility dates along with the extended time required for application review necessarily means that the newest and most innovative products will never have any chance of securing a product exclusion, jeopardizing their success right from the start. A granted product exclusion should not be time-limited but continue through the duration of the China Section 301 tariff process, i.e., valid from September 24, 2018, until Section 301 tariffs are no longer levied against China.
- Additionally, Americans for Free Trade hopes that USTR will soon propose a process for companies to re-apply for product exclusions granted on List 1 and List 2 that are set to soon expire. We believe it is critical that companies be afforded the opportunity to renew their exclusion request. This should be announced in advance of any exclusions expiring.

In conclusion, we highlight that USTR itself explicitly recognized in its May 21, 2019 Federal Register Notice that “delay” in the implementation of an exclusion process on List 3 “could harm interested U.S. stakeholders and negatively effect [sic] trade and investment” in the United States. Americans for Free Trade agrees. While we urge you to quickly implement a revised exclusion process for those affected by the List 3 tariffs, we hope that you also reassess the efficacy of these broadly applied tariffs given their detrimental impact on U.S. businesses, workers and consumers.

Thank you for your consideration of our concerns.

Sincerely,

Accessories Council
Agriculture Transportation Coalition (AgTC)
ALMA, International (Association of Loudspeaker Manufacturing and Acoustics)
American Apparel & Footwear Association (AAFA)
American Association of Exporters and Importers (AAEI)
American Association of Port Authorities
American Bakers Association
American Chemistry Council
American Coatings Association, Inc. (ACA)
American Down and Feather Council
American Fly Fishing Trade Association
American Home Furnishings Alliance
American Lighting Association
American Petroleum Institute
American Pyrotechnics Association
American Rental Association
American Specialty Toy Retailing Association

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American Wind Energy Association
Arizona Technology Council
Arkansas Grocers and Retail Merchants Association
Association For Creative Industries
Association for PRINT Technologies
Association of Equipment Manufacturers (AEM)
Association of Home Appliance Manufacturers
Auto Care Association
Beer Institute
BSA | The Software Alliance
Business & Institutional Furniture Manufacturers Association (BIFMA)
California Retailers Association
Chemical Industry Council of Delaware (CICD)
Coalition of New England Companies for Trade (CONNECT)
Coalition of Services Industries (CSI)
Colorado Retail Council
Columbia River Customs Brokers and Forwarders Assn.
Computer & Communications Industry Association (CCIA)
Computing Technology Industry Association (CompTIA)
Consumer Technology Association
Council of Fashion Designers of America (CFDA)
CropLife America
Customs Brokers & Freight Forwarders Assn. of Washington State
Customs Brokers & Freight Forwarders of Northern California
Distilled Spirits Council of the United States
Electronic Transactions Association
Fashion Accessories Shippers Association (FASA)
Fashion Jewelry & Accessories Trade Association
Flexible Packaging Association
Florida Ports Council
Florida Retail Federation
Footwear Distributors and Retailers of America (FDRA)
Fragrance Creators Association
Game Manufacturers Association
Gemini Shippers Association
Georgia Retailers
Global Chamber®
Global Cold Chain Alliance
Greeting Card Association
Grocery Manufacturers Association
Halloween Industry Association
Home Fashion Products Association
Home Furnishings Association
Household and Commercial Products Association

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Idaho Retailers Association
Illinois Retail Merchants Association
Independent Office Products & Furniture Dealers Association (IOPFDA)
Indiana Retail Council
Information Technology Industry Council (ITI)
International Bottled Water Association (IBWA)
International Foodservice Distributors Association
International Housewares Association
International Warehouse and Logistics Association
International Wood Products Association
Internet Association
ISSA - The Worldwide Cleaning Industry Association
Juice Products Association (JPA)
Juvenile Products Manufacturers Association
Licensing Industry Merchandisers' Association
Los Angeles Customs Brokers and Freight Forwarders Assn.
Louisiana Retailers Association
Maine Grocers & Food Producers Association
Maine Lobster Dealers' Association
Maritime Exchange for the Delaware River and Bay
Maryland Retailers Association
Methanol Institute
Michigan Chemistry Council
Minnesota Retailers Association
Missouri Retailers Association
Motor & Equipment Manufacturers Association
Motorcycle Industry Council
NAPIM (National Association of Printing Ink Manufacturers)
National Association of Chain Drug Stores (NACDS)
National Association of Chemical Distributors (NACD)
National Association of Foreign-Trade Zones (NAFTZ)
National Association of Home Builders
National Association of Music Merchants
National Association of Trailer Manufacturers (NATM)
National Confectioners Association
National Council of Chain Restaurants
National Customs Brokers and Freight Forwarders Association of America
National Electrical Equipment Manufacturers Association (NEMA)
National Fisheries Institute
National Foreign Trade Council
National Grocers Association
National Lumber and Building Material Dealers Association
National Marine Manufacturers Association
National Restaurant Association

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National Retail Federation
National Sporting Goods Association
Natural Products Association
New Jersey Retail Merchants Association
North American Association of Uniform Manufacturers and Distributors (NAUMD)
North Carolina Retail Merchants Association
Ohio Council of Retail Merchants
Outdoor Industry Association
Pacific Coast Council of Customs Brokers and Freight Forwarders Assns. Inc.
Pennsylvania Retailers' Association
PeopleforBikes
Personal Care Products Council
Pet Industry Joint Advisory Council
Petroleum Equipment & Services Association
Plumbing Manufacturers International
Power Tool Institute (PTI)
Precious Metals Association of North America (PMANA)
Promotional Products Association International
Recreational Off-Highway Vehicle Association
Retail Association of Maine
Retail Council of New York State
Retail Industry Leaders Association
Retailers Association of Massachusetts
RISE (Responsible Industry for a Sound Environment)
RV Industry Association
San Diego Customs Brokers and Forwarders Assn.
SEMI
Snowsports Industries America
Society of Chemical Manufacturers & Affiliates
Software & Information Industry Association (SIIA)
South Dakota Retailers Association
Specialty Equipment Market Association
Specialty Vehicle Institute of America
Sports & Fitness Industry Association
TechNet
Telecommunications Industry Association (TIA)
Texas Retailers Association
Texas Water Infrastructure Network
The Airforwarders Association
The Fertilizer Institute
The Hardwood Federation
The Toy Association
The Vinyl Institute
Travel Goods Association

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Truck & Engine Manufacturers Association (EMA)
U.S. Hide, Skin and Leather Association
United States Council for International Business
United States Fashion Industry Association
US Global Value Chain Coalition
US-China Business Council
Virginia Retail Merchants Association
Virginia-DC District Export Council (VA-DC DEC)
Washington Retail Association
Window and Door Manufacturers Association
World Pet Association, Inc. (WPA)