



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 – American Chemistry Council Concerns Regarding the Proposed Section 301 Product Exclusion Process for “List 3” Tariffs

Dear Ambassador Lighthizer,

The American Chemistry Council (ACC) appreciates the opportunity to provide public comment to the Office of the U.S. Trade Representative (USTR) and Office of Management and Budget (OMB) on the proposed information collection request (ICR), “301 Exclusion Requests”, as published in the Federal Register on May 21, 2019 (see 84 FR 23145).

ACC represents a diverse set of companies engaged in the business of chemistry. An innovative, \$553 billion enterprise, we work to solve some of the biggest challenges facing our nation and our world. Our mission is to deliver value to our members through advocacy, using best-in-class member engagement, political advocacy, communications and scientific research. We are committed to fostering progress in our economy, environment and society. The business of chemistry drives innovations that enable a more sustainable future; provides 526,000 skilled good paying jobs—plus over six million related jobs—that support families and communities; and enhances safety through our diverse set of products and investments in R&D.

ACC agrees that China must be held to account for its unfair trade practices, particularly regarding intellectual property theft and forced technology transfer. ACC has submitted comments on each of the three tranches of Section 301 tariffs currently in effect on imports from China. We have in each instance requested that the Administration remove all the chemical and plastics products from the lists. Unfortunately, with the introduction of the \$300 billion List 4 on May 10, U.S. chemical manufacturers may ultimately experience tariffs on over \$25 billion in imports of chemicals and plastics from China. China thus far has targeted \$11 billion in U.S. exports of chemicals and plastics in retaliation and could target more through additional tariffs and non-tariff barriers to trade. Given the significant amount of chemicals exposed to U.S. tariffs on imports from China, having a robust, workable exclusion process is critical to the success and competitiveness of ACC members and the business of chemistry in the United States.



In our review of the proposed product exclusion process for China Section 301 “List 3” tariffs, we have identified flaws that may undermine the ability of U.S. chemical manufacturers from submitting exclusion requests. A number of ACC members submitted requests during the List 2 product exclusion process and have informed us of their experiences. As List 3 covers \$13.2 billion in chemicals and plastics imports from China, ACC members will likely make product exclusion requests again in the List 3 process and in the List 4 process, assuming USTR offers a process if those tariffs come into effect.

As a guiding principle, USTR should not unduly suppress the submission of product exclusion requests from U.S. businesses. Many of the requests for information in the form and the apparent exclusion of an opportunity to provide business confidential information (BCI) appear to be aimed at reducing the number of product exclusion requests and streamlining the request process for USTR reviewers. The List 3 tariffs are having a negative impact on many companies, in particular those who are only able to source the inputs they need for their businesses from China. These companies are applying for exclusions because their businesses and the livelihoods of their employees are at risk. We urge USTR and OMB to take this perspective into account in formulating the List 3 exclusion process and request form.

To advance this principle and improve the proposed process, we would like to offer our comments on the proposed List 3 request form:

- **Short comment and response timeframes:** We note the new shortened timeframes for submission of comments and responses regarding exclusion requests. While it may be the case that these short timeframes are designed to speed the review process for the anticipated estimated 60,000 requests that will be submitted for List 3 products, we are concerned that they will have the effect of limiting the number of exclusion requests filed and supportive comments offered.
- **Exclusion period:** 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.
- **Exclusion Request Form – Question 3:** According to the request form and this question in particular, it appears that requestors will not be provided the opportunity to make BCI submissions. As USTR had previously offered opportunities for requestors to provide BCI submissions for List 1 and List 2 exclusion requests, we urge USTR to again offer BCI submission opportunities for List 3. The absence of this channel means that requestors will only be able to provide information that is publically available. This will have a negative impact on chemical submissions, since identifying information usually includes the Chemical Abstract Services (CAS) number, which, for some products, may be BCI. This will restrict the ability of requestors to file requests for products in HTS Chapters 29, 32 and 38.



- **Exclusion Request Form – Questions 5 and 6:** We urge USTR and OMB to provide additional guidance on what may constitute proof that the product is not available in the United States or available from third countries? For example, would USTR need information from trade publications, company studies, or other written publically available material?
- **Exclusion Request Form – Question 7:** We urge USTR and OMB to provide additional guidance on how requestors can provide proof that it made attempts to source this product from the United States or third countries.
- **Exclusion Request Form – Questions 8-11:** Compared to the questions in the exclusion request forms for List 1 and List 2, it appears that there are new requirements to provide specific information on import value and quantity in the proposed form for the exclusion request form for List 3. This information can be BCI as it presents import data on import quantities and values. If so, it would preclude the submission of an exclusion request that contained BCI. We urge USTR and OMB to clarify whether requestors can make separate BCI submissions to avoid this problem. The request for a company's gross revenue for 2018 and 2019 in Question 11 in particular could be prejudicial when compared to the request for the value of the imports from China in question 8. We are concerned that the Administration would deny exclusion requests containing a high ratio of gross revenue to import value of a product. We urge USTR and OMB to remove this question from the form.
- **Exclusion Request Form – Question 13:** We request that USTR and OMB specify whether this is the appropriate question for making the written argument for exclusion.
- **Exclusion Request Form – Question 16:** We request that USTR provide links to descriptions of "Made in China 2025" or other Chinese industrial programs to enable requestors to have a common understanding of these programs so that requestors can provide an accurate answer to this question.
- **Taking into account signed contracts:** The product exclusion process does not take into account prior signed contracts for massive capital investments that companies are making, which may have been in the works prior to the beginning of imposition of tariffs last year. It would be important for the request form to prove an opportunity for requestors to provide information regarding cases of purchases or investments made and contracts signed several years ago with delivery dates in the present.
- **End date for exclusion applications:** ACC opposes the inclusion of an end date for List 3 product exclusion requests. Imposing an end date runs counter to the administration's policies to encourage 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.

- **Opportunities for additional exclusion requests**: When the exclusion periods for products in List 1 and List 2 expire, we urge USTR to offer a new exclusion process for companies whose products received exclusions to make new exclusion requests for those products. Expiration of exclusion periods for the products could harm interested U.S. stakeholders and negatively affect trade and investment.

Thank you again for your consideration of our concerns. ACC and our members look forward to engaging with USTR and OMB staff on the finalization of the product exclusion process for List 3.

Best regards,



Ed Brzytwa
Director for International Trade
American Chemistry Council

