



[Billing Code 3290-F9]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: Effective July 6, 2018, the U.S. Trade Representative (Trade Representative) imposed additional duties on goods of China with an annual trade value of approximately \$34 billion (the \$34 billion action) as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The Trade Representative's determination included a decision to establish a product exclusion process. The Trade Representative initiated the exclusion process in July 2018, and stakeholders have submitted requests for the exclusion of specific products. In December 2018 and March 2019, the Trade Representative granted two prior sets of exclusion requests. This notice announces the Trade Representative's determination to grant additional exclusion requests, as specified in the Annex to this notice. The Trade Representative will continue to issue decisions on pending requests on a periodic basis.

DATES: The product exclusions announced in this notice will apply as of the July 6, 2018 effective date of the \$34 billion action, and will extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395-5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact traderemedymail@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), and 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 83 FR 67463 (December 28, 2018), 84 FR 7966 (March 5, 2019), and 84 FR 11152 (March 25, 2019).

Effective July 6, 2018, the Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$34 billion. *See* 83 FR 28710. The Trade Representative's determination included a decision to establish a process by which U.S. stakeholders may request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the \$34 billion action from the additional duties. The Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 32181 (the July 11 notice).

Under the July 11 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the \$34 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product only is available from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to “Made in China 2025” or other Chinese industrial programs.

The July 11 notice stated that the Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The July 11 notice required submission of requests for exclusion from the \$34 billion action no later than October 9, 2018, and noted that the Trade Representative would periodically announce decisions. In December 2018, the Trade Representative granted an initial set of exclusion requests. *See* 83 FR 67463. The Trade Representative granted a second set of exclusions in March 2019. *See* 84 FR 11152. The Office of the

United States Trade Representative regularly updates the status of each pending request and posts the status at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/request-exclusion>.

B. Determination to Grant Certain Exclusions

Based on the evaluation of the factors set out in the July 11 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex to this notice, the exclusions are reflected in 21 specially prepared product descriptions, which cover 348 separate exclusion requests.

In accordance with the July 11 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the product descriptions in the Annex to this notice, and not by the product descriptions set out in any particular request for exclusion.

Paragraph A, subparagraphs (3) – (5) are conforming amendments to the HTSUS reflecting the modification made by the Annex to this notice.

In order to clarify the periodic revisions to the HTSUS, paragraphs B and C of the Annex modifies the text to U.S. notes 20(i)(6) and 20(i)(7) to subchapter III of chapter 99

of the Harmonized Tariff Schedule of the United States, as set out in the Annex of the notice published at 84 FR 11152 (March 25, 2019).

Paragraph D of the Annex to this notice corrects a typographical error in U.S. note 20(i)(24) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States, as set out in the Annex of the notice published at 84 FR 11152 (March 25, 2019).

As stated in the July 11 Notice, the exclusions will apply as of the July 6, 2018 effective date of the \$34 billion action, and extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Stephen Vaughn,

General Counsel,

Office of the U.S. Trade Representative.

ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.07 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, “Rates of Duty 1-General”, respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
“9903.88.07	Articles the product of China, as provided for in U.S. note 20(j) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative	The duty provided in the applicable subheading”		

2. by inserting the following new U.S. note 20(j) to subchapter III of chapter 99 in numerical sequence:

“(j) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.01 and provided for in U.S. notes 20(a) and 20(b) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.01. See 83 Fed. Reg. 28710 (June 20, 2018) and 83 Fed. Reg. 32181 (July 11, 2018). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.01 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

- (1) Pumps designed for countertop appliances for serving beer, the foregoing that control the level of carbonation by means of sonic waves (described in statistical reporting number 8413.19.0000)
- (2) Roller machines designed for cutting, etching or embossing paper, foil or fabric, manually powered (described in statistical reporting number 8420.10.9080)
- (3) Water oxidizers and chlorinators (described in statistical reporting number 8421.21.0000)

- (4) Ratchet winches designed for use with textile fabric strapping (described in statistical reporting number 8425.39.0100)
- (5) Continuous action elevators and conveyors, designed to convey mineral materials (described in statistical reporting number 8428.33.0000)
- (6) Counterweight castings of iron or steel designed for use on fork lift and other works trucks (described in statistical reporting number 8431.20.0000)
- (7) Tines, carriages, and other goods handling apparatus and parts designed for use on fork lift and other works trucks (described in statistical reporting number 8431.20.0000)
- (8) Parts of drill sharpening machines (described in statistical reporting number 8466.93.9885)
- (9) Outer shells of hydraulic accumulators, of iron or non-alloy steel, cylindrical with hemispherical heads on each end (described in statistical reporting number 8479.90.9496)
- (10) Parts of mechanical awnings and shades (described in statistical reporting number 8479.90.9496)
- (11) Reject doors, pin protectors, liners, front walls, grates, hammers, rotor and end disc caps, and anvil and breaker bars, of iron or steel, the foregoing parts of metal shredders (described in statistical reporting number 8479.90.9496)
- (12) Steering wheels designed for watercraft, of stainless steel, having a wheel diameter exceeding 27 cm but not exceeding 78 cm (described in statistical reporting number 8479.90.9496)
- (13) Pressure regulators of brass or bronze, whether high or low inlet type, having a rated flow rate of 55,000 - 150,000 BTU/hr, maximum inlet pressure of 0.17 MPa to 1.72 MPa, inlet connection with POL or thread type of fitting (described in statistical reporting number 8481.10.0090)
- (14) Pipe brackets of aluminum, each with 4 ports, the foregoing measuring 27.9 cm x 20.3 cm x 17.8 cm and weighing 11.34 kg, designed for installation into air brake control valves (described in statistical reporting number 8481.90.9040)
- (15) Push pins and C-poles of steel, designed for use in variable force solenoid valves (described in statistical reporting number 8481.90.9040)
- (16) Ball bearings of a width not exceeding 30 mm (described in statistical reporting number 8482.10.5032)
- (17) Inductor baseplates of aluminum, each with a length measuring 149.20 mm or more but not over 275 mm, with a width measuring 119.40 mm or more but

not over 232 mm and with a depth of 10.50 mm or more but not over 19 mm, with a weight of 0.48 kg or more but not over 3.2 kg (described in statistical reporting number 8504.90.9690)

- (18) Parts of soldering irons and soldering machines (described in statistical reporting number 8515.90.4000)
- (19) Motor vehicle gear shift switch assemblies, comprised of a plunger, connector and gear shift lever (described in statistical reporting number 8536.50.9065)
- (20) Pressure switches designed for use in heat pumps and air-conditioning condensers having a rating of 1.90 megapascals or more but not over 4.55 megapascals (described in statistical reporting number 8536.50.9065)
- (21) Instruments for measuring or checking voltage or electrical connections; electrical circuit tracers (described in statistical reporting number 9030.33.3800)

3. by amending the last sentence of the first paragraph of U.S. note 20(a) to subchapter III to chapter 99 by:

- a. deleting “provided for in heading 9903.88.05 and U.S. note 20(h), or provided for in heading 9903.88.06 and U.S. note 20(i) to subchapter III of chapter 99.”; and
- b. inserting in lieu thereof “provided for in: (1) heading 9903.88.05 and U.S. note 20(h) to subchapter III of chapter 99; (2) heading 9903.88.06 and U.S. note 20(i) to subchapter III of chapter 99; or (3) heading 9903.88.07 and U.S. note 20(j) to subchapter III of chapter 99.”.

4. by amending the first sentence of U.S. note 20(b) to subchapter III to chapter 99 by:

- a. deleting “provided for in heading 9903.88.05 and U.S. note 20(h), or provided for in heading 9903.88.06 and U.S. note 20(i) to subchapter III of chapter 99.”; and
- b. inserting in lieu thereof “provided for in: (1) heading 9903.88.05 and U.S. note 20(h) to subchapter III of chapter 99; (2) heading 9903.88.06 and

U.S. note 20(i) to subchapter III of chapter 99; or (3) heading 9903.88.07 and U.S. note 20(j) to subchapter III of chapter 99.”.

5. by amending the Article Description of heading 9903.88.01:
 - a. by deleting “ Except as provided in headings 9903.88.05 or 9903.88.06,”; and
 - b. inserting in lieu thereof “Except as provided in headings 9903.88.05, 9903.88.06 or 9903.88.07,”.
- B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, U.S. note 20(i)(6) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “described in statistical reporting number 8413.91.9095, effective January 1, 2019; described in statistical reporting number 8413.91.9080, effective prior to January 1, 2019” and inserting “whether described in statistical reporting number 8413.91.9080 (parts of pumps for liquids, other), prior to January 1, 2019 or described in statistical reporting number 8413.91.9095, post January 1, 2019” in lieu thereof.
- C. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, U.S. note 20(i)(7) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “described in statistical reporting number 8413.91.9095, effective January 1, 2019; described in statistical reporting number 8413.91.9080, effective prior to January 1, 2019” and inserting “whether described in statistical reporting number 8413.91.9080 (parts of pumps for liquids, other), prior to January 1, 2019 or described in statistical reporting number 8413.91.9095, post January 1, 2019” in lieu thereof.
- D. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, U.S. note 20(i)(24) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “and weight of 257 g or less” and inserting “and weight of 2575 g or less” in lieu thereof.

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