



[Billing Code 3290-F0]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion and Amendments: 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 exclusion and amendments.

SUMMARY: Effective July 6, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately \$34 billion 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 U.S. Trade Representative's determination included a decision to establish a product exclusion process. The U.S. 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, April, May, June, July, September, and October 2019, the U.S. Trade Representative granted exclusion requests. This notice announces the U.S. Trade Representative's determination to grant an additional exclusion request, as specified in the Annex to this notice, and makes amendments to certain notes in the Harmonized Tariff Schedule of the United States (HTSUS). The U.S. Trade Representative will continue to issue decisions as necessary.

DATES: The product exclusion will apply as of the July 6, 2018 effective date of the \$34 billion action, and will extend to October 1, 2020 at 11:59 p.m. EDT. The amendments announced in this notice are retroactive to the date the original exclusions were published

and do not extend the period for the original exclusions. 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 Counsel Philip Butler 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 traderemedy@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), 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), 84 FR 11152 (March 25, 2019), 84 FR 16310 (April 18, 2019), 84 FR 21389 (May 14, 2019), 84 FR 25895 (June 4, 2019), 84 FR 32821 (July 9, 2019), 84 FR 49564 (September 20, 2019), and 84 FR 52567 (October 2, 2019).

Effective July 6, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the HTSUS, with an approximate annual trade value of \$34 billion. *See* 83 FR 28710. The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders can request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the \$34 billion action from the additional duties. The

U.S. 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 it 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 is available only 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 U.S. 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 U.S. Trade Representative periodically would announce decisions. In December 2018, the U.S. Trade

Representative granted an initial set of exclusion requests. *See* 83 FR 67463. The U.S. Trade Representative granted additional exclusions in March, April, May, June, July, September, and October 2019. *See* 84 FR 11152, 84 FR 16310, 84 FR 21389, 84 FR 25895, 84 FR 32821, 84 FR 49564 and 84 FR 52567.

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 U.S. Trade Representative has determined to grant the product exclusion set out in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion request.

Exclusions from the duties have been established in two different formats: (1) as an exclusion for an existing 10-digit subheading from within an 8-digit subheading covered by the \$34 billion action, or (2) as an exclusion reflected in specially prepared product descriptions. The exclusion announced in this notice takes the form of a 10-digit HTSUS subheading.

In accordance with the July 11 notice, the exclusion is available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of the exclusion is governed by the scope of the 10-digit HTSUS subheading in the Annex to this notice, and not by the product descriptions set out in any particular request for exclusion.

Paragraph A is a conforming amendment to the HTSUS reflecting the modification made by the Annex to this notice.

C. Amendments to Certain Exclusions

To correct technical and ministerial errors and in order to conform to the U.S. Trade Representative's intent to grant certain exclusions requested, the Annex to this notice includes amendments to certain notes in the HTSUS.

Subparagraphs B(1–5) correct errors in U.S. notes 20(q)(25), 20(q)(26), 20(q)(201), 20(q)(235) and 20(q)(252) to subchapter III of chapter 99 of the HTSUS, as set out in the Annex of the notice published at 84 FR 49564 (September 20, 2019).

In order to conform to the U.S. Trade Representative's intent to grant certain exclusion requests, subparagraphs B(6–7) of the Annex make amendments to U.S. notes 20(n)(11) and 20(n)(85) to subchapter III of chapter 99 of the HTSUS, as set out in the Annex of the notice published at 84 FR 32821 (July 9, 2019). Subparagraphs B(8–14) of the Annex make amendments to notes 20(q)(27), 20(q)(28), 20(q)(58), 20(q)(195), 20(q)(217), 20(q)(291) and 20(q)(293) to subchapter III of chapter 99 of the HSTUS, as set out in the Annex of the notice published at 84 FR 49564 (September 20, 2019), to conform to this intent.

The U.S. Trade Representative will continue to issue determinations on a periodic basis as needed.

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, and before October 2, 2020, U.S. note 20(x) to subchapter III of chapter 99 of

the Harmonized Tariff Schedule of the United States (HTSUS) is modified by inserting the following exclusion in numerical order after exclusion (92):

“(93) 9030.90.4600”.

- 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:
1. U.S. note 20(q)(25) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “Rotary compressors, each exceeding 746 W (1 horsepower) but not exceeding 2,984 W (4 horsepower), with a cooling capacity ranging from 2,300 W (7,960 BTU) to 5,500 W (18,766 BTU) (described in statistical reporting number 8414.30.8060)” and inserting “Rotary compressors, each exceeding 746 W but not exceeding 2,238 W, with a cooling capacity ranging from 2.3 kW to 5.5 kW (described in statistical reporting number 8414.30.8060)” in lieu thereof.
 2. U.S. note 20(q)(26) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “Rotary compressors, each exceeding 746 W (1 horsepower) but not exceeding 2,984 W (4 horsepower), with a cooling capacity ranging from 750 to 1400 W (described in statistical reporting number 8414.30.8060)” and inserting “Rotary compressors, each exceeding 746 W but not exceeding 2,238 W, with a cooling capacity of 750 W or more but not exceeding 1.4 kW (described in statistical reporting number 8414.30.8060)” in lieu thereof.

3. U.S. note 20(q)(201) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “electric transformers, static converters and”.
4. U.S. note 20(q)(235) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “Single-pole, double-throw switches, for a voltage not exceeding 100 V, each with a movable contact arm permitting the opening and closing of contact points (described in statistical reporting number 8536.50.9065)” and inserting “Single-pole, double-throw switches, each with a movable contact arm permitting the opening and closing of contact points, of a rating not over 1,000 V (described in statistical reporting number 8536.50.9065)” in lieu thereof.
5. U.S. note 20(q)(252) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “of less than 1 W and an operating frequency of less than 100 MHz (described in statistical reporting number 8541.29.0095)” and inserting “of 1W or more (described in statistical reporting number 8541.29.0095)” in lieu thereof.
6. U.S. note 20(n)(11) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “\$72” and inserting “\$96” in lieu thereof.
7. U.S. note 20(n)(85) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “\$2.50” and inserting “\$3.20” in lieu thereof.

8. U.S. note 20(q)(27) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “\$250 but not over \$500” and inserting “\$200 but not over \$1500” in lieu thereof.
9. U.S. note 20(q)(28) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “\$500 but not over \$900” and inserting “\$200 but not over \$1500” in lieu thereof.
10. U.S. note 20(q)(58) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “polymer filtration systems of a kind used to separate solid contaminants from liquid polymers, each valued over \$30,000 but not over \$40,000” and inserting “filtration or purifying machinery for liquid chemical polymers, of steel housing, with sintered metal cylindrical filters” in lieu thereof.
11. U.S. note 20(q)(195) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “stators and rotors, 2 or 4 pole type, valued over \$4,700 but not over \$4,900” and inserting “stators and rotors for electric motors and generators (excluding generating sets), 2 or 4 pole type, valued \$85 or more but not over \$1,700” in lieu thereof.
12. U.S. note 20(q)(217) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “not over \$1.50” and inserting “at not over \$4” in lieu thereof.
13. U.S. note 20(q)(291) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “for radiation therapy, affixed to the treatment table when used, each valued over \$18 but not over \$23” and

inserting “of polycaprolactone for the use of immobilizing patients, during the use of alpha, beta or gamma radiations, for radiography or radiotherapy” in lieu thereof.

14. U.S. note 20(q)(293) to subchapter III of chapter 99 of the Harmonized Tariff

Schedule of the United States is modified by deleting “\$2” and inserting “\$8.50” in lieu thereof.

Joseph Barloon,

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Office of the U.S. Trade Representative.

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