



[Billing Code 3290-F0]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion: 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 Amendment.

SUMMARY: Effective August 23, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately \$16 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 September 2018, and stakeholders have submitted requests for the exclusion of specific products. The U.S. Trade Representative is issuing determinations to grant exclusion requests on a rolling basis. This notice announces the U.S. Trade Representative's determination to grant the additional exclusion specified in the Annex to this notice, and to make a technical amendment to a previously granted exclusion.

DATES: The product exclusion will apply as of the August 23, 2018 effective date of the \$16 billion action, and will extend through October 1, 2020. The technical amendment announced in this notice applies to the time period established for the original exclusion, that is, retroactive to the original date of October 2, 2019, and ending on October 1, 2020 at 11:59 p.m. EDT. 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 traderemedies@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 47236 (September 18, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FR 37381 (July 31, 2019), 84 FR 49600 (September 20, 2019), 84 FR 52553 (October 2, 2019), and 84 FR 69011 (December 17, 2019).

Effective August 23, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 279 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$16 billion. *See* 83 FR 40823. The U.S. 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 \$16 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 47236 (the September 18 notice).

Under the September 18 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 \$16 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 September 18 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 September 18 notice required submission of requests for exclusion from the \$16 billion action no later than December 18, 2018, and noted that the U.S. Trade

Representative periodically would announce decisions. In July 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 37381. The U.S. Trade Representative granted additional exclusions in September and October 2019. *See* 84 FR 49600 and 84 FR 52553.

B. Determination to Grant Exclusion

Based on the evaluation of the factors set out in the September 18 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.

As set out in the Annex, the exclusion is reflected in a specially prepared product description, found in Paragraph A.

In accordance with the September 18 notice, an 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 and product description in the Annex to this notice, and not by the product description set out in any particular request for exclusion.

C. Technical Amendment to an Exclusion

Subparagraph B of the Annex makes a technical amendment to U.S. note 20(y)(2) to subchapter III of chapter 99 of the HTSUS, as set out in the annex of the notice published at 84 FR 52553 (October 2, 2019). In particular, the amendment in

Subparagraph B converts an exclusion of a specially prepared product description to an exclusion of a 10-digit HTSUS subheading.

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

Joseph Barloon,
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 August 23, 2018 and before October 2, 2020, U.S. note 20(y) 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 (111):

112. Skateboards with electric power for propulsion, of a power not exceeding 250 W (described in statistical reporting number 8711.60.0050).

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 August 23, 2018:

U.S. note 20(y)(2) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “silicone presented in 210 liter (55 gallon) drums or 1,040 liter (275 gallon) intermediate bulk containers (IBCs) (described in statistical reporting number 3910.00.0000)” and inserting “3910.00.0000” in lieu thereof.

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