



Billing Code 3290-F0

**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 exclusion amendments.

**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. In July, September, and October 2019, and February 2020, the U.S. Trade Representative issued determinations to grant certain exclusion requests on a rolling basis. This notice announces the U.S. Trade Representative's determination to make certain technical amendments to previously granted exclusions.

**DATES:** The technical amendments announced in this notice are retroactive to the date the original exclusions were published and do not further 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 Associate 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 [traderemedymail@cbp.dhs.gov](mailto:traderemedymail@cbp.dhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### **A. Background**

For background on the proceedings in this investigation, please see prior notices 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), 84 FR 69011 (December 17, 2019), and 85 FR 10808 (February 25, 2020).

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 could 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 objectives 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, and February 2020. *See* 84 FR 49600, 84 FR 52553, 85 FR 10808.

**B. Technical Amendments to Exclusions**

Subparagraph A of the Annex makes four technical amendments to U.S. notes 20(v)(2), 20(v)(8), 20(v)(78), and 20(y)(83) to subchapter III of chapter 99 of the HTSUS, as set out in the Annexes of the notice published at 84 FR 49600 (September 20, 2019) and 84 FR 52553 (October 2, 2019).

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 August 23, 2018:
1. U.S. note 20(v)(2) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “valued at \$5.40 to \$5.60 per kg” and inserting “valued at \$4.00 to \$7.00 per kg” in lieu thereof.
  2. U.S. note (20)(v)(8) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “20 cm or more in length” and inserting “18 cm or more in length” in lieu thereof.
  3. U.S. note 20(v)(78) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “(described in statistical reporting number 8541.10.0080)” and inserting “(described in statistical reporting number 8541.10.0050)” in lieu thereof.
  4. U.S. note 20(y)(83) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "storing downloadable readings" and inserting "storing downloadable readings or storing temperature parameters" in lieu thereof.

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[FR Doc. 2020-10231 Filed: 5/12/2020 8:45 am; Publication Date: 5/13/2020]