



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 exclusions.

SUMMARY: On August 20, 2019, at the direction of the President, the U.S. Trade Representative determined to modify the action being taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by imposing additional duties of 10 percent *ad valorem* on goods of China with an annual trade value of approximately \$300 billion. The additional duties on products in List 1, which is set out in Annex A of that action, became effective on September 1, 2019. On August 30, 2019, at the direction of the President, the U.S. Trade Representative determined to increase the rate of the additional duty applicable to the products covered by the action announced in the August 20 notice from 10 percent to 15 percent. On January 22, 2020, the U.S. Trade Representative determined to reduce the rate from 15 percent to 7.5 percent. The U.S. Trade Representative initiated a product exclusion process in October 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice. The U.S. Trade Representative will continue to issue decisions on pending requests on a periodic basis.

DATES: The product exclusions announced in this notice apply as of September 1, 2019, the effective date of List 1 of the \$300 billion action, and extend to September 1, 2020.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler, Assistant General Counsel 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 traderemedy@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including: 82 FR 40213 (August 24, 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 49153 (September 28, 2018), 84 FR 20459 (May 9, 2019), 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019), 84 FR 69447 (December 18, 2019), 85 FR 3741 (January 22, 2020), 85 FR 13970 (March 10, 2020), 85 FR 15244 (March 17, 2020), 85 FR 17936 (March 31, 2020), 85 FR 28693 (May 13, 2020), and 85 FR 32098 (May 28, 2020).

In a notice published on August 20, 2019, the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an additional 10 percent *ad valorem* duty on products of China with an annual aggregate trade value of approximately \$300 billion. 84 FR 43304 (August 20, 2019) (the August 20 notice). The August 20 notice contains two

separate lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, was effective September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, was scheduled to take effect on December 15, 2019.

On August 30, 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A (List 1) and Annex C (List 2) of the August 20 notice. *See* 84 FR 45821. On October 24, 2019, the U.S. Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading covered by List 1 of the \$300 billion action from the additional duties. *See* 84 FR 57144 (the October 24 notice). Subsequently, the U.S. Trade Representative announced a determination to suspend until further notice the additional duties on products set out in Annex C (List 2) of the August 20 notice. *See* 84 FR 69447 (December 18, 2019). The U.S. Trade Representative later determined to further modify the action being taken by reducing the additional duties for the products covered in Annex A of the August 20 notice (List 1) from 15 percent to 7.5 percent. *See* 85 FR 3741 (January 22, 2020).

Under the October 24 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 eight-digit subheading covered by the \$300 billion action. Requestors also had to provide the ten-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, among other information. 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 October 24 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 October 24 notice required submission of requests for exclusion from List 1 of the \$300 billion action no later than January 31, 2020, and noted that the U.S. Trade Representative periodically would announce decisions. In March 2020, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 85 FR 13970. The U.S. Trade Representative granted additional exclusions in March and May 2020. *See* 85 FR 15244, 85 FR 17936, 85 FR 28693, as modified by 85 FR 32098. The Office of the United States Trade Representative regularly updates the status of each pending request on the Exclusions Portal at <https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0017>.

B. Determination to Grant Certain Exclusions

Based on evaluation of the factors set out in the October 24 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 exclusions set out in the Annex to this notice. The determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex, the exclusions are reflected in two ten-digit HTSUS subheadings and 32 specially prepared product descriptions, which together respond to 55 separate exclusion requests.

In accordance with the October 24 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 ten-digit HTSUS subheading as described in the Annex, and not by the product descriptions set out in any particular request for exclusion.

Paragraph A, subparagraphs (3)-(4) of the Annex contain conforming amendments to the HTSUS reflecting the modifications made by the Annex.

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

Joseph Barloon,

General Counsel,

Office of the United States 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 September 1, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:
1. by inserting the following new heading 9903.88.49 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, and “Rates of Duty 1-General”, respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
“9903.88.49	Articles the product of China, as provided for in U.S. note 20(bbb) 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(bbb) to subchapter III of chapter 99 in numerical sequence:

“(bbb) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.15 and provided for in U.S. notes 20(r) and (s) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.15. See 84 Fed. Reg. 43304 (August 20, 2019), 84 Fed. Reg. 45821 (August 30, 2019), 84 Fed. Reg. 57144 (October 24, 2019) and 85 Fed. Reg. 3741 (January 22, 2020). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that, as provided in heading 9903.88.49, the additional duties provided for in heading 9903.88.15 shall not apply to the following particular products, which are provided for in the following enumerated statistical reporting numbers:

- 1) 5210.11.4040
- 2) 5210.11.6020
- 3) Down of ducks or geese, not further worked than cleaned, disinfected or treated for preservation, meeting both test standards 4 and 10.1 of Federal Standard 148a promulgated by the General Services Administration, with a fill power of at least 315 cm³/g but not more than 580 cm³/g (described in statistical reporting number 0505.10.0055)

- 4) Cyanuric chloride (IUPAC name: 2,4,6-trichloro-1,3,5-triazine) (CAS No. 108-77-0), 99.5 percent or higher in purity (described in statistical reporting number 2933.69.6010)
- 5) Kneeling pads of plastics (described in statistical reporting number 3924.90.5650)
- 6) Fittings of plastics, of a kind used to connect mop heads with mop handles (described in statistical reporting number 3926.90.9990)
- 7) Printed books, in the Chinese language (other than dictionaries and encyclopedias, textbooks, directories, bibles, testaments, prayer books and other religious books, technical, scientific and professional books, art and pictorial books, hardbound books, and rack size paperbound books), containing 49 or more pages each (excluding covers) (described in statistical reporting number 4901.99.0093)
- 8) Women's cut and sewn garden gloves, without fourchettes, cut and sewn from preexisting machine knitted fabric of polyester and cotton jersey, containing 50 percent or more by weight of rubber or plastics, clute cut (described in statistical reporting number 6116.10.4400)
- 9) Gloves cut and sewn of machine knitted fabric, without fourchettes, with applied polyvinyl chloride dots, such gloves containing 50 percent or more by weight of cotton, man-made fibers or wool, or any combination thereof and subject to man-made fiber restraints (described in statistical reporting number 6116.10.5520)
- 10) Gloves, containing less than 50 percent by weight of textile fibers, coated with rubber or plastics designed for enhanced grip (described in statistical reporting number 6116.10.6500)
- 11) Gloves, cut and sewn of knitted fabric in chief weight of polyester, not impregnated, coated or covered with plastics or rubber, without fourchettes (described in statistical reporting number 6116.93.8800)
- 12) Gloves of vegetable fibers, without fourchettes, with applied dots of polyvinyl chloride (described in statistical reporting number 6216.00.1720)
- 13) Shells for pillows and comforters made from microfiber fabric consisting of filament yarns not more than 1.22 decitex, such fabric with a weight of at least 55 g/m² but not more than 155 g/m² (described in statistical reporting number 6307.90.9889)
- 14) Round wire of nonalloy steel, hot-dipped galvanized with zinc, containing by weight less than 0.25 percent carbon, measuring at least 1.5 mm in diameter (described in statistical reporting number 7217.20.3000)
- 15) Ring binder mechanisms for loose leaf binders, each measuring at least 132 mm but not more than 134 mm in length and at least 16 mm but not more than 18 mm in width, with 2 prongs seated underneath housing (described in statistical reporting number 8305.10.0010)
- 16) Three-way hand-operated valve part of brass, suitable for use as an input part on irrigation-grade valves (described in statistical reporting number 8481.90.1000)

- 17) Lithium-ion batteries of a form other than size designations of the International Electrotechnical Commission (“IEC”) or the American National Standards Institute (“ANSI”), each producing not more than 45 V, with a capacity of at least 6,000 milliamp hours (mAh) but not more than 10 A hours (described in statistical reporting number 8507.60.0020)
- 18) Optical channel splitters (capable of converting between electrical signals and multiplexed optical signals) (described in statistical reporting number 8517.62.0090)
- 19) Television liquid crystal display (“LCD”) main board assemblies, each consisting of a printed circuit board containing a television tuner and audio and video components (described in statistical reporting number 8529.90.1300)
- 20) Safety spectacle frames of plastics conforming to U.S. Occupational Safety and Health Administration standards (described in statistical reporting number 9003.11.0000)
- 21) Spectacle frames of plastics conforming to U.S. Food and Drug Administration regulations as approved medical devices (described in statistical reporting number 9003.11.0000)
- 22) Spectacle frames, other than of plastics (described in statistical reporting number 9003.19.0000)
- 23) Liquid crystal display (“LCD”) modules, not capable of receiving or processing a broadcast television signal, each with a video display diagonal measuring not more than 191 cm (described in statistical reporting number 9013.80.9000)
- 24) Watch cases of stainless steel and titanium, not gold- or silver-plated, unassembled, each measuring at least 20 mm but not more than 48 mm in diameter and weighing at least 50 g but not more than 250 g (described in statistical reporting number 9111.20.4000)
- 25) Wristwatch cases of stainless steel, not gold- or silver-plated, including the sapphire crystal, the crown and the case back, each measuring at least 39 mm but not more than 41 mm in diameter and at least 8 mm but not more than 10 mm in thickness, weighing not more than 40 g (described in statistical reporting number 9111.20.4000)
- 26) Watch dials of brass, each measuring at least 18 mm but not exceeding 50 mm in width and weighing at least 10 g but not more than 20 g (described in statistical reporting number 9114.30.4000)
- 27) Wristwatch dials of copper, each measuring at least 33 mm but not more than 35 mm in diameter (described in statistical reporting number 9114.30.4000)
- 28) Wristwatch hands, presented in sets each containing three hands (second, minute and hour) of copper, each hand measuring at least 10 mm but not more than 14 mm in length, faced with lume paint (described in statistical reporting number 9114.90.4000)
- 29) Parts of child safety seats (described in statistical reporting number 9401.90.1085)

- 30) Unfinished pads and seats for weight-training exercise machines (described in statistical reporting number 9506.91.0030)
 - 31) Fish hooks, not snelled (described in statistical reporting number 9507.20.8000)
 - 32) Mop heads of polyester and rayon, lint free, disposable (described in statistical reporting number 9603.90.8050)
 - 33) Tufts of swine hair bristles, oriented with the soft feather tipped ends of the hairs facing up and the hard, root ends of the hairs facing down, with the root ends of the hairs glued together to form a round bottom not more than 7 mm in diameter, for incorporation into brushes (described in statistical reporting number 9603.90.8050)
 - 34) Electrical spark lighters (described in statistical reporting number 9613.80.2090)”
3. by amending the last sentence of the first paragraph of U.S. note 20(r):
- a. by deleting “or (4)” and by inserting “(4)” in lieu thereof; and
 - b. by inserting “; or (5) heading 9903.88.49 and U.S. note 20(bbb) to subchapter III of chapter 99” after “U.S. note 20(zz) to subchapter III of chapter 99”.
4. by amending the article description of heading 9903.88.15:
- a. by deleting “9903.88.44 or” and by inserting “9903.88.44,” in lieu thereof; and
 - b. by inserting “or 9903.88.49” after “9903.88.47”.

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