



[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.

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, which was initiated in September 2018. Stakeholders submitted requests for the exclusion of specific products and the U.S. Trade Representative granted exclusion requests. This notice announces the U.S. Trade Representative’s determination to make certain amendments to previously granted exclusions and grants an exclusion that previously was published under a different U.S. note to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS).

DATES: The amendments announced in this notice are retroactive to the date of publication of the original exclusions 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 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 traderemedym@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 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), 85 FR 10808 (February 25, 2020), and 85 FR 28691 (May 13, 2020).

Effective August 23, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 279 eight-digit subheadings of the 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 eight-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 (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 eight-digit subheading covered by the \$16 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. 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, and February 2020. *See* 84 FR 49600, 84 FR 52553, 85 FR 10808.

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. This exclusion previously was published under a different U.S. note to subchapter III of chapter 99 of the HTSUS. *See* 85 FR 7816 (February 11, 2020). 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 ten-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 Amendments to Exclusions

Subparagraph B of the Annex makes eight amendments to accommodate conforming changes to the HTSUS: U.S. notes 20(o)(63)–(65), U.S. note 20(v)(89), and U.S. notes 20(y)(79)–(82) to subchapter III of chapter 99 of the HTSUS, as set out in the Annexes of the notice published at 84 FR 37381 (July 31, 2019), 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, 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 exclusions in numerical order after exclusion (112):
- 113 . Multi-phase AC motors of an output of at least 5.8 kW but not exceeding 14.92 kW, each assembled with planetary gears and a gearbox (described in statistical reporting number 8501.52.4000)
- 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 September 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:
1. U.S. note 20 (o)(63) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “(described in statistical reporting number 9025.19.8040)” and inserting “(described in statistical reporting number 9025.19.8040 prior to July 1, 2020; described in statistical reporting number 9025.19.8010 or 9025.19.8020 effective July 1, 2020)” in lieu thereof.
 2. U.S. note 20 (o)(64) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “(described in statistical reporting number 9025.19.8080)” and inserting “(described in statistical reporting number 9025.19.8080 prior to July 1, 2020; described in statistical reporting number 9025.19.8060 or 9025.19.8085 effective July 1, 2020)” in lieu thereof.
 3. U.S. note 20 (o)(65) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “(described in statistical reporting number 9025.19.8080)” and inserting “(described in statistical reporting number 9025.19.8080 prior to July 1, 2020; described in statistical reporting number 9025.19.8060 or 9025.19.8085 effective July 1, 2020)” in lieu thereof.
 4. U.S. note 20 (v)(89) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “(described in statistical reporting number 9025.19.8080)” and inserting “(described in statistical reporting number 9025.19.8080 prior to July 1, 2020; described in statistical reporting number 9025.19.8060 or 9025.19.8085 effective July 1, 2020)” in lieu thereof.

5. U.S. note 20 (y)(79) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “(described in statistical reporting number 9025.19.8040)” and inserting “(described in statistical reporting number 9025.19.8040 prior to July 1, 2020; described in statistical reporting number 9025.19.8010 or 9025.19.8020 effective July 1, 2020)” in lieu thereof.
6. U.S. note 20 (y)(80) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “(described in statistical reporting number 9025.19.8080)” and inserting “(described in statistical reporting number 9025.19.8080 prior to July 1, 2020; described in statistical reporting number 9025.19.8060 or 9025.19.8085 effective July 1, 2020)” in lieu thereof.
7. U.S. note 20 (y)(81) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “(described in statistical reporting number 9025.19.8080)” and inserting “(described in statistical reporting number 9025.19.8080 prior to July 1, 2020; described in statistical reporting number 9025.19.8060 or 9025.19.8085 effective July 1, 2020)” in lieu thereof.
8. U.S. note 20 (y)(82) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “(described in statistical reporting number 9025.19.8080)” and inserting “(described in statistical reporting number 9025.19.8080 prior to July 1, 2020; described in statistical reporting number 9025.19.8060 or 9025.19.8085 effective July 1, 2020)” in lieu thereof.

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Office of the United States Trade Representative.

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