



[Billing Code 3290-F0]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion Extensions: 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 extensions.

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 initiated the exclusion process in September 2018 and, to date, has granted three sets of exclusions under the \$16 billion action. The first set of exclusions was published in July 2019 and will expire in July 2020. On April 30, 2020, the U.S. Trade Representative established a process for the public to comment on whether to extend particular exclusions granted in July 2019 for up to 12 months. This notice announces the U.S. Trade Representative's determination to extend certain exclusions through December 31, 2020.

DATES: The product exclusion extensions announced in this notice will apply as of July 31, 2020, and extend through December 31, 2020. 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 Counsels Philip Butler or Benjamin Allen, 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 traderemedycbp@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), 85 FR 10808 (February 25, 2020), 85 FR 28691 (May 13, 2020), and 85 FR 43291 (July 16, 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 Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$16 billion. *See* 83 FR 40823 (the \$16 billion action). 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 (the September 18 notice).

In July 2019, the U.S. Trade Representative granted a set of exclusion requests, which expire on July 31, 2020. *See* 84 FR 37381 (the July 31 notice). On April 30, 2020, the U.S. Trade Representative invited the public to comment on whether to extend by up to 12 months, particular exclusions granted in the July 31 notice. *See* 85 FR 24076 (the April 30 notice).

Under the April 30 notice, commenters were asked to address:

- whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- any changes in the global supply chain since July 2018 with respect to the particular product, or any other relevant industry developments.
- efforts, if any, importers or U.S. purchasers have undertaken since July 2018 to source the product from the United States or third countries.

In addition, commenters who were importers and/or purchasers of the products covered by an exclusion were asked to provide information regarding:

- their efforts since July 2018 to source the product from the United States or third countries.
- the value and quantity of the Chinese-origin product covered by the specific exclusion request purchased in 2018 and 2019, and whether these purchases are from a related company.
- whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties.
- the value and quantity of the product covered by the exclusion purchased from domestic and third country sources in 2018 and 2019.

- the commenter's gross revenue for 2018 and 2019.
- whether the Chinese-origin product of concern is sold as a final product or as an input.
- whether the imposition of duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.
- any additional information in support or in opposition of the extending the exclusion.

The April 30 notice required the submission of comments no later than June 1, 2020.

B. Determination to Extend Certain Exclusions

Based on evaluation of the factors set out in the September 18 notice and the April 30 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 extend certain product exclusions covered by the July 31 notice, as set out in the Annex to this notice.

The April 30 notice provided that the U.S. Trade Representative would consider extensions of up to 12 months. In light of the cumulative effect of current and possible future exclusions or extensions of exclusions on the effectiveness of the action taken in this investigation, the U.S. Trade Representative has determined to extend the exclusions in the Annex to this notice for less than 12 months – through December 31, 2020. To date, the U.S. Trade Representative has granted more than 6,700 exclusion requests, has extended some of these exclusions, and may consider further extensions of exclusions. Furthermore, more than 200 requests are pending on the products covered by the action taken on August 20, 2019. The U.S. Trade Representative will take account of the

cumulative effect of exclusions in considering the possible further extension of the exclusions covered by this notice, as well as possible extensions of exclusions of other products covered by the action in this investigation. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments concerning extension of the pertinent exclusion.

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

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

Joseph Barloon,
General Counsel,
Office of the United States Trade Representative.

ANNEX

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 31, 2020 and before 11:59 p.m. eastern daylight time on December 31, 2020, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.54 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	
“9903.88.54	Effective with respect to entries on or after July 31, 2020, and through December 31, 2020, articles the product of China, as provided for in U.S. note 20(ggg) 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(ggg) to subchapter III of chapter 99 in numerical sequence:

“(ggg) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.02 and provided for in U.S. notes 20(c) and 20(d) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.02. See 83 Fed. Reg. 40823 (August 16, 2018) and 83 Fed. Reg. 47326 (September 18, 2018). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that, as provided in heading 9903.88.54, the additional duties provided for in heading 9903.88.02 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

- (1) Polytetrafluoroethylene ((C2F4)n), having a particle size of 5 to 500 microns and a melting point of 315 to 329 degrees Celsius (described in statistical reporting number 3904.61.0090)
- (2) Polyethylene film, 20.32 to 198.12 cm in width, and 30.5 to 2000.5 m in length, coated on one side with solvent acrylic adhesive, clear or in transparent colors, whether or not printed, in rolls (described in statistical reporting number 3919.90.5060)

- (3) Rectangular sheets of high-density or low-density polyethylene, 111.75 cm to 215.9 cm in width, and 152.4 cm to 304.8 cm in length, with a sticker attached to mark the center of each sheet, of a kind used in hospital or surgery center operating rooms (described in statistical reporting number 3920.10.0000)
- (4) Gasoline or liquid propane (LP) engines each having a displacement of more than 2 liters but not more than 2.5 liters (described in statistical reporting number 8407.90.9010)
- (5) Dispensers of hand-cleaning or hand-sanitizing solutions, whether employing a manual pump or a proximity-detecting battery-operated pump, each article weighing not more than 3 kg (described in statistical reporting number 8424.89.9000)
- (6) Walk behind rotary tillers, electric powered, individually weighing less than 14 kg (described in statistical reporting number 8432.29.0060)
- (7) AC motors, of 18.65 W or more but not exceeding 37.5 W, each with attached actuators, crankshafts or gears (described in statistical reporting number 8501.10.6020)
- (8) Position or speed sensors for motor vehicle transmission systems, each valued not over \$12 (described in statistical reporting number 8543.70.4500)
- (9) Wheel speed sensors for anti-lock motor vehicle braking systems, each valued not over \$12 (described in statistical reporting number 8543.70.4500)
- (10) Apparatus using passive infrared detection sensors designed for turning lights on and off (described in statistical reporting number 8543.70.9960)
- (11) Liquid leak detectors (described in statistical reporting number 8543.70.9960)
- (12) Robots, programmable, measuring not more than 40 cm high by 22 cm wide by 27 cm deep, incorporating an LCD display, camera and microphone but without "hands" (described in statistical reporting number 8543.70.9960)
- (13) Motorcycles (including mopeds), with reciprocating internal combustion piston engine of a cylinder capacity not exceeding 50 cc, valued not over \$500 each (described in statistical reporting number 8711.10.0000)
- (14) Digital clinical thermometers (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)"

3. by amending the last sentence of the first paragraph of U.S. note 20(c) to subchapter III of chapter 99 by:

- a. by deleting "or (3)" and by inserting "(3)" in lieu thereof; and
- b. by inserting "; or (4) heading 9903.88.54 and U.S. note 20(ggg) to subchapter III of chapter 99" after the phrase "U.S. note 20(y) to subchapter III of chapter 99", where it appears at the end of the sentence.

4. by amending the first sentence of U.S. note 20(d) to subchapter III of chapter 99 by:

- a. by deleting "or (3)" and by inserting "(3)" in lieu thereof; and

- b. by inserting “; or (4) heading 9903.88.54 and U.S. note 20(ggg) to subchapter III of chapter 99” after the phrase “U.S. note 20(y) to subchapter III of chapter 99”, where it appears at the end of the sentence.
5. by amending the Article Description of heading 9903.88.02:
- a. by deleting “9903.88.17 or”;
 - b. by inserting in lieu thereof “9903.88.17,”; and
 - c. by inserting “or 9903.88.54,” after “9903.88.20,”.

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