



[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.

**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 an exclusion process in September 2018 and granted three sets of exclusions under the \$16 billion action. He published the third set of exclusions in September 2019 and added additional exclusions in February and July 2020. These exclusions will expire on October 2, 2020. On June 25, 2020, the U.S. Trade Representative established a process for the public to comment on whether to extend particular exclusions 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 apply as of October 2, 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 Associate General Counsel Philip Butler or Assistant General Counsel 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 [traderemedym@cbp.dhs.gov](mailto: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), 85 FR 24076 (April 30, 2020), 85 FR 28691 (May 13, 2020), 85 FR 38237 (June 25, 2020), 85 FR 38243 (June 25, 2020), 85 FR 43291 (July 16, 2020), 85 FR 45949 (July 30, 2020), and 85 FR 59595 (September 22, 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 (September 18 notice).

In September 2019, the U.S. Trade Representative granted a set of exclusion requests and added additional exclusions in February and July 2020. *See* 84 FR 49600 (September 20 notice); 85 FR 10808 (February 25 notice); 85 FR 43291 (July 16 notice). The exclusions granted under these notices expire on October 2, 2020. On June 25, 2020, the U.S. Trade Representative invited the public to comment on whether to extend for up to 12 months particular exclusions granted under these notices. *See* 85 FR 38243 (June 25 notice).

Under the June 25 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 August 2018 with respect to the particular product, or any other relevant industry developments; and efforts, if any, importers or U.S. purchasers have undertaken since August 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 August 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; and any additional information in support or in opposition of the extending the exclusion.

The June 25 notice required the submission of comments no later than July 30, 2020.

#### **B. Determination to Extend Certain Exclusions**

Based on an evaluation of the factors set out in the September 18 and June 25 notices, 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 September 20, February 25, and July 16 notices, as set out in the Annexes to this notice.

The June 25 notice said 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 6,800 exclusion requests, has extended some of these exclusions, and may consider further extensions of exclusions. 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 Annexes, 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 Annexes to this notice, and not by the product descriptions set out in any particular request for exclusion.

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

**ANNEX A**

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 October 2, 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 9903.88.61 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	
“9903.88.61	Effective with respect to entries on or after October 2, 2020, and through December 31, 2020, articles the product of China, as provided for in U.S. note 20(nnn) 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(nnn) to subchapter III of chapter 99 in numerical sequence:

“(nnn) 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 9903.88.61, 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) Elastomeric petroleum resins (CAS No. 64742-16-1) (described in statistical reporting number 3911.10.0000)
- (2) Machine tool stands having leveling, stabilizing, attachment or other special features (described in statistical reporting number 8466.30.8000)
- (3) Electric motors, with an output of 18.65 W or more but not exceeding 37.5 W, with attached cables, designed for use in adjusting motor vehicle seats (described in statistical reporting number 8501.10.6080)

- (4) DC electric motors, 12 V, with an output exceeding 74.6 W but not exceeding 735 W, with lead wires and electrical connector, measuring not over 75 mm outside diameter, with a housing not over 100 mm in length and a shaft not over 60 mm in length (described in statistical reporting number 8501.31.4000)
- (5) DC electric motors, 12 V, with an output not exceeding 515 W, measuring not over 95 mm in outside diameter, not over 155 mm in length and with a shaft not over 30 mm in length (described in statistical reporting number 8501.31.4000)
- (6) DC electric motors, 120 V, with an output not exceeding 90 W, measuring not over 90 mm long by 35 mm wide by 35 mm high (described in statistical reporting number 8501.31.4000)
- (7) DC electric motors, 13.5 V, with an output not exceeding 110 W, measuring not over 75 mm outside diameter, housing not over 120 mm long, a shaft not over 55 mm long and with a mounting flange not over 150 mm (described in statistical reporting number 8501.31.4000)
- (8) DC electric motors, 230 V, with an output not exceeding 140 W, measuring not more than 45 mm in diameter and not over 100 mm in length (described in statistical reporting number 8501.31.4000)
- (9) DC electric motors, 230 V, with output not exceeding 85 W, measuring not more than 90 mm in length by 35 mm in width by 35 mm in height (described in statistical reporting number 8501.31.4000)
- (10) DC electric motors, 24 V, with an output not exceeding 515 W, measuring not over 95 mm in outside diameter, not over 155 mm in length and with a shaft not over 30 mm in length (described in statistical reporting number 8501.31.4000)
- (11) DC electric motors, with an output exceeding 74.6 W but not exceeding 735 W, containing lead wires and an electrical connector (described in statistical reporting number 8501.31.4000)
- (12) DC motors with a power output exceeding 74.6 W but not exceeding 230 W, measuring less than 105 mm in diameter and 50 mm or more but not over 100 mm in length (described in statistical reporting number 8501.31.4000)
- (13) DC motors, of an output exceeding 74.6 W but not exceeding 735 W, each valued not over \$18 (described in statistical reporting number 8501.31.4000)
- (14) Direct Current (DC) permanent magnet motors rated at 90 W or more but not over 110 W and 24 V with torque of 65 Newton meters (Nm) and 2,035 Nm, incorporating a wheel that can manually actuate a valve (described in statistical reporting number 8501.31.4000)
- (15) Ground Fault Circuit Interrupters (GFCIs), Appliance Leakage Current Interrupters (ALCIs), Leakage Current Detection Interrupters (LCDIs), and Arc Fault Circuit Interrupters (AFCIs) (described in statistical reporting number 8536.30.8000)
- (16) Electronic AC passive infrared (PIR) motion sensing switches (described in statistical reporting number 8536.50.7000)
- (17) Bottom shelf coupler assemblies designed for use with coupling systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
- (18) Buffering/cushioning front retainer plates, designed for use with buffering/cushioning systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)

- (19) Buffering/cushioning intermediate aligning and overtravel protection members, designed for use with buffering/cushioning systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
  - (20) Buffering/cushioning rear aligning and overtravel protection members designed for use with buffering/cushioning systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
  - (21) Buffering/cushioning rear structural units, designed for use with buffering/cushioning systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
  - (22) Buffering/cushioning retention and alignment shafts, designed for use with buffering/cushioning systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
  - (23) Buffering/cushioning retention caps, designed for use with buffering/cushioning systems of freight railcars of heading 8606 (described in statistical reporting number 8607.30.1000)
  - (24) Draft pack rear aligning and overtravel protection members, designed for use with hybrid railcar cushioning systems of freight railcars of heading 8606 (described in statistical reporting number 8607.30.1000)
  - (25) Follower block plates, designed for use with buffering/cushioning systems of freight railcars of heading 8606 (described in statistical reporting number 8607.30.1000)
  - (26) Type F knuckles, designed for use with coupling systems of vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
  - (27) Digital clinical thermometers, valued not over \$11 each (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)
  - (28) Portable, wireless enabled, electrical gas monitors (described in statistical reporting number 9027.10.2000)”
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 (5)” and by inserting “(5)” in lieu thereof; and
    - b. by inserting “; or (6) heading 9903.88.61 and U.S. note 20(nnn) to subchapter III of chapter 99” after the phrase “U.S. note 20(III) to subchapter III of chapter 99”, where it appears at the end of the sentence.
  4. by amending U.S. note 20(d) to subchapter III of chapter 99 by:
    - a. by deleting “or (5)” and by inserting “(5)” in lieu thereof; and
    - b. by inserting “; or (6) heading 9903.88.61 and U.S. note 20(nnn) to subchapter III of chapter 99” after the phrase “U.S. note 20(III) 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 “9903.88.54 or”;
- b. by inserting in lieu thereof “9903.88.54,”; and
- c. by inserting “or 9903.88.61,” after “9903.88.59,”.

## ANNEX B

The following table is provided for informational purposes only. The table contains a list of the original product exclusions that are being extended by this notice. In addition, the table contains the corresponding subdivisions in new note 20(nnn) to subchapter III of Chapter 99 and new heading 9903.88.61 for the product exclusions that are being extended by this notice. The original product exclusions expire on October 2, 2020. The exclusions that are being extended are effective from October 2, 2020 through December 31, 2020.

Original Product Exclusions		Corresponding Extension of Product Exclusions	
Note 20 Subdivision	Chapter 99 Heading	Note 20 Subdivision	Chapter 99 Heading
20(y)(3)	9903.88.20	20(nnn)(1)	9903.88.61
20(y)(23)	9903.88.20	20(nnn)(2)	9903.88.61
20(y)(29)	9903.88.20	20(nnn)(3)	9903.88.61
20(y)(33)	9903.88.20	20(nnn)(4)	9903.88.61
20(y)(34)	9903.88.20	20(nnn)(5)	9903.88.61
20(y)(36)	9903.88.20	20(nnn)(6)	9903.88.61
20(y)(37)	9903.88.20	20(nnn)(7)	9903.88.61
20(y)(38)	9903.88.20	20(nnn)(8)	9903.88.61
20(y)(39)	9903.88.20	20(nnn)(9)	9903.88.61
20(y)(42)	9903.88.20	20(nnn)(10)	9903.88.61
20(y)(43)	9903.88.20	20(nnn)(11)	9903.88.61
20(y)(45)	9903.88.20	20(nnn)(12)	9903.88.61
20(y)(46)	9903.88.20	20(nnn)(13)	9903.88.61
20(y)(47)	9903.88.20	20(nnn)(14)	9903.88.61
20(y)(53)	9903.88.20	20(nnn)(15)	9903.88.61
20(y)(55)	9903.88.20	20(nnn)(16)	9903.88.61
20(y)(67)	9903.88.20	20(nnn)(17)	9903.88.61
20(y)(68)	9903.88.20	20(nnn)(18)	9903.88.61
20(y)(69)	9903.88.20	20(nnn)(19)	9903.88.61
20(y)(70)	9903.88.20	20(nnn)(20)	9903.88.61
20(y)(71)	9903.88.20	20(nnn)(21)	9903.88.61
20(y)(72)	9903.88.20	20(nnn)(22)	9903.88.61

20(y)(73)	9903.88.20	20(nnn)(23)	9903.88.61
20(y)(74)	9903.88.20	20(nnn)(24)	9903.88.61
20(y)(75)	9903.88.20	20(nnn)(25)	9903.88.61
20(y)(78)	9903.88.20	20(nnn)(26)	9903.88.61
20(y)(79)	9903.88.20	20(nnn)(27)	9903.88.61
20(y)(84)	9903.88.20	20(nnn)(28)	9903.88.61

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