

[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: In September 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately \$200 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 a product exclusion process in June 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, and corrects a ministerial error in a previously announced exclusion.

DATES: The product exclusions announced in this notice will apply as of the September 24, 2018, effective date of the \$200 billion action, to August 7, 2020. The amendment announced in this notice is retroactive to the date the original exclusion was published.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or 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 traderemedym@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, 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 47974 (September 21, 2018), 83 FR 49153 (September 28, 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 FRN 38717 (August 7, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), 84 FR 57803 (October 28, 2019), 84 FR 61674 (November 13, 2019), and 84 FR 65882 (November 29, 2019).

Effective September 24, 2018, the U.S. Trade Representative imposed additional 10 percent duties on goods of China classified in 5,757 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$200 billion. *See* 83 FR 47974, as modified by 83 FR 49153. In May 2019, the U.S. Trade Representative increased the additional duty to 25 percent. *See* 84 FR 20459. On June 24, 2019, the Trade Representative established a process by which U.S. stakeholders may request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the \$200 billion action from the additional duties. *See* 84 FR 29576 (the June 24 notice).

Under the June 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 8-digit subheading covered by the \$200 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 June 24 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 June 24 notice required submission of requests for exclusion from the \$200 billion action no later than September 30, 2019, and noted that the U.S. Trade Representative would periodically announce decisions. In August 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 38717. The U.S. Trade Representative granted additional exclusions in September, October, and November 2019. *See* 84 FR 49591, 84 FR 57803, 84 FR 61674, and 84 FR 65882. The Office of the United States Trade Representative (USTR) regularly updates the status of each pending request on the USTR Exclusions Portal at <https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0005>.

B. Determination to Grant Certain Exclusions

Based on the evaluation of the factors set out in the June 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 U.S. Trade Representative's 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 9 ten-digit HTSUS subheadings and 35 specially prepared product descriptions, which cover 75 separate exclusion requests.

In accordance with the June 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 product descriptions in the Annex, and not by the product descriptions set out in any particular request for exclusion.

To correct a ministerial error and in order to conform to the U.S. Trade Representative's intent to grant an exclusion requested, the Annex to this notice also includes an amendment to a note in the HTSUS.

Paragraph A, subparagraphs (3)–(6) are conforming amendments to the HTSUS reflecting the modifications made by the Annex.

Paragraph B, subparagraph (1) is a ministerial correction of U.S. note 20(II)(53) to subchapter III of chapter 99 of the HTSUS that modifies the product description value published in the annex to the notice published at 84 FR 57803 (October 28, 2019). Paragraph B, subparagraphs (2)–(4), make conforming amendments to note 20(II) published at 84 FR 57803 (October 28, 2019), note 20(mm) published at 84 FR 61674 (November 13, 2019), and note 20(nn) published at 84 FR 65882 (November 29, 2019).

As stated in the September 20, 2019 notice, the exclusions will apply from September 24, 2018, to August 7, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

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

Joseph Barloon
General Counsel
Office of the U.S. 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 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:
1. by inserting the following new heading 9903.88.36 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 | Specia 1 | |
| “9903.88.36 | Articles the product of China, as provided for in U.S. note 20(oo) 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(oo) to subchapter III of chapter 99 in numerical sequence:

“(oo) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.03 and provided for in U.S. notes 20(e) and (f) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.03, and by which particular products classified in heading 9903.88.04 and provided for in U.S. note 20(g) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.04. See 83 Fed. Reg. 47974 (September 21, 2018) and 84 Fed. Reg. 29576 (June 24, 2019). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.03 or in heading 9903.88.04 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

- 1) 0304.72.5000
- 2) 0304.83.1015
- 3) 0304.83.1020
- 4) 0304.83.5090

- 5) 8507.20.4000
- 6) 8708.50.8500
- 7) 8708.94.7510
- 8) 8708.99.8105
- 9) 8712.00.1520
- 10) Bananas, freeze-dried and sliced, put up for retail sale in packages each having a net weight of 15 g (described in statistical reporting number 0803.90.0045)
- 11) Apples, freeze-dried and sliced, put up for retail sale in packages each having a net weight of 15 g (described in statistical reporting number 0813.30.0000)
- 12) Peaches, freeze-dried and sliced, put up for retail sale in packages each having a net weight of 15 g (described in statistical reporting number 0813.40.4000)
- 13) Pears, freeze-dried and sliced, put up for retail sale in packages each having a net weight of 15 g (described in statistical reporting number 0813.40.9000)
- 14) Mixtures of strawberries and bananas, freeze-dried and sliced, put up for retail sale in packages each having a net weight of 15 g (described in statistical reporting number 0813.50.0020)
- 15) Mixed seasoning of Himalayan salt, tomato flake, lemon peel, basil, black pepper and sage, put up for retail sale in packages each weighing 200 g (described in statistical reporting number 2103.90.8000)
- 16) Molded blocks of wood pulp cellulose sponge, each measuring not over 105 cm by 105 cm by 40 cm (described in statistical reporting number 4823.70.0040)
- 17) Satin woven fabrics of artificial filament yarn, consisting of 63 percent rayon and 37 percent combed cotton, dyed, weighing not over 211 g/m² (described in statistical reporting number 5408.32.9050)
- 18) Nonwoven rug pads, each comprising a 100 percent polyester fiber fabric, face laminated to a thermoplastic elastomer and weighing over 150 g/m² (described in statistical reporting number 5603.94.1090)
- 19) Ropes of man-made fibers, each measuring 1.7 m or more but not over 6.1 m in length with breaking strength of 22 kg or more but not over 230 kg, with hooks of base metal and locking mechanisms to maintain tension on the rope (described in statistical reporting number 5609.00.3000)
- 20) Gates for confining children or pets, of steel not coated or plated with precious metals (described in statistical reporting number 7323.99.9040)
- 21) Steel electrical boxes, designed for lighting fixtures, switches, receptacles or outlet devices, such boxes weighing 0.4 kg or more but not over 3.5 kg, 10.2 cm in length or more, 5 cm or more but not over 10.2 cm in width and 12 cm in height, the foregoing UL listed (described in statistical reporting number 7326.90.8688)
- 22) Telescoping multi-position ladders of aluminum, each with maximum reach height of 4.2 m or more but not over 7.9 m, with locks to adjust the telescoping positions and with load rating of 136 kg or more but not over 170 kg (described in statistical reporting number 7616.99.5130)
- 23) Towers of aluminum, unassembled, each designed to be mounted on a boat, incorporating at least one point to which a tow rope may be fastened for towing

- individuals participating in water sports such as wakeboarding, the assembled tower measuring not over 1.9 m in height and no more than 2.5 m in width (described in statistical reporting number 8302.49.6055)
- 24) Towers of aluminum, unassembled, each designed to be mounted on the body of a boat, incorporating a tow point for towing individuals participating in water sports such as wakeboarding, the assembled tower measuring not over 1.6 m in height and not over 2.5 m in width (described in statistical reporting number 8302.49.6055)
 - 25) Digital electronic scales, not for personal use, not for continuous weighing, other than constant-weight scales, each measuring no more than 195 mm by 165 mm by 60 mm, having a maximum weight capacity of 5 kg, and having the ability to reset tare (zero point reset) multiple times while adding to the article being weighed (described in statistical reporting number 8423.81.0040)
 - 26) Electronic calculators for desktop use, solar-powered with battery backup (other than with engineering, trigonometric, scientific or construction functions), each measuring 11 cm or more but not over 25 cm in length, 7 cm or more but not over 19.5 cm in width, and 1 cm or more but not over 5 cm in height and weighing 0.058 kg or more but not over 0.34 kg (described in statistical reporting number 8470.10.0040)
 - 27) Electronic calculators, handheld, solar-powered or battery powered (other than with engineering, trigonometric or scientific functions), each measuring 10 cm or more but not over 16 cm in length, 5 cm or more but not over 9 cm in width, and 0.5 cm or more but not over 2 cm in height and weighing 0.02 kg or more but not over 1 kg (described in statistical reporting number 8470.10.0040)
 - 28) Electronic calculators, handheld, solar-powered or battery powered, with scientific, trigonometric or other advanced mathematical functions, each measuring 11 cm or more but not over 18 cm in length, 6.5 cm or more but not over 9 cm in width and 1 cm or more but not over 3 cm in height and weighing 0.04 kg or more but not over 0.25 kg (described in statistical reporting number 8470.10.0040)
 - 29) Electronic calculating machines, each incorporating a 2 color ink roller printing device, that operates with an external source of power, with a vacuum fluorescent display (VFD), measuring 24 cm or more but not over 27 cm in length, 18 cm or more but not over 21 cm in width and 5 cm or more but not over 7 cm in height and weighing 0.5 kg or more but not over 1.5 kg each (described in statistical reporting number 8470.21.0000)
 - 30) Electronic calculating machines, each incorporating a parallel ribbon ink printing device, that operates with an external source of power, with a vacuum fluorescent display (VFD), measuring 31.75 cm or more but not over 34.3 cm in length, 21.5 cm or more but not over 25.4 cm in width and 7.5 cm or more but not over 9 cm in height and weighing 1.6 kg or more but not over 2 kg each (described in statistical reporting number 8470.21.0000)
 - 31) Electronic calculating machines, each incorporating a ribbon ink printing device, that operates with an external source of power, with a vacuum fluorescent display (VFD), measuring 32 cm or more but not over 35 cm in length, 22 cm or more but not over

- 26 cm in width and 8 cm or more but not over 9 cm in height and weighing 1.75 kg or more but not over 2 kg each (described in statistical reporting number 8470.21.0000)
- 32) Electronic calculating machines, each incorporating an ink roller printing device, capable of operating with an external source of power or battery power, with liquid crystal display (LCD), measuring 19 cm or more but not over 26.5 cm in length, 8 cm or more but not over 20 cm in width and 4 cm or more but not over 7 cm in height and weighing 0.3 kg or more but not over 0.7 kg each (described in statistical reporting number 8470.21.0000)
- 33) Other static converters, rectifiers and rectifying apparatus, with ABS plastic damage resistant box, input and output voltage cables, weighing not more than 0.35 kg, measuring not more than 17 cm in length and 12 cm in width (described in statistical reporting number 8504.40.9550)
- 34) Light-emitting diode (LED) headlights, light bars and cube lights, of a kind designed to be mounted on off-road, all-terrain vehicles (described in statistical reporting number 8512.20.2040)
- 35) Brake drums of grey cast iron for the motor vehicles of headings 8701 to 8705 (other than tractors for agricultural purposes), with an inside diameter of 38 cm or more but not over 42 cm (described in statistical reporting number 8708.30.5020)
- 36) Brake discs of grey cast iron for the motor vehicles of headings 8701 to 8705 (other than tractors for agricultural purposes), with an outside diameter of 32 cm or more but not over 44 cm (described in statistical reporting number 8708.30.5030)
- 37) Wheel hubs of cast iron, for off-road vehicles of headings 8701 to 8705, each weighing 2 kg or more but not exceeding 4 kg (described in statistical reporting number 8708.99.5300)
- 38) Upholstered dining chairs, with a wooden frame, other than of teak (described in statistical reporting number 9401.61.4011)
- 39) Chairs with three legs, with frames of steel held together by elastic cord and textile seating material, for outdoor non-household use (described in statistical reporting number 9401.79.0015)
- 40) Chairs, each with four legs, a frame of aluminum held together by elastic cord and textile seating material, for outdoor non-household use (described in statistical reporting number 9401.79.0015)
- 41) Entry tables of wood other than bent-wood, each measuring 180 cm or more but not over 185 cm in length, 80 cm or more but not over 83 cm in height and over 40 but not over 45 cm in width, with tin top (described in statistical reporting number 9403.60.8081)
- 42) 8-light circular electric household chandeliers, of base metal other than brass (described in statistical reporting number 9405.10.6010)
- 43) Electric household table lamps, with bases of wood, presented with shades, not more than 64 cm in height, each weighing not more than 3 kg (described in statistical reporting number 9405.20.8010)
- 44) Non-electrical wall candelabras, of wood, each with 3 wrought iron candle holders (described in statistical reporting number 9405.50.4000)”

3. by amending the last sentence of the first paragraph of U.S. note 20(e) to subchapter III of chapter 99:
 - a. by deleting the word “or” where it appears after the phrase “U.S. note 20(mm) to subchapter III of chapter 99;”; and
 - b. by inserting the phrase “; or (6) heading 9903.88.36 and U.S. note 20(oo) to subchapter III of chapter 99” after the phrase “U.S. note 20(nn) to subchapter III of chapter 99”.
 4. by amending U.S. note 20(f) to subchapter III of chapter 99;
 - a. by deleting the word “or” where it appears after the phrase “U.S. note 20(mm) to subchapter III of chapter 99;”; and
 - b. by inserting the phrase “; or (6) heading 9903.88.36 and U.S. note 20(oo) to subchapter III of chapter 99” after the phrase “U.S. note 20(nn) to subchapter III of chapter 99”.
 5. by amending the Article Description of heading 9903.88.03:
 - a. by deleting “9903.88.34 or” and inserting “9903.88.34,” in lieu thereof; and
 - b. by inserting “or 9903.88.36,” after “9903.88.35,”.
 6. By amending the Article Description of heading 9903.88.04:
 - a. By deleting “9903.88.33 or” and inserting “9903.88.33,” in lieu thereof; and
 - b. By inserting “or 9903.88.36,” after “9903.88.34,”.
- 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:
1. U.S. note 20(ll)(53) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by deleting “21” and inserting “55” in lieu thereof.
 2. The second sentence of U.S. note 20(ll) to subchapter III of chapter 99 is amended by inserting “or in heading 9903.88.04” after “provided for in heading 9903.88.03”.
 3. The second sentence of U.S. note 20(mm) to subchapter III of chapter 99 is amended by inserting “or in heading 9903.88.04” after “provided for in heading 9903.88.03”.
 4. The second sentence of U.S. note 20(nn) to subchapter III of chapter 99 is amended by inserting “or in heading 9903.88.04” after “provided for in heading 9903.88.03”.