

[Billing Code 3290-F9]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementing Modification to Section 301 Action: 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 implementing modification.

SUMMARY: In a notice published on May 9, 2019 (May 9 Notice), the U.S. Trade Representative (Trade Representative) increased the rate of additional duty from 10 percent to 25 percent for the products of China covered by the September 2018 action that are (i) entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on May 10, 2019, and (ii) exported to the United States on or after May 10, 2019. This notice provides that products of China that are covered by the September 2018 action and that were exported to the United States prior to May 10, 2019, are not subject to the additional duty of 25 percent, as long as such products are entered into the United States prior to June 1, 2019. Such products remain subject to the additional duty of 10 percent for this interim period.

DATES: HTSUS heading 9903.88.09, which is set out in the Annex to this notice, applies to products of China covered by the September 2018 action that were exported before May 10, 2019, and entered into the United States on or after May 10, 2019, and before June 1, 2019.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, contact Associate General Counsel Arthur Tsao or Assistant General Counsel Juli

Schwartz, or Director of Industrial Goods Justin Hoffmann at (202) 395-5725. For questions on customs classification or implementation of additional duties on products covered in the supplemental action, contact traderemedycbp@dhs.gov.

SUPPLEMENTARY INFORMATION:

In the May 9 Notice, the Trade Representative modified the action being taken in the Section 301 investigation by increasing the rate of additional duty from 10 percent to 25 percent for the products of China covered by the September 2018 action in this investigation. The “September 2018 action” refers to the additional duties on products of China with an annual trade value of approximately \$200 billion, published at 83 FR 47974 (Sep. 21, 2018), as subsequently modified by the notice published at 83 FR 49153 (September 28, 2018). The increase in the rate of additional duty became effective on May 10, 2019.

Under this implementing modification, and as specified in the Annex to this notice, products of China that are covered by the September 2018 action that were exported prior to May 10, 2019, are not subject to the additional duty of 25 percent as long as such products are entered into the United States prior to June 1, 2019. Such products remain subject to the additional duty of 10 percent for a transitional period of time before June 1, 2019. The covered products of China that are entered into the United States on or after June 1, 2019, are subject to the 25 percent rate of additional duty.

To distinguish between covered products of China subject to the 10 percent rate of additional duty from those subject to the 25 percent rate, the Annex to this notice creates a new heading in Chapter 99 of the HTSUS (9903.88.09) for products of China covered by the September 2018 action that were exported before May 10, 2019, and

entered into the United States on or after May 10, 2019 and before June 1, 2019. HTSUS heading 9903.88.09 is limited to covered products of China entered into the United States during this period of time to account for customs enforcement factors and the average transit time between China and the United States by sea.

The products of China covered by the September 2018 action that are admitted into a foreign-trade zone (FTZ) in “Privileged Foreign” status shall retain that status consistent with 19 CFR 146.41(e) and will be subject, at the time of entry for consumption, to the additional duty rate that was in effect at the time of FTZ admission of said product.

U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

Joseph Barloon
General Counsel
Office of the U.S. Trade Representative.

ANNEX

Effective with respect to goods: (1) exported to the United States before May 10, 2019; and (2) entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on May 10, 2019, and entered for consumption, or withdrawn from warehouse for consumption, before 12:01 a.m. eastern daylight time on June 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 9903.88.09 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	
“9903.88.09	Articles the product of China, as provided for in U.S. note 20(l) to this subchapter and as provided for in the subheadings enumerated in U.S. notes 20(f) or 20(g) to this subchapter, if exported to the United States before May 10, 2019 and entered for consumption, or withdrawn from warehouse for consumption, on or after May 10, 2019, and before June 1, 2019	The duty provided in the applicable subheading + 10%”		

2. by inserting the following new U.S. note 20(l) to subchapter III of chapter 99 in numerical sequence:

“(l) For the purposes of heading 9903.88.09, products of China, as provided for in this note, shall be subject to an additional 10 percent *ad valorem* rate of duty. The products of China that are subject to an additional 10 percent *ad valorem* rate of duty under heading 9903.88.09 are products of China that are classified in the subheadings enumerated in U.S. notes 20(f) or 20(g) to subchapter III. All products of China that are classified in the subheadings enumerated in U.S. notes 20(f) or 20(g) to subchapter III are subject to the additional 10 percent *ad valorem* rate of duty imposed by heading 9903.88.09.

For the purposes of heading 9903.88.09, the products of China that are subject to an additional 10 percent *ad valorem* rate of duty are products that are: (1) exported to the United States

before May 10, 2019; and (2) entered for consumption, or withdrawn from warehouse for consumption on or after May 10, 2019, and before June 1, 2019.

Notwithstanding U.S. note 1 to this subchapter, all products of China that are subject to the additional 10 percent *ad valorem* rate of duty imposed by heading 9903.88.09 shall also be subject to the general rates of duty imposed on products of China classified in the subheadings enumerated in U.S. notes 20(f) or 20(g) to subchapter III.

Products of China that are classified in the subheadings enumerated in U.S. note 20(f) or 20(g) to subchapter III and that are eligible for special tariff treatment under general note 3(c)(i) to the tariff schedule, or that are eligible for temporary duty exemptions or reductions under subchapter II to chapter 99, shall be subject to the additional 10 percent *ad valorem* rate of duty imposed by heading 9903.88.09.

The additional duties imposed by heading 9903.88.09 do not apply to goods for which entry is properly claimed under a provision of chapter 98 of the HTSUS, except for goods entered under subheadings 9802.00.40, 9802.00.50, and 9802.00.60, and heading 9802.00.80. For subheadings 9802.00.40, 9802.00.50, and 9802.00.60, the additional duties apply to the value of repairs, alterations, or processing performed abroad, as described in the applicable subheading. For heading 9802.00.80, the additional duties apply to the value of the article less the cost or value of such products of the United States, as described in heading 9802.00.80.

Products of China that are provided for in heading 9903.88.09 and classified in one of the subheadings enumerated in U.S. notes 20(f) or 20(g) to subchapter III shall continue to be subject to antidumping, countervailing, or other duties, fees, exactions and charges that apply to such products, as well as to the additional 10 percent *ad valorem* rate of duty imposed by heading 9903.88.09.”