

[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 of 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.

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.

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 traderemedy@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), and 84 FR 57803 (October 28, 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 and October 2019. *See* 84 FR 49591 and 84 FR 57803. The Office of the United States Trade Representative regularly updates the status of each pending request on the USTR Exclusions Portal at <https://exclusions.ustr.gov/s/PublicDocket>.

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 2 ten-digit HTSUS subheadings and 34 specially prepared product descriptions, which cover 42 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.

Paragraph A, subparagraphs (3)–(5) are conforming amendments to the HTSUS reflecting the modification made by the Annex.

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 9903.88.34 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	
“9903.88.34	Articles the product of China, as provided for in U.S. note 20(mm) 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(mm) to subchapter III of chapter 99 in numerical sequence:

“(mm) 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. 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 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

- (1) 8409.91.3000
- (2) 8708.50.9500
- (3) Floor coverings of polyvinyl chloride, presented in the form of tiles or planks designed to snap together during installation (described in statistical reporting number 3918.10.1000)
- (4) Vinyl floor tiles of polymers of vinyl chloride, designed to click together during installation, each measuring 4.7 mm or more but not over 8 mm in thickness, 18 cm or more but not over 23 cm in width and 120 cm or more but not over 182 cm in length (described in statistical reporting number 3918.10.1000)

- (5) Vinyl floor tiles of polymers of vinyl chloride, designed to click together during installation, measuring 7 mm in thickness, 18 cm or more but not over 19 cm in width and 120 cm or more but not over 125 cm in length (described in statistical reporting number 3918.10.1000)
- (6) Dog and cat leashes, collars, harnesses, retractable leashes, muzzles, and head halters of nylon, polyester or soy-based webbing of various sizes; and tie out cables, stakes and aerials of iron or steel of various sizes, such cables, stakes and aerials presented in a form to be sold individually or in sets (described in statistical reporting number 4201.00.3000)
- (7) Standard wood moldings, of oak (described in statistical reporting number 4409.29.4100)
- (8) Engineered flooring, of oak, consisting of a 1.2 mm thick oak veneer top layer, 5.8 mm stone-plastic composite core and a 2 mm polyethylene backing, such flooring coated with aluminum oxide, measuring not over 191 cm long by 19 cm wide by 0.9 cm thick (described in statistical reporting number 4412.99.5105)
- (9) Flooring panels constructed of a hardwood veneer measuring 0.6 mm or more but not over 1.2 mm in thickness laminated onto a waterproof stone-polymer composite base, with the thickness of each panel between 5 mm and 7.5 mm, with tongue and groove mechanism for installation and an attached foam pad (described in statistical reporting number 4412.99.5105)
- (10) Assembled fence sections, of reeds held together with rows of wire, each section measuring 1.8 m or more but not over 1.9 m in height and 4.5 m or more but not over 4.6 m in width, or measuring not over 1.3 m in height and not over 2.5 m in width (described in statistical reporting number 4421.91.7020)
- (11) Rigid boxes of paperboard weighing 1.2 kg per m² covered with paper with a decorative design, each presented with hang tag, a handle and two imitation leather straps with snaps, such boxes measuring 21 cm or more but not over 23 cm in height, 21 cm or more but not over 23 cm in length and 5 cm or more but not over 9 cm in depth (described in statistical reporting number 4819.50.4040)
- (12) Silk fabrics, containing 85 percent or more by weight of silk or of silk waste other than noil silk, the foregoing not printed, not jacquard woven, measuring over 127 cm in width (described in statistical reporting number 5007.20.0065)
- (13) Silk fabrics, containing 85 percent or more by weight of silk or of silk waste other than noil silk, the foregoing not printed, not jacquard woven, measuring 107 cm or more but not over 127 cm in width (described in statistical reporting number 5007.20.0085)
- (14) High tenacity single yarn of polyester multifilament, of 554 decitex or more but not over 556 decitex, with twist of 5 turns or more per meter (described in statistical reporting number 5402.20.3030)
- (15) Sinks, of cast iron enameled with porcelain (described in statistical reporting number 7324.90.0000)
- (16) Portable drill presses for use with hand drills of subheading 8467.21 (described in statistical reporting number 8467.99.0190)

- (17) Static converters designed for wireless (inductive) charging of telecommunication apparatus (described in statistical reporting number 8504.40.8500)
- (18) Gas ignition safety controls, measuring 3.8 to 5.3 cm in height, 6.4 to 10.1 cm in width and 13.2 to 13.9 cm in depth; weighing 160 g to 380 g each; and valued not over \$26 each; of a kind used in patio heaters, agricultural heaters or clothes dryers (described in statistical reporting number 8537.10.9170)
- (19) Extension cords, as defined in statistical note 6 to chapter 85, for a voltage not exceeding 1,000 V, each with a receptacle at one end and a male plug at the other with prongs perpendicular to the rest of the cord, the plug under a cover of plastics measuring 115 mm in length and 70 mm in width (described in statistical reporting number 8544.42.9010)
- (20) Casters, with diameter (including, where appropriate, tires) of 20 cm or more but not over 23 cm (described in statistical reporting number 8716.90.3000)
- (21) Bicycle speedometers designed to be handlebar mounted, wired, with a digital display, capable of measuring the following seven variables: current speed, average speed, maximum speed, trip distance, total distance, elapsed time and time (described in statistical reporting number 9029.20.2000)
- (22) Folding chairs with frames of steel and/or aluminum, each measuring 30 cm or more but not over 97 cm in width, 20 cm or more but not over 89 cm in depth and 30 cm or more but not over 117 cm in height (described in statistical reporting number 9401.79.0015)
- (23) Foldable stools with frames of steel or aluminum, each measuring not over 30.5 cm in width, 26 cm in depth and 39 cm in height (described in statistical reporting number 9401.79.0035)
- (24) Fiberboard sheets, containing phenolic resin, each not exceeding 0.635 mm in thickness (described in statistical reporting number 4411.93.9090)
- (25) Circular knitted fabrics of polyester and spandex, printed, other than of double knit or interlock construction, on rolls (described in statistical reporting number 6006.34.0080)
- (26) Cutting pliers, each weighing 90 g or more but not over 545 g, measuring not over 32 cm in length, not over 10.5 cm in width and not over 3 cm in thickness (described in statistical reporting number 8203.20.6030)
- (27) Bolt-on tips of carbon alloy steel of a kind used in tub or horizontal grinders (described in statistical reporting number 8207.90.7585)
- (28) Tool tips, strips and sticks of tungsten carbide (described in statistical reporting number 8209.00.0030)
- (29) Mountings, each weighing less than 2 kg, designed for use in motor vehicles primarily used for amusement, recreation, sporting and off-road transportation classified in heading 8703 or motorcycles in heading 8711 (described in statistical reporting number 8302.30.3060)
- (30) Ratcheting chain hoists, other than skip hoists or hoists of a kind used for raising motor vehicles, such chain hoists not powered by an electric motor (described in statistical reporting number 8425.19.0000)

- (31) Ultrasonic cleaners, with tanks of stainless steel and of a liquid capacity not over 32 liters (described in statistical reporting number 8479.89.9485)
- (32) Static converters of a kind used to charge telecommunication apparatus in cars or homes, valued not over \$2 each (described in statistical reporting number 8504.40.8500)
- (33) Electrical insulators of glass (described in statistical reporting number 8546.10.0000)
- (34) Road wheels of aluminum for motor vehicles of subheading 8703.21.01, each measuring 30 cm or more but not over 51 cm in diameter and 14 cm or more but not over 28 cm in width (described in statistical reporting number 8708.70.4545)
- (35) Drive shafts, also known as propeller shafts, that connect a transmission to a differential, allowing a vehicle to move, designed for use in the manufacture of motor vehicles primarily used for amusement, recreation, sporting and off-road transportation classified in heading 8703 (described in statistical reporting number 8708.99.6805)
- (36) Tension pole shower caddies, each of which adjusts to a height not to exceed 305 cm, and consists of 5 steel poles, 3 steel wire baskets and small plastic parts to hold the shelves on the poles (described in statistical reporting number 9403.20.0050)

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(w) to subchapter III of chapter 99;” and
- b. by inserting the phrase “; or (4) heading 9903.88.34 and U.S. note 20(mm) to subchapter III of chapter 99” after the phrase “U.S. note 20(l) 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(w) to subchapter III of chapter 99;” and
- b. by inserting the phrase “; or (4) heading 9903.88.34 and U.S. note 20(mm) to subchapter III of chapter 99” after the phrase “U.S. note 20(l) to subchapter III of chapter 99”.

5. by amending the Article Description of heading 9903.88.03:

- a. by deleting “9903.88.18 or” and inserting “9903.88.18,” in lieu thereof; and
- b. by inserting “or 9903.88.34,” after “9903.88.33,”.