

Billing Code 3390-F3

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Extensions for Reinstated Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: In prior Federal Register notices, the U.S. Trade Representative modified the actions being taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by excluding certain products from additional duties. The U.S. Trade Representative subsequently extended 549 of these exclusions. In 2022, following public notice and comment, the U.S. Trade Representative determined to reinstate 352 of these exclusions. These reinstated exclusions are scheduled to expire on December 31, 2022. This notice announces the U.S. Trade Representative's determination to extend the reinstated exclusions for an additional nine months.

DATES: The extensions announced in this notice will apply as of January 1, 2023, and will extend through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Assistant General Counsel Edward Marcus at (202) 395-5725. For specific questions on customs classification or implementation of the product exclusions, contact traderemedy@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Background

In the course of the investigation into China's acts, policies, and practices related to technology transfer, intellectual property, and innovation, the U.S. Trade Representative imposed additional duties on products of China in four tranches. *See* 83 FR 28710 (June 20, 2018) (the July 6, 2018 action); 83 FR 40823 (August 16, 2018) (the August 23, 2018 action); 83 FR 47974 (September 21, 2018), as modified by 83 FR 49153 (September 28, 2018); and 84 FR 43304 (August 20, 2019), as modified by 84 FR 69447 (December 18, 2019) and 85 FR 3741 (January 22, 2020). Each tranche is commonly known as a 'List', *e.g.*, List 1, List 2, etc. The fourth List was divided into two tranches, Lists 4A and 4B. No tariffs on List 4B are currently in effect.

For each List, the U.S. Trade Representative established a process by which U.S. stakeholders could request the exclusion of particular products subject to the action. The first tranche of exclusions expired in December 2019 and the final tranche of exclusions expired in October 2020. Starting in November 2019, the U.S. Trade Representative established processes for submitting public comments on whether to extend particular exclusions. *See, e.g.*, 85 FR 6687 (February 5, 2019) and 85 FR 38482 (June 26, 2020). Pursuant to these processes, the U.S. Trade Representative determined to extend 137 exclusions covered under List 1, 59 exclusions covered under List 2, 266 exclusions covered under List 3, and 87 exclusions covered under List 4. With the exception of certain exclusions related to the COVID-19 pandemic, all of these 549 exclusions expired. In particular, the exclusions for most of these products expired by December 31, 2020, and the remaining exclusions expired in 2021. *See* 85 FR 15849 (March 19, 2020) and 85 FR 20332 (April 10, 2020).

On October 8, 2021, the U.S. Trade Representative invited the public to submit comments on whether to reinstate certain exclusions previously granted and extended. 86 FR 56345 (October 8, 2021) (the October 8 notice). The October 8 notice set out factors to be considered in decisions on possible reinstatement, and invited public comment. Those factors included whether, despite the imposition of additional duties beginning in September 2018, the excluded products remain available only from China and whether or not reinstating the exclusions would impact or result in severe economic harm to the commenter or other U.S. interests.

Pursuant to Sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, on March 28, 2022, the U.S. Trade Representative determined to further modify the action by reinstating 352 of the 549 expired exclusions. The reinstated exclusions applied as of October 12, 2021, and extend through December 31, 2022. *See* 87 FR 17380 (March 28, 2022).

In accordance with Section 307(c)(3) of the Trade Act of 1974, on September 8, 2022, the USTR announced that it would be conducting a review of the July 6, 2018 and August 23, 2018 actions, as modified. *See* 87 FR 26797 (May 5, 2022); 87 FR 55073 (September 8, 2022). Section 307(c) of the Trade Act of 1974 requires the U.S. Trade Representative to conduct a review of: (A) the effectiveness in achieving the objectives of Section 301 of (i) such action, and (ii) other actions that could be taken (including actions against other products or services), and (B) the effects of such actions on the United States economy, including consumers. *See* 19 U.S.C. 2417(c)(3)(A) and (B). In a notice published on October 17, 2022 (87 FR 62914), USTR announced that it was opening a docket on November 15, 2022 (USTR-2022-0014) for interested persons to

submit comments with respect to any aspect of Section 307(c) considerations, including whether certain tariff headings should remain covered by the actions.

B. Determination To Extend Exclusions

Based on a continued consideration of the factors and criteria set forth in the October 8 notice, and in light of the ongoing statutory four-year review of the July 6, 2018 and August 23, 2018 actions, the U.S. Trade Representative has determined to extend the 352 reinstated exclusions, as set out in the Annex to this notice. The U.S. Trade Representative's determination to extend the reinstated exclusions takes into account public comments previously submitted in response to the October 8 notice, which indicated that reinstatement of the previously extended exclusions was appropriate based on the unavailability of particular products outside of China, or possible severe economic harm. The determination also takes into account the advice of advisory committees and the advice of the interagency Section 301 Committee.

Extending the reinstated exclusions will allow the U.S. Trade Representative to consider and align, as appropriate, the reinstated exclusions with the results of the statutory four-year review of the July 6, 2018 and August 23, 2018 actions, as modified. *See* 87 FR 62914 (October 17, 2022); 87 FR 55073 (September 8, 2022). Interested persons wishing to submit comments on whether certain tariff headings with a reinstated product exclusion should remain covered by the actions or removed, may submit comments on docket number USTR-2022-0014. Comments must be submitted through the online portal (<https://comments.USTR.gov>) by January 17, 2023 at 11:59 p.m. EST.

The reinstated exclusions are available for any product that meets the description in the product exclusion. In particular, the scope of each exclusion is governed by the

scope of the ten-digit Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers and product descriptions in note 20(ttt) to subchapter III of chapter 99 of the HTSUS. The U.S. Trade Representative has determined to extend the reinstated exclusions through September 30, 2023, and may consider further extensions and/or additional modifications as appropriate.

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

ANNEX

The U.S. Trade Representative has determined to extend all exclusions previously reinstated under heading 9903.88.67 and U.S. notes 20(ttt)(i), 20(ttt)(ii), 20(ttt)(iii), and 20(ttt)(iv) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS). *See* 87 FR 17380 (March 28, 2022). The extension is effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on January 1, 2023, and before 11:59 p.m. eastern daylight time on September 30, 2023. Effective on January 1, 2023, the article description of heading 9903.88.67 of the HTSUS is modified by deleting “December 31, 2022,” and by inserting “September 30, 2023,” in lieu thereof.

Greta Peisch
General Counsel
Office of the United States Trade Representative.