

Billing Code 3390-F3

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Number USTR-2023-0001

Interim Extension and Request for Comments on COVID-Related 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 and request for comments.

SUMMARY: In prior notices, the U.S. Trade Representative modified the actions in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by excluding from additional duties certain medical-care products needed to address COVID, and subsequently extended certain of these exclusions. The current COVID exclusions — covering 81 medical-care products — are scheduled to expire on February 28, 2023. In light of developments in the production capacity of the United States, and continuing efforts to combat COVID, USTR is requesting public comments on whether to further extend particular exclusions. This notice also announces the U.S. Trade Representative's determination to adopt an interim, 75-day extension of the 81 COVID related product exclusions to allow for consideration of public comments.

DATES:

February 6, 2023: The public docket on the web portal at <http://comments.USTR.gov> will open for interested persons to submit comments.

March 7, 2023 at 11:59 p.m. ET: To be assured of consideration, submit written comments on the public docket by this time.

The interim extension announced in this notice will extend the COVID-related product exclusions through May 15, 2023.

ADDRESSES: You must submit all comments through the online portal:

<https://comments.ustr.gov/>.

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 this investigation, the U.S. Trade Representative has imposed additional duties on products of China in four tranches. *See* 83 FR 28719 (June 20, 2018); 83 FR 40823 (August 16, 2018); 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).

For each tranche, the U.S. Trade Representative established a process by which interested persons could request the exclusion of particular products from the additional duties.

On March 25, 2020, USTR requested public comments on proposed modifications to exclude from additional duties certain medical-care products related to the U.S. response to COVID. 85 FR 16987 (March 25, 2020).

On December 29, 2020, USTR announced 99 product exclusions for medical-care products and products related to the U.S. COVID response. The December 29 notice further provided that the U.S. Trade Representative might consider further extensions and/or modifications as appropriate. *See* 85 FR 85831.

These 99 exclusions were later extended until September 30, 2021. 86 FR 13785. On August 27, 2021, USTR published a notice requesting public comments on whether any of these exclusions should be further extended for up to six months. 86 FR 48280. To provide time for USTR to review the comments it received in response to the August 27 notice, the 99 exclusions were subsequently extended. *See* 86 FR 54011 (September 29, 2021).

On November 16, 2021, USTR announced the U.S. Trade Representative's determination to extend of 81 of the COVID exclusions for an additional six months (until May 31, 2022). *See* 86 FR 63438 (November 16, 2021) (November 16, 2021 notice). The notice further provided that the U.S. Trade Representative might consider further extensions and/or modifications as appropriate. 86 FR 63438. These 81 exclusions were subsequently extended through February 28, 2023. *See* 87 FR 33871 (June 03, 2022); 87 FR 73383 (November 29, 2022).

B. Request for Public Comments

Subsequent to USTR's prior request for public comments regarding the extension of the COVID exclusions in August 2021, the rates of infection of COVID in the United States continue to fluctuate. Domestic production of certain products covered by these exclusions also has increased. In light of these circumstances, USTR is requesting public

comment on whether to extend particular exclusions for COVID products for up to six months.

USTR will evaluate each exclusion on a case-by-case basis. The evaluation will examine whether it remains appropriate to exclude certain products from the additional Section 301 duties in light of the changing circumstances, including the spread of variants or subvariants and the increased domestic production and availability of certain products, and taking account of the overall impact of these exclusions on the goals of this Section 301 investigation.

C. Procedures To Comment on Particular COVID Exclusions

The 81 COVID exclusions can be found in annex B of the November 16, 2021 notice, as well as in U.S. notes 20(sss)(i), 20(sss)(ii), 20(sss)(iii), and 20(sss)(iv) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS). As noted above, the public docket on the portal will be open from February 6, 2023 to March 7, 2023. Fields on the comment form marked with an asterisk (*) are required fields. Fields with gray (BCI) notation are for business confidential information, which will not be publicly available. Fields with a green (Public) notation will be publicly available. Additionally, interested person will be able to upload documents to supplement their comments. Commenters will be able to review the public version of their comments before they are posted.

Set out below is a summary of the information to be entered on the exclusion comment form.

- Contact information, including the full legal name of the organization making the comment, whether the commenter is a third party (*e.g.*, law firm, trade association,

or customs broker) submitting on behalf of an organization or industry, and the name of the third party organization, if applicable.

- The exclusion from annex B of the November 16, 2021 notice covered by the comment.
- Whether you support or oppose extending the exclusion beyond May 15, 2023.
- Rationale for supporting or opposing an extension.
- The availability of products covered by the exclusion from sources in the United States or third countries.
- Whether extending or not extending the exclusion will impact the domestic supply of products covered by the exclusion, including the price and availability of the products.

D. Submission Instructions

To be assured of consideration, you must submit your comment when the public docket on the portal is open — from February 6, 2023 to March 7, 2023. Interested persons seeking to comment on two or more exclusions must submit a separate comment for each exclusion. By submitting a comment, the commenter certifies that the information provided is complete and correct to the best of their knowledge.

E. Determination to Extend COVID Exclusions

To provide time for a consideration of the comments received in response to this Notice, and, pursuant to Sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, the U.S. Trade Representative has determined to adopt an interim extension of the 81 COVID exclusions through May 15, 2023. The U.S. Trade Representative's determination considers public comments previously submitted, advice of advisory

committees, advice of the interagency Section 301 Committee, and the advice of the White House COVID-19 Response Team. As provided in the November 16 , 2021 notice, the exclusions extensions are available for any product that meets the description in the product exclusion. Further, the scope of each exclusion and modification is governed by the scope of the ten-digit HTSUS subheadings and product descriptions in annex B of the November 16, 2021 notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative may continue to consider further extensions and/or additional modifications as appropriate.

ANNEX

The U.S. Trade Representative has determined to extend all exclusions previously extended under heading 9903.88.66 and U.S. notes 20(sss)(i), 20(sss)(ii), 20(sss)(iii), and 20(sss)(iv) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS). *See* 87 FR 73383 (November 29, 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 March 1, 2023, and before 11:59 p.m. eastern daylight time on May 15, 2023. Effective on March 1, 2023, the article description of heading 9903.88.66 of the HTSUS is modified by deleting “February 28, 2023” and by inserting “May 15, 2023” in lieu thereof.

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