

[Billing Code 3290-F9]

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: Effective July 6, 2018, the U.S. Trade Representative (Trade Representative) imposed additional duties on goods of China with an annual trade value of approximately \$34 billion (the \$34 billion action) 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 Trade Representative's determination included a decision to establish a product exclusion process. The Trade Representative initiated the exclusion process in July 2018, and stakeholders have submitted requests for the exclusion of specific products. In December 2018, March 2019, and April 2019, the Trade Representative granted three prior sets of exclusion requests. This notice announces the Trade Representative's determination to grant additional exclusion requests, as specified in the Annex to this notice. The Trade Representative will continue to issue decisions on pending requests on a periodic basis.

DATES: The product exclusions announced in this notice will apply as of the July 6, 2018 effective date of the \$34 billion action, and will extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

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 traderemedymail@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 24, 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 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 83 FR 67463 (December 28, 2018), 84 FR 7966 (March 5, 2019), 84 FR 11152 (March 25, 2019), and 84 FR 16310 (April 18, 2019).

Effective July 6, 2018, the Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$34 billion. *See* 83 FR 28710. The Trade Representative's determination included a decision to establish a process by which U.S. stakeholders may request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the \$34 billion action from the additional duties. The Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 32181 (the July 11 notice).

Under the July 11 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 \$34 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 July 11 notice stated that the Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The July 11 notice required submission of requests for exclusion from the \$34 billion action no later than October 9, 2018, and noted that the Trade Representative would periodically announce decisions. In December 2018, the Trade Representative granted an initial set of exclusion requests. *See* 83 FR 67463. The Trade Representative granted a second and third set of exclusions in March 2019 and April 2019. *See* 84 FR

11152 and 84 FR 16310. The Office of the United States Trade Representative regularly updates the status of each pending request and posts the status at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china/section-301-exclusion-process>.

B. Determination to Grant Certain Exclusions

Based on the evaluation of the factors set out in the July 11 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 Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The 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 to this notice, the exclusions are established in two different formats: (1) as an exclusion for an existing 10-digit subheading from within an 8-digit subheading covered by the \$34 billion action, or (2) as an exclusion reflected in specially prepared product descriptions. In particular, the exclusions take the form of five 10-digit HTSUS subheadings, and 35 specially prepared product descriptions.

In accordance with the July 11 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 to this notice, and not by the product descriptions set out in any particular request for exclusion.

The exclusions in the Annex cover approximately 515 separate exclusion requests: the excluded 10-digit subheadings cover 86 separate requests, and the 35 specially prepared product descriptions cover approximately 429 separate requests.

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

As stated in the July 11 notice, the exclusions will apply as of the July 6, 2018 effective date of the \$34 billion action, and extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The 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 July 6, 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 9903.88.08 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	
“9903.88.08	Articles the product of China, as provided for in U.S. note 20(k) 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(k) to subchapter III of chapter 99 in numerical sequence:

“(k) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.01 and provided for in U.S. notes 20(a) and 20(b) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.01. See 83 Fed. Reg. 28710 (June 20, 2018) and 83 Fed. Reg. 32181 (July 11, 2018). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.01 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

- (1) 8407.21.0040
- (2) 8427.10.4000
- (3) 8473.40.1000
- (4) 8481.10.0090
- (5) 8483.50.9040
- (6) Apparatus, including pitchers, bottles, and units designed for incorporation into refrigerators, appliances or sink faucets, the foregoing fitted with filters for filtering or purifying water (described in statistical reporting number 8421.21.0000)

- (7) Filtering apparatus, fitted with pumps, designed for use in pools, spas or similar contained bodies of water (described in statistical reporting number 8421.21.0000)
- (8) Filtering or purifying machinery or apparatus of a kind used for waste water treatment (described in statistical reporting number 8421.21.0000)
- (9) Submersible machinery for filtering water, designed for use in pools, basins, aquariums, spas or similar contained bodies of water (described in statistical reporting number 8421.21.0000)
- (10) Water distillation machinery and apparatus not covered by heading 8419 (described in statistical reporting number 8421.21.0000)
- (11) Air purification equipment, electrically powered, weighing less than 36 kg (described in statistical reporting number 8421.39.8015)
- (12) Dust collection equipment for cement, minerals and mining industries (described in statistical reporting number 8421.39.8015)
- (13) Apron-type chain conveyor (described in statistical reporting number 8428.39.0000)
- (14) Roller conveyors (described in statistical reporting number 8428.39.0000)
- (15) Vibrating conveyors (described in statistical reporting number 8428.39.0000)
- (16) Machinery for mixing beverages in single servings for direct human consumption, designed for use in commercial food service establishments (described in statistical reporting number 8438.80.0000)
- (17) Machinery for reconstituting single serving beverages for direct human consumption from frozen pre-packaged portions, designed for use in commercial food service establishments (described in statistical reporting number 8438.80.0000)
- (18) Armatures designed for use in hydraulic solenoid valves (described in statistical reporting number 8481.90.9040)
- (19) C-poles, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)
- (20) Housings designed for hydraulic ball valves, of cast iron or steel, each measuring 5.7 cm by 3.2 cm and weighing 0.528 kg (described in statistical reporting number 8481.90.9040)
- (21) Metering spools, of aluminum, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)
- (22) Metering spools, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)
- (23) Poles, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)
- (24) Push pins, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)
- (25) Retainers, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)

- (26) DC electric motors, of an output of less than 18.65 W, valued over \$4, other than brushless (described in statistical reporting number 8501.10.4060)
- (27) AC electric motors, multi-phase, of an output exceeding 14.92 kW but not exceeding 75 kW, other than for use in civil aircraft (described in statistical reporting number 8501.52.8040)
- (28) Coils, coil assemblies and other parts of electromagnets (the foregoing described in statistical reporting number 8505.90.7501)
- (29) Radio remote control apparatus for garage doors (described in statistical reporting number 8526.92.5000)
- (30) Radio remote control apparatus for pet collars and pet food dispensers (described in statistical reporting number 8526.92.5000)
- (31) Remote control devices, hand held and battery powered, designed for use with toy model vehicles and aircraft (described in statistical reporting number 8526.92.5000)
- (32) Bezels, covers and housings, the foregoing designed for motor vehicle cameras (described in statistical reporting number 8529.90.8100)
- (33) Electromechanical relays, for a voltage exceeding 60 V but not over 250 V, with contacts rated at 10 A or more (described in statistical reporting number 8536.49.0075)
- (34) Push-button switches, rated at over 5 A, measuring no more than 2.9 cm by 2.9 cm by 2.9 cm, with 4 spade or brass terminals, with an actuator shaft with D-shaped cross section (described in statistical reporting number 8536.50.9035)
- (35) Push-button switches, rated at over 5 A, measuring no more than 4.8 cm by 2.8 cm by 2.8 cm, with 2 spade or brass terminals (described in statistical reporting number 8536.50.9035)
- (36) Push-button switches, rated at over 5 A, measuring no more than 5 cm by 1.7 cm by 1.9 cm, with 2 spade or brass terminals, with an actuator shaft with D-shaped cross section (described in statistical reporting number 8536.50.9035)
- (37) Snap-action switches, each designed for installation in a wall-mounted enclosure or electrical box (described in statistical reporting number 8536.50.9040)
- (38) Stereoscopic microscopes, not provided with a means for photographing the image, valued not over \$500 per unit (described in statistical reporting number 9011.10.8000)
- (39) Adapter rings, tubes and extension sleeves, stands and arm assemblies, stages and gliding tables, eyeguards and focusing racks, all the foregoing designed for use with compound optical microscopes (described in statistical reporting number 9011.90.0000)
- (40) Ultraviolet or infrared LED light therapy devices for the professional treatment of pain or of ailments of the skin (described in statistical reporting number 9018.20.0040)

3. by amending the last sentence of the first paragraph of U.S. note 20(a) to subchapter III of chapter 99 by:
 - a. deleting the word “or” where it appears after the phrase “U.S. note 20(i) to subchapter III of chapter 99;” and
 - b. inserting “; or (4) heading 9903.88.08 and U.S. note 20(k) to subchapter III of chapter 99” after the phrase “U.S. note 20(j) to subchapter III of chapter 99”, where it appears at the end of the sentence.
4. by amending the first sentence of U.S. note 20(b) to subchapter III of chapter 99 by:
 - a. deleting the word “or” where it appears after the phrase “U.S. note 20(i) to subchapter III of chapter 99;” and
 - b. inserting “; or (4) heading 9903.88.08 and U.S. note 20(k) to subchapter III of chapter 99” after the phrase “U.S. note 20(j) to subchapter III of chapter 99”, where it appears at the end of the sentence.
5. by amending the Article Description of heading 9903.88.01:
 - a. by deleting “9903.88.06 or”;
 - b. by inserting in lieu thereof “9903.88.06, ”; and
 - c. by inserting “or 9903.88.08,” after “9903.88.07,”.