



[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, the Trade Representative granted an initial set 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 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), and 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 83 FR 67463 (December 28, 2018), and 84 FR 7966 (March 5, 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 opening 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 had 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 only is available 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

regularly updates the status of each pending request and posts the status at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/request-exclusion>.

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 of 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 three 10-digit HTSUS subheadings, and 30 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 10-digit headings and 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 87 separate exclusion requests: the excluded 10-digit subheadings cover 24 separate requests, and the 30 specially drafted product descriptions cover approximately 63 separate requests.

Paragraph B of the Annex to this notice corrects a typographical error in U.S. note 20(h)(ix) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States, as set out in the Annex of the notice published at 83 FR 67463 (December 28, 2018).

As stated in 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.

Stephen P. Vaughn,
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 9903.88.06 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, “Rates of Duty 1-General”, respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
“9903.88.06	Articles the product of China, as provided for in U.S. note 20(i) 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(i) to subchapter III of chapter 99 in numerical sequence:

“(i) 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) 8412.21.0045
- (2) 8430.31.0040
- (3) 8607.21.1000
- (4) Submersible centrifugal pumps, each powered by 36 V motor (described in statistical reporting number 8413.70.2004)
- (5) Breast pumps, whether or not with accessories or batteries (described in statistical reporting number 8413.81.0040)

- (6) Impeller housings of cast iron (described in statistical reporting number 8413.91.9095, effective January 1, 2019; described in statistical reporting number 8413.91.9080, effective prior to January 1, 2019)
- (7) Impellers of plastic designed for centrifugal pumps, each of the foregoing with outside diameter of 73 mm or more but not more than 74 mm (described in statistical reporting number 8413.91.9095, effective January 1, 2019; described in statistical reporting number 8413.91.9080, effective prior to January 1, 2019)
- (8) Compressor housings designed for turbochargers (described in statistical reporting number 8414.90.4165)
- (9) Salad spinners, of plastics, not electrically powered (described in statistical reporting number 8421.19.0000)
- (10) Machinery for filtering water, submersible, powered by batteries, manually operated, such machinery designed for use in pools, basins, aquariums, spas or similar contained bodies of water (described in statistical reporting number 8421.21.0000)
- (11) Machinery designed for removing waste from water in saltwater aquariums by injecting air bubbles then filtering such bubbles (described in statistical reporting number 8421.21.0000)
- (12) Electronic water oxidizers designed for purifying water for household washing machines (described in statistical reporting number 8421.21.0000)
- (13) Hand-held ultraviolet water purifiers, powered by batteries (described in statistical reporting number 8421.21.0000)
- (14) Filters designed to remove sulfites from wine (described in statistical reporting number 8421.22.0000)
- (15) Filter housings, covers, or couplings, the foregoing of steel and comprising parts of machinery or apparatus for filtering liquids (described in statistical reporting number 8421.99.0040)
- (16) Steel L-shaped bucket elevators, each comprising steel buckets bolted to a steel chain with guide wires and drive system (described in statistical reporting number 8428.32.0000)
- (17) Vulcanized rubber tracks, each incorporating cords and cleats of steel, designed for use on construction equipment (described in statistical reporting number 8431.49.9095)
- (18) Rotors designed to agitate paper and water into pulp, of stainless steel, the foregoing comprising parts of machinery for making pulp of fibrous cellulosic materials (described in statistical reporting number 8439.91.9000)

- (19) Automated data processing storage units (other than magnetic disk drive units), not assembled in cabinets for placing on a table or similar place, not presented with any other unit of a system (described in statistical reporting number 8471.70.6000)
- (20) Bituminous pavers, self-propelled, each with a weight exceeding 14.9 metric tons but not exceeding 18.2 metric tons, with working width of 2.4 m or more but not over 8.6 m (described in statistical reporting number 8479.10.0060)
- (21) Check valves, of acrylonitrile butadiene styrene (ABS), each weighing 120 g or less (described in statistical reporting number 8481.30.9000)
- (22) Check valves, of plastics (described in statistical reporting number 8481.30.9000)
- (23) Electric motors, AC, permanent split capacitor type, each in a housing with outside diameter of 84 mm or less, with output of 6 W or more but not exceeding 16 W (described in statistical reporting number 8501.10.4020)
- (24) DC motors rated at 739.6 W, each with a housing with external diameter of 85 mm or more but not exceeding 90 mm and weight of 257 g or less (described in statistical reporting number 8501.31.5000)
- (25) Electrical transformers, each with a power handling capacity rating of 1.8 kVA, with external dimensions measuring approximately 13.3 cm by 12.7 cm by 11.4 cm (described in statistical reporting number 8504.32.0000)
- (26) Battery powered soldering irons or soldering guns, not over 18 cm in length (described in statistical reporting number 8515.11.0000)
- (27) Knobs of injection molded plastics (described in statistical reporting number 8538.90.6000)
- (28) Molybdenum foil filament assemblies, designed for use in ultraviolet lamps (described in statistical reporting number 8539.90.0000)
- (29) Thin-film-transistor, light-emitting diode (LED) backlit flat panel liquid crystal display modules, each with an aluminum bezel and a video display diagonal measuring 113 mm or more but not over 339 mm (described in statistical reporting number 9013.80.7000)
- (30) Depth-sounding apparatus with digital display, each designed for installation in a 63.5 mm hole in dashboard, designed for recreational boating use (described in statistical reporting number 9014.80.2000)
- (31) Restraint packs designed for use with chest compressors, each containing one torso restraint, consisting of a cotton strap which fastens with hook and loop fasteners to the compressor, and one cover for a head stabilizer (described in statistical reporting number 9018.90.7580)

- (32) Inoculator sets of plastics, each consisting of a plate with multiple wells, a display tray, and a lid; when assembled, the set measuring 105 mm or more but not exceeding 108 mm in width, 138 mm or more but not exceeding 140 mm in depth, and 6.5 mm or less in thickness (described in statistical reporting number 9027.90.5650)
- (33) Tuners designed to clip onto musical instruments and indicate whether the instrument is in tune (described in statistical reporting number 9031.80.8085)

- 3. by amending the last sentence of the first paragraph of U.S. note 20(a) to subchapter III to chapter 99 by inserting after the phrase “provided for in heading 9903.88.05 and U.S. note 20(h)” the following phrase:

“, or provided for in heading 9903.88.06 and U.S. note 20(i)”;

- 4. by amending the first sentence of U.S. note 20(b) to subchapter III to chapter 99 by inserting after the phrase “provided for in heading 9903.88.05 and U.S. note 20(h)” the following phrase:

“, or provided for in heading 9903.88.06 and U.S. note 20(i)”;

- 5. by amending the Article Description of heading 9903.88.01:

- a. by deleting: “Except as provided in heading 9903.88.05,” and

- b. inserting in lieu thereof: “Except as provided in headings 9903.88.05 or 9903.88.06,”.

- B. 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, U.S. note 20(h)(ix) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by deleting “not over 34.6 mm” and inserting “not over 254 mm” in lieu thereof.

- C. In U.S. note 20(h) to subchapter III of chapter 99, subdivisions (h)(i) through (h)(xxxix) are re-designated as subdivisions (h)(1) through (h)(31), respectively.

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