

[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), 84 FR 57803 (October 28, 2019), and 84 FR 61674 (November 13, 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, October, and November 2019. *See* 84 FR 49591, 84 FR 57803, and 84 FR 61674. 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/docket?docketNumber=USTR-2019-0005>.

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 32 specially prepared product descriptions, which cover 39 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.

Paragraph B, subparagraph (1) is a typographical correction of U.S. note 20(II)(23) to subchapter III of chapter 99 of the HTSUS that modifies the unit of measurement published in the annex to the notice published at 84 FR 57803 (October 28, 2019). Paragraph B, subparagraphs (2)–(5), make conforming amendments to note 20(g) published at 83 FR 47974 (September 21, 2019), note 20(II) published at 84 FR 57803 (October 28, 2019), note 20(mm) published at 84 FR 61674 (November 13, 2019), and heading 9903.88.04 of the HTSUS published at 83 FR 47974 (September 21, 2019).

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 9903.88.35 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	
“9903.88.35	Articles the product of China, as provided for in U.S. note 20(nn) 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(nn) to subchapter III of chapter 99 in numerical sequence:

“(nn) 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, and by which particular products classified in heading 9903.88.04 and provided for in U.S. note 20(g) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.04. 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) Candy lollipops, not containing cocoa, such goods put up for retail sale in packings in the form of a larger plastic lollipop, each comprising a spheroid container with a major axis of 14 cm and a minor axis of 11 cm, with and a plastic stick measuring 22

- cm in length inserted in the bottom of the container, with the container portion wrapped in printed plastic film cinched at the container's bottom by a printed hang tag (described in statistical reporting number 1704.90.3550)
- (2) Sodium metal (CAS No. 7440-23-5), in bulk solid form (described in statistical reporting number 2805.11.0000)
 - (3) Plastic trays, of a kind used for retail packaging, custom vacuum formed from polyvinyl chloride or polystyrene sheets (0.45 to 0.9 mm in thickness), each measuring 7.62 cm or more but not over 53.34 cm in length, 17.15 cm or more but not over 42.55 cm in width, and 3.18 cm or more but not over 15.24 cm in depth (described in statistical reporting number 3923.10.9000)
 - (4) Nonelectrical graphite sheets, flexible, measuring 1,000 mm in length, 1,000 mm in width, and 0.8 mm or more but not exceeding 1.5 mm in thickness (described in statistical reporting number 6815.10.0100)
 - (5) Grinding beads of yttria-stabilized zirconia (described in statistical reporting number 6909.11.2000)
 - (6) Tube or pipe sleeves (couplings) of alloy steel (except stainless steel), threaded, each weighing 0.19 kg or more but not over 18.2 kg, measuring 305 cm in length, measuring 1.2 cm or more but not over 10.2 cm in diameter, UL listed (described in statistical reporting number 7307.92.3030)
 - (7) Butt welding tube or pipe elbows of galvanized steel, each weighing 0.19 kg or more but not over 17 kg, measuring 12 mm or more but not over 102 mm in inside diameter, UL listed (described in statistical reporting number 7307.93.6000)
 - (8) Foldable stepladders of steel, each with 2, 3 or 4 steps and safety latch, with load capacity of 90 kg or more but not over 140 kg (described in statistical reporting number 7326.90.8660)
 - (9) Flat panel display mounting adapters of base metal (described in statistical reporting number 8302.50.0000)
 - (10) Telescoping curtain rod sets put up for retail sale, each set including two or more cylindrical telescoping rods, two or more wall brackets capable of affixing the rods to building components, all the foregoing of steel, and two or more rod finials of resins or other plastics, the foregoing not including mechanisms for opening or closing curtains (described in statistical reporting number 8302.41.6050)
 - (11) Electric display cases incorporating refrigerating equipment designed for commercial use, each with a glass front to display the food or drink being stored (described in statistical reporting number 8418.50.0080)
 - (12) Wireline bridge plug assemblies for use in oil and gas fields, compliant with Specification 11D1 of the American Petroleum Institute (API), each composed of cylindrically shaped, sand cast, cast iron components with a nitrile rubber sealing element and brass element backup rings, measuring 3.7 cm or more but not over 52 cm in diameter and 30 cm or more but not over 72 cm in length (described in statistical reporting number 8479.89.9450)
 - (13) Vacuum cleaners, bagless, upright, capable of operating in wet mode or dry mode, each with self-contained electric motor of a power not exceeding 1,500 W and having

- a tank capacity not over 4 liters (described in statistical reporting number 8508.11.0000)
- (14) Vacuum cleaners, bagless, upright, each with self-contained electric motor of a power not exceeding 1,500 W and having a dust receptacle capacity not exceeding 1 liter (described in statistical reporting number 8508.11.0000)
 - (15) Starter motors for internal combustion gasoline engines designed for use in the lawn, automotive, watercraft, motorcycle, industrial and garden industries (described in statistical reporting number 8511.40.0000)
 - (16) EGR coolant tube assemblies of stainless steel for diesel powered vehicles of headings 8701 to 8705 (described in statistical reporting number 8708.99.8180)
 - (17) Bicycles, not motorized, each having aluminum- or magnesium- alloy wheels both measuring more than 69 cm but not more than 71 cm in diameter, tires of cross-sectional diameter of 3.5 cm, aluminum frame, a polyurethane/carbon fiber cord drive belt, 3-, 7- or 12-speed rear hub and twist shifter (described in statistical reporting number 8712.00.2500)
 - (18) Single-speed bicycles meeting the criteria of HTS subheading 8712.00.44, each having steel frame, with aluminum stems, rims and crankset and with rider contact area of plastics, each bicycle weighing not over 11.5 kg (described in statistical reporting number 8712.00.4400)
 - (19) Carts (other than industrial hand trucks and portable luggage carts) that convert into ladders, each weighing not more than 15 kg, measuring not more than 105 cm by 56 cm by 11 cm (described in statistical reporting number 8716.80.5090)
 - (20) Dump carts, each with a steel frame, a plastic bed and four pneumatic tires on wheels, with a capacity not exceeding 550 kg (described in statistical reporting number 8716.80.5090)
 - (21) Canoes (other than of wood or of metal) each valued over \$800, not of a type designed to be principally used with motors or sails (described in statistical reporting number 8903.99.0500)
 - (22) Folding chairs with aluminum frames, each comprising a seat of polyester ripstop fabric and polyester netting and an aluminum frame, weighing not more than 600 g (described in statistical reporting number 9401.79.0015)
 - (23) Folding tables designed for camping, each composed of a polyester ripstop fabric top designed to assemble onto an aluminum frame, the foregoing when opened for use measures 53.34 cm x 41.91 cm x 36.83 and weighs under 0.9 kg (described in statistical reporting number 9403.20.0050)
 - (24) Outdoor tables of steel and aluminum, each measuring no more than 93 cm by 93 cm by 63 cm, incorporating a built-in gas-burning fire pit (described in statistical reporting number 9403.20.0050)
 - (25) Foldable cots with frames of steel and/or aluminum, each with sleeping surface of polyester or nylon fabric, each cot measuring 185 cm or more but not over 230 cm in length, 70 cm or more but not over 105 cm in width and 7 cm or more but not over 58 cm in height (described in statistical reporting number 9403.20.0090)

- (26) Foldable tables with frames of steel and/or aluminum, each measuring 25 cm or more but not over 156 cm in length, 30 cm or more but not over 80 cm in width and 37 cm or more but not over 113 cm in height, with a tabletop surface of aluminum (described in statistical reporting number 9403.20.0090)
- (27) Electric household floor-standing lamps, of base metal other than brass, each measuring 1.22 m or more but not over 2.59 m in height, with an E26 socket (described in statistical reporting number 9405.20.6010)
- (28) Electric household floor-standing lamps, of base metal other than brass, each measuring 77 cm or more but not over 232 cm in height with light-emitting diode (LED) lamp as light source (described in statistical reporting number 9405.20.6010)
- (29) Electric household table or desk lamps, of base metal other than brass, each measuring 25 cm or more but not over 92 cm in height with an E26 socket (described in statistical reporting number 9405.20.6010)
- (30) Electric household table or desk lamps, of base metal other than brass, each measuring 38 cm or more but not over 87 cm in height, with light-emitting diode (LED) lamp as light source and featuring an AC outlet, a charging pad and USB port designed for the charging of electronic devices (described in statistical reporting number 9405.20.6010)
- (31) Electric household floor-standing lamps, of wood, each measuring 115 cm or more but not over 210 cm in height, with an E26 socket (described in statistical reporting number 9405.20.8010)
- (32) Electric household table or desk lamps, of wood, each measuring 25 cm or more but not over 80 cm in height, with an E26 socket (described in statistical reporting number 9405.20.8010)”

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(II) to subchapter III of chapter 99;” and

b. by inserting the phrase “; or (5) heading 9903.88.35 and U.S. note 20(nn) to subchapter III of chapter 99” after the phrase “U.S. note 20(mm) 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(II) to subchapter III of chapter 99;” and

b. by inserting the phrase “; or (5) heading 9903.88.35 and U.S. note 20(nn) to subchapter III of chapter 99” after the phrase “U.S. note 20(mm) to subchapter III of chapter 99”.

5. by amending the Article Description of heading 9903.88.03:

a. by deleting “9903.88.33 or” and inserting “9903.88.33,” in lieu thereof; and

b. by inserting “or 9903.88.35,” after “9903.88.34,”.

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 September 24, 2018:

1. U.S. note 20(l)(23) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by deleting “Articulated chains of iron, not over 8 mm in thickness and valued not over \$2 per kg (described in statistical reporting number 7315.12.0080)” and inserting “Articulated chains of iron, not over 8 mm in thickness and valued not over \$2 per m (described in statistical reporting number 7315.12.0080)” in lieu thereof.
2. U.S. note 20(g) to subchapter III of chapter 99 of the HTSUS is amended by inserting the following phrase at the end of the first sentence after the phrase “the following products of China”:

“, except products of China granted an exclusion by the U.S. Trade Representative and provided for in: (1) heading 9903.88.33 and U.S. note 20(l) to subchapter III of chapter 99; or (2) heading 9903.88.34 and U.S. note 20(m) to subchapter III of chapter 99”.
3. U.S. note 20(l) to subchapter III of chapter 99 of the HTSUS is amended by inserting the following phrase at the end of the first sentence after the phrase “imposed by heading 9903.88.03”:

“, and by which particular products classified in heading 9903.88.04 and provided for in U.S. note 20(g) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.04”.
4. U.S. note 20(m) to subchapter III of chapter 99 of the HTSUS is amended by inserting the following phrase at the end of the first sentence after the phrase “imposed by heading 9903.88.03”:

“, and by which particular products classified in heading 9903.88.04 and provided for in U.S. note 20(g) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.04”.
5. The article description of heading 9903.88.04 of the HTSUS is amended by deleting “Articles” and inserting in lieu thereof the phrase “Except as provided in headings 9903.88.33 or 9903.88.34, articles”.