

[Billing Code 3290-F9]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions, Amendment to the Exclusion Process, and Technical Amendments: 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 and technical amendments.

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 amends the exclusion process by establishing August 7, 2020 as a uniform expiration date for all exclusions granted under the \$200 billion action. This notice also announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in Annex A. As specified in Annex B, this notice also makes technical amendments to the \$200 billion action and to the \$300 billion action announced in August 2019.

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. The technical amendments in Annex B to the \$200 billion and \$300 billion actions are effective as of the respective effective date of those actions. 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 A 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), 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), and 84 FR 46212 (September 3, 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. This set of exclusions is set to expire on August 7, 2020, one year following the publication of the

exclusion determination in the Federal Register. The Office of the United States Trade Representative regularly updates the status of each pending request and posts the status within the webpages for the respective tariff action they apply to at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions>.

On August 20, 2019, the U.S. Trade Representative determined to impose additional 10 percent duties on two lists of goods of China classified under 8-digit subheadings in the HTSUS, with an approximate annual trade value of \$300 billion. *See* 84 FR 43304. The U.S. Trade Representative subsequently increased the rate of the additional duty to 15 percent. *See* 84 FR 45821. The additional duties became effective on September 1, 2019, for goods on list 1 and will become effective on December 15, 2019, for goods on list 2.

B. Amendment to the Exclusion Process

The June 24 notice announced that the exclusions granted for the \$200 billion trade action would be effective starting from September 24, 2018, and extend for one year after the publication of the exclusion determination in the Federal Register. This policy, however, would have resulted in disparities in the effective periods between exclusions granted early in the exclusion process and those granted later. Accordingly, the Trade Representative is amending the exclusion process so as to adopt a uniform expiration date for exclusions granted for the \$200 billion trade action, subject to special circumstances. In particular, all exclusions from the \$200 billion action will be effective from September 24, 2018, to August 7, 2020.

C. 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 Annex A. 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 Annex A, the exclusions are reflected in 38 specially prepared product descriptions, which cover 46 separate exclusion requests.

In accordance with the June 24 notice, the exclusions are available for any product that meets the description in Annex A, 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 Annex A, 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 Annex A.

As stated in Section B above, 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.

D. Technical Amendments to \$200 Billion and \$300 Billion Actions

Annex B make technical amendments to the \$200 billion and \$300 billion trade actions. These amendments provide that the additional duties do not apply to entries under certain subheadings if the applied rate of duty for an entry is derived from another subheading, and if the entry for this reason already is subject to the additional duties.

Joseph Barloon
General Counsel
Office of the U.S. Trade Representative.

ANNEX A

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, and before 11:59 p.m. eastern daylight time on August 7, 2020, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.18 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	
“9903.88.18	Articles the product of China, as provided for in U.S. note 20(w) 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(w) to subchapter III of chapter 99 in numerical sequence:

“(w) 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. 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) Chabazite zeolites having a silica-alumina ratio of 20:1 to 24:1, valued at \$31 to \$39 per kg (described in statistical reporting number 3824.99.3900)
- (2) Cups of polypropylene, with a fluted wood paper filter fitted and affixed to the inside, measuring 44.1 mm in height, of a kind used to produce capsules for single-cup coffee brewing systems (described in statistical reporting number 3923.90.0080)

- (3) Anti-electrostatic discharge mats, comprising a conductive rubber mat measuring 40 cm or more but not exceeding 60 cm in width, 80 or more but not exceeding 125 cm in length, and 2 mm in thickness, with integrated discharge points for a grounding wire clip or an anti-static wrist strap, such mats printed on the surface with measuring rules and technical reference data (described in statistical reporting number 4016.91.0000)
- (4) O-rings, of nitrile rubber, ethylene propylene diene monomer (EPDM) rubber or fluoroelastomers (described in statistical reporting number 4016.93.1010)
- (5) Dog harnesses and retractable dog leashes (described in statistical reporting number 4201.00.3000)
- (6) Portable, single-use grills for heating food, each comprising bamboo charcoal fuel, expanded perlite insulation, bamboo rods for suspending foods over the charcoal flame, and cut paper or paperboard in shapes specially designed for assembly of a grill body (described in statistical reporting number 4402.10.0000)
- (7) Laminated wood flooring panels having a hardwood veneer finished surface and a backing of pine strips or blocks, the panels having tongue-and-groove outer edges and being in thickness greater than 1.4 cm but not greater than 1.5 cm. (described in statistical reporting number 4412.99.5105)
- (8) Rattan webbing, woven into decorative patterns (described in statistical reporting number 4601.93.0100)
- (9) Paper pulp sponge blocks, measuring 38 cm by 38 cm by 102 cm (15 inches by 15 inches by 40 inches) (described in statistical reporting number 4823.70.0040)
- (10) Woven microfiber fabric of 100 percent polyester, not exceeding 150/75 or 104/72 threads per inch, weighing 83 gram/m² (described in statistical reporting number 5407.10.0010)
- (11) Woven fabric sheeting of 65 percent polyester and 35 percent cotton, weighing less than 170g/ m², not exceeding 45/45 or 110/76 threads per inch (described in statistical reporting number 5513.11.0040)
- (12) Polyester or viscose fabric coated with polyurethane, the foregoing measuring 137 cm (54 inches) in width, and weighing 187 grams/m² (described in statistical reporting number 5903.20.2500)
- (13) Stainless steel mesh filters (described in statistical reporting number 7314.14.1000)
- (14) Grills composed of steel wire, each measuring 49 cm by 47 cm (19.25 inches by 18.5 inches), weighing 0.36 kg (0.80 lbs.), designed as cooking surface of barbecue grill (described in statistical reporting number 7321.90.6090)
- (15) Mounting boards of aluminum for guitar sound modifying (“effect”) devices, each consisting of an aluminum frame with above ground slots for the placement of devices and floor level slots for the on/off foot-operated pedal switches which control the modifying devices (described in statistical reporting number 7616.99.5190)

- (16) Hand rails of tubular stainless steel, with wall connectors, of a length exceeding 300 mm but not exceeding 1.3 m (described in statistical reporting number 8302.41.6080)
- (17) Stamped and formed latches of steel (described in statistical reporting number 8302.49.6085)
- (18) Stamped and formed brackets of steel (described in statistical reporting number 8302.50.0000)
- (19) Spark ignition reciprocating piston engines of a cylinder capacity exceeding 100 cc but not exceeding 250 cc, not exceeding 10.0 kW (described in statistical reporting number 8407.32.9040)
- (20) Fuel pumps for internal combustion, spark ignition piston engines (described in statistical reporting number 8413.30.9030)
- (21) Parts, of aluminum, iron or steel, for blowers other than fans of 8414.51 (described in statistical reporting number 8414.90.1080)
- (22) Mouse input devices for automatic data processing (ADP) machines, each valued over \$70 (described in statistical reporting number 8471.60.9050)
- (23) Trackpad input units for automatic data processing (ADP) machines, each valued over \$100 (described in statistical reporting number 8471.60.9050)
- (24) Printed circuit assemblies to enhance the graphics performance of automatic data processing (ADP) machines (“accelerator modules”) (described in statistical reporting number 8473.30.1180)
- (25) Printed circuit assemblies for rendering images onto computer screens (“graphics processing modules”) (described in statistical reporting number 8473.30.1180)
- (26) Printed circuit assemblies, constituting unfinished logic boards (described in statistical reporting number 8473.30.1180)
- (27) Parts and accessories of machines of heading 8471 not incorporating goods of headings 8541 or 8542 (described in statistical reporting number 8473.30.5100)
- (28) Refrigerated and heated vending machines for dispensing live bait and fishing tackle, each machine weighing more than 350 kg (described in statistical reporting number 8476.81.0000)
- (29) Power supplies suitable for physical incorporation into automatic data processing (ADP) machines or units thereof of heading 8471, each with a power output exceeding 500 W, measuring 148mm in length, 43 mm in width and 335 mm in height (described in statistical reporting number 8504.40.6018)
- (30) Cold cathode electric neon discharge lamps, measuring 6.5 mm (1/4 inch) or less in diameter and 16 mm (5/8 inch) or less in length (described in statistical reporting number 8539.39.9000)
- (31) Guide pins and guide bolts designed for use in brakes and servo-brakes of subheading 8708.30 (described in statistical reporting number 8708.30.5090)

- (32) Aluminum radiators for motor vehicles of headings 8701 to 8705 (other than for tractors suitable for agricultural use), measuring 50 cm or more but not exceeding 77 cm (20 inches to 30 inches) in width, 50 cm or more but not exceeding 77 cm (20 inches to 30 inches) in height, and 5 cm or more but not exceeding 11 cm (2 inches to 4 inches) in thickness, consisting of upper and lower tanks or side tanks welded to a center core (described in statistical reporting number 8708.91.5000)
- (33) Single-speed bicycles having both wheels exceeding 63.5 cm in diameter, weighing less than 16.3 kg without accessories and not designed for use with tires having a cross-sectional diameter exceeding 4.13 cm (described in statistical reporting number 8712.00.2500)
- (34) Tractor trailer skirts, consisting of panels designed to be attached to each side of a trailer, each with an upper section having a polyethylene core, steel layer and polyester finish coat and each lower section composed of thermoplastic vulcanite compound (described in statistical reporting number 8716.90.5060)
- (35) Miniature lighting sets of a kind used for Christmas trees (described in statistical reporting number 9405.30.0010)
- (36) LED light fixtures, of a kind used in horticulture, containing over 5,000 LEDs spread across 6 light bars (described in statistical reporting number 9405.40.8440)
- (37) Garden, patio and table top wick burning torches for outdoor use (described in statistical reporting number 9405.50.4000)
- (38) Lamp shades of fabric over metal frame (described in statistical reporting number 9405.99.4090)”

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 “provided for in heading 9903.88.13” and inserting “provided for in: (1) heading 9903.88.13” in lieu thereof; and
- b. by inserting “; or (2) heading 9903.88.18 and U.S. note 20(w) to subchapter III of chapter 99” after “U.S. note 20(p) to subchapter III of chapter 99”.

4. by amending U.S. note 20(f) to subchapter III of chapter 99:

- a. by deleting “provided for in heading 9903.88.13” and inserting “provided for in: (1) heading 9903.88.13” in lieu thereof; and
- b. by inserting “; or (2) heading 9903.88.18 and U.S. note 20(w) to subchapter III of chapter 99” after “U.S. note 20(p) to subchapter III of chapter 99”.

5. by amending the Article Description of heading 9903.88.03:

- a. by deleting “heading 9903.88.13,”; and
- b. by inserting in lieu thereof: “headings 9903.88.13 or 9903.88.18,”.

ANNEX B

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 headings 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	
“9903.88.21	Articles the product of China, as provided for in U.S. note 20(z) to this subchapter	The duty provided in the applicable subheading		
9903.88.22	Articles the product of China, as provided for in U.S. note 20(aa) to this subchapter	The duty provided in the applicable subheading		
9903.88.23	Articles the product of China, as provided for in U.S. note 20(bb) to this subchapter	The duty provided in the applicable subheading		
9903.88.24	Articles the product of China, as provided for in U.S. note 20(cc) to this subchapter	The duty provided in the applicable subheading”		

2. by inserting the following new U.S. notes 20(z), 20(aa), 20(bb) and 20(cc) to subchapter III of chapter 99 in numerical sequence:

“(z) For purposes of heading 9903.88.21, the additional duties imposed by heading 9903.88.03 or 9903.88.09 shall not apply to entries under subheadings 2202.99.36, 2202.99.37, 5810.91.00, 5810.92.10, 5810.92.90, 5810.99.10, 5810.99.90, 8205.90.60, 8206.00.00, 8215.20.00, 9017.90.01, 9620.00.15, and 9620.00.30, if such entries are subject to an applied rate of duty under such enumerated subheadings that is derived from another subheading that is subject to the additional duties imposed by heading 9903.88.01.

(aa) For purposes of heading 9903.88.22, the additional duties imposed by heading 9903.88.03 or 9903.88.09 shall not apply to entries under subheadings 2202.99.36, 2202.99.37, 5810.91.00, 5810.92.10, 5810.92.90, 5810.99.10, 5810.99.90, 8205.90.60, 8206.00.00, 8215.20.00, 9017.90.01, 9620.00.15, and 9620.00.30, if such entries are subject to an applied rate of duty under such enumerated subheadings that is derived from another subheading that is subject to the additional duties imposed by heading 9903.88.02.

(bb) For purposes of heading 9903.88.23, the additional duties imposed by heading 9903.88.03 or 9903.88.09 shall not apply to entries under subheadings 2202.99.36, 2202.99.37, 5810.91.00, 5810.92.10, 5810.92.90, 5810.99.10, 5810.99.90, 8205.90.60, 8206.00.00, 8215.20.00, 9017.90.01, 9620.00.15, and 9620.00.30, if such entries are subject to an applied rate of duty under such enumerated subheadings that is derived from another subheading that is subject to the additional duties imposed by heading 9903.88.03 or 9903.88.09.

(cc) For purposes of heading 9903.88.24, the additional duties imposed by heading 9903.88.03 or 9903.88.09 shall not apply to entries under subheadings 2202.99.36, 2202.99.37, 5810.91.00, 5810.92.10, 5810.92.90, 5810.99.10, 5810.99.90, 8205.90.60, 8206.00.00, 8215.20.00, 9017.90.01, 9620.00.15, and 9620.00.30, if such entries are subject to an applied rate of duty under such enumerated subheadings that is derived from another subheading that is subject to the additional duties imposed by heading 9903.88.15.”

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 1, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new headings 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	
“9903.88.25	Articles the product of China, as provided for in U.S. note 20(dd) to this subchapter	The duty provided in the applicable subheading		
9903.88.26	Articles the product of China, as provided for in U.S. note 20(ee) to this subchapter	The duty provided in the applicable subheading		
9903.88.27	Articles the product of China, as provided for in U.S. note 20(ff) to this subchapter	The duty provided in the applicable subheading		
9903.88.28	Articles the product of China, as provided for in U.S. note 20(gg) to this subchapter	The duty provided in the applicable subheading”		

2. by inserting the following new U.S. notes 20(dd), 20(ee), 20(ff) and 20(gg) to subchapter III of chapter 99 in numerical sequence:

“(dd) For purposes of heading 9903.88.25, the additional duties imposed by heading 9903.88.15 shall not apply to entries under subheadings 2106.90.52, 2106.90.54, 6103.22.00, 6103.23.00, 6103.29.05, 6103.29.10, 6103.29.20, 6104.22.00, 6104.23.00, 6104.29.05, 6104.29.10, 6203.22.30, 6203.29.10, 6203.29.15, 6203.29.20, 6203.29.30, 6204.21.00, 6204.22.30, 6204.23.00, 6204.29.20, 8215.10.00, 9005.90.40, 9005.90.80, 9110.11.00, 9110.90.20, and 9608.50.00, if such entries are subject to an applied rate of duty under such enumerated subheadings that is derived from another subheading that is subject to the additional duties imposed by heading 9903.88.01.

(ee) For purposes of heading 9903.88.26, the additional duties imposed by heading 9903.88.15 shall not apply to entries under subheadings 2106.90.52, 2106.90.54, 6103.22.00, 6103.23.00, 6103.29.05, 6103.29.10, 6103.29.20, 6104.22.00, 6104.23.00, 6104.29.05, 6104.29.10, 6203.22.30, 6203.29.10, 6203.29.15, 6203.29.20, 6203.29.30, 6204.21.00, 6204.22.30, 6204.23.00, 6204.29.20, 8215.10.00, 9005.90.40, 9005.90.80,

9110.11.00, 9110.90.20, and 9608.50.00, if such entries are subject to an applied rate of duty under such enumerated subheadings that is derived from another subheading that is subject to the additional duties imposed by heading 9903.88.02.

(ff) For purposes of heading 9903.88.27, the additional duties imposed by heading 9903.88.15 shall not apply to entries under subheadings 2106.90.52, 2106.90.54, 6103.22.00, 6103.23.00, 6103.29.05, 6103.29.10, 6103.29.20, 6104.22.00, 6104.23.00, 6104.29.05, 6104.29.10, 6203.22.30, 6203.29.10, 6203.29.15, 6203.29.20, 6203.29.30, 6204.21.00, 6204.22.30, 6204.23.00, 6204.29.20, 8215.10.00, 9005.90.40, 9005.90.80, 9110.11.00, 9110.90.20, and 9608.50.00, if such entries are subject to an applied rate of duty under such enumerated subheadings that is derived from another subheading that is subject to the additional duties imposed by heading 9903.88.03 or 9903.88.09.

(gg) For purposes of heading 9903.88.28, the additional duties imposed by heading 9903.88.15 shall not apply to entries under subheadings 2106.90.52, 2106.90.54, 6103.22.00, 6103.23.00, 6103.29.05, 6103.29.10, 6103.29.20, 6104.22.00, 6104.23.00, 6104.29.05, 6104.29.10, 6203.22.30, 6203.29.10, 6203.29.15, 6203.29.20, 6203.29.30, 6204.21.00, 6204.22.30, 6204.23.00, 6204.29.20, 8215.10.00, 9005.90.40, 9005.90.80, 9110.11.00, 9110.90.20, and 9608.50.00, if such entries are subject to an applied rate of duty under such enumerated subheadings that is derived from another subheading that is subject to the additional duties imposed by heading 9903.88.15.”